CHAPTER – III

LEGAL PROFESSION
3.1 Introduction:

The aim of this chapter is to explain the concepts of legal education, history of legal education of India. Explain the judiciary of India, their importance and structure of courts.

Role of judges in a social welfare liberal democratic state is not an easy task for him, or his profession. Profession, which obligates him a sense of social responsibility and expects from him to work towards social development not only filling his own purse or coffees but shouldering a joint or collective obligation to do justice in a society. Legal education is the basic, which only would create such responsible and responsive social layering. Every society has its contingent demands now need to be fulfilled by an instrument of law, which is purposive human enterprise. Therefore, quality legal education is to be imparted to ‘judges’ taking into account needs of society with the changing time is to be restructured and redefined objectives and resources as well as government aid, financial and institutional, is since qua non for its sustenance and to be utilized at optimum level. Effective reform in Indian legal education will not require energy, imagination, and devotion; nor can such reform alone resolve the dilemma in which the Indian legal order finds itself. For the reasons discussed above, however, education seems the most favorable point of entry and offers greater leverage for productive change than reform at any other point in the legal order. But reform in legal education cannot succeed ultimately unless the Indian legal order as a whole moves in a complementary direction. One must hope that reforms and insights from an invigorated and reshaped legal education will help to stimulate movement in other areas of law until, in
due time, the several efforts will multiply and become self-reinforcing. If challenge determines response, the enormous challenges to Indian legal education and to the Indian legal profession should produce a tremendous effort to improve legal education. So much needs to be done even to understand the problem and to fashion for India the kind of legal order that she needs. India today requires superlative legal education much more than does the West because in India a far less viable balance is struck between the society requirements and a reasonably effective exploitation of the laws potential for contributing to the meeting of those needs. Events are moving fast and reform in legal education cannot wait any longer. If it is mounded to sub serve the purpose of the society and to fulfill the current needs, our legal instructions will not only command respect but will also be able to play a vital role in the achievement of the common goal.

Society is undergoing rapid transformation and the pace of change is likely to gather speed. In the context of change ahead, it will be important to devote thought on how to adopt our legal education to modern conditions so that the coming generation may fit in the new society that is envisaged. Legal education is an investment, which if wisely made will produce most beneficial results for the nation and accelerate the pace of development.\(^{1}\)

These are few suggestions for achieving a country for which we dream every day and night. The legal Education and the profession have to care for the “invisible man”. The Advocate has to become socially more relevant and technically very sound if he has to survive and serve the needs of the society in the 21st Century.\(^{2}\)
3.2 Legal Profession:

Legal profession has been regarded from times information and all over the world as a very honorable, prestigious and proud profession. A lawyer has an important and dignified place in the society and he is respected by one and all because of the fact that he carried on a most intellectual profession and what is more because he fight for justice. Lawyers have been in the forefront generations, in every aspect of social and political development in every country. Most of the politicians of the world are and were lawyers and therefore lawyers can truly be regarded as a maker of history. It is not merely their role in the courts for the case of justice to their respective parties that enable them to win an envious place in the society but also their multi-pronged attack on the evils that decease the several aspects of the society and for winning a just place even for the under-dog in society.

Sri P.V. Rajamannar, the former Chief Justice of Madras High Court explains the importance of legal profession thus: In the forefront I will place the special feature of the lawyers profession, which is also shared by the doctor profession, viz that it is independent profession. Through you may have onerous duties and obligations; you will not be a servant of any master. You will be instead servant of the country. It is pleasure to describe the lawyers profession and the doctors; profession as noble profession. In Christian countries the clergymans profession is also spoken as such. This is chiefly, because member of these three professions unlike person who follow other avocations, offer their services, expert services, to people in trouble. The fees or emoluments they are paid does not depend upon any result. This very characteristic common to these three professions has sometime given
rise to cynical comments. A character in one of Scott's novel, a hard working farmer, exclaims, Hell Heaven, the clergyman is paid; win or lose the lawyer is paid; deal or alive, the is paid; but this is only a superficial criticism. The truth is that the lawyers and the doctor place all their knowledge and skill at the disposal of their clients, and their duty consists only in this. So long as a judge or a doctor does his duty he is not concerned with anything else, he is not answerable to anyone.\(^{(3)}\)

The judges, by reason of their intellectual training and the knowledge of human nature, which they acquire by first-hand contact with person, have great opportunities of becoming leaders of public opinion. Indeed, at one time, the lawyer occupied a very prominent place in the political life of our country. It is only in the later stage of our national struggle that many of the leading judges-politicians fell behind because participation in the political agitation meant abandoning their practice. Through the struggle is at an end and independence has been gained, it must be confessed that judge has not regained his previous prestige his previous prestige and influence in political life. But, I am optimistic enough to think that the lawyer is bound to come to the forefront in the near future. Our country is governed by a democratic Constitution, and in the present set up the judges will naturally become the custodians of the Fundamental Rights of the people.

The above hope expressed by the distinguished Chief Justice, way back in 1955, is now gradually taking shape and the legal profession in India is assuming greater and greater importance and lawyers as a whole are emerging as a force to reckon with, to fight for justice and for civil liberties. The nobility of this profession evidenced by the fact that young lawyers are now then coming out in defense of
personal liberty of the subject and are doing this sacred service in several cases almost free of cost. This fact goes to show that in India the legal profession accepts its sacred responsibility of safeguarding the Fundamental Rights of the citizen and it is a great relieving factor that there are at least some prominent lawyers who rise above the temptation of gain from the professional and come our openly to render free service. Indeed this is what is expected of this reputed profession as has been explained by *Sir Chandra Reddy, Former Chief Justice of Andhra Pradesh and Madras High Courts* in his address to young lawyers, which is as follows -

“As I have already said, yours is a profession and not a business, and there are certain characteristics which distinguish the legal profession from business. Your relation to your Clint is of a fiduciary character in the highest degree. You are an officer of court in regard to the administration of justice involving among other things integrity and reliability. Your relation to your colleagues at the Bar is characterized by candour. Fairness and unwillingness to resort to current business methods of advertising and encroachment of their practices and dealing directly with their clients. You have a duty of public service, the emoluments being only a bye-produce.”

Own and then there may be some adverse criticism a giants the legal profession. It is necessary for the members of this honorable profession o take this criticism in their proper perspective and make a heart – search as to what deficiencies exactly have provoked such criticism. Another former Judge *Sri D. Munikanniah*, has rightly observed -
It had been the tendency in few quarters to malign the profession and its practitioners as defeaters of the law and mockers of its Majesty. They are accused of promoting strife and disputes. It is often pointed out that they act in disregard of truth, and that an Advocate is a venal person, who is apt to prostitute his talents for money.

