CHAPTER - III

JUSTICE DELIVERY SYSTEM IN INDIA:
STRUCTURAL FRAMEWORK
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The Constitution of India has provided for a single integrated system of courts to administer both the union and the state laws. At the apex of entire judicial system sits the Supreme Court of India. For each state or a group of states, there is a High Court which is the Highest Court of appeal at the state level and below High Court there is a hierarchy of sub-ordinate courts. Panchayat Courts also function in some states under the various names\(^1\) to decide civil and criminal disputes of petty and local nature.

Each state is divided into many judicial districts, with each court being presided over by a district and sessions judge. It can try all offences, including those punishable with death. It is the highest legal authority in the district. Under it, there are courts of civil jurisdiction\(^2\), as well as criminal Jurisdiction with chief Judicial Magistrate and Judicial magistrates of first class and Second class, as presiding officers.

Hierarchy of Civil Courts in India

- Supreme Court
- High Courts
- District Judge
- Civil Judge (Senior Division)
- Civil Judge (Junior Division)

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\(^1\) like Nyaya Panchayat, Panchayat Adalat, Gram Kachehri, etc
\(^2\) Known in different states as munsifs, sub-judges, civil Judges and the like.
(i) Hierarchy of Criminal Courts

Supreme Court

High Court

Sessions Court

(Sessions Judge, Additional Sessions Judge)

Assistant Sessions Judge

Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrate

Chief Judicial Magistrate or Additional Chief Judicial Magistrate

Metropolitan Magistrate

Special Metropolitan Magistrate

Sub-divisional Judicial Magistrate

Judicial Magistrate or Special Judicial Magistrate of First Class

Judicial Magistrate or Special Judicial Magistrate of Second Class

(ii) Hierarchy of Executive Magistrates

DISTRICT MAGISTRATE (ADDITIONAL DISTRICT MAGISTRATE)

SUB-DIVISIONAL MAGISTRATE

Executive Magistrate

Special Executive Magistrate
3.1 INDEPENDENCE OF THE JUDICIARY

An impartial and independent Judiciary is a sine-qua-non for a democratic country. The constitution of India has made elaborate provisions to ensure independence of the Judiciary.

Appointment of Judges:
The Constitution does not leave the appointment of the Judges of the Supreme Court and the High Courts to the unguided discretion of the Executive. The Executive is required to consult Judges of the Supreme Court and High Courts in the appointment of the Judges of the Supreme Court as well as High Courts.3

Security of tenure
The Judges of the Supreme Court as well as those of the High Courts have security of tenure. They cannot be removed from office except by an order of the President and that too only on the ground of proved misbehavior or incapacity, supported by a resolution adopted by a majority of total membership of each House of Parliament and also by a majority of not less than 2/3 of the members of the House present and voting4. Parliament may, however, regulate the procedure for presentation of the address and for investigation and proof of the misbehaviour or incapacity of a Judge.5

Salary of Judges
The salaries, allowances & Pension payable to or in respect of the Judges of the Supreme Court are fixed by the Constitution6 and shall be charged on the Consolidated Fund of India and are not subject to a vote

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3 Article124 (2) & Article 217 (1) of the constitution of India. The independence of the Supreme Court is emphasised by Article 229 which provides that appointment of officers and servants shall be made by the Chief Justice or such other Judge or officer as he may appoint.

4 Articles 124(4) & 217 (1) (b) of the constitution of India

5 Clause (5) of Article 124; Parliament enacted The Judges (Inquiry) Act 1968, In the exercise of the power conferred by Article 124 (5)

6 At present the salary of the chief Justice of India is Rs 33000 per month and salary of other judges of the Supreme Court is Rs 30, 000 per month. The Salary of Chief Justice of High Court is Rs. 30, 000 and other judges of the High Court is 26, 000
of the Parliament. Parliament is also authorized to determine, from time to time, by law such questions as the privileges, allowances, rights in respect of leave of absence and pension for these Judges. None of these can, however, be varied by Parliament to the disadvantage of a Judge after his appointment to the Court except in grave financial emergency.

Powers and Jurisdiction of Supreme Court vis-à-vis powers of the Parliament

In respect of the jurisdiction of the Supreme Court, the Parliament may change pecuniary limit for appeals to the Supreme Court in civil cases, enhance the appellate jurisdiction of the Supreme Court, confer supplementary power to enable it to work more effectively, confer power to issue directions, order or writs including all the prerogative writs for any purpose other than those mentioned in Article 32. However, the parliament can exceed but cannot curtail the jurisdiction and the powers of the Supreme Court.

No discussion in Legislature on the conduct of the Judges—

Neither in the Parliament nor in the State Legislature, a discussion can take place with respect to the conduct of a Judge of the Supreme Court.

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7 Article 112 of the constitution of India Parliament is also authorized to determine, from time to time, by law such questions as the privileges, allowances, rights in respect of leave of absence and pension for these Judges. None of these can, however, be varied by Parliament to the disadvantage of a Judge after his appointment to the Court.

8 Article 125(2) the proviso. All these matters are now regulated by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 as amended in 1998. Similarly, Article 202(3) (d) of the constitution provides that expenditure in respect of Salaries and allowances of Judges of any High Court shall be charged on consolidated fund of the state. Proviso to Article 221(2) of the constitution further provides that neither the allowances of a Judge nor his right in respect of leave of absence or pension shall be varied to his disadvantage after his appointment proviso to Article 221 provides that Salaries etc. of judges of High court cannot be varied to their disadvantage after their appointment.

9 Article 360 of the Constitution

10 Article 138 of the Constitution

11 Article 140 of the Constitution

12 Article 139 of the Constitution
or High Court for anything done by him in discharge of his duties, except that in parliament it may be done when a judge is being impeached.

**Power to punish for Contempt**

The Supreme Court and the High Courts have the power to punish any person for their contempt. This power is very essential for maintaining the dignity and independence of the Judiciary.

**Separation of the Judiciary from the Executive**

The Constitution directs the State to take steps to separate the judiciary from the executive in the public services of the State. It emphasizes the need of securing the independence of judiciary from the interference by the executive.

**Prohibition on practice after retirement**

The Constitution prohibits a retired Judge of the Supreme Court from appearing and pleading in any court or before any other authority within the territory of India.

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13 Article 121 & Article 211 of the constitution provides that no discussion shall take place in parliament with respect to conduct of any judge of the Supreme Court or of a High court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of Judges as herein after provided.

14 Article 129 and 215 of the constitution of India

15 Article 50 of the constitution of India

16 Article-124 (7) of the constitution of India Practice after retirement; The Draft Constitution Article 103(7) Provided that No person who has held office of a judge of the supreme Court shall plead or Act in any Court or before any authority in India and a Similar provision was made for permanent as well as acting or additional judges of the High Court (Draft Article 196) The Judges memorandum raised no objection to this ban on practice for permanent judges, but it pointed out that if such a ban was imposed on temporary or additional Judges, it might not be possible to recruit additional or acting judges from the bar (B.N. Rau’s – The framing of India’s constitution Vol. IV, p 197-198)

In considering these objections, the Draft Committee was greatly impressed by the Comments of Sir Tej Bahadur Sapru, who as a law member of Viceroy’s Executive Council had considered this question in 1921. Sir Tej Bahadur Sapru said that he was
A person who held an office as a permanent judge of a High Court is debarred from acting and pleading in any court or before any authority in India except the supreme court and other High Court. The law commission in its XIV Report, 1988 adversely commented on the practice of the High Court Judges setting up practice after retirement, as it greatly detracted from the dignity of the High Courts and the administration of justice generally. The commission, therefore, suggested that retirement age of High Court Judges be extended from 60 to 65 years and total ban imposed on a retired High Court judge resuming practice in any court. The commissions' recommendation was partially accepted, the age of retirement of High Court judge was raised from 60 to 62 but ban on his practice after retirement was not imposed.

strongly of the opinion that the English practice of not allowing a judge to revert to bar should be followed in India and the practice of appointing additional and acting judges should be given up. A seat on the Bench gave a lawyer pre-eminence over his colleagues, and embarrassed sub-ordinate Judges who were under his control at one time. Thus a Judge who is reverted to the Bar did not help justice but hindered it Sir Tej Bahadur added that we should follow the long standing English Convention that no member of the Bar should do anything which creates the impression that he has a pull over his opponent by reason of having held a judicial post (B. Shiva. Rao's: The framing of the Indian Constitution Vol. IV, p 172-173)

The Drafting Committee agreed with Sir Tej Bahadur Sapru and so did Shri Alladi Krishna Swami Ayyar. The Drafting Committee's proposal imposing ban on practice by all persons who had held office of Judge of the High Court after the commencement of the constitution met with opposition in the constituent Assembly from Shri Hukam Singh Who moved an amendment proposing that restriction on private practice should apply only to practice within the Jurisdiction of the Court where a Judge had served. He was supported by Shri H.V. Kamath and Shri V.M. Gupta the latter observing that if this ban were added to the other satisfactory terms and conditions of Judge's Service, the best men at Bar would not accept a judgeship. The constituent Assembly, however, rejected the amendment.

Shri K.M. Munshi an eminent lawyer, pointed out another evil in the Constituent Assembly. He said that "Judges were not allowed to practice after retirement; otherwise during the last years of their tenure there may be temptation to so behave as to attract practice after retirement (Constituent Assembly Debates, Vol. VIII, p 670)

Article 220 of the Constitution of India

The Constitutional (fifteenth amendment) Act 1963; Sec 4.
### 3.2 THE SUPREME COURT OF INDIA

In India at the apex of the judicial authority sits the Supreme Court of India\(^\text{19}\), whose constitutional provisions are based on the analogous provisions contained in Government of India Act, 1935 relating to the federal court. Compared to the federal court the Supreme Court exercises much wider powers, it is independent of the executives and the legislature and it combines in itself the function and powers of both the former federal Court of India and the Privy Council of England.

As compared to the Supreme Court’s of other countries, the Supreme Court of India is a unique judicial institution, entrusted with large powers enjoying original, appellate revisional and advisory jurisdictions and has the power to issue writs to the union and the state Government and other authorities. It can also interfere with decisions of the courts and tribunals throughout India.

The Supreme Court of India is the apex court and is the final interpreter of the Constitution and the Law.

### 3.3 HIGH COURTS

Next in Hierarchy of Judicial System in India are the High Courts. The High Court stand at the summit of the States’ judicial administration. There are 21 High Courts in the country, with three of them 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 the jurisdiction of different state High Courts.\(^\text{20}\) Each High Court comprises of a Chief Justice and such other judges as the President may, from time

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\(^{19}\) Article 124-147 of the constitution of India make provision regarding.

\(^{20}\) Bombay High Court has Jurisdiction over Maharashtra, Goa Dadra and Nagar Haveli and Daman and Diu; Guwahati High Court has Jurisdiction over Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh; Kerala High Court has Jurisdiction over Kerala and Lakshwadeep; Madras High Court has Jurisdiction over Tamil Naidu and Pondicherry; Punjab and Haryana High court Jurisdiction over Punjab, Haryana and Chandigarh
Every judge of a High Court shall be appointed by the president by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the state and in the case of appointment of a judge other than chief justice, the Chief justice of the concerned High Court.

For the sake of convenience and avoidance of repetition study of the composition, Qualifications, appointment, transfer and removal of both the Supreme Court and High Court judges is discussed together.

3.4 COMPOSITION

a) The Supreme Court

b) The High Court

The Constitution of India provides that "There shall be a supreme court of India consisted of a chief Justice of India and until parliament by law prescribes a larger number, of not more than seven other judges".

At the commencement of the constitution, the Supreme Court consisted of chief justice of India and not more than seven other Judges. Parliament is empowered to prescribe by law, a larger number of other Judges. In the exercise of this power, parliament enacted the Supreme Court (Number of Judges) Act, 1956 increasing the number of other Judges to nine. The number of other Judges was raised to 13 in 1960 and then to 17 in 1977. In 1986 the strength of Judges was raised to 25. At present the Supreme Court consists of a Chief Justice and 25 other Judges. It has been held in Rupa Asho Hurra Vs Ashok Hurra.

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21 Art 216 of the constitution.
22 Article 217 of the Constitution
23 Article 124(1) of the constitution of India
24 The Supreme Court Number of Judges (Amendment) Act, 1960
25 The Supreme Court Number of Judges (Amendment) Act, 1977
26 The Supreme Court Number of Judges (Amendment) Act, 1986
27 Presently, there is proposal to raise the strength of the Supreme Court to 31 but no bill for this purpose has been introduced so far.
28 AIR 2002 SC 1771
that the number of other Judges should be commensurate with the quantum of judicial workload. Otherwise, the Judiciary cannot be expected to discharge satisfactorily its constitutional obligations.

3.5 TENURE OF OFFICE:

The Judges of the Supreme Court hold office until the age of 65 years.29 A Judge may, however, resign his office by writing under his hand addressed to the President. 30 The resignation takes effect immediately or on the date mentioned by the judge for his resignation, if it is a future date31. He may be removed from his office in the manner provided in the constitution32.

The judges of the High Court hold office up to 62 Years of age. To be eligible for appointment as a High Court Judge, one must be a citizen of India and should have held a judicial office 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.33 The judges of the High court hold office up to 62 Years.

3.6 APPOINTMENT, REMOVAL AND TRANSFER

A. Appointment of Judges

Independence of Judiciary is a corner stone of our constitution. Independence here means freedom from Executive and Legislative interference in Judicial functions. The Judicial function can be performed by an authoritative independent and impartial Judiciary34.

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29 Article 124 clause 2
30 Article 124 (2), Proviso (a) of the constitution
31 For details see under heading Resignation of Judge
32 Clause (4) of Article 124 of the constitution.
33 To compute the period of 10 years, the period for which a person has held a Judicial office, been advocate of High Court, been a member of Tribunal or held any post under centre or state requiring special knowledge of law have to be counted. Expl (a) and (aa) to Article 217 (2)
34 BR Sharma: Judiciary on trial (1989) p 104
The method of appointment of Judges plays a vital role in the independence of Judiciary. To whom the task of selecting and appointing judges is to be given is one of the fundamental questions.

In case of India, in fashioning the provisions relating to Judiciary the greatest importance was attached to securing the independence of judiciary and throughout Constituent Assembly’s Debates the most vigorous emphasis was laid on that principle. The framers of the Constitution took great pains to ensure that even better and more effective judicial structure be incorporated in the Constitution, one that would meet the highest expectation of judicial independence. This judicial independence is secured by the Constitution by several provisions and one of such provisions is security of tenure provided to the Judges. But provisions for securing independence after appointment alone were not sufficient for an independent Judiciary it is also necessary to eliminate political influence or for that matter any other influence even at the stage of initial appointments of the judges as the independence of judiciary is directly and undoubtedly linked with appointment of judges of higher judiciary.

Keeping in mind the above said views let us examine the relevant Constitutional provisions in their true spirits and without stretching them too far.

There shall be a Supreme Court of India consisting of a Chief Justice of India and until Parliament by law prescribes a larger number, of not more than seven other judges (now twenty-five vide Act 22 of 1986).

A candidate for appointment as a judge of the Supreme Court must be

i) a citizen of India

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35 S.P. Gupta Vs Union of India, AIR 1982, SC 149 at p 526
36 Article 124(4) of Constitution of India
37 The method of appointment of judges of Supreme Court and High Court is outlined in Article 124(2) and Article 217(1) of the Constitution respectively.
38 Article 124 of the Constitution
ii) a judge of one or more High Courts in succession for at least 5 years

OR

iii) an advocate of one or more High Courts in succession for at least 10 years

OR

c) a distinguished jurist in the opinion of the President.39

Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the State as the President may deem necessary for the purpose. Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.40

Appointment of a Judge of a High Court:

Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.41

For appointment to the High Court as a Judge, a person must have the following qualifications viz:

1) He or she is a citizen of India, and

39 There was no provision in the Draft Constitution for the appointment of non-practicing lawyers as judges of Supreme Court. It was during the consideration stage of draft constitution that the qualification of being distinguished jurist was accepted, thus enabling Court to get benefit of the services of talented non-practicing lawyers. This provision was borrowed from the United States where distinguished law teachers have been appointed to the Supreme Court and they have proved to be successful. The opinion was expressed that one out the seven judges of Supreme Court must be a jurist of great eminence. In India so far no jurist has been appointed as a judge of Supreme Court.

40 Article 124 of the constitution

41 Article 217 (1) of Constitution of India provides for the appointment of Judges to the High Court.
2) (a) He or she has held a 'judicial office' in the territory of India for at least 10 years.
   (b) He or she has been an advocate of the High Court or of two or more High Courts in succession for at least 10 years.

Perusal of Article 124 (2) and Article 217(1) of the Constitution of India makes it clear that the President appoints judges of the Supreme Court and High Court after consultation with specified constitutional functionaries. For appointment of the Supreme Court judge, the President has to consult:

1) Such of the Judges of the Supreme Court, and Judges of the High Court in the States as the President may deem necessary for this purpose, but the proviso to clause (2) of Article 124 makes it obligatory on the part of the President to consult the Chief Justice of India in case of an appointment of a Judge other than the Chief Justice. Thus, Article 124(2) envisages two kinds of consultations, one being discretionary on the part of the President and the other being mandatory.

In case of appointment of a Judge of the High Court, the following constitutional functionaries are consulted:

1) The Chief Justice of India,
2) The Governor of the State, and
3) Chief Justice of High Court concerned.

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42 In Kumar Padam Prasad vs Union of India AIR 1992 SC 1213 The SC has held that holder of "Judicial office" under Art 217 (2) (a) means a person who exercises only Judicial functions, determines causes inter-partes and renders decisions in judicial capacity. He must belong to the judicial service which as a class is free from executive control and is disciplined to hold the dignity, integrity and independence of judiciary.

In view of Court, the expression 'judicial office' means an office which is a part of judicial service as defined under Article 236(b) of the constitution." In this case the court has held that office of Legal Remembrancer-Cum-Secretary (Law and Justice) of the state government was a non-judicial office under the control of Executive.

43 By the Constitutional (42nd Amendment) Act, Provision was made to appoint Jurist as a Judge of the High Court, However, by Constitutional (44th Amendment) Act this provision was deleted.
It is clear that under Article 217(1), the process of ‘consultation’ by the President is mandatory and this clause does not speak of any discretionary ‘consultation’ with any other authority as in the case of appointment of a Judge of the Supreme Court as envisaged in clause (2) of Article 124. The question is what is the meaning of the expression ‘consultation’ and in what context it is used under the Constitution. The word “in consultation with” when used in legal sense has come up for judicial interpretation before Supreme Court as well as High Court on many occasions.

In Sankal Chand Seth’s case⁴⁴ relating to the scope and meaning of Article 222(1) of the Constitution it was held that the word ‘consultation’ means full and effective consultation. For a full and effective consultation it is necessary that the three constitutional functionaries “must have for its consideration full and identical facts” on the basis of which they would be able to take a decision. The President, however, has a right to differ from them and take a contrary view, ‘Consultation’ does not mean ‘concurrence’ and the President is not bound by it.

In S.P. Gupta vs Union of India⁴⁵ popularly known as Judges Transfer case, the Supreme Court unanimously agreed with the meaning of the term ‘consultation’ as explained by the majority in Sankal Chand Seth’s case. The meaning of the word ‘consultation’ in Article 124(2) is the same as the meaning of the word ‘consultation’ in Article 212 and Article 222 of the Constitution. This means that the ultimate power to appoint judges is vested in the Executive from whose dominance and subordination it was sought to be protected. The Supreme Court had abdicated its power by ruling that constitution functionaries had merely a consultative role and that power of appointment of Judges is “solely and exclusively” vested in the Central Government. This decision of the Supreme Court, it is submitted with respect was bound to have adversely effected the independence and impartiality of the judiciary which is the only hope for the citizens in the democracy.

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⁴⁴ Union of India vs Sankal chand, Himat Lal Seth, AIR 1977, SC 2328
⁴⁵ AIR 1982 SC 149
Fortunately the Supreme Court in its historic judgment in the case of S.C. Advocate on Record Association vs Union of India\textsuperscript{46} by a majority of 7-2\textsuperscript{47} overruled S.P. Gupta’s case and established Judicial supremacy in the appointment of Judges of Supreme Court and the High Courts.

The Court considered the question of the primacy of the opinion of the Chief Justice of India in regard to the appointment of the Supreme Court Judges. The Court emphasized that the question has to be considered in the context of achieving "the constitutional purpose of selecting 'the best' suitable person for composition of the Supreme Court "so essential to ensure the independence of the judiciary, and, thereby, to preserve democracy."\textsuperscript{48}

Referring to the 'consultative' process envisaged in Article 124(2) the Court emphasized that this procedure indicates that the Government does not enjoy 'primacy' or "absolute discretion" in the matter of appointment of the Supreme Court Judges.\textsuperscript{49}

The Court has pointed out that the provision for consultation with the Chief Justice was introduced because of the realisation that the Chief Justice is best equipped to know and assess the worth of the candidate and his suitability for appointment as a Supreme Court Judge, and it was also necessary to eliminate political influence.

The Court has also emphasized that the phraseology used in Art. 124(2) indicates that it was not considered desirable to vest absolute discretion or power of veto in the Chief Justice as an individual in the matter of appointments so that there should remain some power with the Executive.

\textsuperscript{46} AIR 1994 SC 334
\textsuperscript{47} The majority judgment was delivered by J.S. VERMA, J., on behalf of himself and Yogeshwar Dayal, G.N. Ray, A.S. Anand and Bharucha, JJ.
\textsuperscript{48} Ibid at 425
\textsuperscript{49} Ibid at 429
to be exercised as a check, whenever necessary. Accordingly, the Court has observed:50

"The indication is that in the choice of a candidate suitable for appointment, the opinion of the Chief Justice of India should have the greatest weight, the selection should be made as a result of a participatory consultative process in which the executive should have power to act as a mere check on the exercise of power by the Chief Justice of India, to achieve the constitutional purpose. Thus, the executive element in the appointment process is reduced to the minimum and any political influence is eliminated. It was for this reason that the word 'consultation' instead of 'concurrence' was used but that was done merely to indicate that absolute discretion was not given to any one, not even to the Chief Justice of India as an individual."

Thus, in the matter of appointment of a Supreme Court Judge, the primary aim ought to be to reach an agreed decision taking into account the views of all the consultees giving the greatest weight to the opinion of the Chief Justice. When decision is reached by consensus, no question of primacy arises. Only when conflicting opinions emerge at the end of the process, the question of giving primacy to the opinion of the Chief Justice arises, "unless for very good reasons known to the executive and disclosed to the Chief Justice of India, that appointment is not considered to be suitable."51

The Court has further clarified that "the primacy of the opinion of the Chief Justice of India" is, in effect, "primacy of the opinion of the Chief Justice of India formed collectively, that is to say, after taking into account the views of his senior colleagues who are required to be consulted by him for the formation of his opinion".

Emphasizing upon this aspect further, the Court has said that the principle of non-arbitrariness is an essential attribute of the Rule of Law and is all pervasive throughout the Constitution. An adjunct of this principle is "the absence of absolute power in one individual in any sphere of constitutional
activity. Therefore, the meaning of the "opinion of the Chief Justice" is "reflective of the opinion of the judiciary" which means that "it must necessarily have the element of plurality in its formation". The final opinion expressed by the Chief Justice is not merely his individual opinion but "the collective opinion formed after taking into account the views of some other Judges who are traditionally associated with this function". The Court has observed in this connection:52

"Entrustment of the task of appointment of superior Judges to high constitutional functionaries the greatest significance attached to the view of the Chief Justice of India, who is best equipped to assess the true worth of the candidates for adjudging their suitability; the opinion of the Chief Justice of India being the collective opinion formed after taking into account the views of some of his colleagues; and the executive being permitted to prevent an appointment considered to be unsuitable for strong reasons disclosed to the Chief Justice of India, provide the best method, in the constitutional scheme, to achieve the constitutional purpose without conferring absolute discretion or veto upon either the judiciary or the executive much less in any individual, be the Chief Justice of India or the Prime Minister."

The Court also laid down the following propositions in relation to the appointment of the Supreme Court Judges:

(1) Initiation of the proposal for appointment of a Supreme Court Judge must be by the Chief Justice.

(2) In exceptional cases alone, for stated and cogent reasons, disclosed to the Chief Justice, indicating that the person who was recommended is not suitable for appointment, that appointment recommended by the Chief Justice of India may not be made. However, if the stated reasons are not accepted by the Chief Justice and other Supreme Court Judges who have been consulted in the matter, on reiteration of the recommendation of the Chief Justice of India, the appointment should be made as a healthy convention.

(3) No appointment of any Judge to the Supreme Court can be made by the President unless it is in conformity with the final opinion of the Chief Justice formed in the manner indicated above.

52 Ibid 434 -435
(4) As the President acts on the advice of the Council of Ministers in the matter of appointment of a Supreme Court Judge, the advice of the Council of Ministers is to be given in accordance with Article 124(2) as interpreted by the Supreme Court.

(5) All consultation with everyone involved, including all the Judges consulted, must be in writing. Expression of opinion in writing is an in-built check on exercise of the power, and ensures due circumspection.

(6) Appointment to the office of Chief Justice of India ought to be of the senior-most Judge of the Supreme Court considered fit to hold the office. "The provision in Article 124(2) enabling consultation with any other Judge is to provide for such consultation, if there be any doubt about the fitness of the senior-most Judge to hold the office, which alone may permit and justify a departure from the long standing convention", i.e., to appoint the senior-most Supreme Court Judge to the office of the Chief Justice of India.

(7) Inter se seniority among Judges in their High Court and their combined seniority on all India basis should be kept in view and given due weight while making appointments from amongst High Court Judges to the Supreme Court. Unless there be any strong cogent reason to justify departure, that order of seniority must be maintained between them while making their appointment to the Supreme Court.

The main purpose underlining the law laid down by the Supreme Court in the matter of appointing Supreme Court Judges was to minimise political influence in judicial appointments as well as to minimise individual discretion of the constitutional functionaries involved in the process of appointment of the Supreme Court Judges. The entire process of making appointment to High judicial offices is sought to be made more transparent so as to ensure that neither political bias, nor personal favoritism nor animosity play any part in the appointment of Judges.

Clarifying certain points arising out of the above judgment, the Supreme Court has now delivered an advisory opinion on a reference made by the President\(^{53}\) under Article 143. In this opinion, the Court has laid down the following propositions in regard to the appointment of the Supreme Court Judges:

\(^{53}\) In re Presidential reference AIR 1999 SC 1
(1) In making his recommendation for appointment to the Supreme Court, the Chief Justice of India ought to consult four senior-most puisne Judges of the Supreme Court. Thus, the collegiums to make recommendation for appointment should consist of the Chief Justice and four senior-most puisne Judges.

(2) The opinion of all members of the collegium in respect of each recommendation should be in writing.

(3) The views of the senior-most Supreme Court Judge who hails from the High Court from where the person recommended comes must be obtained in writing for the consideration of the collegium.

(4) If the majority of the collegium is against the appointment of a particular person, that person shall not be appointed. The Court has gone on to say that “if even two of the Judges forming the collegium express strong views, for good reasons, that are adverse to the appointment of a particular person, the Chief Justice of India would not press for such appointment.”

(5) The following exceptions have now been engrafted on the rule of seniority among the High Court Judges for appointment to the Supreme Court:

(a) A High Court Judge of outstanding merit can be appointed as a Supreme Court Judge regardless of his standing in the seniority list. "All that needs to be recorded when recommending him for appointment is that he has outstanding merit".

(b) A High Court Judge may be appointed as a Supreme Court Judge for "good reasons" from amongst several Judges of equal merit, as for example, the particular region of the country in which his parent High Court is situated is not represented on the Supreme Court Bench.

Thus, the responsibility to make recommendations for appointment as Supreme Court Judges has been taken away from the Central Executive and has now been placed on a collegium consisting of the Chief Justice of India and four senior-most puisne Judges. The Court has now specifically stated that an opinion formed by the Chief Justice of India in any manner other than that indicated has no primacy in matter of appointments to the Supreme Court and the Government is not obliged to act thereon. The
process of consultation among the members of the collegium has now been formalized as every member Judge has to give his opinion in writing.

**Present Position: Appointment of Judges of High Court**

CI (1) of Article 217 provides that every judge of a High court shall be appointed by the President under his hand and seal after consultation with the Chief Justice of India, the Governor of the state, and in case of appointing of a judge other than chief justice, the Chief Justice of the High Court.

The Present position with regard to appointment of Judges of the High Court is that the process of appointing the Judges of High Court must be initiated by the chief justice of the concerned High Court. In this matter the opinion of the Chief Justice of India (CJI) has Primacy. The opinion of the CJI is reflective of the opinion of the judiciary. Which means that "It must necessarily have the element of plurality in its formation."

Therefore, the Chief Justice of India should form his opinion in consultation with his two senior-most puisne Judges. They would in making their decision take into account the opinion of the Chief Justice of the High Court, which "would be entitled to greatest weight", the views of other High Court judges who may have been consulted and the views of the Supreme Court Judges "who are conversant with the affairs of the concerned High Court. All these views should be expressed in writing and conveyed to the Government of India along with the recommendation.

The CJI is obliged to comply with the norms and the requirement of the consultation process in making his recommendations to the Government of India.

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54 After perusal of Article 217 (1) and decisions of SC in SC Advocates on record vs. Union of India & re Presidential reference.
Recommendations made by the CJI without complying with the norms and requirements of the consultation process, as aforestated, are not binding upon the Government of India.

The plurality of Judges in the formation of the opinion of the Chief Justice of India is an in-built check against the likelihood of arbitrariness or bias. In view of this safeguard, Judicial review of the appointment of a High Court Judge is available

(i) if, in making the decision as regards the appointment of a High Court Judge, the views of the Chief Justice and the senior Judges of the High Court concerned, and of the Supreme Court Judges having knowledge of that High Court, have not been sought or considered by the Chief Justice of India and his two senior-most colleagues;

(ii) if the appointee lacks eligibility for appointment as a High Court Judge.

The appointment of Chief Justice of India:

There was no Provision in the Constitution as regard procedure for the appointment of Chief Justice of India. Over the years a practice was developed that the senior most puisne judge would become the Chief Justice of India whenever vacancy arose and this practice was virtually being transformed into convention and was followed by the Executive without any exception. This convention was however, not followed on the retirement of 13th Chief Justice of India Mr. Justice S.M. Sikri. On 24th April, 1973 Mr. Justice A.N. Ray was appointed Chief Justice in preference to Mr. Justice Shelat, Mr. Justice A. N. Grover and Mr. Justice Hedge who in protest resigned. This was because these judges gave judgment in Fundamental Rights case against the government. Thus the seniority rule built on the convention over the years was given a go bye. For this the reliance was placed on XIVth Law Commission Report which was given in the year 1956 but the Government could not justify its action in the light of Law Commission’s Report. This action of Government raised serious controversy and was condemned by Supreme Court Bar Association and the entire Legal circle. Again, on retirement of Chief Justice A.N. Ray Senior most judge Mr. Justice H.R.
Khanna was superseded and Mr. Justice M.N. Beg was made Chief Justice of India.

However, in 1977 when Janta Party came into power they revived the old practice of appointment of Chief Justice of India on the basis of seniority and so on retirement of Mr. Justice M.N. Beg the senior most judge Mr. Justice Y.V. Chandrachud was appointed Chief Justice of India. Since then, again the seniority rule is followed. The Supreme Court has approved this seniority rule. In Supreme Court Advocates on Record Association vs Union of India\textsuperscript{55} wherein the majority held that, the appointment to the office of Chief Justice of India should be made on the basis of seniority i.e. the senior most judge considered suitable to hold the office be appointed as Chief Justice of India.

As per J.S. Verma\textsuperscript{56}, J “Apart from the two well known departures, appointments to the office of Chief Justice of India have, by convention, been of the seniormost Judges of the Supreme Court considered fit to hold the office and the proposal is initiated in advance by the outgoing Chief Justice of India. The Provision in Article 124(2) enabling consultation with any other Judge is to provide for such consultation, if there be any doubt about the fitness of seniormost Judge to hold the office, which alone may permit and justify a departure from the long standing convention” i.e. to appoint the Senior most Supreme Court Judge to the office of the Chief Justice of India.

It is submitted that the rule of seniority in case of appointment of Chief Justice of India though a mechanical rule is beyond controversy and will ensure independence of judiciary and any controversy regarding such appointment will plainly be sterile.

\textsuperscript{55} AIR 1994 SC 334

\textsuperscript{56} for himself and on behalf of Yogeshwar Dayal, G.N.Ray, Dr. A.S.Anand and S.P Bharucha, JJ
B. Removal of Judges
The Society has vested interest in the independence of judiciary as it would likely to ensure that the rule of law is upheld. The state spends considerable amount on Judicial infrastructure and accords high respect to the Judges. It expects impeccable integrity, honesty and impartiality as also highest standard of conduct from them. Their deviant behaviour may undermine the confidence of the people in Judiciary. It, therefore, visits such behaviour with removal of a Judge but an impartial mechanism has often been provided so that executive is not able to trample Judicial independence.57
Sir Alladi Krishana Swami Ayyar, speaking on the removal clause in the Constituent Assembly on July 29, 1947 said:

"It is a wholesome provision intended to be a salutary check on misbehaviour not indeed to be used frequently and I have no doubt that the future legislatures invested with this power will act with wisdom and that sobriety which have characterized the great houses of Parliament in other jurisdiction."58
A complex procedure for removal of judges is usually laid down in the Constitution. The framers of Indian Constitution were conscious of the value of independent judiciary and made elaborate provisions to secure the same.59

The Constitution provides that a judge of Supreme Court shall not be removed from his office except by an order of the President passed after an address by each house of the Parliament supported by a majority of total membership of that house and by majority of not less than 2/3 of the members of that house present and voting presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.60 Proviso to Article 217 (1) and Article 218

58 Constituent Assembly Debates, official reports, vol I to IV p 891
60 Article 124 (4) of the Constitution of India
indicates that Provisions of Clauses (4) & (5) of Article 124 equally apply for removal of judge of High Court.

Clause (5) of Article 124 empowers Parliament to regulate the procedure for the presentation of an address and for the investigation and proof of misbehaviour or incapacity of a judge by law. A suggestion in the Constituent Assembly that a Judicial Committee may first investigate the matter was rejected. 61 Parliament enacted the Judges (inquiry) Act, 1968, in the exercise of the powers conferred by Article 124(5). The Act and Judges (Inquiry) Rules, 1969 made there under provide for removal of a Judge on the ground of proved misbehaviour or incapacity.

In a historic judgment K. Veera Swami vs Union of India62, a five judge bench of the Supreme Court by a majority of 4-1 has held that a Judge of the Supreme Court and High Court can be prosecuted and convicted for criminal misconduct.

The expression “misbehaviour” in Article 124 (5) includes criminal misconduct defined in the Prevention of Corruption Act. The expression “public servant” in Section 6 (1) (c) and (2) includes Judges of the High Court and the Supreme Court. The Judges (Inquiry) Act, 1968 enacted by Parliament under Article 124 (5) and the Judges (Inquiry) Rules, 1969 made thereunder provide for removal of a Judge on the ground of proved misbehaviour or inability.

**Impeachment: - Probability and Reality**

Under the Constitution of India the Judge of High Court and Supreme Court can only be removed from the office on the ground of proven 'misbehaviour' or incapacity by an impeachment motion supported by 2/3rd majority of the house in Parliament. The chances of impeachment of corrupt Judges are remote cumbersome and highly uncertain besides being complex and unworkable. Taking stock of prevailing scenario and reality the Supreme Court of India in the Judges case-III63 has tilted the balance in favour of a consultative process of peer- review organized

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61 Constituent Assembly Debates, official reports, vol VIII p 243
62 (1991) 3 SCC 655
63 AIR 1999 SC 1
around a collegium comprising the Chief Justice of India and Senior Judges of the Supreme Court. There is no gainsaying the fact that there are certain inherent limitations to a politicized process of impeachment as demonstrated in the infamous case of Justice V. Ramaswamy in 1993.  

The facts of Ramaswamy case:
During 1987-89 Mr. Justice V. Ramaswamy, was Chief Justice of Punjab and Haryana High Court. In April 1990 Mr. Kuldip Nayar a noted journalist, wrote an article alleging administrative lapses and financial irregularities and extravagant expenditure incurred by Mr. Ramaswamy during his tenure as Chief Justice of the High Court. This triggered a series of press report taking serious note of conduct of the judge. The press releases referred to the objections of audit cells of High Court and the Accountant General of Punjab and Haryana regarding irregular expenditure from the contingency funds by him. The then Chief Justice of India Justice Sabyhaschi Mukharji then exercising his inherent powers set up an informal Committee of 3 Judges of the court to investigate and report whether justice Ramaswamy should sit on the Bench in such circumstances. Meanwhile “Chief Justice advised Justice Ramaswamy to proceed on leave till investigation was over. Chief Justice Mukharji’s doctrine of self-suspension was remarkable development in filling up a gap in the Constitutional and Parliamentary law.”

The Committee comprising of justice B.C. Roy, K.J. Shetty and M.N. Venkatachaliah approvingly quoted observations from Pierson Vs Ray:

(The immunity of judges) is “not for the protection of a malicious or corrupt judge but for the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences”

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66 386 U.S. 547 at p 553.
The Committee observed: “However, the standards of ethical and intellectual rectitude expected of judges are directly proportional to the exalted constitutional protection that they deserve to enjoy. The country is entitled to be most exacting in its prescription and expectation of the standards of rectitude in judicial conduct what might be pardonable in an ordinary citizen or officer might in the case of a judge look indeed unpardonable. His morals are not the standards of market place but are the punctilio of a higher code.”

This was the statement of principles on proportionality of judicial independence and standards of judicial conduct. Even though the Committee expressed grief over the falling standards of public conduct of the judge but observed that there was no justification to withhold judicial work from him.

According to the Committee, such a step would have the effect of interdicting the legal incidence of Constitutional warrant of the appointment of the judge. At the same time, the Committee suggested that the judge might voluntarily reimburse the loss suffered by the exchequer. The report of the committee was circulated to all the judges of the court and as a result of the unanimous view, the judge was called back to resume judicial work. Chief Justice, Mukharji’s fiat was thus short-lived and could not form foundation for a future convention.

The report of the internal committee and resumption of judicial work by Justice Ramaswamy were taken as acts of compromise with the credibility of the judiciary and evoked widespread protest in both the media and the bar.

In February, 1991, 108 members of the Lok Sabha signed a notice of motion for presenting an address to the President for the removal of Justice Ramaswami under article 124(4) of the Constitution read with section 3(1)(9) of the Judges (Inquiry) Act, 1968. The notice, which listed

67 Ibid at 831
68 Ibid at 831
11 acts of misbehaviour committed by Justice Ramaswamy, was submitted to the Speaker. The Speaker after satisfying himself that there was a prima-facie case for investigation announced that the motion was in order and admitted the same. He also constituted a Committee in consultation with the Chief Justice of India. To investigate all the allegations against the judge it consisted of a sitting judge of the Supreme Court, Chief Justice of Bombay High Court and a retired judge of the Apex Court as a distinguished jurist. Immediately thereafter the Lok Sabha was dissolved. In the meantime, neither the Chief Justice of India stopped allocating judicial work to the judge nor the judge himself volunteered to abstain from undertaking such work. Rather, the Apex Court dismissed in limine a petition by way of Public Interest Litigation (PIL) seeking to prevent judicial work being allocated to the judge till the conclusion of impeachment proceedings. Around this time, the judge addressed a letter to the President of India questioning the validity of the Constitution of the Committee and stressing that the motion and the matters arising out of it lapsed with the dissolution of the Lok Sabha. He condemned the entire initiative against him as politically motivated.

The view of the Attorney-General and stand of the Central Government were that the motion moved by the Members of Parliament and the decision of the Speaker to admit it as also the Constitution of the Committee lapsed with the dissolution of the Lok Sabha. The Chief Justice felt helpless in withdrawing judicial work from the judge. These developments forced the bar to seek judicial intervention in this matter. The Sub Committee on Judicial Accountability and the Supreme Court Bar Association filed petitions before the Apex Court seeking directions to the government to activate the Committee set up under the Judges (Inquiry) Act and to stop Justice Ramaswami from performing judicial functions till the proceedings were over. As opposed to this, in some other petitions, the constitutionality of the Act was challenged and a declaration was sought to the effect that the motion for removal lapsed with the dissolution of Lok Sabha.

Under Section 3(2) of the Judges (Inquiry) Act, 1968
All the petitions were cumulatively disposed of by the Court in Sub Committee on Judicial Accountability V. Union of India. The majority, inter alia, held as follows:

(i) The motion did not lapse with the dissolution of Lok Sabha;

(ii) The Speaker was a statutory authority under the Act and he acted within his competence.

(iii) The Judges (Inquiry) Act 1968 was constitutionally valid;

(iv) The Court was not competent to pass an order regarding the suspension of the judge from exercising judicial power as there was no constitutional or legal authority to justify it. However, the propriety demanded that either the judge should act on the advice of the Chief Justice as a matter of convention or himself decide to stop discharging judicial functions during the pendency of proceedings.

The Court directed the government to take immediately steps to enable the committee to function.

In view of the Court’s verdict, the media and the bar demanded the withdrawal of judicial work from Justice Ramaswamy. The bar even resolved to boycott his Court. Later, a petition by way of Public Interest Litigation was filed seeking the review of verdict in Sub Committee on Judicial Accountability but the same was dismissed as not maintainable. This was followed by another petition viz, Sarojini Ramaswamy V. Union of India, praying for a copy of the report of the Committee (whenever available) so as to enable him to challenge its adverse findings in the Court.