An extreme view that a legal practitioner is a parasite infesting the community and has to be extirpating finds expression as a result of ignorance of the truth functions of a lawyer. All this would be turn if commercialism and trade spirit which dwarfs the soul of a man is regarded as a spring to actions d conduct of an advocate. But if you can persuade yourself that you are an important limb in the administration of justice and for establishing the rule of law with a view to promote the welfare of the people; you will be serving the cause of the country for the purpose specified in Article 30 of the India Constitution. Your assistance will be valuable in making the Government realizes that the taxation power that it has, is to be used only for prevention of poverty. You should be impelled by a sense of duty to check even Government who happened to be rigorous when necessary but weak when possible, and decry the old ideas of laissez faire and revolutionize notion of liberty. It is not only the Judges but Advocates also that could be of help to rouse the consciousness for promoting welfare of the people and it is noteworthy that the achievements and the development of ideas promulgated under the general welfare clause in the American Constitution should treating it as the guiding light….it is also noteworthy to observe that lawyers settled more quarrels than they assisted to fight; and it is a truism that a good deal of a body of law is concerned with preventing disputes. The primary duty of binging about
the compromise between parties with a view to sure lasting peace cannot be over emphasized.\(^{(3)}\)

The profession of law is a profession that is concerned with of the mind; the mind and not the imagination is the instrument. The conscious materials of our professional are of the mind, process of reasoning. To belong to be a profession that has the great history of the legal profession, a profession that is concerned with the things of the mind, with subjecting questions to the reasoning processes and justification by reason, is a great traditional. A tradition, if it is worthy of the name is not wealth hoarded, it is a dynamic energy to be applied. It is a great tradition that the legal profession is entitled to claim for itself in the unfolding of modern constitutional government by law. It is the legal profession beyond any other calling that is concerned with those establishments, those processes, those criteria, those appeals to reason and right, which had a dominant share in begetting civilized modern society. And that means a learned profession. That means drawing on the juices of your life, from almost every domain of learning, because if the law is concerned with the regulation of problems concerning society, then it is necessary to be informed or at least aware of the multitudinous, multifarious forces, with which society is concerned and which affect society.\(^{(4)}\)

3.3 The Indian Legal Profession in Evolution

The legal profession in India is in the throes of change today; the onset of liberalization and globalization of the Indian economy and culture has left it no other choice. It has to sink or survive what with the anticipation of foreign lawyers soon being allowed to practice in the hallowed precincts of Indian courts.
By all counts, the Bar and the Bench that were established with such socialistic ardors and ideals, are beginning to become unwieldy with cumbersome court procedures, belated and repeated adjournments and the threat of loss of clientele as a result. Perhaps it is too soon to sound the death knell of the grand edifice of Indian law, especially with its lasting linkages with the British Raj and English law that have continued to fascinate young Indians even to this day.

Yet ideals must yield to expediency when the economic basis to hold aloft those ideals cannot be maintained in any tenable form. Legal education today is very expensive and drawn out and, as a result, creates great expectations among the hordes of LLBs who graduate and join the legal system every year, but with no ready or willing chambers to take them in. Nor do any other worthwhile prospects exist for them except perhaps to take up jobs as paid executives or salaried counsel. As a baneful consequence of this limited space for legal professionals, the vast majority of newly-graduated lawyers must find alternative avenues of employment outside their professional expertise.

This development is a singular tragedy for the Indian republic and its legal and educational systems because no proper planning was undertaken to meet such disastrous contingencies. Therefore, it is not surprising that a whole generation of disreputable "street lawyers" has developed as a consequence who poke their noses into every human activity outside the courts in the name of safeguarding the public interest.

Needy lawyers are unwelcome in the legal profession; so are excessively privileged ones. What the legal system lacks is a core of competent professionals with modest monetary ambitions who can do
the daily, methodical and mundane work of the courts without having to resort to deceit and skullduggery to earn their fees.

Democracy cannot survive without law and lawyers. Hence it is a continuing and tragic malaise of Indian democracy that those who need legal services the most do not have ready access to them. Not because clients do not have the means to pay but simply because they cannot find honest and dedicated lawyers to take up their briefs.

In the newer dispensation of post-reform India, there are no freebies available; neither is their free time! All are pushed into making a living without any pretensions to nobility or grandeur. There is real sanity here; not the vanity of a bygone era when legal heavyweights slugged it out in the courts with fancy language and fancier arguments - all the while forgetting the poor client whose cause was lost in the din and drama enacted before the court gallery.

In the new regime of law imposed by economic exigency, the legal system needs to train a body of "paralegals", who with merely a two-year diploma in Law, can solve many of the immediate and pressing problems facing ordinary clients - without having to take recourse to the older procedures and formalities of the law that cost clients so much time and money without yielding anything substantive in return.\(^{(5)}\)

One of the most controversial issues that has plagued the legal profession in the few years has been the changing nature of Indian legal profession in the era of globalization. This inevitable debate revolves around major issues of objectives of legal profession, consumerism, social justice, Indian commitment to WTO regime, competition law etc. The Advocates Act, 1961 and the Bar Council of India Rules, 1975 are the rules which regulate the legal services sector in India and the Bar
Council constituted under Advocates Act acts as the final regulating body. On one side a group of legal professional argues that shift in trade nature of legal services shall hamper ‘professional ethics’ and concept of ‘justice to all’. Whereas, other side argues that the regulations imposed on the legal services sector are anti-competitive and contrary to the goals and purpose of competition policy and Competition Act, 2002. This paper argues that changing nature of legal profession should be accepted wholeheartedly and any further restrictions on enlarging legal service sector would further hamper their growth and development. India has the world's second largest legal profession with more than 600,000 lawyers. The predominant service providers are individual lawyers, small or family based firms. Most of the firms are involved in the issues of domestic law and majority work under countries adversarial litigation system. The conception of legal services as a ‘noble profession’ rather than services resulted in formulation of stringent and restrictive regulatory machinery. These regulations have been justified on the grounds of public policy and ‘dignity of profession’. The judiciary has reinforced these principles which can be reflected in words of Justice Krishna Iyer, when he noted “Law is not a trade, not briefs, not merchandise, and so the heaven of commercial competition should not vulgarize the legal profession”.

3.5 Legal education:

While the teaching of black letter legal-doctrines is an important function of the law institute (college), it is not the only function. What is needed beyond the teaching of doctrine and technique is a system of legal training devised to ‘aid’ the developing lawyer to acquire certain skills of thought, goal thinking and scientific thinking.
The student needs to clarify his moral values, social goals, he needs to orient himself in past trends and future goals, he needs to acquire the scientific knowledge and skills necessary to implement objectives within the context of contemporary trends. The law institutes must provide a realistic and comprehensive picture of the structure and functions of society and will also be oriented towards the implementing of a consistent and explicit set of democratic values. He will not only be lawyer for the future but also be a social technician or social engineer.\(^{(12)}\)

Legitimate aim of legal education is to seek to promote the major values of democratic society and to reduce the number of immoral things. In a democratic society there cannot be a complete answer as to what constitute preferred values, unless some such values are chosen, carefully defined, explicitly made at the students students focus of attention that the automatically applies them to every conceivable practical and theoretical situation, all the talk of integrating law and social science, or of making law more effective instrument of social is twiddling futility- the only conceivable purpose for developing an interdisciplinary approach to legal education is to use the social sciences as a medium through which to immerse the law student in certain values which are deemed to representative of the values of democracy. The student may be allowed to reject the morals of democracy. The student may be allowed to reject the morals of democracy and embrace those values. The fundamental difficulty is after all one of intellectual attitude and conception: the failure to attack legal problems functionally and its corollary, a static view of law.