The majority of the Supreme Court held that the report could be challenged only after Parliament voted to request the President to

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70 AIR 1992 SC 320
71 AIR 1992 SC 2219
remove the judge and such an order was consequently passed. The findings would only be recommendations to Parliament to start the process of removal. The Committee was the sole arbiter as regards finding of ‘guilty’ or ‘not guilty’. The judge would, however, get a copy of the report from the Speaker for his defence after it was placed on the table of the House.\footnote{Ibid}

By the time, the Court gave its verdict in Sarojini Ramaswamy case, the report of the Inquiry Committee had been submitted to the Speaker. Inquiry Committee, after careful scrutiny and consideration of all available material, framed 14 charges against Justice Ramaswami alleging conduct amounting to willful and gross misuse of office, habitual extravagance at the cost of public exchequer, moral turpitude, and persistent failure or negligence in the discharge of his duties. The Committee said that these charges and omissions amounted to misbehaviour within the meaning of article 124(4) of the Constitution. It sent to the judge a copy of the report along with a statement of grounds on which each of the charges was based as also a notice for appearance. The judge neither appeared before the Committee nor submitted his defence. The Committee expressed the view that Justice Ramaswami’s conduct was such that continuance in office would be prejudicial to the administration of justice and to the public interest. In its opinion, his acts constituted ‘misbehaviour’ within the meaning of article 124(4) and as such warranted his removal from the office.\footnote{Subhash. C. Jain: Constitution of India (2000), p 833}

The report of the Committee was submitted to the Speaker and laid on the table of Lok Sabha on December 17, 1992. In January, 1993, the Sabha served a notice on the judge stating that, if he so wished, he might file his response to the report.
The debate on the impeachment motion in Lok Sabha took place on 10th and 11th May, 1993 followed by voting later.

But surprisingly at the time of voting the motion for his removal in Parliament failed since the majority-party in the Parliament abstained from voting. The procedure from the investigation to the unsuccessful Parliamentary vote took over three years. The Supreme Court expressed its concern with an unfulfilled expectation that "In the process of removing judges, Parliament would discharge its obligation in the Constitutional scheme with as much responsibility and seriousness as was expected from any other organ of the State or authority involved in the process of removal of a Judge"  

**Correctional Mechanism**

What is gratifying is that the Supreme Court of India has evolved its own mechanism to correct the recent aberration in the judiciary whether taking place in Chandigarh, Bangalore, Mumbai, Mysore or Jaipur. The judiciary must find its own answers to set its house in order so that the people's faith and confidence in justice and fair play is not shattered. As the Ex-Chief Justice of Delhi High Court, Justice Rajinder Sachar puts it aptly:

"The process of impeachment is cumbersome and the result uncertain. Effective alternate measures are necessary- - - -A National Judicial Commission has been mooted to deal with appointment of High Court and Supreme Court Judges.'........The in-House correctional mechanism being adopted by the Chief Justice of India, some years

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74 Sarojini Rama Swamy's Case: AIR 1992 SC 2219 at p 2244

75 Under the in-House procedure, the Chief Justice of India shall advise the Judge concerned to resign or to seek voluntary retirement. In case the Judge refused to do so, the CJI shall advise the Chief Justice of the High Court concerned not to allocate any judicial work to him, and intimate the President and the Prime Minister. Here it is noteworthy that the Justice B.K Roy Committee report has resulted into the resignation of Arun Madan, a Judge of the Rajasthan High Court.

76 However, in-house mechanism does not ensure transparency. Whenever any inquiry is ordered by chief justice, report of that inquiry is not made public and most of time no action is taken.
back is appreciable whereby alternatives were given to a Judge either to quietly resign or to face impeachment proceedings. This approach however has a limited reach and the same may not work so well in every case.\textsuperscript{77} The telling remarks made by Chief Justice Venkatachaliah (just after his retirement) where in Chief Justice Venkatachaliah observed that:

“....... About half the High Courts have already adopted it. The rest find it too stringent. Or they are debating that the restatement of basic principles may convey the impression that we have otherwise not been practicing the prescribed judicial austerity--- My own feeling is that Judges do not need a code of conduct in strict sense. Rather, it is a restatement of those principles of judicial life and conduct which might come in handy for us whenever we are in dilemma. The need for the code of conduct may imply that there is something wrong with the system. That may be well so because a system cannot be higher than the quality of the times in which it functions.”\textsuperscript{78}

Of late, there has been a series of transfers of a High Court Judge to another High Court whenever some charges of malpractices are levelled against Judge. It is shocking to note that instead of dealing with the corruption the same is transferred to another High Court for the reasons best known to the Chief Justice of the High Court. This practice of palliating the malady requires an immediate check nut on it.\textsuperscript{79}

\textsuperscript{77} Arun Beriwal: Judicial Corruption and Removal of Judges, AIR 2003 Journal 350-351
\textsuperscript{78} Just after his retirement in an interview with India Today, 15\textsuperscript{th} Nov, 1994
\textsuperscript{79} Arun Beriwal: Judicial Corruption and Removal of Judges, AIR 2003 Journal 350-351
C. Transfer of Judges

Transfer is an incidence of service. An officer may be transferred by an appointing authority or by senior officer authorized in this behalf from one place to another as for example is often done not only on the executive side but also in case of sub-ordinate judiciary. However, the office of a Judge of a High Court being a constitutional one no provision was made for transfer of High Court Judge from one High court to another. The President of India appoints a person not as a judge of High Court but a judge of a particular High Court therefore the question of transfer\(^{80}\) from one High court to another arises and provisions for the same is made in the constitution. Since it was not a question of ordinary transfer like other officers, therefore provisions for compensatory allowance to a judge who has been transferred is made Article 222 which was added by constitutional (15\(^{\text{th}}\) Amendment) Act, 1963\(^{81}\)

Thus, the President may transfer a judge from one High Court to any other High Court. Before doing so his consultation with Chief Justice of India is necessary. High Court has a power to transfer any member of sub-ordinate judiciary in the state.

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\(^{80}\) The question of transfer of a Judge from one High Court to another has raised controversies from time to time. During the emergency of 1975, 16 High Court Judges were transferred from one High Court to another. It was widely believed that the Government did so as a punitive measure to punish those Judges who had dared to give judgments against it. The Government sought to justify these transfers on the plea of national integration and removal of narrow parochial tendencies, but this defence was found by the Supreme Court as not true. CHANDRACHUD, J., observed in Sankalchand, "... the record of this case does not bear out the claim that any one of the 16 High Court Judges was transferred in order to further the cause of national integration. In the words of BHAGWATI, J., in S.P. Gupta vs Union of India, [AIR 1982 SC, at 218]. What was held by the Court was that the transfers of the High Court Judges during the emergency were made not for the purpose of furthering the cause of national integration but by way of punishment".

\(^{81}\) Article 222(1) empowers the President after consultation with Chief Justice of India to transfer a judge from one High Court to another High Court. Clause (2) makes provision for the granting compensatory allowances to a judge who goes on transfer to another High Court.
Transfer has been affected on two grounds:
- Administrative grounds and
- As a matter of policy

In Union of India vs Sankal Chand 82 the constitutionality of the notification issued by the president by which Justice Sankal Chand Seth of the Gujarat High Court was transferred to the High Court of Andhra Pradesh was challenged on the ground that the order was passed without the consent of the judge and against public interest and without effective consultation with the Chief Justice of India. The Supreme Court by 3:2 majority held: that judge of High Court could be transferred without his consent. If consent was imported in Article 222 so as to make condition precedent to transfer a Judge from one High Court to another, then a Judge by withholding his consent, could render the power contained in Article 222 wholly ineffective and nugatory. The power to transfer a High Court Judge is conferred by the Constitution in public interest and not for the purpose of providing the executive with a weapon to punish a Judge who does not toe its line or who, for some reason or the other, has fallen from its grace. This extra-ordinary power conferred on the President by Article 222 (2) cannot be exercised in a manner which is calculated to defeat or destroy in one stroke the object and purpose of various provisions conceived with such case to insulate the judiciary from the influence and pressure of the executive. Once it is accepted that a High Court judge can be transferred on the ground of public interest only, the apprehension that the executive may use the power of transfer of its own ulterior ends and there by interfere with the independence of Judiciary, loses its force. Also Article 222(1) casts an absolute obligation on the president to consult the Chief Justice of India before transferring a judge from one High Court to another High Court. That is the condition precedent to the actual transfer of the Judge. The consultation with Chief Justice of India must be effective one. It means that while consulting the Chief Justice the President must make the relevant data available to him on the basis of which he can offer to the President, the benefit of his considered opinion. If the facts necessary to

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82 AIR 1977 SC 2328
arrive at a proper conclusion are not made available to the Chief Justice, he must ask for them. Because in casting on the President the obligations to consult the Chief Justice, the constitution at the same time must be taken to have imposed a duty on Chief Justice to express his opinion on nothing less than a full consideration of the matter on which he is entitled to be consulted. The fulfillment by the President of this constitutional obligation to place full facts before the Chief Justice and performance by the latter of the duty to elicit facts which are necessary to arrive at a proper conclusion are part of the same process and complementary to each other. Consultation within the meaning of Article 222(1) therefore means full and effective consultation & not the formal or unproductive consultation. The two other Judges i.e. Bhagwati J and Untwalia, J in their Separate opinions were of the view that consent of the judge to be transferred was an essential constitutional requirement for his transfer for otherwise it would bring “devastating results and cause damage to the tower of Judiciary and erosion in its independence”. The technical justification for their view was that a transfer of Judge amounts to his appointments to the High court where he is being transferred and just as in the case a appointment of a person as a Judge to a High court or the Supreme Court his consent is necessary, So also the same is necessity in the case of transfer.

The law commission in its 80th report entitled: “The method of Appointment of Judges”, has recommended:

“To prevent abuse of power of transfer, it is recommended that no judge should be transferred without his consent, from one High Court to another unless a Panel consisting of the Chief Justice of India and his four senior most colleagues finds sufficient cause for such a cause. In case of difference between members of the Panel, the view of the majority be taken to be view of panel”
In the case of S.P. Gupta and others vs Union of India and others83 also known as Judges Transfer case the validity of circular letter of Union Law minister asking the Chief Ministers of the various states to get the advance consent of sitting additional Judges and future incumbents to post of being appointed as permanent Judges outside their state was challenged. A seven Judge bench of the court by 4-3 majority held that circular letter was valid and it did not affect the independence of judiciary.

The minority however held: it affected the independence of the Judiciary as it has a coercive effect on the minds of sitting additional Judges by implying a threat to them that if they did not give their consent to be transferred to another court they would neither continued nor be made permanent.

Regarding the transfer of judges, the court by a 4:3 majority held that consent is not a necessary element of Article 222 the only requirement is that there must be effective consultation with the Chief Justice of India. The power of transferring the Judges must be exercised in public interest; however, it cannot be done by way of punishment. Accordingly, the court held that the transfer of Chief Justice of Patna High Court to Madras High Court was in public interest because certain persons were taking undue advantage of their close relationship with him, which had created considerable misunderstanding and dissatisfaction in the working, and remedying this was surely a public purpose. There was full and effective consultation between the Chief Justice of India and the President and the Chief Justice had in fact recommended the transfer84. Now, in the historic judgement in the Supreme Court Advocate-On-Record vs. Union of India85. The Supreme Court has overruled the Judges’ Transfer Case and held that in case of transfer of Judges of the High Court, the opinion of the Chief Justice of India not only enjoys primacy, but also is determinate in the matter. The Chief Justice was,
however, required to consult two senior most Judges of the Supreme Court before sending his recommendation for transfer of a Judge from one High Court to another.

It was further held that the consent of the transferred Judge/ Chief Justice of a High Court is not required for either the fresh or any subsequent transfer from one High Court to another. Any transfer made on such recommendation of the Chief Justice of India shall not deemed to be punitive and such transfer is not justifiable on any ground.

The matter of transfer of a High Court Judge was raised again before the Supreme Court in Reddy. It was argued that judicial review being a basic feature of the Constitution, exclusion of judicial review in the matter of transfer could not be regarded as good law. There could be arbitrariness in transferring a High Court Judge. The Supreme Court rejected the contention. The Court observed:

"Every power vested in a public authority is to subserve a public purpose, and must invariably be exercised to promote public interest. This guideline is inherent in every such provision, and so also in Article 222. The provision requiring exercise of this power by the President only after consultation with the Chief Justice of India, and the absence of the requirement of consultation with any other functionary, is clearly indicative of the determinative nature, not mere primacy, of the Chief Justice of India's opinion in this matter."

The consent of the Judge is not required for his transfer. The Chief Justice of India will recommend transfer of a Judge only in public interest, for promoting better administration of justice throughout the country, or at the request of the concerned Judge.

In the formation of his opinion for transfer of a High Court Judge, the Chief Justice of India would take into consideration the opinion of the Chief Justice of the High Court from which the Judge is to be transferred, any Judge of the Supreme Court whose opinion may be of significance in that

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87 AIR 1994 SC 1210.
case, as well as the views of at least one other senior Chief Justice of a High Court, or any other person whose views are considered relevant by the Chief Justice of India. The primacy of the judiciary in the matter of appointments and its determinative nature in transfers introduces the judicial element in the process, and is in itself a sufficient justification for the absence of the need for further judicial review of those decisions.

In re-President reference\(^8\) a nine-judge bench of the Supreme Court has unanimously held "that in case of transfer of High Court judges the Chief Justice of India must consult four senior most judges of the Supreme Court and the Chief Justices of the two High Court (one from which judge is being transferred and the other receiving him). The collegium should make the decision in consensus and unless opinion of collegium is in conformity with that of Chief Justice of India no recommendation is to be made. If two judges give adverse opinion the Chief Justice of India should not send the recommendation to the government.

Unless the decision to transfer has been taken in the manner aforesaid, it is not decisive and does not bind the Government of India.\(^9\)

Because of all the safeguards mentioned above, the judicial review in case of transfer of a High Court Judge, according to the Court, would be limited to a case where transfer of a Judge has been made or recommended without obtaining the views and reaching the decision in the manner aforesaid.

Thus, from a perusal of various case laws and provisions of the Constitution, one can conclude that the President may transfer a Judge from one High Court to another but before doing so, effective consultation with the Chief Justice of India is imperative. Moreover, whenever the transfer is to be made, the Chief Justice of India must consult four senior most judges of the Supreme Court and the Chief

\(^{88}\) AIR 1999 SC 1
\(^{89}\) AIR 1999 SC 21
Justices of the two High Courts (one from which Judge is being transferred and the other receiving him). The collegium should make the decision unanimously and unless it is in conformity with that of the Chief Justice of India no recommendation is to be made. If two judges give adverse opinion the Chief Justice of India should not send the recommendations to the government. Moreover, transfer should not be by way of punishment and for ulterior purpose but should be in greater public interest.

3.7 RESIGNATION OF JUDGES:

The Constitution of India has granted special status to the holders of high judicial posts. The Judges of the Supreme Court and the High Courts enjoy special privileges, special rights and special immunities. They cannot be removed from their office except by a special and cumbersome Procedure called impeachment. They may however relinquish their office by resignation under Article 124 (2) and 217 (1) Proviso (a) of the Constitution of India. The aforesaid constitutional provisions provide that a judge may by writing in his own hand addressed to the president resign his office.

The question is whether a judge who has submitted his resignation can be allowed to withdraw the same and if so what is the law in this regard.

In this connection, the Supreme Court’s decision in the case of Union of India etc. v. Gopal Chandra Mishra and others\[^{90}\] can be relied upon. In this case it was held that a Judge may resign from his office by writing to the President. Proviso (a) to Article 217(1)] Resignation takes effect from the

\[^{90}\] AIR 1978 Supreme Court 694. In this case a sitting judge of Allahabad High Court by a letter in his own hand addressed to the President of India resigned from his office from a future date. But after few days he sent another letter revoking his resignation and assumed his duties. This was challenged by way of writ of Qua-warranto on the ground that Judge having relinquished his office by submitting his letter of resignation, he ceases to be the judge of High Court from the date mentioned in the Letter and there is no Provision in the constitution allowing the withdrawal of such resignation. The writ petition was allowed by the High court upholding petitioner’s contention.
date on which the Judge of his own volition chooses to sever his connection with his office.

There is nothing in the Constitution which expressly or impliedly forbids the withdrawal of a communication by the Judge to resign his office before the arrival of the date on which it was intended to take effect. A prospective resignation does not, before the intended future date is reached, become a complete, and operative act of 'resigning his office' by the Judge within the contemplation of proviso (a) to Article 217(1) So, It may be withdrawn by him before it becomes effective i.e. before the date with effect from which he resign.

3.8 JURISDICTION OF SUPREME COURT:
The constitution confers the following jurisdiction on the Supreme Court of India:—

3.8.1 As a court of record
3.8.2 Original & Exclusive Jurisdiction
3.8.3 Appellate Jurisdiction
   a) Constitutional Matters
   b) Civil Matters
   c) Criminal Matters
   d) By special leave to appeal
3.8.4 Review Jurisdiction
3.8.5 Advisory Jurisdiction
3.8.6 Writ Jurisdiction
3.8.7 Jurisdiction to Transfer Cases

3.8.1 COURT OF RECORD:
The Constitution of India provides that “The Supreme Court shall be the court of record and shall have all the powers of such a court including the power to punish for the contempt of itself.”

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91 Article 129 of the constitution of India
The contempt of court is a special jurisdiction to be exercised sparingly and cautiously, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the court of law. The jurisdiction is not to be exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned.92

In number of cases, the Supreme Court has exercised its power of contempt to punish erring bureaucrats who were either found guilty of disobeying certain Court's orders for enforcing fundamental rights of citizens or were charged with corruption. In 1995 for the first time since Independence, a senior IAS officer93 was convicted for contempt of court and sentenced to imprisonment by the apex court.94 The Supreme Court took an unprecedented action when it directed a sitting Minister of the state of Maharashtra, Swaroop Singh Naik, to be jailed for 1 month on a charge of contempt of court on May 12 2006. This was the first time that a serving Minister was ever jailed.

The Supreme Court has been declared to be a court of Record95

The court of record is that court, the record of which are admitted to be of evidentiary value and cannot be questioned when they are produced

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92 Supreme Court Bar Association vs Union of India. AIR 1998 SC 1895
94 Similarly, a senior Haryana IPS officer M.S. Ahlawat was sentenced to one year's rigorous imprisonment and punishment for criminal contempt for fabrication and forgery of document in connection with a case of wrongful confinement of two minor boys; In TN Godavaraman Thirumulpad vs Ashok Khot and another (2006) 5 SCC 1 Supreme Court held the Principal Secretary, Department of Forest Government of Maharashtra guilty of contempt of the Court for deliberately and willfully flouting the order of the Court and Sentenced him to undergo Simple imprisonment for one month.
95 Similarly each High Court is also declared to be Court of Record Article 215
before a court and it has inherent power, to punish for contempt of itself.\(^96\)

The Contempt of Courts Act, 1971, defines the powers of courts for punishing contempt of courts and regulates their procedure. The contempt of courts Act classifies contempt into civil and criminal contempt.\(^97\)

Civil contempt means willful disobedience of any judgment, decree, direction, order writ or other process of a court or willful breach of an undertaking given to the court.\(^98\)

Criminal contempt means the publication (whether by words spoken or written or by signs or visible representation or otherwise) of any matter or doing of any act whatsoever of any act so ever which,-

- Scandalizes or tends to scandalize or lowers or tends to lower the authority of any court.
- Prejudice or tends to prejudice or interferes or tends to interfere within the due course of any judicial proceedings.
- Interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice, in any other manner.\(^99\)

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

\(^96\) Once a court is made a court of record, its power to punish for contempt necessary follows from that position. Constituent Assembly Debates, volume VII, p 382

\(^97\) Section 2 of the Contempt of the Courts Act 1971.

\(^98\) Clause (b) of section 2 of the contempt of courts Act, 1971

\(^99\) Clause (c) of section 2 of the contempt of courts Act, 1971
(a) Innocent publications and its distribution;
(b) Fair and accurate report of judicial proceedings;
(c) Fair criticism of judicial act;
(d) Complaint made in good faith against presiding officers of subordinate courts (below High Court);
(e) Publication of fair and accurate report of a judicial proceeding before a court sitting in camera.

A Contempt of Court may be punished with simple imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 2,000 or with both.\(^{100}\)

In M.B. Sanghi Vs High Court of Punjab & Haryana\(^{101}\) a resolution passed by the Bar Association expressing want of confidence in the judicial officers or in particular judge amount to scandalising the court and undermining its authority. Again, in the case of Bineet Singh,\(^{102}\) it was held that forging orders of the court to obtain favourable orders from the government amounts to criminal contempt. In Re: S.K. Sharma\(^{103}\), a telegram sent by an advocate, to the chief justice of India to step down on grounds of giving wrong age and use of other intimidatory epithets was held to be criminal contempt.

In Radha Mohan Lal vs Rajasthan High Court\(^{104}\) It was held that:-
“Expressing lack of confidence / faith in a particular judge and requesting the chief justice to post the matter before a bench not comprising the said judge amounts to impede, obstructs or prevent the administration of law or destroys the confidence of the people in such administration.”

\(^{100}\) Section 12 of the Contempt of the Court Act, 1971
\(^{101}\) AIR 1991 SC 1834
\(^{102}\) AIR 2001 SC 2018
\(^{103}\) JT 2000(1) SC 81
\(^{104}\) JT 2003 (2) SC 49
In Ajay Kumar Pandey’s Case\textsuperscript{105} the Supreme Court has held that the Jurisdiction of the Supreme Court under Article 129 of the constitution is independent of the contempt of courts Act 1971 and the power under Article 129 cannot be denuded, restricted or limited by The Contempt of the Courts Act. Thus, there is no restriction or limitation on the nature of punishment that the Supreme Court may impose while exercising its contempt jurisdiction.

Again in Zahira Habibulla H. Sheikh vs. State of Gujrat\textsuperscript{106} known as the best Bakery Case, having held that Zahira was guilty of having committed contempt, the Court sentenced Zahira to undergo simple imprisonment for 1 year and to pay Rs. 50, 000 as Fine and in case of default of payment of fine within two years she shall suffer further imprisonment of 1 year.\textsuperscript{107}

Again, the willful breach of an undertaking given to a court also amounts to committing contempt of the court. In Mohd. Aslam Vs Union of India\textsuperscript{108} the Supreme Court held Mr. Kalyan Singh, the then Chief Minister of Uttar Pradesh, guilty of contempt of the court for breach of undertaking

\textsuperscript{105} Ajay Kumar Pandey, In re, AIR 1997 SC 260
\textsuperscript{106} (2006) 3 SCC 374
\textsuperscript{107} Zahira was guilty of having committed contempt of the court. Referring to entry 77 list I of the Seventh Schedule to the Constitution, the court held that Parliament is competent to enact a law relating to the power of the Supreme Court with regard to contempt of itself and that such law may prescribe the nature of punishment which may be imposed on a contemnor by virtue of provisions contained in article 129 read with article 143 (2) of the Constitution. Pasayat J speaking for the court, however, held that:\textsuperscript{107}:

Since, no such law has been enacted by Parliament, the nature of punishment prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme court, except that section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction.

\textsuperscript{108} (1994) 6 SCC 442 The court awarded a token sentence of one day and a fine of Rs. 2000 to be paid within two months. This verdict establishes the principle of the rule of law that no authority is above law. The object of vesting such a power in the court was to uphold the majesty of law, the rule of law - which is the foundation of democratic society.
given in the court not to allow any permanent structure on the disputed Ram Janam Bhoomi Babari Masjid site in Ayodhya.

In the Nand Lal Balwani’s case\textsuperscript{109}, a Mumbai-based lawyer, hurled shoes towards the Judges in the chief justice’s court, 15 minutes after the court assembled in the morning. He was immediately taken into custody. The 3- judge bench headed by the chief justice of India sentenced Mr. Balwani to four months imprisonment for committing "gross contempt of the court". The court held that the law did not permit a lawyer to cause disrespect to or lower the dignity of the court. Rejecting the apology of the lawyer, the court said that the contemner’s action was aimed at intimidating the court and causing interference in judicial proceedings.

**Contempt of Sub-ordinate courts:**

Under Article 129 the Supreme Court not only has the power to punish for its own contempt, but also has the power to punish for the contempt of the courts, which are sub-ordinate to this Court.\textsuperscript{110}

In Delhi Judicial Services Association Vs State of Gujarat\textsuperscript{111}

The Supreme Court has given a broad and expansive interpretation to Art. 129 and has thus made a significant contribution towards maintaining the integrity and independence of subordinate courts by taking them under its protective umbrella. The Court has ruled that under Art. 129, it has power to punish for contempt not only of itself but also of High Courts and that of the lower courts. This is the inherent power of the Court as ‘a court of record’ as laid down in Article 129. Explaining the reasons for taking such a liberal view of its contempt power, the Supreme Court has observed.\textsuperscript{112} “The subordinate courts administer justice at the grass root level. Their protection is necessary to preserve

\textsuperscript{109} AIR 1999 Sc 1300

\textsuperscript{110} In the case of Income Tax Appellate Tribunal vs. V.K. Aggarwal AIR 1999 SC 452 the Supreme Court held that it has the jurisdiction to punish for the contempt of Income tax Appellate Tribunal as it is a national tribunal.

\textsuperscript{111} AIR 1991 SC 2176

\textsuperscript{112} Ibid, at 2200
the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level."

The court further held that:

"Since this Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect themselves. Therefore, it is necessary that this Court being the Apex Court and a superior court of record has power to determine its jurisdiction under Art. 129 of the Constitution and ..... it has jurisdiction to initiate or entertain proceeding for contempt of subordinate courts."\(^{113}\)

**Contempt of High Courts**

However, the power to punish for content does not include the power to take over the power conferred by a statute on some other authorities.

In Supreme Court Bar Association v. Union of India\(^ {114}\), a five-Judge-Bench of the Supreme Court overruled its three-Judge-Bench Judgment in Re : Vinay Chandra Mishra\(^ {115}\) and held that the power of the Supreme Court under Article 129 to punish for contempt is, though quite wide, yet limited and cannot extend to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner by-passing the procedure prescribed under the Advocate’s Act. The power to render complete justice under Article 142 is a corrective power which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act-1961 by suspending his licence to practice in a summary manner.

\(^{113}\) Ibid, at 2204, 2205
\(^{114}\) AIR 1998 SC 1895
\(^{115}\) AIR 1995 SC 2349 In this case court punished Sri Vinay Chandra Mishra, a senior advocate and president of the Bar council of India for his misbehaving with Justice Kishote of Allahabad High Court, as it amounted to contempt of the said court.
manner while dealing with a case of contempt of court. The Court cannot invest itself with the disciplinary jurisdiction of the Bar Council of India and the State Bar Council to punish an advocate for the contempt of Court. This power is vested in the Disciplinary Committee of the Bar Council under the Advocate's Act. A complaint of professional misconduct is required to be tried by the Disciplinary Committee of the Bar Council. The Court cannot punish an advocate for professional misconduct in exercise of its appellate jurisdiction by converting itself into statutory body exercising "original jurisdiction". However, if in a given case the concerned Bar Council on being apprised of the blameworthy conduct of the advocate by the High Court or Supreme Court, does not take action against the said advocate the Supreme Court may, in exercise of its appellate powers under Section 38 of the Advocate's Act and read with Article 142 of the Constitution proceed suo moto, send for the records from the Bar Council and pass appropriate orders against the concerned Advocate.

3.8.2 ORIGINAL JURISDICTION:116

The Constitution of India confers on the Supreme Court original and exclusive jurisdiction.

In a federal or a quasi-federal structure, which the Indian Constitution sets up, disputes may arise between the Government of India and one or more States or between two or more States and a forum should be provided for the resolution of such disputes and that the forum should be the highest court so that final adjudication could be achieved expeditiously. Article 131 serves that purpose. It provides that the Supreme Court shall have original jurisdiction, to the exclusion of any other court, in a dispute provided the following conditions are complied with. These are,-

116 Article 131 & Article 32 of the constitution of India
117 A court has original jurisdiction when it has the authority to hear and determine a case in the first instance.
118 It has exclusive jurisdiction when it has authority to hear and determine a case which cannot be heard or determined by any other court.
The dispute must be

(i) between the Government of India and one or more states or
(ii) between Government of India and any state/states on one side and
    one or more states on the other and
(iii) between two or more states

The dispute must involve a question (whether of law or fact) on which the existence or extent of any legal right depends.

The Supreme Court however in its original jurisdiction cannot entertain any suit brought by or against a private person.

Power of the Supreme Court under Article 131 basically refers to matters relating to federal structure. In Union of India vs State of Rajasthan\textsuperscript{119} the Court pointed out that Article 131 is attracted only when the dispute arises between or amongst the states and Union in context of constitutional relationship that exist between them and the power, rights, Duties, Immunities, Liabilities, Disabilities, etc. flowing therefrom. It could never have been the intension of the framers of the constitution that any ordinary dispute of this nature have to be decided exclusively by the Supreme Court.

As Justice Bhagwati has observed in State of Karnataka vs Union of India\textsuperscript{120} the Article is a necessary concomitant of a federal or quasi-federal form of Government and it is attracted only when parties to the dispute are Government of India or one or more states arranged on either side.

In suits by the State Governments for compensation etc. against the railway administration, the Union of India is a necessary party. These suits however, cannot be filed under Article 131 because they do not involve any question with respect to the rights or claims either of the

\textsuperscript{119} In State of Bihar vs. Union of India (1970) 1 SCC 67, 69-70: AIR 1970 SC 1446) the Court held that a dispute between the State of Bihar and the Hindustan Steel Ltd., a registered company under the Indian Companies Act, did not fall within its original jurisdiction because a body like the Hindustan Steel Ltd. was not ‘a State’ for the purposes of Article 131.

\textsuperscript{120} AIR 1978 SC at 143
States or Union as such but only to rights and claims relating to ordinary business or commercial transactions which are not in any way different from similar transactions between private persons.

Exclusion of original jurisdiction of the Supreme Court:

The jurisdiction conferred by Article 131 is to be read subject to other provisions of the constitution.

a) The original jurisdiction of the Supreme Court does not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which having been entered into or executed before the commencement of the constitution continues in operation, after such commencement or which provides that the jurisdiction shall not extend to such disputes.

121 AIR 1984 SC 1675. In state of Karnataka vs State of Andhra Pradesh AIR 2001 SC 1560 A suit filed by the State of Karnataka against the State of Andhra Pradesh under Article 131 raising a dispute relating to non-implementation of the binding decision rendered by the Krishna Water Disputes Tribunal constituted under s. 4 of the Inter-State Water Dispute Act, 1956, has been held to be maintainable. State of Haryana v. State of Punjab AIR 2002 SC 685 The State of Haryana filed a case under Art. 131 against the State of Punjab and the Union of India seeking a mandatory injunction requiring completion of the Sutlej-Yamuna link canal pursuant to agreement between the two states for division of river waters. It was argued that the suit was not maintainable in view of Article 262. But the court rejected the contention saying that there was no water dispute under Article 262 as the states had already agreed to share river water. The court issued a mandatory injunction directing the State of Punjab to complete the canal and make it functional within a year. The court also directed the Central Government to discharge its own constitutional obligation to ensure that the canal is completed as expeditiously as possible.

122 Article 131 opens with the subjective clause i.e. "subject to the provisions of this constitution"

123 Proviso to Article 131 of the constitution

124 Reference may also be made in this connection to Art 363 which excludes the above mentioned disputes from the jurisdiction - Original or Appellate of the Supreme Court and or other Courts. Also under Article 143 (2) The President may, notwithstanding anything in the proviso to Art 131, refer a dispute of the kind mentioned in the (said proviso) to Supreme Court for opinion and the Supreme Court Shall, after such hearing as it thinks fit report to the president its opinion there on.
b) Parliament may, by law, exclude the jurisdiction of the Supreme Court in disputes between states with respect to use, distribution or control of waters of inter-state rivers or river valleys. In such disputes different mode of adjudication may be prescribed. \(^{125}\)

c) The jurisdiction of the Supreme Court with respect to the matters referred to the finance commission is excluded. \(^{126}\)

**Other Provision relating to Original Jurisdiction**

Article 32 vests the Supreme Court with the original but the concurrent\(^{127}\) jurisdiction to enforce the Fundamental Rights. Under Article 32, every Person has a right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights.\(^{128}\)

**Disputes regarding election of the President:**

All doubts and disputes arising out of or in connection with the election of a president or vice president shall be inquired into and decided by the Supreme Court whose decision shall be final.\(^{129}\) Under Article 317 the chairman or member of Public Service Commission will be removed on the ground of misbehavior only when the Supreme Court to whom the matter was referred by the President of India holds on inquiry in accordance with the procedure prescribed in that behalf under Article 145 and reported that such a chairman or member must be removed from the office. During the period of inquiry by the Supreme Court such members may be suspended by the President of India.

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\(^{125}\) Article 262(2) of the constitution

\(^{126}\) Article 280 of the constitution

\(^{127}\) Under Article 226 High Courts also have the Power to enforce Fundamental Rights

\(^{128}\) The Supreme Court is given the power to issue directions or orders or writs including writs in the nature of habeus-corpus, mandamus, prohibition and certiorari for the enforcement of fundamental rights.

\(^{129}\) Article 71 (1) of the Constitution
3.8.3 APPELLATE JURISDICTION:
The Supreme Court is primarily a court of appeal and enjoys extensive appellate jurisdiction. The Appellate Jurisdiction of the Supreme Court can be divided into four main categories.

a) Constitutional matters

An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings if the High Court certifies that the case involves a substantial question of law as to the interpretation of this constitution. Where such certificate is given, any party to the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

The scheme of the appellate jurisdiction of the Supreme Court clearly indicates that questions relating to the interpretation of the Constitution are placed in a special category irrespective of the nature of the proceedings in which they may arise, and a right of appeal of the widest amplitude is allowed in cases of such questions. The idea is that on questions involving the interpretation of the Constitution the Supreme Court should have the last say. Divergent interpretations on

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130 Article 132 of the constitution
131 Article 133 of the constitution
132 Article 134 of the constitution
133 Article 136 of the constitution
134 Article 132(1) of the constitution
135 under Article 134-A of the constitution
136 Article 132 of the constitution
constitutional questions by different High Courts would be undesirable. With that object, the article is freed from other limitations imposed under Articles 133 and 134. Moreover, as the provisions of Article 132 suggest, a speedy determination on constitutional issues going to the root of the case is aimed at.

Under Article 132 (1) three conditions are necessary for the grant of certificate by the High Court:–

1. The order appealed against should be a “judgment, decree or final order138 made by the High Court in civil, criminal or other proceedings.”

2. The case must involve a question of law as to the interpretation of this Constitution. It means the decision on the question or constitutional law should be necessary for the proper decision of the case.

3. The question involved must be substantial question of law. A question will not be termed as a substantial question if the law on the subject has been finally and conclusively decided by the Supreme Court in a previous case.

The words 'other proceedings' include all proceedings other than civil and criminal; they include 'revenue proceedings' under the Sales Tax Act or the Income Tax Act, etc. Secondly, the case must involve a substantial question of law as to the interpretation of the Constitution. A question is not a substantial question of law if it has been decided by the Supreme Court in a previous case. But if there is a difference of opinion on any question of law among High Courts, and there is no direct decision of the Supreme Court on that point it would be a substantial question of law.139

138 An appeal against the High Court's decision would lie to the Supreme Court only when its decision amounts to a final order. An order of the High Court amounts to a final order only if the order puts an end to the suit or other proceedings. If after the order, the suit is still alive, i.e., in which the rights are still to be determined, it will not be a final order and no appeal would lie in the Supreme Court.

139 Substantial question of law as to the interpretation of the constitution includes the substantial question as to the interpretation of Government of India Act 1935 of any order in council or order made under that Act or of Indian Independence Act or any order made under that Act (Article 147 of the constitution)
Under this article\textsuperscript{140} an appeal is allowed from any judgment, decree or final order of a High court provided that the requisite certificate is given and there is no rule, as in Article 133, that the decision must not be a Single Judge decision of the High Court. The practice of deciding the case sitting single and giving a certificate under Article 132(1) for appeal to the Supreme Court, although technically correct, is an improper practice. It is the party’s right to file an appeal in the High Court itself against the decision of the single Judge and this right should not be short-changed by passing on the case to the Supreme Court for a decision thereon.\textsuperscript{141} However, in appropriate cases, a single Judge may issue a certificate. But such a certificate is warranted in exceptional cases wherein a direct appeal is necessary and in view of the grave importance of the case, an early decision is imperative in the larger interest of the public or other similar reasons exist\textsuperscript{142}.

Thus, Supreme Court has emphasized that an appeal would lie under Article 132 even against the decision of a single Judge of the High Court on the grant of necessary certificate by him. However, this could only be done, in very exceptional cases, where direct appeal to Supreme Court was necessary and in view of great importance of the case an early decision was required in public interest\textsuperscript{143}.

b) \textit{Appellate Jurisdiction in Civil Matters: -}

Article 133 confers a constitutional right to appeal to Supreme Court in civil matters. clause (1) of Article 133 provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order in a Civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134-A that

\begin{itemize}
  \item[a)] the case involves a substantial question of law of general importance and
\end{itemize}

\textsuperscript{140} Article 132, of the Constitution of India
b) In the opinion of the High Court the said question needs to be decided by the Supreme Court.

The appeal under Articles 133 lies to the Supreme Court against the decision of the High Court under the following conditions:

i. The judgment, decree or final order appealed against must have been passed or made by a High Court in any 'civil proceedings'.

ii. The High Court must give a certificate under Article 134-A in the following circumstances:

a) That the case involves a substantial question of law of general importance.

b) Such judgment, decree or final order should be given in a civil proceeding

c) That in the opinion of High Court the said question needs to be decided by the Supreme Court.

The word "needs" suggests that there has to be necessity for a decision by Supreme Court on the question, and such necessity can be said to exist when, for instance, two views are possible regarding the question and the High Court takes one of the said views. Such a necessity can also be said to exist when a different view has been expressed by another High Court. It is thus apparent that there must be some imperative necessity arising from the fact and circumstances of the case before the Court can certify it to be fit one to prefer an appeal to the Supreme Court.

In Kiranmal vs. Dnyanoba144, the High Court dismissed the appeal by one word order "Dismissal" against the judgment of the Civil Judge. The Supreme Court found that the appellant could have raised serious questions of law and facts before the High Court and, therefore, held that is was a fit case which ought to have been admitted and disposed of.

144 AIR 1983 SC 461
on merits. The case was remitted to the High Court for disposal on merits.

Prior to the passing of the constitution (30th Amendment) Act, 1972, an appeal could lie to the Supreme Court under Article 133, against the judgment, decree or final order of the High Court, in a civil proceeding if the High Court certifies that:

i) That the Subject matter involved in a dispute was valued at Rs. 20,000 or more.

ii) The case was fit one for appeal to the Supreme Court. The constitution 30th Amendment has removed the condition of monetary value and now appeal lies to the Supreme Court only if the High Court certifies that the case involves a substantial question of law of general importance, needs to be decided by the Supreme Court\textsuperscript{145}.

The expressions "final order", "a substantial question of law" and "civil proceedings" carry the same meaning as under Article 132. The expression civil proceeding thus means proceeding in which party asserts the existence of a civil right.

A civil proceeding is one in which a person seeks to remedy by an appropriate process the alleged infringement of his civil rights against another person or the State and which, if the claim is proved, would result in the declaration, express or implied, of the right claimed and relief, such as, payment of debt, damages, compensation, etc. Civil proceeding does not only mean the proceeding in a civil suit before the court but also includes proceedings before the High Court in the writ.

\textsuperscript{145} The 30th Amendment has given effect to the recommendation of the law commission’s 44\textsuperscript{th} & 45\textsuperscript{th} reports. The object is to curtail the number of appeals which are filed in the Supreme Court merely on the valuation test being satisfied. Also, it was held that valuation could not be a rational yardstick and that important questions of law could arise even in suits for small value - see the object and reasons attached to the constitution 30\textsuperscript{th} Amendment Act, 1972
In the case of Prasanna Kumar Raj Karmakar vs. State of West Bengal\(^{146}\) the Supreme Court has held that: “there is no ground for restricting the expression "civil proceeding" (in Article 133) to those proceedings which arise out of civil suits (or proceedings which are tried as civil suits); nor is there any rational basis for excluding, from its purview, proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 226, where the aggrieved party seeks the relief against infringement of civil rights by authorities purporting to act in the exercise of the powers conferred upon them by revenue statutes, or disputes between landlord and tenant.”

No appeal lies against the decision of a single Judge:\(^{147}\)

Clause (3) of Article 133 provides that no appeal shall lie to the Supreme Court from the judgment, decree or final order of a single judge of the High Court. However, parliament, by law may remove this prohibition. No such law, has been enacted till date.