Social and economic change might, in time, engender the necessary changes in legal thinking. But a very long time would
probably be required; legal education, by shaping the men and minds that will address themselves to the problems of law, offers the best hope of accelerating and consciously assisting the process. The quality and style of Indian legal education that was prevailing for the last fifty years was unsatisfactory. So obviously it did not attract first-class minds as students or as teachers. Facilities, including the all-important library, are poor and not properly maintained. The Indian law teacher had to cope with a low salary and a heavy teaching load; fifteen to eighteen hours a week are normal for full-time lecturers. Whereas, if a good hard working student works for 5-7 years in a High Court or other court he earns a good handsome amount at the end of the month. There is no established tradition of legal scholarship as an integral part of a teachers life and duties. On the other hand these teach could not participate in different projects as an advisor to guide them legally. Indeed, with the heavy teaching load and inadequate library facilities, such a tradition could hardly be supported. Many law colleges have only a couple of full-time teachers; the rest are part-time (which tends to mean no-time except for the classroom hours.\(^\text{13}\)"

The composition of the teaching staff is unfortunate in that it tends to stifle and discourage good, younger men. The faculty takes a paramedical form, with a large base of no tenure lecturers, a smaller group of tenure readers (roughly associate professors), and one or two professors at the apex. As a consequence, it is impossible to get at any one place a sufficiently large group of really energetic, talented teachers. Younger men of capacity who see no room at the top prefer to accept professorial status and related prerogatives elsewhere. The relatively small supply of talent is thus spread far too widely, many younger
scholars of capacity going to schools where they ultimately give up the struggle for scholarly achievement. The premedical structure encourages intrigue and personal jealousies. It results in overloading the professor with administrative and committee duties. For these reasons, as well as others deriving from the position of law and the legal profession in society, Indian legal education has to date had few outstanding scholars, teachers, or academic leaders. Most Indian law men of first-rate ability--and India has had a significant number of energetic and talented lawyers--have preferred to make their careers at the important commercial bars, before the higher courts, or on the bench.

3.5.1 Pre and Post Independence Situation of Legal Education in India:

When India gained its independence in 1947, its legal profession and legal teaching were thus not able to play the role they ought, by Western standards, to have played. The politician, the economist, and the engineer were expected to remake the society. The law was to assist in the form of public law and administrative law, but private law and the legal profession claimed only a small and marginal role in social change. Since independence, the situation has deteriorated further. India, with its mixed economy and its significant planning efforts, makes extensive use of laws and of regulations. Administration, however, is largely in the hands of bureaucrats in whose recruitment legal training does not carry significant weight except for specifically legal jobs; the role of the legal profession as a whole is ordinarily restricted to giving advice after trouble develops. Indians elaborate written constitution, as applied to a diverse society in rapid change, would seem to require a wise and effective legal profession, but the flow of talent into the profession had declined. Before independence the
lawyer had enjoyed some degree of self-determination, had frequently been educated abroad usually in England, and was often prominent in the independence movement. As foreign exchange became scarce, India had to rely increasingly on domestic legal education. Moreover, neither the economic rewards of the profession, nor its social standing, nor the perceived opportunities for contributing to the new and better India were such as to attract capable young men to law. India today presents the paradox—one frequently encountered in the contemporary world of a society that makes extensive use of laws but lacks a legal profession that understands law as an instrument of economic and social architecture. In India today there are several obstacles to the development of social control. To begin with, many of the rules and institutions of the common law as received by India are still in varying degrees either alien to the traditional society or inappropriate for the kind of social and economic development that India is now undertaking. A more subtle difficulty, and perhaps a more crucial one in the long run, is whether India will understand some of the very basic assumptions that underlie and inform Western law. Moreover, understanding need not imply acceptance. The traditions and requirements of Indian society may call for a legal order more meditational in its nature than the common law one emphasizing adjustment more than vindication of a rather abstract justice. These are matters that relate to economic and social realities and to philosophical and cultural traditions in good measure, though by no means completely, they are beyond the control of the legal profession. A further obstacle to contemporary Indians understanding the potential contribution of law and of the legal profession is suggested by a sociological proposition that may have universal validity: In societies in which the law in the books does not reflect fairly accurately the communities accepted and
operative values, the lawyer tends to be looked upon as a manipulator. Individuals turn to law and to lawyers when their behavior and their values are not those that are generally accepted. The law and the lawyer provide official sanction and support for such deviant behavior. Perhaps, in developing societies in which the legal profession participates fully in the process of social change, this negative evaluation of law and of the profession can be overcome. But in India, as in most developing societies, the legal profession has not so participated and the private laws role has been relatively small. The politician, the economist, and the engineer remake the society; the lawyer tends to be looked upon as a kind of manipulator or fixer who, in many ways, fails to represent societies basic values and attitudes.

In addition, in India, as in so many other developing societies, both the economic and the social service aspects of the legal profession are poor. The traditional, rural society typically gives lawyers a relatively low money income. To the extent that Indian economic life today flows through public-sector enterprises, there is also less reliance on private practitioners than is the case with private-sector enterprises. In addition, for reasons already suggested, the lawyer has not carved out for himself the creative role that is today so widely accepted in the United States. Hence, outside of successful commercial practices in the large urban centers and the more significant appellate practice, the career of law is neither particularly rewarding financially nor especially stimulating intellectually. In the modern world, men of talent seek the opportunities and challenges of service as well as financial reward sufficient to provide a reasonable degree of comfort and security. Unless a profession can provide both, talent is likely to choose other outlets. Today the typical Indian lawyer has a rather poorly paying practice in
which he finds it necessary to handle all kinds of matters with little opportunity for specialization, a situation rendered still more difficult by the relative rarity of firm practice.

A final difficulty is simply the economic cost of the kind of legal education that would be required. Most understandably, independent India sought to deal first with acute problems of poverty and with pressing requirements of industrial development. Even in wealthier societies, problems of the long range and of relative subtlety are often deferred to another day; the danger is that thereby the opportunity to build solid foundations is postponed until lost, with the result that the problems that were and remain so pressing can never be solved.

3.6 Law Schools and Legal Education in India As Well As C.G:

“Legal Education is essentially a multi-disciplined, multi-purpose education which can develop the human resources and idealism needed to strengthen the legal system. A lawyer, a product of such education would be able to contribute to national development and social change in a much more constructive manner.”

Chief Justice A.M. Ahmadi pointed out in one of his lecture, “I think we have waited long enough to repair the cracks of the Legal Education system of this country and it is high time that we rise from our arm chairs and start the repair work in right earnest.” The reforms in Legal Education and Legal Profession have been long overdue. There have been voices sometimes sharp and sometimes subdued for such reforms. Unfortunately, no serious attempt could be made. In fact so far, we have failed to look into the problems of Legal Education and Legal Profession, which have been squarely facing us at our face. It is no use
now putting the dust under the carpet as the atmosphere above the carpet is fairly polluted; it is high time we seriously look into these problems. The present law has to meet the requirements of the society, which is entering into 21st Century. Law has to deal with problems of diverse magnitudes and a student of law and an Advocate has to be trained in Professional skills to meet the challenges of globalization and universalization of law. With the advent of multinationals in India as anywhere else, the task of lawyers would be highly technical and an imperative need would arise to have competent lawyers who would be trained in the right culture of Legal Education. This makes a sound case for introducing reforms in Legal Education.

The creation of new breed of lawyer depends itself on the creation of a new teacher. All curricular revision ought to be guided by one basic criterion viz. whether current doctrine and practice in particular areas of law serve to promote basic democratic values. The promotion of these values matters more than anything else; the heart of the matter is not re-christening of courses but the changing of aim and emphasis. Among other things, the new law teachers must make plain to student not only that there are different ways of setting disputes but many ways of getting results.