New Plea for the first time not allowed:

Ordinarily, the Supreme Court does not allow fresh pleas to be raised in appeal under Article 133. However a new plea on pure question of law not involving any investigation of facts can be raised for the first time in the Supreme Court. The question of limitation cannot be said to be a pure question of law as, it will require investigation into facts, to ascertain the exact dates of accrual of the cause of action. The Supreme Court declined to entertain the plea of limitation. The plea of res judicata cannot be raised for the first time as was held in Deva Ram vs. Ishwarchand\(^{148}\). Again the Supreme Court under Article 133 does not interfere with the concurrent findings of the fact by the Trial Court and the High Court unless it is shown that important and relevant evidence has been over looked or unless it is fully unsupported by evidence on record or when there is a grave error\(^{149}\). It is left to the judicial discretion

\(^{146}\) AIR 1996 SC 1517 (paragraphs 11,12)

\(^{147}\) Article 133 (3) of the Constitution

\(^{148}\) AIR 1996 SC 378 paragraph 30

\(^{149}\) D.C. Works Ltd. vs. State of Saurashtra AIR 1957 SC 2667.
of the court as to when it will interfere in the concurrent findings of fact of Trial Court and High Court. However no rigid rule can be laid down which will cover all such cases.

In Laxmikant V. Patel vs. Chetanbhat Shah\textsuperscript{150} it was held that the Supreme Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the trial Court and substitute its own discretion, therefore, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the court under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction.

c) Appellate Jurisdiction in Criminal Matters

A limited Criminal appellate jurisdiction is conferred upon the Supreme Court by Article 134. It is limited in the sense that the Supreme Court has been constituted a court of criminal appeal in exceptional cases where demand of justice requires interference by the highest court of the land.

Article 134(1) provides: An appeal shall lie to the Supreme Court from any judgement, final order or sentence in a criminal proceedings of a High Court in the territory of India if the High Court:

(a) has on an appeal reversed an order of acquittal of an accused person and sentenced him to death or
(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death.
(c) if the High Court certifies under Article 134-A that the case is fit one for appeal to the Supreme Court.

Proviso to clause (c) of Article 134 explains that an appeal there under shall lie, subject to such provisions as may be made in that behalf under

\textsuperscript{150} AIR 2002 SC 275
clause(1) of Article 145 and to such conditions as the High Court may establish or require.

Article 134 clause 1 (a) & (b) appeal lies to the Supreme Court without certificate from the High Court whereas under Article 134 (1) (c) appeal lies to the Supreme Court only when High Court grants a certificate to the extend that case is fit one for an appeal to the Supreme Court.

The word ‘acquittal’ here does not mean that the trial must have ended in complete acquittal but would also include a case where an accused has been acquitted of murder and has been convicted of a lesser offence. Thus in Tarachand Danu Sutar Vs. State of Maharashtra151, the accused who was charged with murder under section 302, IPC, was convicted by the Trial Court under sec. 304 IPC. The High Court reversed the order and convicted the accused of murder under section 302 IPC and sentenced him to death. The Supreme Court, rejecting the argument on behalf of the state that the word ‘acquittal’ meant complete acquittal, held that the accused was entitled to a certificate under Article 134 (1) (a). In Janak Singh vs. State of U.P152 once it is established that the High Court has applied the correct principles in reversing an order of acquittal, the Supreme Court would not ordinarily interfere with the High Courts order of conviction or reassess the evidence. The Supreme Court would only examine whether a High Court has approached the question properly and applied the principle correctly.

Under Article 134-A makes it obligatory on the High Court to determine the question of granting certificate immediately on the passing of judgment, decree or order or sentence either on oral application made by party aggrieved or if deems fit to do so, on its own motion.

Under sub clauses (a) & (b) of Article 134 the appeal lies as of right both on the question of fact and of law while under sub clause (c) the appeal lies only if High Court certifies that the case is a fit one for appeal.

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151 AIR 1962 SC 130
152 AIR 1972 SC 1853
The power of the High Court to grant fitness certificate in the criminal cases is a discretionary power, but the discretion is a judicial one and must be judicially exercised along with the well-established lines which govern these matters. The Supreme Court has laid down entire guiding principles for the High Courts to follow in granting certificates. The High Court should grant certificate only where there has been exceptional circumstances, e.g., where substantial and grave injustice has been done. Thus a certificate cannot be granted by the High Court on a mere question of fact, or where no substantial question of law is involved.

Moreover, the Supreme Court is not necessarily bound to hear an appeal on the merits merely because a certificate has been granted by the High Court under Article 134 (1) (c). If the Supreme Court is satisfied that the High Court has not properly exercised its discretion under this provision, the Supreme Court may either remit the case or exercise the discretion itself and treat the appeal as under Article 136. The court may also dismiss the appeal in limine if it finds no sufficient reasons to interfere under Article 136.

The Supreme Court is not constituted as a general court of criminal appeal. Consequently, it would entertain appeals from the High Court under Article 134 (1) (c) only on the above principles.

By Article 134(2) the jurisdiction can be enlarged and Parliament has enlarged the jurisdiction of Supreme Court to entertain and hear appeal in criminal matters by the Supreme Court (Enlargement of Criminal appellate jurisdiction) Act, 1970. Now a right of appeal is provided if

a) The High Court has on appeal reversed the order of acquittal and award a punishment of life imprisonment or imprisonment for a period of not less than 10 years.

153 In Sideshwar Singh Ganguly Vs. State of West Bengal AIR 1958 SC 143.
b) If the High Court has withdrawn for trial, before itself, any case from any court subordinate to itself and has in such trial convicted the accused person and sentence him to imprisonment for life or to imprisonment for a period of not less than ten yrs.

Certificate for appeal to the Supreme Court—Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134,—

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case.154

Article 134-A was inserted by constitutional 44th Amendment Act, 1978155.

This Article 134-A is not an independent provision under which a certificate can be issued. It is ancillary to Article 132(1), 133 (1) and Article 134(1) (c), the High Court can issue certificate only when it is satisfied that the conditions in Article 132, Article 133 or Article 134 as the case may be are satisfied. Accordingly, in State Bank of India vs. SBI Employers Union156. The Supreme Court revoked a certificate issued by a Single Judge of the High Court because clearly the appeal did not fall within Article 132 & 134 and it could fall within Article 133 (1). It contravened clause (3) of that Article which denies appeal from the judgment etc. of a single Judge of a High Court.

154 Article 134–A of the constitution
155 Before the insertion of this, Article there existed two main deficiencies vis-à-vis-a power of the Court to grant certificate firstly, there was no express provision in Article 132, 133 & 134 regarding the time and manner in which application for a certificate under any of those articles could be made before the High Court. Secondly, there was also a doubt as to the power of High Court to issue a certificate suo moto under any of those articles.
156 AIR 1987 SC 2203
Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court:
until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law. \(^{157}\)

d) **Appellate Jurisdiction by Special Leave to Appeal**

Article 136 is in the nature of special or residuary power exercisable outside the purview of ordinary law where the requirement of justice demands intervention by the Supreme Court. It is to be exercised sparingly and cautiously after great deliberation.

Article 136 provides that:

Special leave to appeal by the Supreme Court.— (1) Notwithstanding any thing in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Under Article 136 one may appeal to the court only with the permission or leave of the Supreme Court. But the power of the court to hear appeals in this article is much wider and general, it vests in the Supreme Court plenary jurisdiction in the matter of entertaining and hearing appeals by granting special leave against:

- Any Judgment, decree, determination or order
- In any cause or matter

\(^{157}\) Article 135 of the constitution
Passed or made by any court or tribunal in the territory of India.

The only exception to this power of the Supreme Court is w.r.t. any judgment of any court or tribunal constituted by or under any law relating to the Armed Forces.

Compared with the provisions of Articles 132, 133, 134 the jurisdiction conferred under Article 136 has the following distinguishing features:

The power of the Supreme Court under Article 136 is not fettered by any of the limitations as contained in Articles 132-135. Under Articles 132-135 appeal can be entertained by the Supreme Court only against the 'final order', but under Article 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 Articles 132 to 134 appeal lies only against the final order of the "High Court;" while under Article 136 the Supreme Court can grant special leave for appeal from "any court or tribunal", viz. from any subordinate court below the High 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.

Under Articles 132 to 134 an appeal can lie in the Supreme Court only against any judgment, decree, determination, sentence or order of any court or tribunal; but under Article 136 an appeal may lie against "any case or matter".

From the above, it is clear that the Supreme Court is vested with very wide discretionary power. It is in the fitness of things that it should have such a wide power as the highest Court of the country. To deal with special cases separate provision is made under Article 136. This discretionary power of the Supreme Court to grant special leave to appeal from the decision of any court or tribunal except military tribunal
is not subject to any constitutional limitation and technical hurdles and is left entirely to the discretion of the Supreme Court. This provision was introduced in order to empower the Supreme Court to give relief to any aggrieved party in cases where the principles of Natural Justice have been violated even though the party may not have right to appeal otherwise. But how this discretionary power is to be exercised has been explained by the Supreme Court itself in Pritam Singh’s case\textsuperscript{158} when the court held:\textasciitilde

"By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income tax cases which come up before different kinds of tribunals and any variety of other cases"\textsuperscript{159}. The only conditions are firstly, the determination or order sought to be appealed from must have the character of a judicial adjudication. Purely administrative or executive direction is not contemplated to be made the subject matter of appeal to the Supreme Court\textsuperscript{160}. Secondly, the authority whose act is complained against must be a court or tribunal. Unless both the conditions are satisfied, Article 136 (1) cannot be involved\textsuperscript{161}.

Thus it is a well settled practice of the Supreme Court that except where there has been an illegality or an irregularity of procedure or a violation of the principles of natural justice resulting in the absence of a fair trial or gross miscarriage of Justice, the Supreme Court does not permit a third review of evidence w.r.t. such questions of facts in cases in which two courts of fact have appreciated and assessed the evidence with regard to such questions\textsuperscript{162}. It can, however, go into the correctness of findings of facts where the concurrent decisions of the two or more courts or tribunals are manifestly unjust." The Supreme Court does not

\begin{footnotesize}
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\item \textsuperscript{158} Pritam Singh vs. State AIR 1950 SC 169
\item \textsuperscript{159} Ibid
\item \textsuperscript{160} Jaswant Sugar Mills Ltd. vs. Lakshmichand AIR 1963 SC 677
\item \textsuperscript{161} Engineering Mazdoor Sabha vs. Hind Cycles AIR 1963 SC 874
\item \textsuperscript{162} Chikkaranga Gowda Vs. State of Mysore AIR 1956 SC 751 P.S. Mills Ltd. vs. P.V. Mills Mazdoor Union 1957 SC 95, State of T.N. vs. His Holiness (1997) 9 SCC 313
\end{itemize}
\end{footnotesize}
allow a point, not raised before the courts below, before itself for the first time.\textsuperscript{163}

In Pritam Singh Vs State\textsuperscript{164} the Supreme Court held: The wide discretionary power with which this court is vested under Article 136 is to be exercised sparingly and in exceptional and special circumstances, where substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.

Again the Supreme Court has declined to fetter its discretionary power by laying down ‘principles’ and ‘rules’ in Dhakeswari Cotton Mills Ltd vs. Commissioner of Income Tax\textsuperscript{165} wherein Justice Mahajan held that it is not possible to define the limitation on the exercise of discretionary jurisdiction vested in this court by Article 136. The limitation whatever they be, are implicit in the nature and character of the power itself. It, being an exceptional and overriding power naturally, has to be exercised sparingly cautiously and only in special and extraordinary situations.

The power of Supreme Court under Article 136 is invoked more frequently in criminal appeals rather than the civil appeals. The general principle which the Supreme Court has been following in criminal cases is that it will not grant a special leave to appeal unless there are special and exceptional circumstances or it is established that grave injustice has been done which warrants the review of decision appealed against.

In Delhi Judicial service Association vs. State of Gujarat\textsuperscript{166}, the Supreme Court has held that under Article 136 the Supreme Court has wide power to interfere and correct the judgment and orders passed by any court or tribunal in the country. In addition to the appellate power, the court has special residuary power to entertain appeal against any order of any

\textsuperscript{163} R.J. Singh Vs. State of Delhi AIR 1971 SC 1552
\textsuperscript{164} AIR 1950 SC 169
\textsuperscript{165} AIR 1955 SC 65
\textsuperscript{166} (1991) 4 SCC 406
court. The plenary jurisdiction of the Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals including subordinate courts of Magistrate and District Judge. The Supreme Court has therefore supervisory jurisdiction over all courts of India. Accordingly, the Supreme Court in the above case punished the five police officials for committing contempt of the Chief Judicial Magistrate Court of Nadiad in Gujarat and also quashed the false criminal proceedings against the magistrate filed by the police.

In the case of Bhaginbhai Hirajibhai vs. State of Gujarat\(^{167}\) the Supreme Court held that in an appeal under Art. 136, the Supreme Court does not interfere with the concurrent findings of facts unless it is established: (1) that the finding is based on no evidence, or (2) that the finding is perverse, it being such as no reasonable person could arrive at even if the evidence were taken at its face value, or (3) the finding is based and built on inadmissible evidence which evidence, excluded from vision would negate the prosecution case or substantially discredit or impair it, or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded.

The Supreme Court does not function as a regular court of appeal in every criminal case. Normally, the High Court is a final Court of appeal and the Supreme Court is only a court of special jurisdiction. The Supreme Court would not therefore reappraise the evidence to determine the correctness of findings unless there are exceptional circumstances where there is manifest illegality or grave and serious miscarriage of justice, for example, the forms of legal process are disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted.

\(^{167}\) AIR 1983 SC 753
In the case of State of U.P vs Hari Ram, The Court held that where the High Court committed serious errors of law in appreciating the evidence and based its decisions on conjectures. It was held that the Supreme Court was justified in reversing the acquittal by the High Court and convicting the accused and sentencing them to life imprisonment. The Court also rejected the argument that since 15 years had passed from the date the trial began till the judgment of the Supreme Court reversing the High Court judgment therefore it should not reverse the High Court judgment. It was held that the time lag between prosecution conviction was no ground for the Supreme Court not to interfere it otherwise justified, that is, if it was found that the respondent was guilty of the offence of murder.

The exercise of the jurisdiction under Article 136 consists of two steps:

(i) granting special leave to appeal;
(ii) hearing the appeal.

At the first step, the Court exercises its discretionary jurisdiction to grant or not to grant leave to appeal. If the petition is dismissed at this stage it means that a case for invoking appellate jurisdiction of the Court was not made out. If the first step is crossed i.e. the leave to appeal is granted the appellate jurisdiction of the Court stands invoked. Dismissal at the first stage is not an affirmation of the decision against which leave is sought. Therefore, the petitioner may seek any other remedy available to him such as review of the decision by the concerned court or review under Article 226.

Clause (2) admits an exception when it says that the provision for special leave to appeal shall not apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the armed forces. These are the only courts or tribunals which are expressly exempted from the purview of Article 136.

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168 (1983) 4 SCC 453
The Supreme Court has also read a general power of superintendence on all courts in India under Article 136 similar to the power of the High Courts under Article 227\textsuperscript{170}.

3.8.4 POWER TO REVIEW JUDGMENT

Article 137 empowers the Supreme Court to review its own judgments, subject to the provisions of any law made by Parliament or any rules made by the Supreme Court. Under Article 145 (e) the Supreme Court is authorized to make rules as to the conditions subject to which the court may reviews any Judgment or order. The Parliament has not made any rules in this regard. Order XL of Supreme Court Rules, 1966 provides for review. Rule 1 provides that in civil cases, no application will be entertained except on the grounds mentioned in order 40 Rule 1 of CPC and in criminal case except on the grounds of error apparent on the face of record. Order XL, Rule 3 as amended in 1978 provides that the review petition may be disposed of only by circulation amongst the Judges without oral arguments. This provision has been commenced and has also been upheld.

In Civil Cases the review of Supreme Court orders and judgments is possible on any of the following grounds:

a) Discovery of new and important matter or evidence.

b) Mistake or error on the face of record.

c) Any other sufficient reason

The Supreme Court has justified review of its own judgment with the following remarks\textsuperscript{171} “Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility ...... Rectification of an order thus stems from fundamental principle that justice is above all. It is exercised to remove the error and not for disputing finality.” Similarly, in


Srinivasian Vs. Sree Balaji Krishna Hardware Stores\textsuperscript{172} Supreme Court allowed review where the contrary findings of the lower authorities were not brought on record and, therefore, were not within the notice Supreme Court.

A review may also be allowed if out of three Judges, two award death sentence and third one awards life imprisonment\textsuperscript{173}. In Lily Thomas v. Union of India\textsuperscript{174} Supreme Court held: The purpose of review is to ensure that justice is not defeated and that errors leading to miscarriage of justice and remedied errors requiring review are those which a patent and apparent from the face of record and are errors inadvertence and not those need to be fished out.

Law declared by the Supreme Court to be binding
Article 141 enacts that the law declared by the Supreme Court is binding on all courts in the territory of India. It declare that “The law declared by the Supreme court shall be binding on all the courts within the territory of India.”

The expression ‘law declared’ is a wider term and implies law creating role of the Supreme Court. The word “all Courts” obviously means courts other than the Supreme Court that means the Supreme Court is not bound by its own decisins\textsuperscript{175}. The Supreme Court may overrule its decision either by expressly saying so impliedly by not following them in subsequent cases\textsuperscript{176}.

\textsuperscript{172} (1998) 6 SCC 312
\textsuperscript{173} Suthendraja vs. State (1999) 9 SCC 323
\textsuperscript{174} (2000) 6 SCC 224 SC
\textsuperscript{175} Dwarka Das Shrinivas vs. Sholapur spg and wvg Co. Ltd, AIR 1954 SC 119, Bengal immunity v. State of Bihar AIR 1955 SC 631 at 673; Sajjan Singh vs. State of Rajasthan AIR 1965 845; state of West Bengal vs. Corp. of Calcutta AIR 1967 SC 997.
\textsuperscript{176} C.N. Rudramurthy vs. K. Barkathulla Khan (1998) 8 SCC 275.
Even so, the normal rule that the judgments pronounced by the Supreme Court would be final, should not be ignored and unless considerations of a substantial and compelling character makes it necessary to do so, the Supreme Court would be slow to doubt the correctness of previous decisions or to depart from them.\footnote{Sajjan Singh vs. State of Rajasthan AIR 1965 SC 845, 855}

However, the Supreme Court will review its earlier decision even though the decision has held the field for a considerable long time, if it is satisfied of its error or the baneful effect which a decision would have on the general interest of the public or if it is ‘inconsistent’ with the legal philosophy of our constitution.

In Union of India vs. K.S. Subramaniam\footnote{AIR 1976 SC 2433}, if there is an apparent conflict between the decisions of the Supreme Court, the opinion expressed by larger bench of the Supreme Court must be followed in preference to those of smaller benches unless the former can be distinguished by giving reasons.

### 3.8.5 ADVISORY OR CONSULTATIVE JURISDICTION:

When it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance, that it is ‘expedient’ to obtain the opinion of the Supreme Court upon it, he may refer it to the Court for its consideration. The Court then may, after such hearing as it thinks fit, report to the President its opinion thereon.\footnote{Article 143 (1) of the constitution of India}

Under Article 143(2), a matter which is excluded from the Supreme Courts’ jurisdiction under Article 131 may be referred to it for opinion and the Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

A perusal of Article 143 leads to the conclusion that under Article 143 (i), it is the discretion of the Court to entertain a reference and report to the president its opinion and the Court may in a proper case decline to express any opinion on the question submitted to it e.g. where the
question referred to is a political one. While under clause (2) it is obligatory on the Supreme Court to entertain a reference and to report to the president its opinion. It is for the president to decide what questions should be referred to the Supreme Court.

On receipt of the reference the registrar of the Supreme Court gives notice to the Attorney General to appear before the court and take directions of the court as to the parties who will be served with notice.

On such reference the court may also permit such other persons, as may be, interested to appear as interveners.\textsuperscript{180} The Supreme Court is to report its opinion after such hearing as it thinks fit. The report shall be made in accordance with an opinion delivered in the open court with the concurrence of majority of Judges present.\textsuperscript{181} The procedure to be followed is similar to the one followed in the exercise of original jurisdiction.

Till now following references made under Article 143 (l) are as follows:
1. In re Delhi laws Act in 1951\textsuperscript{182}
2. In re Kerela Education Bill in 1957\textsuperscript{183}
3. In re Berubari Union and exchange of enclaves in 1960\textsuperscript{184}
4. In re The sea customs Act, 1962\textsuperscript{185}
5. In re Keshav Singh’s case 1945\textsuperscript{186}
6. In re The Presidential Poll, 1974\textsuperscript{187}
7. In re The special Courts Bill, 1978\textsuperscript{188}
8. In re Cauvery Disputes Tribunal in 1992\textsuperscript{189}

\textsuperscript{180} Presidential Poll. Re 1974 AIR 1974 SC 1682
\textsuperscript{181} Order 37 Rule 3, Supreme Court Rules, 1966
\textsuperscript{182} AIR 1951 SC 332
\textsuperscript{183} AIR 1958 SC 956
\textsuperscript{184} AIR 1960 SC 845
\textsuperscript{185} AIR 1963 SC 1760
\textsuperscript{186} AIR 1965 SC 754
\textsuperscript{187} AIR 1974 SC 1682
\textsuperscript{188} AIR 1979 SC 740
\textsuperscript{189} AIR 1997 SC 522
Amongst the Eleven references, excepting reference of 1998, all references related to the question of law.

Though the reference is made by the president, in reality, the reference is by the Council of Ministers. But for that purpose, the Supreme Court cannot verify or examine as to whether the reference is by the President himself or on the advice of the Council of Ministers. In view of the constitutional bar contained in clause (2) of Article 74, which mandates that the question whether any and if so what advice was rendered by the Council of Ministers to the President shall not be inquired into in any Court. But if the President consults the Supreme Court under Article 143 in the absence of advice to that effect from the Council of Ministers, it would amount to a violation of constitution for which the president may be impeached.

The power of the President under article 143 is wide enough to empower the President to refer to the Supreme Court for its advisory opinion 'any question' whether of law or fact which has arisen or likely to arise, provided that it appears to the president that the question referred is of such a nature and a such public importance that it is expedient to obtain the opinion of Supreme Court upon it.

On the question whether the Supreme Court is bound to answer the reference there is unanimous opinion that Supreme Court in not bound to answer a presidential reference under Article 143 (I).
In re Kerela Education bill, 1957 Das C.J. opined that “it is obligatory on the Supreme Court to entertain a reference and to report to the president its opinion if the reference is under Article 143 (2) but the court has under Cl (1) a discretion in the matter and may in the proper case and for good reasons decline to express any opinion on the question submitted to it.” However, in re Special Court bill, 1978.194

“The right of this court to decline to answer a reference does not flow merely out of the different phraseology used in Cl (1) & Cl (2) of Article 143 in the sense that Cl (1) provides that court may report to the President its opinion on the question referred to it while Cl (2) provides that the court ‘shall’ report to the President its opinion on the question. Even in matters arising under Cl (2) though the question does not arise in this reference the court may be justified in returning the reference unanswered if it finds a valid reason that the question is in capable of being answered.

Gajendra Gadkar, C. J. in special reference No. 1 of 1964. “......Whereas in the case of reference made under Article 143(2) it is the constitutional obligation of this court on the reference embodying its advisory opinion, in a reference made under article 143(1) there is no obligation”.

In special reference No. 1, 1993195 a five judge bench unanimously refused to entertain a reference which was with regard to the question of fact and this was the only reference sent to the president unanswered.

Another issue which arose before the Supreme Court was whether the advisory opinion rendered by the court is “law” as declared within the meaning of Article 141. The question was considered by the court in re-Special Courts Bill, 1978 and held that the question may have to be...

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194 C.J. Chandra Chud had opined to the contrary. (1979) 1 SCC at 401
195 In special reference No. 1 of 1993 the question referred to the SC for its advisory opinion was whether a Hindu Temple or a religious structure existed at a particular place in Ayodhya (1993) 1 SCC 642
considered more fully on a future occasion. It further opined that it would be strange that the decisions given by the court on question of law in a dispute between two private parties should be binding on all the courts in the country but advisory opinion should bind no one at all. The issue was again raised in re- Cauvery Water Disputes Tribunal\(^ {196}\). It was held that the advisory opinion is entitled to due weight and respect and normally it will be followed. Similar view was held by Reddy. J. in St. Xavier’s College Society Ahmadabad vs. State of Gujarat\(^ {197}\), it was further held in this case that the report which the Supreme Court makes to the President is not binding on the supreme court in any subsequent matter where in a concrete case an analogous provisions may be called in question though it is entitled to great weight.

Further, in the case of Supreme Court Advocates-on-Record Association vs Union of India\(^ {198}\) also known as Judges II case a nine judge bench by majority of 7:2 held that in the matters of appointment of Judges to the Supreme Court under Article 124(2), the views of collegium consisting of the Chief Justice of India and two senior most judges will have primacy. Five years after this decision was rendered, the President of India referred nine questions for the consideration of the Supreme Court in Special Reference No. 1 of 1998.

This decision\(^ {199}\) was modified in special reference no. 1 of 1998. The collegiums membership was altered from chief justice of India and two senior most judges to the chief justice of India and four senior most judges of the Supreme Court. Since the law declared by the Supreme Court is contained in judges case-II, it cannot be altered in an advisory opinion, which does not have the effect of declaring the law.

Therefore it is respectfully submitted that the alteration of the Supreme Court judgment in terms of its views on advisory opinion has no effect.

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196 AIR 1997 SC 522
197 (1974) 1 SCC 17
198 (1998) 4 SCC 409
199 Ibid
When the judgment of the supreme court rendered inter-parties and an opinion of the supreme court under article 143 (1) conflicts, the judgment will prevail and not the opinion.\textsuperscript{200}

Moreover, the opinion rendered by the Supreme Court is not a judicial pronouncement. It is also not binding on the President and he may or may not act according to the opinion of the Supreme Court. The advisory opinion cannot serve as a good source of the title as a declaratory judgment. The main use of this provision is to enable government to get authoritative opinion as to the legality of a matter, before action is taken upon it.

In special reference no. I of 2002\textsuperscript{201} It was held that if the question raised in the reference are questions which are likely to arise in future but are of public importance or there being no decision of the court directly on the question so referred and they have raised a doubt in the mind of the President as regards the interpretation of some constitutional provisions, it is imperative that the reference be answered.

In this case the reference under Article 143(1) arose as a result of premature dissolution of the Gujrat Legislative Assembly. The main question raised in the reference was regarding the time-frame within which election to state Assembly must be held.

In this case the Gujarat Legislative Assembly was dissolved prematurely, before the expiry of its normal tenure of five years, on 19-7-2002. The last sitting of the dissolved Assembly was held on 3-4-2002. According to Article 174(1) of the constitution, six months shall not intervene between the last sitting of one session and the date appointed for the first meeting of the next meeting. It was argued that election to the state Assembly must take place before 3-10-2002, i.e. within six months of the last sitting of the House. On the other hand, the Election Commission was of the view that since the law and order situation in the state was delicate, election could not be held.

\textsuperscript{200} Pooja Jha: Supreme Courts Advisory Jurisdiction under Art 143 JILI April – December Vol. 42, p-68

\textsuperscript{201} AIR 2003 SC 87
before 3-10-2002 and it would take a few more months thereafter to hold the election. It was this dichotomy of views which became the subject-matter of the reference to the Supreme Court. The main question involved therein related to the interpretation of Article 174(1) and Art. 324 and the inter-relation between the two provisions, if any, was the Election Commission bound by Art. 174(1) and was bound to hold election to the Gujarat Assembly before 3-10-2002.

The Presidential reference under Art. 143(1) of the Constitution, was heard by a Bench of five learned Judges and three concurring judgments were delivered. The main propositions which emerged from the several judgments are as follows:

1. Democracy is a part of the basic structure of the Constitution and free and fair elections at regular prescribed intervals are essential to the democratic system. Holding periodic, free and fair elections by the Election Commission are part of the basic structure of the Constitution.

2. Article 174(1) relates to an existing, live and functional Assembly. It regulates the frequencies of sessions of existing Houses. Article 174(1) is mandatory so far as the time period between two sessions of a living and functional House is concerned. But Article 174(1) does not relate to a dissolved House. Accordingly, Article 174(1) does not provide for any period for holding election for constituting fresh legislative Assembly. Article 174 and 324 operate in different fields, are not subject to one another.

3. Election Commission is a constitutional body which is an independent and impartial body free from any executive interference. But the powers of the commission are subject to a law made by Parliament or a State Legislature so long as the same does not encroach upon the plenary powers of the Election Commission. The legislative power is subject to the provisions of the constitution.

Conducting of elections is the sole responsibility of the Election Commission. "As a matter of law, the plenary powers of the Election Commission cannot
be taken away by law framed by Parliament. If Parliament makes any such law, it would be repugnant to Article 324."

Thus, Article 324 "operates in the area left unoccupied by legislation and the words 'superintendence, control, direction' as well as 'conduct of all elections' are the broadest of the terms.'

4. From the various constitutional and statutory provisions, it can be inferred that on premature dissolution of a House, election ought to be held within six months from the date of dissolution of the Assembly.

5. On the premature dissolution of the Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting legislature assembly on the first occasion and in any case within six months from the date of premature dissolution of the assembly.

Effort should be to hold the election and not to defer holding the election. Only when there is an 'act of God' can the election be postponed beyond six months. But man-made obstructions in the way of elections should be sternly dealt with and should not allowed to defer the election.

6. As regards framing of the schedule for holding the election, the matter lies within the exclusive domain of the Election Commission. This is not subject to any law passed by Parliament.

BALAKRISHNAN, J., in a separate concurring opinion, held that any decision of the Election Commission which is intended to defeat the avowed object of forming an elected Government at the earliest, can be challenged before the Court. If the decision taken by the Commission is perverse, unreasonable or for extraneous reasons and if the decision of the Election Commission is vitiated by any of these grounds, the court can give appropriate direction for the conduct of the election.

The above propositions would apply mutatis mutandis to election to Lok Sabha and Article 85. The Supreme Court's judgement gives some flexibility to frame the time-table to hold election to a prematurely dissolved house.
But the over-all time frame for the purpose is six months from the date of dissolution. The Court has emphasized that free and fair elections are the sine qua non of democracy which is a basic feature of the Constitution.

3.8.6 WRIT JURISDICTION

The Constitution of India has given wide powers to the supreme court of India under Article 32. It provides for enforcement of fundamental rights as conferred by Part III of the constitution by means of writ\(^{202}\) when it is moved by ‘appropriate proceedings’. The Supreme Court is empowered to issue appropriate writs, orders and directions, including the writs in the nature of Habeus-corpus, Mandamus, Prohibition, Quo-warranto and Certorari which ever may be appropriate for the enforcement of fundamental right as conferred by Part III of the constitution. The right to constitutional remedies, as provided under Article 32, is itself a fundamental right.

The Supreme Court is constituted as the protector and guarantor of fundamental rights and it is the duty of Supreme Court to grant relief under Article 32 where the existence of a fundamental rights and its breach, actual or threatened is prime-facie established. Article 32 gives very wide discretion in the matter of framing our writs to suit the exigencies of particular cases and the application of the petitioner cannot be thrown out simply on the ground that propellant has not been prayed for. Clause (4) of Article 32 specifically provides that right to move the Supreme Court for the enforcement of fundamental right which is guaranteed by this article shall not be suspended except as provided by Article 359\(^{203}\) of the constitution. The power of Supreme Court to issue writs cannot be taken away by any legislation. Any law, which renders nugatory or illusory the exercise of the Supreme Courts power under Article 32, shall be null and void.

\(^{202}\) Writ jurisdiction of both the courts is discussed in detail under Article 226 in this chapter at p 170
\(^{203}\) During emergency
In Kesavananda Bharati vs State of Kerela\textsuperscript{204} The Supreme Court has held that though parliament can amend any part of the Constitution, it cannot tinker with its basic and essential features. The original writ jurisdiction under Article 32 will fall under this protection and is, therefore, immune from the parliamentary amending power. The jurisdiction of the Supreme Court to issue writs is concurrent and not exclusive. Under Article 226, similar powers have been granted to the High Courts. It is established that an application under Article 32 lies in the first instance to the Supreme Court without first resorting to the High Courts under Article 226. It has been said: the writ of this Court will run over the territory extending to over 2 million square miles. It can truly be said that the jurisdiction and powers of this court, by their nature and extent, are wider than those exercised by the highest court of any country in the Commonwealth or even by the US Supreme Court.

Article 139 empowers Parliament, by law, to enlarge the writ jurisdiction of the Supreme Court and confer on the court, power to issue direction, orders or writs including writ in the nature of the above mentioned writs for any purpose other than the enforcement of fundamental rights. Till date, no such law has been enacted.

### 3.8.7 POWER TO WITHDRAW AND TRANSFER CASES

Article 139-A provides: “where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts and the Supreme Court is satisfied on its own motion or an application made by Attorney General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case / cases pending before the High Court or High Courts and dispose of all the cases itself.”\textsuperscript{205}
Proviso to clause (1) of Article 139-A provides that the Supreme Court may after determining the said question return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn and the High Court shall on receipt there of proceed to dispose of the case in conformity with such judgment.206

Clause (2) of Article 139-A empowers the Supreme Court to transfer a case from one High Court to another if the court deems it expedient so to do for the ends of justice.

Clause (2) was invoked to transfer certain cases against a company from Bombay to Gujrat High Court within whose Jurisdiction some other cases and proceedings concerning the company were pending and where the company had its registered office207.

Ancillary Power of the Supreme Court: Article 140

Article 140 provides: parliament may by law make provisions for conferring upon Supreme Court such supplemental powers, not inconsistent with any of the provisions of this Constitution, as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under the constitution. Thus, the object of this article is to enable parliament to confer such supplementary powers on the Supreme Court as may appear necessary to enable it to perform effectively the constitutionally mandated functions.

3.8.8 POWER TO DO COMPLETE JUSTICE

Under Article 142 the Supreme Court in the exercise of its jurisdiction, pass such order as is necessary for rendering complete justice in matters pending before it. This power of the court cannot be curtailed even by a legislature. It is a residuary power, supplementary and complementary to the power specifically conferred on

206 Provision in clause (1) of Article 139-A was availed in the famous Judges case (S.P. Gutpa vs Union of India AIR 1982 SC 149) to bring petition filed before different High Courts to The Supreme Court and have an early and decisive statement of law.

207 Shree V.G. Works Ltd. Vs. I.C.I.C.I Ltd. AIR 1987 SC 1574
the court which it may exercise whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties while administering justice according to law.\(^{208}\)

In DDA Vs. Skipper Construction (P) Ltd.\(^{209}\), the Supreme Court has held that it is advisable to leave the power under Article 142 undefined and uncatalogued so that it remains elastic enough to be moulded to suit the situation."

### 3.9 WRIT JURISDICTION OF THE HIGH COURT

Art 226 of the constitution confers a power on all the High Courts of India to issue to any person, authority including the government any directions, orders or writs including the writ in the nature of Habeas Corpus, mandamus, prohibition, quo-warranto and certiorari, for the enforcement of any rights conferred by Part-III and for any other purpose i.e. for the enforcement of any other legal right.\(^{210}\)

Thus the jurisdiction of High Court under Article 226 to issue writs is more extensive than that of the Supreme Court under Article 32, as under Article 32, the Supreme Court can issue writ only for the enforcement of Fundamental Right whereas in addition to issuing writ for the enforcement of fundamental right, the High Courts can issue writs for any other purpose also.

**Territorial Extent of Writ Jurisdiction**

By clause (1) of Article 226, a two fold territorial limitation has been placed on the Power of the High Courts to issue writs firstly, writ issued by the court cannot run beyond the territories subject to its jurisdiction.

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\(^{208}\) Supreme Court Bar Association vs. U.O.I (1998) 4 SCC 409.

\(^{209}\) AIR 1996 SC 533

\(^{210}\) Article 226 provides that: “Notwithstanding anything in Article 32 Every High Court shall have power through out the territorial limits in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Govt. within whose territories, directions, orders of writs including writ in the nature of Habeus Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them.-

a) For the enforcement of fundamental rights conferred by Part III of the constitution, and

b) For any other purposes
Secondly, the person or authority to whom a High Court issues such a writ must be “within those territories”. It clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories.

Speaking on the scope of this power of High Court in T.C. Basa vs Nagappa\textsuperscript{211} the Supreme Court held that Article 226 is couched in comprehensive phraseology and it confers wide power on the high court to remedy injustice whenever it is found. The constitution has purposely used wide language in describing the nature of power, the purpose for which and person or authority against whom it is exercised. It can issue writs in the nature of prerogative writs as understood in England but the scope of writs is widened by the use of expression “nature”. This expression does not equate the writ that can be issued in India with those in England but only draw analogy from them. Apart from that, the High Court can also issue directions, orders or writs other than the prerogative writs.

Thus, Article 226 enables the High Court to mould the relief to meet the peculiar and complicated requirement of this country. In Election Commission vs Saka Venkata Subba Rao\textsuperscript{212} the respondent had applied to the High Court of Madras under Article 226 for a writ restraining the Election Commission, a statutory authority constituted by the president having its office permanently located at New Delhi, from inquiring into his alleged disqualification for membership of the Assembly. On appeal, the Supreme Court held that the High Court had no power to issue a writ to the Election commission which had its office permanently located elsewhere. The court pointed out that the mere functioning of the tribunal or authority permanently located elsewhere within the territorial limits of the High Court is not sufficient to invest it with a jurisdiction under Article 226 to issue a writ. Nor is the accrual of the cause of action within the territorial limits of jurisdiction sufficient for investing of the High Court with jurisdiction under Article 226 to issue a writ.

\textsuperscript{211} AIR 1954 SC 440
\textsuperscript{212} AIR 1953 SC 210
Accordingly, no High Court other than the High Court of Punjab (at that time having jurisdiction over Delhi) could issue a direction, order or writ to the Central Government because the seat of Government of India was located in New Delhi.

This caused great hardship to various persons to proceed against the Government of India under Article 226 even if they had a just grievance.

The law commission recommended the removal of this analogy. Accordingly the parliament passed constitutional (15th amendment) Act, 1963, which added clause (2) to Article 226, which permits the High Courts within whose jurisdiction the cause of action in whole or in part arises, to issue directions, orders or writs to any government or authority, notwithstanding that the authority or the government is located outside their territorial jurisdiction.

After the amendment, therefore, the position is that a government or authority can be directed by the High Court within whose jurisdiction it is located and also by a High Court within whose jurisdiction the cause of action in whole or in part arises.

The remedy in Article 226 is a discretionary remedy and High Court has always the discretion to refuse to grant any writ if it is satisfied that aggrieved party can have adequate remedy elsewhere.

There is no prescribed period of limitation nor the provisions of limitation Act apply to the petition under Article 226 but inordinate delay in invoking the jurisdiction of the High Court may be a good ground for declining to grant relief.

In Daryao vs. State of U.P.172 The Supreme Court held that:—
The general principles of res judicata apply to writ petitions filed under Article 32 or 226 of the constitution. Where the same question has been

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172

AIR 1961 SC 1457
decided by the High Court in a petition under Article 226 and Court comes to the conclusion that no relief can be granted to the petitioner, such a decision operates as Res Judicata in a subsequent petition for the same relief.

However, the Principle of Res Judicata is not applicable to a petition for a writ of Habeas corpus under Article 32, although a writ on the same grounds has been dismissed by the High Court. Thus, a petitioner whose writ petition for Habeas corpus has been rejected by the High Court under Article 226 can file a writ in the Supreme Court on the same facts under Article 32.

Relief under Article 226 cannot be barred by the legislature. In Sangram Singh vs. Election Tribunal214 the Supreme Court has held that the power conferred on the High Court under Article 226 cannot be taken away or abridged by any law other than the amendment of the constitution.

Thus, the writ under Article 226 can in a proper case be issued against Legislature also. Where a non-member is detained by the order of the Legislature for contempt, he can move the High Court for a writ of Habeas Corpus against the Legislature. No Legislature in India can claim immunity from the writ jurisdiction of High Court by issuing unspeaking warrant i.e. an order which doesn’t specify the reasons for which arrest is being made. However, no writ or direction can be issued to the Legislature or the government to initiate any legislation.

Who may apply:
Article 226 does not specify the person who can approach the court under it. But as this article provides a public law remedy similar to Article 32, similar provisions of locus standi apply to it as to Article 32. Thus ordinarily a person whose legal rights or other legally protected interests are adversely affected should approach the court for relief.

214 AIR 1955 SC 425
Moreover the petitioner need not wait till the actual infringement of his right, he can also approach the court against imminent threat of such infringement. However, this above said rule has certain exceptions:

Firstly, an application for the writ of Habeas Corpus, may in certain circumstances be made by a relative or friend of a person under detention.

Secondly, in an application for Quo-Warranto it is not necessary that the applicant should have suffered a personal injury or should seek redress for personal grievance.

Moreover, as the concept of Locus standi has undergone a sea change, particularly in respect of Public Interest Litigation. The same liberalized principle of locus standii are applicable to Article 226 as are applicable to Article 32 especially w.r.t. the enforcement of fundamental rights.

3.9.1 WRIT OF HABEAS CORPUS

“Habeas Corpus” is a Latin term which literally means ‘you may have the body”. It is a process by which a person who is confined without legal justification may secure a release from his confinement. The writ is in fact, an order issued by the High Court calling upon a person by whom a person is alleged to be kept in confinement to bring such person before the court and to let the court know on what ground the person is confined. If there is no legal justification for the detention, the person is ordered to be released.

Thus the main object of the writ is to give quick and immediate remedy to a person who is unlawfully detained by the person whether in a prison or private custody.
However, the production of the body of person alleged to be unlawfully detained is not essential before an application for a writ of Habeas Corpus can be finally heard and disposed of by the court. 

Who can Apply:

The general rule is that application can be made by any person who is illegally detained. But in certain cases an application for Habeas Corpus can be made by any person on behalf of the prisoner i.e. a friend or a relative.