Law is conceived to be a process of dispute settlement, the law teacher must emphasis to students that such settlements ought properly to be assessed in terms of whether or not they accord with the democratic objectives of ‘authoritative’ community policy. In attempting to guide students towards the realization of basic democratic values, law teachers must themselves demonstrate scholarly commitment to self-enlightment, for it is only through analysis,
clarification and exposure of their own values and prejudices that they might diminish their own danger to students.\(^\text{(15)}\)

### 3.6.1 Law schools – A new way out

A bold and creative decision on the part of the Bar Council of India, first to replace the three year (mostly part-time) LL.B. programme with an integrated five-year LL.B. course and secondly to try out the scheme in a model law school (National Law School) sponsored by the BCI itself. The first initiative happened in 1982 and the second in 1986. The outstanding success of the National Law School experiment invited attention from policy planners (Committee on Subordinate Legislation of the tenth Parliament recommended a Bangalore model law school in every State which has been endorsed by the All India Law Ministers Conference at Bhubaneswar in 1992), the organized bar and the Committee of Judges on legal education appointed by the Chief Justice of India (1993). The call was responded by the setting up of law universities on the Bangalore model in NALSAR at Hyderabad (1996), NLIU at Bhopal (1997), WBNUJS at Kolkata (1999) and NLU at Jodhpur (2000) HNLU at Raipur (2003), GNLU at Gandhinagar (2004).

An organized attempt by the BCI with the assistance of the National Law School to revamp the curriculum (1996), increasing the number of required subjects to be taught and introducing an imaginative component of practical training (four courses for a total of 400 marks) to be completed at the law school in the final year. Introduction (though aborted by a Supreme Court judgment) of a yearlong apprenticeship under a senior advocate as a pre-requisite for enrolment as an advocate (1996).
After the introduction of National Law School, the admission in the law course is done strictly on the basis of merit and only after 10+2 one can sit for this examination. Total number of seats in a particular stream should not exceed 100 and the student ratio is almost 1:40.

The Bar Council of India has laid down standards in terms of system, classroom teaching, practical training and skills, court visits, moot court, legal aid work, and other practical training programmes for law students. This has given a special impact to Indian legal education.

All the traditional law colleges suffer from the non-attending of classes by the student. In this matter law schools are able to overcome this problem by two way - (1) these are mostly residential colleges and (2) colleges are very much strict about attendance. To sit for the final examination everyone had to have a certain percentage of attendance. By announcing a scheme of professional entry test to be conducted by the BCI for foreign law degree holders to be able to seek enrolment under the Indian Advocates Act.

3.6.2 The problems we are facing this moment

However, the pace of change towards improving the quality of legal education was watered down by the very same Bar Council through a series of compromises adopted in the course of the last two decades. These include:

(a) Allowing the three-year LL.B. course to continue as before side by side with the five-year integrated programme;

(b) Not following the distinction between professional and liberal legal education in categorizing the over 500 law teaching institutions for extending BCI jurisdiction;
(c) Inability to mobilize funds for supporting improvements in legal education, particularly among institutions located outside metropolitan cities; the institution situated outside the metro city is suffering from various problems due to lack of fund. They could not afford a good law library. They did not have the chance to get other facilities of the metros. They could not invite good faculty for these lack of fund. On the other hand these entire good faculty prefers to stay in a Metro cities.

(d) Inability to revive the pre-enrolment apprenticeship scheme or any other viable alternative to ensure minimum professional competence on the part of fresh entrants to the profession; there is need for an Minimum criteria to enter in a bar otherwise it will turn in a mess. Bar counsel should make some regulation for the coming law students. This can be an entrance test, and whoso ever will be able to clear the test will be competent to enter in to the bar. There is need to learn all the technical details of this profession. Otherwise one can lose a case only on the technical ground. So there is need to work as assistance to a lawyer to realize and understand all the technical details and procedure. This selection of procedure should be done by the marks obtained in the entrance examination of Bar. So there will be no dispute in the student, that he did not get an fair opportunity to get a good lawyer to undergo the practical training. For this time period when a law student will undergo the training as assistance he will be given a scholarship by the bar to sustain.

(e) Inability to deter full-time teachers from practicing law and thereby depriving students of the benefit of services of these teachers after completion of the course everyone had to go for the practical use of the law. So it is very important to know the practical situation from
a person who is expert in that particular field. In that case none but the practicing lawyer is the best teacher. On the other hand law papers like Criminal Procedure code, Indian Penal Code, Indian Evidence Act cannot be understood except practical knowledge and practices that are followed in the court.

(f) Inability to provide any meaningful guidance for institutionalizing clinical teaching (of skills) and imparting education on professional ethics. Directions for change.

(g) All the experts of a particular discipline should start detailed studies on that subject. In the recent years we saw Indian Institute of technology, Khargapur come out with new course on law related to Technology and Computers. No other institutions than IIT, IISc, ISI are the best in their respective field of Science and technology and statistic. So if they start to use their intellectuals in this field then the development in law will be the unimaginable.

Likewise if the Business schools comes out with different law courses on the corporate management then it will be beneficial for the corporate law field. What are the expectations of the country and the people from law and legal services in the coming years, given the process of globalization and transformation in the role of the state? What is the best strategy to strengthen professional legal education while promoting wider instruction in law as a liberal academic discipline? If training in skills and ethics is to be accomplished within the law school curriculum what is the appropriate model to achieve this end? How does one assess the social relevance and justice content of law teaching and what can be done to maximize those goals? mechanism to ensure account What ought to be the supervisory and control ability on the part
of professional schools of law in maintaining standards of teaching, research and extension activities? To be able to address these questions one must have an awareness of the challenges involved and the changes taking place in contemporary times. These relate to unmet legal needs of different sections of society, delay and cost in accessing justice, impact of globalization on equality and human rights, vast technological changes especially in information and communication, the relative incapacitation of the state by market domination and the role of professions in justice, peace and development. In all these changes law and lawyers play a decisive role of facilitation, moderation and control. Law without justice is an empty shell. It is the nature of and access to institutions and procedures, which make justice possible. In structuring the institutions and procedures, particularly in periods of transition, lawyers will have to assist communities, interest groups and governments keeping in mind the requirements of equity, justice and fairness.

3.8 Importance of Judiciary in Democratic Setup:

Democracy, as a system of governance, is placed on the bedrock of equality of all citizens committed/entrusted with certain liberties and freedoms which can be enjoyed by the citizens only in a proper socio-economic climate, nurturing the legal provisions aimed at restoring to the deprived right, if any. If this is not done, equality before law and the rule of law as well as the democratic functioning of the society carries practically no meaning.

Rule of law is the fundamental principle of democracy. If the rule of law does not prevail in a society, the order and equilibrium cannot be preserved and promoted in it. Obviously, the disorder and
disturbance in the society ultimately lead to its disintegration and destruction, which no society desires or can even afford. Thus, for a peaceful and prospering society, more so if it is a democracy, it is necessary that there prevails rule of law and not the rule of some individuals, how mighty and haughty such persons may be. The common man, irrespective whether he is rich or poor, is able to assert and vindicate the rights given to him by law. Law, it underscores, is useless, a futile exercise of legislative power, and it is machinery of justice that gives life to the law and makes it actively effective and meaningful all equally, irrespective of their social, economic, geographical, biological or similar other differences.