In case of a writ of Habeas Corpus, the courts do not allow the strict rules of pleading nor do they lay undue emphasis as to the question as to on whom the burden of proof lies. Even the post card written by detenue from Jail would be sufficient to galvanize the court into examining the legality of detention.

The writ of Habeas Corpus can not only be used for releasing a person illegally detained but it will also be used for protecting him from maltreatment inside the Jail.

J. Krishna Iyer observed that:

“The dynamic role of Judicial remedies after Batra’s case (No. 1) imparts to the Habeas Corpus writ a versatile vitality and operational utility that makes the healing presence of law live upto its reputation as bastion of liberty even within Jails.”

Kanu Sayal Vs District Magistrate, Darjeeling AIR 1974 SC 510 in this case top ranking naxalite leader Kanu Sayal was arrested in 1971 and was detained without trial in viskhapatnam Jail. He moved the Supreme Court for a writ under Article 32 of the constitution challenging the legality of his detention and praying for court order for his production before the court. The court issued the rule nisi but not the production of detenue. Counsel appearing for the detenu, contended the production of body of a person alleged to be illegally detained was an essential feature of writ of habeas corpus under Article 32 of the constitution and that the court can dispose of the petition only after the petitioner was produced in person before it. Bhagwati J held that “in writ of Habeas corpus under Article 32, the production of the body of person detained before the court was not necessary for hearing and disposing of the writ petition by the court. The production of body of a person legally detained is not essential feature of writ of Habeas corpus.”

Sunil Batra vs Delhi Administration AIR 1980 SC 1579.

\[215\] Kanu Sayal Vs District Magistrate, Darjeeling AIR 1974 SC 510

\[216\] Sunil Batra vs Delhi Administration AIR 1980 SC 1579.

175
3.9.2 MANDAMUS

Mandamus is a command issued by a court commanding a public authority to perform a public duty belonging to its office. Mandamus is issued to enforce performance of public duties by authorities of all kinds. Mandamus is a discretionary remedy and the High Court has full discretion to refuse to issue the writ in unsuitable cases.

The Madhya Pradesh Government made a rule making it a matter of its discretion to grant dearness allowance to its employees. As no right was conferred on government servants to the grant of dearness allowance, and no duty was imposed on the government to grant it, and as the government had merely taken the power to grant the allowance at its own discretion, Mandamus could not be issued to compel the government to exercise its discretionary power.

Article 16(4) of the Constitution confers discretion on the government to reserve posts for backward classes. Article 16(4) neither imposes any obligation, nor confers power coupled with duty on the government to make reservations. Accordingly, Mandamus cannot be issued directing the government to make reservations under Article 16(4).

Mandamus can be issued when the government denies to itself a jurisdiction which it undoubtedly has under the law. For example, when a tribunal omits to decide a matter which it is bound to decide, it can be commanded to determine the questions which it has left undecided and Mandamus can be issued directing the executive to do its legal duty by implementing the order of a tribunal.

State of Madhya Pradesh v. Mandawar, AIR 1954 SC 493; Jagdish Prasad v. M.C.D., AIR 1993 SC 1254; the Supreme Court refused to issue mandamus to enforce the claim of municipal employees for transfer of ownership of municipal quarters to them because they had no legal right thereto.

Ajit Singh vs State of Punjab, AIR 1999 SC 3471 at 3481.

E.A. Coop Society vs State of Maharashtra, AIR 1966 SC 1149:
Mandamus is not issued if the right is purely of a private character. A private right, such as arising out of a contract, cannot be enforced through Mandamus and the proper course is a civil suit except when the matter falls in the public law domain.\footnote{222} For example, in Lotus Hotel,\footnote{223} the Court issued a direction under Art. 226 to enforce a contractual obligation by applying the doctrine of promissory estoppel. Recourse may be had to Mandamus if a public authority acts in an arbitrary and unlawful manner even though the source of the right of the petitioner may initially be in a contract.\footnote{224}

Even in contractual matters, public authorities have to act fairly, and if they fail to do so, approach to Article 226 would always be permissible because that would amount to violation of Art. 14 of the Constitution.\footnote{225} The Supreme Court has observed in Mahabir Auto:\footnote{226}

"Even though the rights of the citizens are in the nature of contractual rights the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the


\footnote{223} Gujrat State Financial Corporation v. Lotus Hotel, AIR 1983 SC 848.

\footnote{224} D.F.O. vs Ram Sanehi Singh, AIR 1973 SC 205.


\footnote{226} Muhabir Auto Stores vs Indian Oil Corp., AIR 1990 SC 1031, 1037.

type of the transactions and nature of the dealing as in the present case”.

To the same effect is the following observation of the Supreme Court in LIC v. Escorts227

“...If the action of the state is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of state if they pertain to the public law domain and refrain from examining them if they pertain to the private Law field”.

A party seeking mandamus must first call upon the authority concerned to do justice by performing its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a court for mandamus even where the alleged obligation is established.

### 3.9.3 PROHIBITION

A writ of prohibition is issued primarily to prevent an inferior Court or tribunal from exceeding its jurisdiction or acting contrary to the rules of natural justice. A writ of Prohibition commands the court or tribunal to whom it is issued to refrain from doing something which it is about to do. It prevents a tribunal possessing judicial or quasi-judicial powers from assuming or threatening to assume jurisdiction which it does not possess. Thus the writ lies both for excess of jurisdiction and absence of jurisdiction.

In the case of Bengal Immunity Co Ltd. Vs State of Bihar228,

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228 AIR 1955 SC 661 followed in Calcutta Co. Ltd. I.T.O AIR 1961 SC 372
the Supreme Court observed that: The existence of alternate remedy may be more relevant in the context of writ of certiorari, but where an inferior tribunal is shown to have usurped jurisdiction which does not belong to it that consideration is irrelevant and the writ of prohibition has to issued.

Prohibition has much in common with certiorari both in terms of scope and the rules by which it is governed. However, there is one basic distinction between the writs i.e. they are issued at the different stage of proceedings. A writ of prohibition will lie when lis to any extend is pending and writ of certiorari will lie for quashing an order passed after final decision.

3.9.4 WRIT OF CERTIORARI

A writ of certiorari is issued by Superior Courts i.e. the Supreme Court and the High Courts to an inferior court or a body exercising judicial or quasi-judicial functions to remove a suit from such inferior court or body and adjudicate upon the validity of the proceedings or body exercising judicial or quasi-judicial functions. Speaking on the scope the writ the Supreme Court in the case of Province of Bombay vs Khushaldass, held that whenever any body of persons having legal authority to determine questions affecting the rights of the subjects and having the duty to act judicially, acts in excess of their legal authority, a writ of certiorari lies.

In this case the Supreme Court has laid down following two propositions to determine where the authority is a judicial one authority or not:—

1. That if a statute empowers an authority not being a court in an ordinary sense, to decide a dispute arising out of a claim made by one party under the statute, which claim is opposed by another and to determine the respective rights of the contesting parties who are opposed to each one, there is a lis, and prima facie and in the absence of anything in the

229 AIR 1950 SC 222
statute to the contrary, it is the duty of the authority to act judicially and
the decision of the authority is a quasi-judicial act and;

2. That if a statutory authority has power to do any act which will
prejudicially affect the subject then, although, there are two parties apart
from the authority and the contest is between the authority proposing to
do an act and the subject opposing it, the final determination of authority
will be a quasi-judicial act provided the authority is required by the
statute to act judicially.

Grounds on which writ can be issued

The writ of certiorari is issued to Judicial or Quasi-Judicial body on the
following grounds

a) Where there is want or excess of jurisdiction

b) Where there is violation of procedure or disregard of
   principal of natural Justice.

c) Where there is error of Law apparent on the face of
   record but no error of fact.

a) Want or excess of Jurisdiction

The writ of certiorari can be issued against a body performing Judicial or
quasi-judicial functions for correcting errors of Jurisdiction as when an
inferior court or tribunal acts without jurisdiction or in excess or of it or
fails to exercise it, in all these cases there is defect of jurisdiction or
power and the writ of certiorari lies.

b) Violation of principle of natural Justice

The writ of certiorari will lie to set aside a decision in violation of
principles of Natural Justice i.e.

1) Audi alteram partan
2) Bias or interest

The Audi alteram partan means that parties be given adequate notice
and opportunity to be heard and second principle mean an adjudicator
be disinterested and unbiased.
The Supreme Court has held in Mineral Development Vs State of Bihar\textsuperscript{230} that tribunals or authorities though they are not Courts of Justice or Judicial tribunals, are as much bound by the doctrine of bias as any other tribunal. The principles governing the doctrine of bias are:

1) No man shall be a judge in his own cause.
2) Justice should not only be done but should manifestly and undoubtedly seem to be done.

c) Error of Law apparent on the face of record:
Where there is error of Law apparent on the face of record but no error of fact, writ of certiorari will lie.

\textbf{When it will not lie}

The writ of certiorari cannot be issued against private persons.

\textbf{3.9.5 WRIT OF QUO-WARRANTO}

The word Quo-warranto literally means “what is your authority.” By this writ a holder of public office is called upon to show to the court under what authority he holds the office. The object of the writ of quo warranto is to prevent a person to hold an office which he is not legally entitled to hold.

If after any inquiry into the matter court comes to the conclusion that the holder of the office has no valid title to it, the court may pass the order preventing the holder to continue in the office and may also declare the office vacant.

\textbf{Who can apply}

A writ of quo-warranto can if a person he satisfies the court that
- The office in question is the public office
- It is held by a person without any legal authority

\textsuperscript{230} AIR 1960 SC 468
The writ of quo warranto is not issued in respect of office of private character.

An application for a writ of quo-warranto challenging the legality of the appointment to an office is of a public nature. It can lie even at the instance of private person, although he is not personally aggrieved or interested in the matter. It is not necessary that petitioner for quo-warranto must have legal right in the office. Any member of the public can challenge the right of a person to hold a public office.

A writ of quo-warranto is never issued as a matter of course and it is always within the discretion of the court to decide after having considered the facts and circumstances of each case, whether the petitioner concerned is the person who could be entrusted with a writ which is always issued only in the interest of public in general.

**When it can be refused**

The court may refuse to grant a writ of quo-warrant if it vexatious or where the petitioner is guilty of laches or where he is acquiesced or concurred in the very act against which he complains or where the motive of petitioner is suspicious.

### 3.10 HIGH COURT AS A COURT OF RECORD

Article 215 declares that every High Court shall be a court of Record and shall have all the powers of such a court including the power to punish for its contempt. The scope and nature of power of High Court under this article is similar to the powers of the Supreme Court under Article 129.  

### 3.11 GENERAL JURISDICTION

Article 225 says that subject to the provisions of constitution and to the provisions of any law of the appropriate legislature (a) the jurisdiction of High Court (b) the law administered in the existing High Court (c) the

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For details see heading Jurisdiction of the Supreme Court as Court of record in this chapter at p 132-133
Powers of the Judges in relation to administration of justice in the courts (d) the power to make rules, of the High Court shall be same as immediately before the commencement of this constitution. Thus the pre-constitutional jurisdiction of the High Court is preserved by the constitution. Article 225 thus gives jurisdiction over revenue matters. In pre-constitution period the decision of Privy Council was binding on all the High Courts under Section 212 of Govt. of India Act 1935. The effect of the present article is same and they are still binding on the High Court unless it is repealed by the legislature or reversed by the Supreme Court itself.

This means that the jurisdiction and powers of the High Courts can be altered both by the Union Parliament, and the state legislatures.

3.12 POWER OF SUPERINTENDENCE:232

Every High Court has the power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises its jurisdiction.

The constitution confers on every High Court the following kinds of supervisory jurisdiction:

a) General Superintendence233
b) Power to transfer certain cases234
c) Control over sub-ordinate courts235

a) Article 227(1) confers on the High Court the power of superintendence over the courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. In the exercise of this power the High Court may

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232 Article 227 of the constitution
233 Article 227
234 Article 228
235 Article 235
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 the officers of any such courts.

However, the power of Superintendence conferred by Article 227(1) on the High Court does not extend over any court or Tribunal constituted under any law relating to the Armed Forces. Under Article 226 read with Article 227 the High Courts exercise Judicial Superintendence over the decisions of all courts and Tribunals within their respective jurisdiction.

The power of superintendence conferred on the High Court by this article is very wide the power is wider than the power conferred on the High Court to control inferior courts through writs under Article 226. It is not only confined to Administrative Superintendence but also Judicial Superintendence. The power conferred on the High Court by Article 227 being extraordinary is to be exercised most sparingly and only in appropriate cases in order to keep subordinate courts, within the bounds of their authority and not for correcting mere error of facts, however erroneous those may be. The main ground on which High Court usually interferes are

- When the subordinate court/Tribunal acts arbitrarily or in capricious manner.
- When the subordinate court or tribunals acts in excess of jurisdiction vested in it or fails to exercise jurisdiction vested in it.
- When the subordinate courts/tribunals acts in violation of principles of Natural Justice.
- When there is error of law apparent on the face of record.
- When the subordinate courts/tribunals arrives at a finding which is perverse or based on no material.
In the exercise of jurisdiction under Article 227 the High Court can go into the question of facts or look into the evidence if justice so requires it. However, the High Court should not interfere with a finding within the Jurisdiction of inferior tribunal or court except where finding is perverse in law in the sense that no reasonable person properly instructed in law could have come to such finding or there is misdirection in law or view of fact has been taken in the teeth of preponderance of evidence or finding is not based on any material evidence or it resulted in manifest injustice.

The power however, can be exercised in those cases in which no appeal or revision lies to the High Court.

b) **Transfer of certain cases to High Court:**

Article 228 empowers the High Court to withdraw before itself certain cases pending before the various subordinate courts. For the exercise of this power following conditions must be fulfilled. The High Court must be satisfied that a case pending in the court subordinate to it:

- involves substantial question of law as to the interpretation of the constitution and
- The determination of the said question is necessary for the disposal of the case

Where the High Court has withdrawn a case before itself the
- High Court may dispose of the case itself or
- the High Court may determine the said question and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question.

The object of Article 228 is to make the High Court sole interpreter of constitution in the state. It is not that sub-ordinate courts have no jurisdiction to interpret the constitution. But the object is to have most competent decisions on the questions involving provisions of the constitution and to maintain certain degree of uniformity in their interpretation.
c) **Control over Sub-ordinate Courts:**

Article 235 provides: The control over district courts and courts subordinate there to including the posting and promotion of, and grant of leave to, persons belonging to the judicial services of a state and holding any post inferior to the post of district judge shall be vested in the High Court.

From the perusal of Article 235 it follows that while the posting and promotion of District Judge shall be in the hands of Governor acting in consultation with the High Court as required under Article 233, the posting and granting of leave to the officers of state judicial service other than District Judge shall be exclusively in the hands of the High Court.

Article 235 enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the dead wood. This constitutional power, the court ruled, could not be circumscribed by any rule or order.236

In the exercise of power under Article 235, the High Court exercising its disciplinary powers can hold inquiries against the member of subordinate judiciary and impose punishment in accordance with the provisions of Article 311(2).

In Registrar (Administration) High Court of Orissa Vs Sisir Kantha Salapathy237 it was held that High Court could not pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative or disciplinary control over the members of the judicial service. The Bench said High Court could of itself pass an order of compulsory retirement of Judicial Magistrate. Though, the High Courts, undoubtedly alone were entitled to initiate, to hold inquiry and to take decision in respect of dismissal etc of the judicial officers but the formal order had to be passed by the state governor on the recommendation of the High Court and after the recommendation of the full court having been received, the course open to the govt. would be to

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236 Chandra Singh vs State of Rajasthan: AIR 2003 SC 2889
237 AIR 1999 SC 3265
forward it to the governor who would pass an order in accordance with
the recommendation made by the High Court because the
recommendation of the High Court was binding on the Government.

3.13 SUBORDINATE COURTS:
The structure and functions of sub-ordinate courts are more or less
uniform throughout the country. Designation of courts connotes their
functions. These courts deal with all disputes of civil or criminal nature
as per the power conferred on them. These courts have been derived
principally from two important codes prescribing procedures i.e. The
Code of Civil Procedure, 1908 and The Code of Criminal Procedure,
1973 and further strengthened by local statute. As per the directions of
Supreme Court in WP (Civil) 1022/1989 in the All India Judges
Association vs Union of India a uniform designation has been brought
about in the sub-ordinate judiciary’s judicial officers all over the country.

- District or Additional Judge
- Civil Judge (Senior Division)
- Civil Judge (Junior Division)

and on criminal side District and Sessions Judge, Additional
Sessions Judge Chief Judicial Magistrate and Judicial Magistrate
e tc as laid down in Code of Criminal Procedure. Appropriate
adjustment, if any, has been made in existing posts by indicating
their equivalent with any of these categories by all State
Governments/UT Administration.

Reading Article 233 to 236, it follows:
- That the initial appointment and initial promotion of persons to be
  either District Judge or any of the categories included in it is a
  matter coming under Article 233 and the power, therefore, is
  vested in the governor acting in consultation with the High Court.
- The further promotion of District Judges shall be a matter vested
  with the High Court under Article 235.

238 Articles 233-237 of the constitution
239 AIR 1993 SC 2506
Article 234 provides for recruitment of persons other than District Judges to the Judicial Services of a state, the power for this purpose is vested in the Governor to frame rules after consultation with the state public service commission and with the High Court.

However, the power of appointment under Article 234 does not include the power to confirm and promote judicial officers other than the District Judges which is vested in the High Court under Article 235.

In State of Bihar vs. Bal Mukand Shah240 Supreme Court by majority held that Article 233 and 234 amongst them, represented a well knit and complete scheme regulating the appointment at the apex level of District Judiciary namely District Judges on the one hand and sub-ordinate judges at the grass root level of judiciary subordinate to District Court. Thereby, not only the rule making power of Governor but also paramount power of the state legislature on that subject got excluded. In this regard court explained that the scheme of the constitution and its basic framework that the executive had to be separated from the judiciary had to be kept in view. Both these articles covered the entire field regarding recruitment and appointment of District Judges and Judges of subordinate judiciary at base level.

3.14 OTHER JUDICIAL FORUMS

A. Consumer Forums

The consumer Protection Act, 1986 provides redressal of grievances in case the goods purchased or the service rendered is found to be deficient.

The Consumer Protection Redressal forums

The Act provides for establishment of following kinds of Redressal Agencies:

1. The consumer Disputes Redressal forum to be known as District Forum.

240 AIR 2000 SC 1296

188
2. The Consumer Dispute Redressal commission to be known as the state Commission.

3. National consumer Dispute Redressal commission to be known as National Commission.

The pecuniary Jurisdiction of the above said Consumer Form after the Amendment Act, 2002 are under:-

<table>
<thead>
<tr>
<th>Forum</th>
<th>Amount in Dispute</th>
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<tbody>
<tr>
<td>District Forum</td>
<td>Upto 20 Lakhs</td>
</tr>
<tr>
<td>State Commission</td>
<td>Above 20 Lakhs and</td>
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<tr>
<td></td>
<td>Below 1 Crore</td>
</tr>
<tr>
<td>National Commission</td>
<td>Above 1 Crore</td>
</tr>
</tbody>
</table>

**District Forum**

Composition:

Every District Forum shall consists\(^{241}\) of:

(a) The president: A person who is or has been a district judge.

(b) Two other members: One of the two members shall be a women

Qualification of two members:

1) He should not be less than 35 years

2) He should be a Graduate from recognized University.

He should be a person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to Economics, Law, Commerce, Accountancy, Industry, Public affairs or administration.

**Jurisdiction**

**Pecuniary Jurisdiction:**

The District Forum shall have the Jurisdiction to entertain complaints where value of the goods or services and the compensation if any claimed does not exceed Rupees Twenty Lakhs.\(^{242}\) (Prior to The

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\(^{241}\) Section 10 of The Consumer Protection Act, 1986

\(^{242}\) Section 11 of The Act provides Pecuniary and Territorial Jurisdiction of The Forum.
Amendment Act, 2002, the Jurisdiction of District forum was upto Rs. 5 Lakhs.)

Territorial Jurisdiction
A complaint shall be instituted in a District forum within the local limits of whose Jurisdiction.

(a) The opposite party or each of the opposite parties, where there are more than one, at the time of institution of the complaint, actually and voluntarily resides or carries on the business or has a branch office or personally works for the gain

or

(b) Any of the opposite parties, where there are more than one, at the time of institution of complaint actually and voluntarily resides, or carries on business or has a branch office or personally works for the gain. In such a case, it is necessary that there should be either the permission of the District forum of the aquiescence in the institution of the suit of such of the opposite parties who does not reside or carry on the business or have a branch office, or personally work for gain as the case may be or the cause of action, wholly or in Part arises.

(c) Section 12 of the Act deals with the persons competent to file a complaint in consumer court.

The complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed in the district forum by any of the following:-

a) A consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such Services provided or agreed to be provided.

b) Any recognised consumer association. Such an association can make a Complaint even though a consumer concerned is not its members. “Recognized Consumer Association” means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.
c) The complaint may also be filed by one or more consumers where there are numerous

d) Consumer having the interest on behalf of or for the benefit of, all the consumers can file a complaint with the permission of the District Forum.

e) The complaint may also be filed by the central or the state government.

An appeal lies from the District Forum to the State Commission 243 Any person aggrieved by an order made by the District forum may prefer an appeal against such order to the state commission (within the Period of 30 days) in such form and manner as may be prescribed. The state commission may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filling an appeal within that period

The State Commission

Composition:

Each State Commission shall consist 244 of the following:-

(a) A person who is or has been a Judge of a High Court He shall be appointed by the state government and shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court.

(b) Not less than two and not more than such number of members as may be prescribed, one of these shall be a woman. They shall have the following qualifications:-

i) He should not be less than 35 years of age

ii) He should posses a bachelors degree from a recognized University and

iii) Be a person of ability, integrity and standing and have adequate knowledge and experience of atleast 10 years in dealing with problems relating to Economics, Law, Commerce, Accountancy, Industry Public affairs or administration.

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243 Section 15 of The consumer protection Act, 1986
244 Section 16 of The consumer protection Act, 1986
Establishment of Benches:

The jurisdiction, Powers and authority of the State Commission may be exercised by the benches there of.
A bench may be constituted by the President of the commission with one or more members as the President may deem fit.

Jurisdiction:

Pecuniary Jurisdiction:

The State Commission entertain Complaints where the value of goods or services and compensation, if any, claimed exceeds Rs. 20 lakhs but does not exceeds Rs. 1 crores.
Prior to the Amendment Act of 2002 the Jurisdiction was from Rs. 5 lakhs to 20 lakhs.

By the increase in amount of Jurisdiction there will be lesser number of direct Complaints which will go to the National Commission, who will have more time for hearing appeals.

2) To entertain appeals against the orders of any District forum within the state and

3) To call for records and pass appropriate orders in any consumer Dispute which is pending before or has been decided by any district forum within the state. Such Power can be exercised, where it appears to the state Commission that such district forum failed to exercise a Jurisdiction so vested in it by law or has acted, in exercise of its Jurisdiction, illegally or with material irregularity.

Circuit Benches:

The state Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the state govt may in

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Section 17 of The Consumer protection Act, 1986
consultation with the state commission, notify in official gazettes from time to time. 246

The provision also has been introduced by the Amendment Act, 2002 and the provisions of Circuit Benches could be of great convenience to the litigants who are for away from the state capital.

Appeals from the State Commission to the National Commission: 247

The State commission can entertain complaints where the value of goods or services and compensation, if any, claimed exceeds Rs. 20 lakhs but does not exceeds Rs. 1 Crore. Any Person aggrieved by an order made by the state commission in the exercise of above said Jurisdiction may prefer an appeal against such order to the National Commission. Such appeal shall be made within a period of 30 days from the date of the order. It shall be in such form and manner as may be prescribed. National commission may however, entertain an appeal after the expiry of said period of 30 days if it is satisfied that there was sufficient cause for not filing it within that period.

Hearing of Appeal:

(a) An appeal filed before The State Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of 90 days from date of admission.

(b) No adjournment shall be ordinarily granted by the State Commission or the National Commission unless sufficient Cause is shown and reason for the grant of adjournment have been recorded in writing by such commission.

(c) The State Commission or the National Commission as the case may be shall make such orders as to costs Occasioned by the adjournments as may be provided by the regulation made under this Act.

(d) In the event of appeal being disposed of after the period so specified, The State Commission or The National Commission as the case may be,

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246 Section 17B of The Consumer Protection Act, 1986
247 Section 19 of The Consumer Protection Act, 1986
shall record in writing the reason for the same at the time of disposing
the said appeal. 248

National Commission

Composition: 249

The National Commission shall consist of the following:

1)  The President: Who is or has been the judge of the Supreme
Court. He shall be appointed by the central Government His appointment
shall be made except after consultation with Chief Justice of India.

2)  Not less than four and not more than such number of members as
may be prescribed one of whom shall be a woman.

These members shall have been following qualification:

i.  He shall not be less than 35 years of age

ii. Possess a bachelor’s degree from a recognised university and

iii. Be a person of ability, integrity and standing and have adequate
knowledge and experience of atleast 10 years in dealing with the
problems relating to economics, Law, commerce, accountancy,
industry, Public affairs or administration.

Provided that not more than 50% of the members shall be from
amongst the persons having Judicial background.

248  Section 19 A of The Consumer protection Act, Section 19-A is a new
provision introduced by the Amendment Act of 2002.

249  Sec 20 of The Consumer protection Act, 1986
Jurisdiction of National Commission:

1) It can entertain complaints where the value of the goods or services or compensation if any, claimed exceeds Rs. 1 Crore.
2) It can entertain appeals against the orders of any state commission.
3) It can call for records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any state commission. Where it appears to the National Commission that such state commission has exercised Jurisdiction not vested in it by law or has failed to exercise a Jurisdiction so vested or has acted in the exercise of its Jurisdiction illegally or with material irregularity.

It may be noted that now after the Amendment Act, 2002 the pecuniary Jurisdiction is only in respect of complaints where the amount in dispute exceeds Rs. 1 Crore.

Appeals from National commission to the Supreme Court

An appeal against the orders of National commission can lie to the Supreme Court. Such an appeal can only be in respect of the powers exercise by the National Commission under Section 21 (a) (i) i.e. when the National Commission is exercising original jurisdiction wherein the value of goods or services and compensation, if any, exceeds Rs. 20 lakhs. An appeal to the Supreme Court can be made within a period of 30 days from the date of the order of the National Commission. However the Supreme Court may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing and appeal within the above said time limit. Penalties for non-compliance of the order

1) Any trader or a person, against whom the Concern Court had made an order, fails or Omits to comply with the order can be punished as follows:
   a) Imprisonment: minimum one month and maximum 3 years
   b) Fine: Minimum Rs. 2000/- and

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250 Section 21 of The Consumer Protection Act, 1986
251 Section 23 of The Consumer Protection Act, 1986
252 Section 27 of The Consumer protection Act, 1986
Maximum Rs. 10,000/-
Or both the above said punishment may be awarded.

Appeal against order passed under sec 27253

<table>
<thead>
<tr>
<th>Order of</th>
<th>Appeal lies to</th>
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<tbody>
<tr>
<td>The District Forum</td>
<td>The State Commission</td>
</tr>
<tr>
<td>The State Commission</td>
<td>The National Commission</td>
</tr>
<tr>
<td>National Commission</td>
<td>The Supreme Court</td>
</tr>
</tbody>
</table>

Time limit for making appeal is 30 days from the date of an order. The relevant appellant authority may entertain an appeal after the expiry of the period of 30 days, if it is satisfied that the appellant had sufficient cause for not preferring an appeal within the period of 30 days.

B. Fast Track Courts

One of the greatest challenges faced by Indian judiciary is that courts in India have failed to deliver justice expeditiously. About thirty millions cases are pending in the various courts and tribunal throughout India, be it, the Supreme Court, the High Courts, the Sub-ordinate courts or the Special Tribunals. The condition in criminal courts is rather pathetic. A large number of criminal cases which includes session’s cases, and which need urgent trials are gathering dusts in the record rooms of courts. The session’s cases & narcotic cases etc deserves priority. This sad situation has compelled all those at the helm of affairs, to find alternative solution for redressal of legal grievances in and outside the court. In the court of law where the people have greater faith and confidence of getting justice, these alternative solutions were created in the form of special tribunals and courts etc. These new category of courts, like the Shatabdi and Rajdhani trains having faster speed, have been created to achieve the goal of speedy justice and accordingly such courts have been named as fast track courts. Even the supreme court has recognised the need of fast track courts when it observed that

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253 Section 27 A of The Consumer protection Act, 1986
Access to justice is an integral part of social justice and adequate number of fast track courts with quick procedure are needed to be in place.\textsuperscript{254}

Now the government of India wakes up to do something and they believe that fast track courts is one remedy the government has decided to set up as many as 1734 Fast Track Courts. These fast track courts have been set up on the recommendation of 11\textsuperscript{th} Finance Commission\textsuperscript{255} Which has allocated 502.9 crores under Article 275 of the Constitution. These centrally funded courts are only adhoc and not a regular arm of the Judiciary. Nevertheless they can give effective start. The state govt have been empowered to set up these courts. These courts are mainly for the disposal of criminal cases (sessions cases) and are presided over by Additional Sessions Judges or retired Additional or District and Sessions judges. These Courts are progressing well and have disposed off 3.70 lakhs cases during the last three years which clearly shows that the fast track courts can be very helpful in reducing deayls and arrears in judicial system.\textsuperscript{256} They have been set up in Punjab. In Rajasthan on the recommendation of the High Court, fast track courts were set up at two levels - District and Session’s court and Court of Chief Judicial Magistrate/Civil judge (senior division). These courts have been quite successful in reducing the arrears. Most of the criminal cases in subordinate courts are pending at the level of Magistrates. 1,66,77,657 criminal cases were pending before magisterial courts as on 31-12 2006. Keeping in view the performance of Fast Track Courts of Session Judges, the Government of India should formulate a similar scheme for setting up Fast Track Courts of Magistrates in each State, as recommended by the previous Conference of Chief Ministers and Chief

\textsuperscript{254} State of Haryana vs Darshana Devi AIR 1979SC 855
\textsuperscript{255} These courts were established on the recommendation of 11\textsuperscript{th} finance commission. The initial scheme of fast track courts was to end the year 2005 Government of India has extended it to the year 2010 Providing central support to the states, Dr. Manmohan Singh: Administration of Justice on fast track (2007) 4 SCC J p 11
\textsuperscript{256} R.C. Lahoti. J: “Envisioning Justice in the 21\textsuperscript{st} century” 2004 (7) SCC J, p 13
Justices held on 11-3-2006.\textsuperscript{257}

The pendency of civil cases in subordinate courts has increased from 69,25,913 cases as on 31-12-2000 to 72,37,495 cases as on 31-12-2006. It is common knowledge that a large number of pending civil cases are very old. Huge arrears of civil cases cannot be wiped out by regular courts. It is, therefore, necessary to set up Fast Track Civil Courts and transfer some of the pending civil cases to those courts for disposal.

However, ever since these courts have been set up, appointment of retired judges to these courts have met with resistance. We are establishing fast track courts but do we have fast track judges to man them? Judges of these fast track courts should be a new species with new mission and purpose and their mission should be speedy justice. Then how to make fast track judges? This is possible only through a new programme to recruit and train a new band of judges. These new class of judges shall be thoroughly re-oriented and re-equipped to gain speed.

The new courts should be electronically restructured. There shall be law clerks for the judges and verification cells in the courts to study the merits of the case. More than anything we must have a new machinery to recruit and train judges who as a class shall be fast track judges.

C. ALTERNATIVE DISPUTE RESOLUTION MECHANISM (ADRs) & LOK ADALATS

The mounting arrears of cases stand as a testimony to the fact that present system of administration of justice has become inadequate to meet the needs of the time. The failure of court on this account has created frustration amongst the litigant public. The present situation calls for resorting to an alternate dispute resolution (ADR) mechanism.

\textsuperscript{257} CJI Justice K.G. BalaKrishnan: Efficient functioning of India’s Justice Delivery System (2007) 4 SCC J 19, 20
At present, there is a perception that disposal of cases takes an unduly long time. At the same time, there is a back-log of cases that has been build up over the period of time.

One of the best ways to reduce the burden of cases on the regular courts is to have recourse to alternate dispute resolution system. The term ADR has been used to describe various systems that attempt to resolve dispute through the methods other than the litigation in the Courts or Tribunals.

The concept of ADR’s implies resolution of disputes through discussion, conciliation, mediation, persuasion and counseling so that it gives speedy and inexpensive justice with the mutual and free consent of the parties concerned. Moreover there are no technical inhibitions imposed by strict procedural laws. In short, justice through ADRs stipulates less costs, no delays and no enmity and brings peace and harmony amongst the litigant public.

The ADR techniques mainly consists of Negotiation, Conciliation Mediation, Arbitration, Resorting to Lok Adalats and series of hybrid forms of these methods like Conciliation-cum-Arbitration, Mediation settlements being converted into compromise decree. Arbitration is adjudicatory and its result is binding, where as conciliation is consensual and helps the parties in settling their disputes mutually with the help of neutral third person. Negotiation is a non-binding procedure resorted to by the public for arriving at a Negotiated settlement. Mediation is a decision making process in which the Parties are assisted by a third party, the mediator.

ADRs Legislation in India:
The Indian Scenario reveals that there are many legislation in India facilitating ADRs. e.g. The Code of Civil Procedure 1908, The Industrial Disputes Act, 1947, The Arbitration Act, 1940 etc.
Provisions contained in civil procedure code (CPC):

The civil procedure code contains the following provisions:

Compromise of suit:

Where it is proved to the satisfaction of the court that suit has been adjusted wholly or in part by any lawful agreement or compromise, written and signed by the parties, the court after satisfying itself about the settlement, can convert the settlement into a judgment decree.\(^{258}\)

Order 32 A, Rule 3 of CPC, 1908 requires the court to make efforts for settlement in case of family dispute.

Sec 80 CPC requires giving of 2 months mandatory notice in case of suits by or against a government with a view to facilitate settlement of disputes amicably where ever possible.

Section 89 CPC as inserted by CPC (Amendment) Act, 2002\(^{259}\) Provides where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observation and after receiving observation of the parties, the court may formulate the terms of possible settlement and refer the same for

- a) Arbitration
- b) Concilation\(^{260}\)
- c) Judicial settlement including settlement through Lok Adalat
- d) Mediation

\(^{258}\) Order 23 Rule 3: of civil procedure code, 1908

\(^{259}\) In CPC there was a provision under Section 89 for referring the matter to arbitrator, but Section 89 was deleted by the Amendment Act of 1976 by But The CPC (Amendment) Act of 2002 has restored this position with the additional provisions for resolving the dispute through conciliation, Mediation and referring the matter to the Lok Adalat.

\(^{260}\) In a significant ruling, the Punjab & Haryana High Court has held that consent of warring parties is not essential for referring a dispute for Conciliation and Mediation.......The Tribune dated 26th May 2008
In case of mediation, the court shall affect a compromise between the parties and shall follow such procedure as may be prescribed. It further provides that where a dispute has been referred:-

a) For arbitration or conciliation; the provisions of Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of the said Act.

b) To the Lok Adalat, the courts shall refer the same to the Lok Adalat in accordance with the provisions of ss (I) of Section 20 of Legal Services Authorities Act, 1987 and all the provisions of that Act shall apply in respect of dispute so referred to the Lok Adalat.

c) For judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all other provisions of Legal Services Authorities Act, 1987 apply as if the dispute were referred to a Lok Adalat under the provisions of that Act:

Section 89 further provides that it is only after the parties fail to get their dispute settled through any one of the ADRs that suit shall proceed further in the court in which it was filed.

It is not compulsory for the parties to the suit that they must actually resolve the dispute through ADRs yet they must first of all try to get it resolve through ADR mechanism of their choice and if these means fail then of course regular courts are there for them.

Thus, insertion of Section 89 in CPC by civil procedure code (Amendment) Act 2002 is a positive effort to counter the growing menace of back log in the courts.

Order 32 A of CPC deals with disputes relating to family matters. It provides that “An endeavour shall be made by the court in the 1st instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist the parties in arriving at a
settlement in respect of subject matter of the suit. Looking at above mentioned provisions of CPC one can safely conclude that there exist sufficient inbuilt mechanism in CPC for settling the dispute through Arbitration, Conciliation and Mediation.

The family courts Act, 1984 also provides for establishment of family courts with a view to promote conciliation and secure speedy settlement of matrimonial and other family dispute and matters connected therewith. Section 9 of this Act provides for compulsory conciliation.

The industrial dispute Act, 1947 also makes provisions for settlement of industrial dispute between workers and management through Conciliation.

Then there are other enactment i.e. the Arbitration and Conciliation Act, 1996. It enables the parties to settle the disputes through conciliation or Arbitration. The settlement reached in conciliation or the Award of Arbitration is deemed to be a decree.

The Legal Services Authorities Act, 1987 provides for the establishment of the Lok Adalats. The concept of Lok Adalats imply Resolution of people’s dispute through discussion counseling, persuasion and conciliation so that it gives speedy and inexpensive Justice with the nature consent of the parties

**Lok Adalats**

Lok adalats are by no means a modern day innovations. They have been used as an agency for settling disputes since time immemorial. The Vedic period throws floods of light on its existence in ancient times. Lok adalats have their roots in the systems of panchas.

These systems of panchas survived the medieval times
However, British systems gave a deathblow to the functioning of these people’s court, as there was complete centralization of judiciary. The local courts were discouraged and replaced by royal courts.

After independence the founding father of our Constitution endeavored to revive the system of justice through panchayats. As Article 40 mandates the state to take steps to organise village panchayats and endow them with such power and authority as may enable them to function as a unit of self-government.

The Committee For Implementing Legal aid Scheme (CILAS) recommended the setting up of lok adalats in 1980. Since then lok adalats have been functioning in the various parts of India with the active support of some of the Chief-Justices & other judges of the High courts.

Objective of Lok Adalats:-
The lok adalat is a system of dispensation of justice, which has come into existence to grapple with the problem of giving cheap and speedy justice to the people.

Concept of Lok Adalats:-
The concepts of Lok Adalats imply resolution of people disputes by discussion, counseling, persuasion and conciliation so that it gives speedy and cheap justice with the mutual and free consent of the parties. In short, the concept of lok adalat implies speedy and cheap justice to a common man at his doorsteps. It is a justice in which people and judges participate to resolve disputes by discussion and mutual consent.

The lok adalats were give statutory status by The Legal Services Authorities Act, 1987, which eventually came into force in November 1995. As per this Act Lok Adalat can be organized at Central level or State level or District level and at such intervals and places for exercising varied jurisdiction.
The number, qualification and experience of members of lok adalats other than judicial members are to be prescribed by the state government. Lok adalats have been conferred jurisdiction to settle civil, criminal or revenue disputes in the Courts and Tribunals in the area for which they are organized.

In doing so they have a power of a civil court in respect of summoning and examining witnesses, discovery of documents, reception of evidence on affidavits and requisitioning of public records. Further it is open to lok adalat to specify its own procedure. It is considered judicial proceedings. It is to be guided only by the principles of justice, equity and fair play as understood under common law and constitutional law.

Ordinarily lok adalats consists of three members including
- a sitting/retired judicial officers
- a member of legal profession (an advocates law teacher, law officer) and a social worker preferably a women.

Pending cases are referred to these adalats
i) When both the parties agree to such a reference or
ii) When one of such parties to the dispute desires it and the court is satisfied of the prospects of its settlement or
iii) When the court itself thinks fit and proper that matter be referred to lok adalats.

However, in the second and the third situation, the court must give, before such reference, reasonable opportunity to the parties involved to express their views.

One of the greatest advantages of settlement through lok adalats is that award of these adalats is deemed to be a decree of civil court but is not subject to any further appeal in any forum. Thus, it brings the litigation to an end expeditiously.

Going before lok adalats is thus expense free, ensuring inexpensive justice.
Moreover, the fact that Judicial officers and Academicians are involved means the parties are guided by people who know law and have judicial experience.

The Lok Adalat is an experiment in uplifting the morale of the citizens and in educating them in how to resolve their differences through exchange of views, discussion etc. They are thus persuaded to avoid a long drawn battle of wits through lawyers.

Moreover, there is no technical inhibitions imposed by any strict procedural law. In this systems justice is done by concerted efforts of people, parties and witnesses and outcome is justice by consensus.

In short, Justice through lok adalats stipulates no costs, no delays and no enmity and brings peace and harmony amongst the litigant public.

No doubt, many people see lok adalats as a measure to divert litigation from formal courts and tribunals and a convenient strategy to reduce the mounting arrears of cases in the formal court system.

The insurance companies finding the compensation amount settled through lok adalats in motor accident cases economically attractive, have started opting for the Lok adalat route in preference to other tribunals. Litigants seeking monetary compensation for land acquisition, administrative excesses etc also found their way to lok adalats.

Lok Adalats type mechanism is being invoked these days by government departments and public sector agencies to settle pensions and provident fund claims, bank debts, Consumer grievances and similar small claims of civil and revenue nature. Of late, matrimonial disputes and minor criminal cases are dealt in lok adalats forum in a big way, resulting in the establishment of Permanent lok adalats in many places like the one in district court in Sector 17 and permanent lok adalats in the High court of Punjab and Haryana High court. Now in Chandigarh we have Lok adalats for settling dispute relating to electricity department. Having organised its first Lok Adalat and Settled 25 cases (on May 3, 2008) the
Supreme Court has proved how Lok Adalats system can speed up cases and provide relief to the litigants.

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\[261\] SC sets example; The Tribune May 6, 2008 p 10