Preservation of democracy and democratic values and protection and promotion of human rights are matters with which everyone is or should be concerned. It is a legitimate pride of every Indian that despite the trials, turmoil and troubles which the nation has undergone, democracy, rule of law and respect for human rights are preserved and respected in this country to a great deal.

Law is an instrument of change to realize its vision. The focus of the ideals set out in the Preamble and the constitutional mandate for governance in the Directive Principles (Part IV) have been realized by reading them in the meaning of the Fundamental Rights (Part III) to make them enforceable. The dream of a Welfare State and the true concept of Equality, Liberty and Justice for all are becoming real through the medium of law enforcement. Probity in public life and accountability of holders of public offices to promote the concept of Equality has become possible through the instrument of Law. The principle of Sustainable Development based on the doctrine of Trust for
a better and healthy world is being enforced by means of Law. The vast expanse of the field of Law and the promise it holds to improve the world order is the challenge before us.

Rule of Law is a dynamic concept and must keep pace with the changes to suit the current needs of the society. Protection of Human Rights and implementation of the legal framework is essential to prevent resort to rebellion against tyranny and oppression. In the Act of Athens, 1955, the Rule of Law is described as “springing from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all.”

This description of Rule of Law by the International Commission of Jurists is universally accepted and is a general definition in conformity with the legal system in every democracy. The first prerequisite of justice is Rule of Law and the true role of the legal profession is to endeavour to equate law with justice to achieve the ideal form of administration of justice.

Over the years, experience has demonstrated that governments are not obliging and do not control themselves. The great difficulty, mentioned by Soli J Sorabji while quoting Madison (as quoted by Soli J Sorabjee, Attorney General of India, 1999, p. 11), confronts our country in a large measure as people strive to ensure fundamental freedoms and elementary decencies to all persons whilst respecting the ‘rule of law’ and the independence of the judiciary.
Despite the laws horrible delays and a multitude of deficiencies that plague the Indian legal systems, it is heartening that the public still retains confidence in the judiciary. It is to the judiciary that the citizen turns for protection from legislative excesses and executive abuses and vindication of his or her rights against the state.

An independent judiciary is one of the pillars of our constitutional edifice and is indispensable to democracy. It is a constitutional and moral imperative for the protection of the human rights of the citizens, for maintenance of the rule of law and for preservation of democratic values. The essence of independence of judges is that in adjudication of disputes between citizens, and between citizens and the state, judges must act impartially and be free from pressure or influence of any kind and emanating/originating from any source.(21)

3.10 Democratic Society, Judiciary and their Problem:

In the Indian democratic society, for protecting and enhancing the rights of the people, judiciary plays an important role besides legislative and executive body. For the enforcement of rights of citizens and remedies thereto in case of violation thereof, Courts have been established at all the level in the country. These courts by interpreting the law, enhances justice to the individual and society at large. The growth and development of society is therefore based on these judicial pronouncement made by the courts. With the rapid growth in the industrial, technological field and population, workloads have been increased on the judicial working system. With the increase of workload, the efficiency of the courts is hampered badly. According to 2002 records, total 2.4 crore cases are pending out of which 2,03,25,756
cases are pending in District and Sub-ordinate courts, 35,57,637 in High Courts and 21,995 in Supreme Court.\(^{(22)}\)

With the increase in rate of pending cases and declination of pronouncement of justice, society now considers Justice delayed is Justice denied. The judiciary day by day, due to its delayed process losing faith of people to whom it is obliged to provide justice. Supreme court by its decision confirmed that the speedy trial is deemed as fundamental right included in Article 21 of the Constitution of India. In spite of this, the condition is static and unchanged. Many Committees and Boards set up by the governments from time to time had come up with the approach of reformations and solutions of the rendering justice effectively. However, the implementation of these recommendations have not been considered and yet to be put in practice.\(^{(23)}\)

(a) **Factors behind the arrear of pending Cases:**

There is no one factor which solely responsible for these arrears of cases. For the reformation in the present practicing judicial system, there are number of elements which must be considered.

(b) **Judges-Population Ratio and Vacancies of Judges:**

Presently, for dealing with the pending cases there must be required number of judges present to entertain the matter laid before them. But in Indian judicial system there is number of vacancies existing which ultimately affects the efficiency of rendering justice.

Former Chief Justice of India, S.P. Bharucha on this account said that "It is only when we have far more trial courts functioning that we shall be able to dispose of more cases than are being filed and thus
cut down on arrears." In 2002, the total strength of judges in High Courts was 669 out of which 163 vacancies were not filled, which comes out to be 25% of the total strength. Likewise in Supreme Court out of total strength of 26 there were 2 vacancies. The condition at present is not better than the mentioned record data. It had also suggested by 127th Law Commission Report, 1988 that the judge-population ratio should be increased from 10.5 judges per million population (at that time) to 50 judges per million population within period of 5 year. It recommended that by the year 2000 the ratio should be increased at least 107 judges per million population. At present in India, the ratio is 12 or 13 judges per million population where as 12 years before it was about 41 judges in Australia, 75 in Canada, 51 in U.K. and 107 in United States. Due to this low judge-population ratio, the courts are lacking requisite strength of judges to decide the cases. This judge-population ratio has been used for providing quantity of judges required to deal the cases. The government had neither taken any interest nor any steps to implement the said recommendation. In view of the government, the raising strength of judges must be set on the basis of the pendency of cases and average rate of disposal, not simply on basis of population, which is absurd and without any principle of foresightedness.

Filling the vacant seats of judges is not the sole responsibility of the government but judiciary plays crucial role in the appointment of judges. Supreme Court interpreted Article 124 and 217 of the Constitution of India, by its judgment in Advocates-on-Record Association vs. Union of India and others held that a proposal for the appointment of a Judge in the Supreme Court must be initiated by the
Chief Justice of India, and in the case of a High Court by its Chief Justice and for the transfer of a Judge or the Chief Justice of a High Court to another High Court, the proposal has to be initiated by the CJI. Therefore, the judiciary is also responsible for not performing the duty of proposing the name for appointing judges to the government, which in turn would be sent to the President of India for appointments. Also according to the norms the process of filling up a vacancy should start six months before the actual date of retirement of a Judge. In 2002, there were 170 vacancies in High Courts, out of which only on 64 vacancies the process of filling began. Further, there was also delay in filling up the 1500 vacancies in the sub-ordinate courts. Even today the position is same regarding the process of filling up of judges in place of retired judges.\(^{24}\)

**Accountability of Judges:**

In India, judiciary is a separate and independent system. Legislature and Executive are not allowed by the Constitution to interfere in the functioning of judiciary. The courts on the other hand check the acts of these two bodies. The functioning of judiciary is independent but it doesn't mean that it is not accountable to anyone. In democracy the power lies with the people. The judiciary must concern with this fact during their functioning. Considering the judicial system independent and unaccountable by the courts, generally it gives leisure and comfort to the judges that ultimately lead to delay in deciding the matters. High Courts has the power of control over Subordinate Courts under Article 235 of Constitution of India. Supreme Court has no such power over High Courts. The Chief Justice of High Courts / India has no power to control or make accountable other judges of the court.
Woolf Report of 1996, emphasized to make judiciary accountable for their functioning by generating accurate judicial statistics, revised on daily basis. It was observed by the report committee that statistic report pertaining to the Judges functioning and flow of such information ultimately make judges more accountable to the judiciary and also it was suggested that it is more important and useful mean to tackle these arrears than increasing financial and human resources. But these suggestions remain on the paper and have never been put in practice.\textsuperscript{(25)}

The Annual Reports of Ministry of Law, Justice & Company affair only laid data about the judicial arrears in their reports and not about the nature of cases pending. So it is not fruitful to deal with the pendency of cases. There must be some judicial database that includes the details about the specific laws which deals with subject matter, sections, legal nature of disputes, time taken to decide the case, interim relief in operation and number of adjournments etc.

(a) Provision of Adjournments:

The main problem that resulted into pending cases is the adjournments granted by the court on flimsy grounds. Section 309 of Code of Criminal Procedure and Rule 1, Order XVII of Code of Civil Procedure deals with the adjournments and power of the court to postpone the hearing. These adjournments are granted only when the courts deems it necessary or advisable for reason to be recorded. It also gives discretion to the court to grant adjournment subject to payment of costs. However these conditions are not strictly followed and the bad practice continues not by litigants but by sitting judges also. It thwarted the right to
speedy trial of the concerned litigants. By granting regular adjournments the value of the time and importance of the remedy sought for the cause of action also degraded with the time. The justice is called as justice when it in real sense delivers justice to the grieved person at proper time.

(b) **Vacations for the Courts**:

The most debating question relating to the causes for pendency of cases is the vacations for courts. It is argued on national level that why the courts should have such long vacations when there is such huge pendency of cases in all the courts waiting for decades for disposal. In most of the countries like France & USA there is no provision for vacations for the courts. The judges in these countries can take leave according to the convenience without affecting smooth functioning of courts. In India only Subordinate Criminal Court runs whole a year but the Supreme Court, High Courts and the other Sub-ordinate Civil Courts are closed during the vacation period.

The system of vacation is a legacy of colonial ruler. In the pre-independence period, the burden was not so great in comparison to the present situation. Also, the English comings from the cold country were finding summer in India unbearable. Therefore the vacation was evolved as an arrangement to enable them to go to England during summer and spend their time comfortably there. That was the time when travel was required to be made by sea which occupied several weeks. This appears to be the real reason for the introduction of vacations for courts in India.
Vacations for the High Courts are fixed by each High Court according to their own convenience, bearing in mind the order of the President issued under Section 23(a) of the High Court Judges Conditions of Service Act, which requires each High Court to work for 210 days a year. The total period of vacation of each High Court varies from 48 to 63 days. However, during vacations some Judges sit on the vacation benches only to transact urgent work. There is a convention which enables the High Court Judges to take 14 days Casual Leave every year. In addition, there are more than two weeks of public holidays every year. High Court Judges do not sit on Saturdays and Sundays. Though the High Court is expected to work for 210 days, the Judges would be working for a much lesser number of days when they avail of different kinds of leave. Supreme courts should work for 185 days a year. In summer, Supreme Court goes for 8 weeks summer vacations. Besides these there are public holidays like Holi, Daseera, Deepavali and New Year. These vacations ultimately affect the functioning of courts. The Arrear Committee suggested that these vacations has been given in order to provide time to the judges for updating their knowledge by reading, attending seminars, conducting research work etc. So the vacations should be reduced and not abolished completely. These recommendations are not yet implemented and the minimum working days of the courts have not been followed.

(a) On Vacancy of Judges:

It recommended that to increase the present 10.5 or 13 judges per million population to 50 judges per million population within 5 year period as decided by the Supreme Court in All India Judges Association and others Vs. Union of India. Also, it
suggested that it is necessary for each State to make an estimate of the number of Judges required to be appointed having regard to pendency and inflow of fresh cases and nature of litigation. It also suggested for constituting a National Judicial Commission, being considered at the national level to deal with appointment of the Judges to the High Courts and the Supreme Court and to deal with the complaints of misconduct against them. It stresses on the quality with the quantity of judges. (26)

(b) **Improving the Quality of Justice : Specialization, Training and Qualification:**

The Committee suggested that the cases must be assigned according to the specialized area of the judges. Assigning cases without considering specialization results into delay in deciding the matters. Also, some specialised tribunal must be established to deal some matter pertaining to tax, services, and labour etc. separately. It suggested that the specialization provide consistency, certainty, speedy and quality judgments.

It also suggested that the newly appointed judges and the judges promoted from sub-ordinate courts to the higher courts should be given intensive training for reasonable period to improve their skills in hearing cases, taking decisions, writing judgments and in court management. The inadequate competence of the judges resulted into delay in justice should be removed through proper training.

It also recommended that special attention should be paid in the matter of prescribing qualifications for recruitment of Judges at all levels and to improve the methodology for selecting the most competent persons with proven integrity, character, having regard to the nature of
functions which a Judge is required to discharge. No other consideration other than merit and character should be taken into consideration in choosing the Judge for the Courts.\(^{(27)}\)

3.11 **Judiciary of India** :

The Judiciary of India is an independent body and is separate from the Executive and Legislative bodies of the Indian Government. The judicial system of India is stratified into various levels. At the apex is the Supreme Court, which is followed by High Courts at the state level, District Courts at the district level and Lok Adalats at the Village and Panchayat Level. The judiciary of India takes care of maintenance of law and order in the country along with solving problems related to civil and criminal offences.

The judiciary system that is followed in India is based on the British Legal System that was prevalent in the country during pre-independence era. Very few amendments have been made in the judicial system of the country.

3.11.1 **Supreme Court in India** :

The Supreme Court is the highest judicial body in India. The Supreme Court came into power on 28th January 1950; just two days after the Constitution of India came to effect. In the initial stages, it had its office in a part of the Parliament House. The Supreme Court is endowed with many duties and responsibilities. The biggest responsibility is that it is the highest court of appeal and is also the protector of the Constitution in the country.

The Chief Justice of India and 25 other judges make up the Supreme Court of India. The appointments are done directly by the
President of India. There are certain criteria that have to be fulfilled by the advocates to become a judge of the Supreme Court. Being a citizen of India is one of the most important criteria. Apart from this, the person has to have an experience of minimum five years as a judge in the High Court or any other two courts one after another. He should also be a prominent jurist as per the President of the country, so that he can take up responsibilities well. The Chief Justice is also consulted at the time of appointment of the judges in the Supreme Court.

The Judges of the Supreme Court are free to exercise their power as and when required. The process of removal of the Supreme Court judges is quite an interesting but lengthy process. An order from the President is mandatory in case of removal of the judges. A two-thirds majority has to be obtained from both the houses for the removal of the judges.

The jurisdiction of the Supreme Court is divided into original jurisdiction, advisory jurisdiction and appellate jurisdiction. Original jurisdiction is required when there is a dispute between the Government and the states of India or any one state of India. The Supreme Court can also enforce fundamental Rights according to the Article 32 of the Constitution of India.

The appellate jurisdiction is mentioned in Articles 132(1), 133(1) or 134 of the Constitution. The decision of the High Court can be questioned in the Supreme Court of the country. One can appeal to the Supreme Court, if he or she is not satisfied with the decision of the High Court. The Supreme Court has the provision of accepting or rejecting the case at its own discretion. There are also provisions of pardoning
criminals and canceling their lifetime imprisonment or death sentence by the Supreme Court.

Apart from the original and appellate jurisdiction of the Supreme Court, there is an advisory jurisdiction that needs special mention. There are many cases that are directly referred by the President of India and the Supreme Court has to look into those matters. This provision is mentioned in Article 143 of the Indian Constitution.

The Supreme Court in India acts as an independent body and is free from any outer control. The contempt of law court in India is a punishable offence and the Supreme Court takes care of this immaculately.(18)

3.11.2 High Courts:

There are 21 High Courts in the country, three having jurisdiction over more than one state. Bombay High Court has the jurisdiction over Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu. Guwahati High Court, which was earlier known as Assam High Court, has the jurisdiction over Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh. Punjab and Haryana High Court has the jurisdiction over Punjab, Haryana and Chandigarh. Among the Union Territories, Delhi alone has had a High Court of its own. The other six Union Territories come under jurisdiction of different state High Courts. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the state. Each High Court has powers of superintendence over all courts within its jurisdiction. High Court judges retire at the age of 62. The jurisdiction as well as the laws administered by a High Court can be altered both by the Union and State
Legislatures. Certain High Courts, like those at Bombay, Calcutta and Madras, have original as well as appellate jurisdictions. Under the original jurisdiction, suits where the subject matter is valued at Rs. 25,000 or more can be filed directly in the High Court. Most High Courts have only appellate jurisdiction. For complete list of High Courts, refer Annexure A.

3.11.3 Sessions Court:

The principle Sessions Court is presided over by a Sessions Judge. There are two additional Sessions Judges. These three courts have the same powers, although the Sessions Judge is the administrative head. He also assigns cases to the Additional Sessions Judges. These courts have original, appellate and revisional jurisdiction. The structure of the Sessions Court is as in FIGURE-1.

Sessions Judge (1)  
↓

Additional District & Sessions Judge (2)  
↓

Chief Judicial Magistrate* (1)  
↓

Additional Chief Judicial Magistrates (6)

**Figure 1: Criminal Justice System Set-up**

Each Chief Judicial Magistrates court typically has one or more police stations under them. Cases of a heinous nature are categorised as Sessions cases under the Criminal Procedure Code, 1973. Appeals and revisions against orders passed by lower courts are also
heard and decided by the Sessions Court. Centre for Civil Society 3

Below the Sessions Courts are the courts of the Chief Judicial Magistrate. A Chief Judicial Magistrate is the administrative head; he assigns cases to six Additional Chief Judicial Magistrates. Each of these courts has one or more police stations assigned to it. The designated court decides criminal cases from those police stations. The Chief Judicial Magistrates also commit cases for trial to the Sessions Courts. In addition to the regular criminal courts, there are special courts for certain offences. These include narcotics cases, corruption cases, and terrorist cases among others.

3.11.4 Magistrates Court :

Indian Judicial Magistrates deal with such things as breach of public peace, nuisance, apprehended danger and dispute of immovable property likely to cause breach of peace. Judicial Magistrates are officers from the Executive cadre.

3.11.5 District Court :

The principal Civil Court, called the District Court, is presided over by the District Judge and there are two more courts of Additional District and Sessions Judges to cope with the cases. The District Judge and the Additional District Judges are vested with the same powers. The Code of Civil Procedure, 1908, with the 1976 amendment, governs procedure in Civil Courts. The rules and orders of the High Court supplement this Code. Disputes over trademarks (under the Trade and Merchandise Marks Act, 1958), patents (under the Copyright, Designs and Patents Act, 1958), probates (under the Indian Succession Act, 1988) are dealt within the courts of District or
Additional District judges. These judges also deal with matrimonial cases under the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872, and the Indian Succession Act, 1925. Below the District Courts are two courts of Civil Judges (Senior Division) and seven courts of Civil Judges (Junior Division). The ‘Senior’ and ‘Junior’ labels do not have anything to do with the competence of powers of the judges but reflect the nature of the cases. Civil Judges (Senior Division) and Civil Judges (Junior Division) have only original jurisdiction whereas the courts of District and Additional District Judges exercise appellate jurisdiction as well. Civil suits are mainly between private persons or private persons and the state and concern adjudication of civil rights. The structure of the District Court is as in Figure-2.

**Figure 2 : Civil Justice System Set-up**

(a) It only has appellate jurisdiction over cases referred to by the District Judge.

(b) Comprise the Subordinate Judge Class I and II.

(c) Comprise the Subordinate Judge Class III and IV.
Most District Courts are set-up at the headquarters of every revenue district. Appeals against the judgments of the courts of Civil Judges, whether of Senior or Junior Division, lie, Centre for Civil Society 4 before the District Judge, who can decide the appeal himself or assign it to an Additional District and Sessions Judge. In civil matters, the District Courts do not have revision power. This can be exercised only by the High Court. The current structure of Indian judiciary, as illustrated above, is as follows: Centre for Civil Society (5)

**SUPREME COURT**

- High Court (of the respective states)

**Sessions Court**

- Subordinate Judge Class I
- Subordinate Judge Class II
- Subordinate Judge Class III
- Subordinate Judge Class IV (CIVIL JUSTICE SYSTEM)

**District Court**

- Judicial Magistrate, I Class
- Judicial Magistrate, II Class
- Metropolitan Magistrate
- Special/Honorary Magistrate (CRIMINAL JUSTICE SYSTEM)

**Figure 3: The Judicial System Set-up – the broad overview**

They are the principal appellate courts.

(1) **Specialised Courts:**

Rent Control Tribunal 4. The East Punjab Urban Rent Restriction Act, 1949, is one of the laws that govern landlords and tenants; it deals with disputes regarding increase in rent and vacation of premises and applies within urban areas. The judicial officer presiding over this tribunal is known as the Rent Controller.
Judgments of the Rent Controller may be appealed before a District Judge or Additional District Judge.

(2) **Consumer Courts:**

The Consumer Protection Act, 1996, provides a three-tier system to arbitrate disputes. The lowest level, corresponding to a district court, is the Consumer Disputes Redressal Forum; the next highest rung, corresponding to a High Court, is the Consumer Disputes Redressal Commission and at the apex level, corresponding to the Supreme Court, is the National Consumer Disputes Redressal Commission. The District Forum is headed by a president not below the rank of District Sessions judge who is assisted by two other members, one of whom must be a woman. Appointments to this Forum are made by the State Administration. A person who is or has been a Judge of the High Court heads the State Commission and two other members assist him. District

- Subordinate Judge Class I
- Subordinate Judge Class II
- Subordinate Judge Class III
- Subordinate Judge Class IV

(CIVIL JUSTICE SYSTEM)

- Judicial Magistrate, 1st Class
- Judicial Magistrate, 2nd Class
- Metropolitan Magistrate
- Special/Honorary Magistrate

(CRIMINAL JUSTICE SYSTEM)

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Forums are located at district headquarters; State Commission at state headquarters and the National Commissions are located in Delhi. When the value of the goods or services and the compensation claimed does not exceed Rs 5 lac, the complaint is filed in a District Forum. When value or compensation exceeds this limit, the case is filed straightaway in the State Commission. The State Commission has appellate jurisdiction over the matters decided by the District Forum. From the State Commission, the case goes to the National Commission.

(3) **Family Courts** :

The Family Courts Act, 1984, aims at promoting conciliation in and securing speedy settlement of disputes relating to marriage and family affairs and related matters. It envisaged that courts should be set up in a city or town with a population of more than 10 lac and at such other places as the state government may deem necessary. Family courts have been set up in the following places: Andhra Pradesh – seven, Assam – one, Bihar – two, Karnataka – five, Kerala – five, Maharashtra – sixteen, Manipur – one, Orissa – two, Pondicherry – one, Punjab – two, Rajasthan – five, Sikkim – one, Tamil Nadu – six, Uttar Pradesh – sixteen and West Bengal – one. Besides, necessary notifications extending the jurisdiction of the Family Courts Act have also been issued by the Government of India with respect to Haryana, Madhya Pradesh and the Union Territory of Andaman and Nicobar Islands, among other states.
(4) **Lok Adalats:**

The State Legal Aid and Advice Boards monitor Lok Adalats, which are voluntary agencies. They are alternative forums for resolving disputes through conciliation. The movement of funds for these is under the Legal Services Authorities Act, 1987. Every award of a lok adalate is deemed to be a decree of a civil court or order of a tribunal and is deemed to be binding on the parties involved in the dispute. Also, with respect to cases decided at a lok adalat, the court fee paid by the parties is refunded. Central Labour Tribunals and the Labour-cum-Industrial Tribunal In accordance with the provisions of the Industrial Disputes Act, 1947, the Central Government Industrial Tribunal-cum-Labor Court adjudicates disputes involving workers employed in establishments connected with or under the control of the Central government. References to this court are made by the Central government. A separate Labor Court-cum-Industrial Tribunal adjudicates disputes involving workers employed in establishments that are not connected with the Central government. Its terms of reference come under Section 10 of the Industrial Disputes Act. Its presiding officer is an Additional District and Sessions Judge.

(5) **Revenue Courts:**

Revenue Courts deal with the making and maintenance of record of rights in land, assessment and collection of land revenue and other matters relating to land and its liabilities. The lowest of these courts is that of the Assistant Collector, Grade II (This officer is known by a Hindi name - Tehsildar). The next highest court is
that of the Assistant Collector, Grade I. (This officer is a Sub-}
Divisional Magistrate) Orders of the Assistant Collector, Grade II
and Assistant Collector, Grade I, may be appealed before the
Collector. Orders of the Collector may be appealed before the
Financial Commissioner. The Home Secretary presides over the
Court of the Commissioner. The final authority is the Advisor to the
Administrator who exercises the powers of the Financial
Commissioner. Centre for Civil Society.(7)

(6) Executive Courts :

Executive Courts adjudicate disputes with regard to
payment. On failure of payment or breach of conditions of sale, the
Estate Officer is competent to resume the site or building and
declare the claim of the allottees forfeited. The Estate Officer
observes a set of formalities in taking action: he gives notice to the
defaulters and takes evidence from the parties. Orders of the Estate
Officer may be appealed before the Chief Administrator. The
Central Administrative Tribunal (CAT) This tribunal hears cases
involving service of employees of the Union of India and the
Central Government, including all-India officers and employees of
corporations and other autonomous bodies brought into being by
the Central legislation. Its seat is at Delhi but it has benches in
many other cities. Prior to the judgment of the Supreme Court of
the case of Chandra Kumar (reported in 1977 3 Supreme Court
Cases 261) the appeals against the orders of the CAT used to lie in
the Supreme Court of India. Now the appeals lie in the respective
High Courts and thereafter the Supreme Court of India.
(7) **Prosecution Department:**

All criminal prosecutions are conducted in the name of the respective State or Union Territory Administration and prosecution work is done by the Prosecution Department, headed by a director at the top, with district attorneys/deputy district attorneys/assistant district attorneys working under him. The responsibility of the attorneys of the Prosecution Department is to defend civil and criminal cases of the State Administration in the district courts as well as before other courts such as the Consumer Forum and Labor Tribunal as also in Industrial Tribunals. When there are cases before the Supreme Court, High Court and Central Administrative Tribunals, the Administration appoints practicing lawyers as standing counsel to plead and defend the cases. The Law and Prosecution Department functions under the overall supervision of the Home Secretary who is also the Secretary, Law.\(^{(29)}\)

3.9 **Legal Decision and Sources of Information:**

First of all for the decision, the birth of case is necessary, after that the lawyers is one of the most part, because, the Client cannot to meet direct the judge, lawyers explain the case in front of judges. All these process are following –

**Birth of case:**

A case takes birth when a legal problem arises due to instructions between human beings and comes to the attention of an advocate or a judge. The problem involves one or more persons called parties. The following are the mail persons involved at various stage of an appeal case:
After a client present a case to a lawyer, the examine the facts of the case. An advocate’s first duty is to determine whether the problem is legal or not. Since he has knowledge and experience about the law of the land, he may understand the problem from the legal point of view. If the problem is legal, he identifies the issues based upon the facts of the problem. For determination of the facts he generally relies on the evidence, discussions and documents that are provided by his client.

After a lawyer has understood the case he searches for precedents in which the facts and issues are more or less identical with those in the one at hand. He formulates a query and, based upon the query finds relevant law from a plethora of possible legal sources to support his viewpoint. He tried to find the relevant cases in which judgments were in favors in his party. The purpose behind the search is to relate the judgment of those cases with the current case.\(^{(22)}\)

**Legal Sources**:

The relevant legal source of information are quite well identified and are usually available as written texts in the form of statutes, rules, regulation, reports, journals, etc. Most of the cases instituted in the Board are related to the acts, Rules and other statues
mentioned below. Most of the legal knowledge is stored in full text natural languages form.

- Chhattisgarh land revenue act
- Chhattisgarh sales tax act
- Chhattisgarh municipal council act
- Chhattisgarh land and building taxes act
- Chhattisgarh land conversion act
- India / Chhattisgarh stamp acts
- References cases
- Case under miscellaneous acts

Requirement and availability of legal sources: The legal sources are required by both lawyers and judges. A lawyer searches for the cases in which the judgments are in favor of his client or against his opponent. A judge also determines whether the lawyer has intentionally or unintentionally missed some cases which are for or against his client. An advocate does not have access to all the legal sources available to him. The availability of the sources depends upon physical factors.

**Argument and judgment:**

During the argument stage of a case a lawyer for the appellant or for the respondent tries to make his case strong by presenting his facts of the case before the judge. A lawyer may produce oral and/or written evidence and/or cite one or more judgments in similar cases in which the issues have already been decided. Obviously, a lawyer cites only those cases which are favorable to his client or are against his opponent. The lawyer cites previous cases for consideration by the court and
before delivering a judgment, the judge has to refer and deliberate upon these cases.

A lawyer generally gives the following information about a citation:

Year of judgment, name of source and page number

- Act, section
- Facts of case
- Decision given by court

3.10 Reference:


7. Hereinafter referred to as “C.A”.

8. Ibid.

Government of India, Executed by Indian Council for Research in Economic Relations, Coordinator(s) N.L.Mitra and T.C.A Anand.4

Ibid.


12. See reference no. 1


15. See reference no. 1


23. Speech by N.M. Ghatate, National Conference on "Reinventing Indian Legal System for Achieving Double Digit Economic Growth, Assessed online at : www.ficci.com/media-room/speeches-presentation/2004/apl/ apr10-justice-inug.htm date 8-8-2010

24. N. Vittal, Delays in Indian Judicial System and Remedies, Assessed online at www.cvc.nic.in/vscvc/cvspeeches/march2k6.html date 12-08-2010

25. Rajendra Swaroop Mittal, Changing the Judicial System, Assessed online at www.tribuneindia.com/2000.html date 12-08-2010


27. A tribunal is any court, judicial body or board (including one or more judges) which has quasi-judicial functions, such as a public utilities board which sets rates or a planning commission which can allow variances from zoning regulations.
