

# INDIA

## *BASIC INFORMATION FOR LEGAL RESEARCH*

*By*

*S.K. Verma\**  
*Indian Law Institute*

### **I. OVERVIEW OF THE INDIAN LEGAL SYSTEM**

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, which has grown with diverse cultures and traditions of its people. Ancient law was based on *Dharmasastras* and *Smritis*, which laid down the basis of social and legal order.

During ancient times,<sup>1</sup> administration of justice in India was one of the main functions performed by the king. In those days, the king was neither fountain of law nor above law, but was subject to law. He, however, was regarded as the fountain of justice. During the medieval period, Muslim System of government came to be established in several parts of India. The judicial system was mainly based on Islamic law,<sup>2</sup> although non-Muslims continued to be governed by their laws based on *Dharmasastras* in personal matters. Here also like Hindus, the Muslim never regarded king as fountain of law, but as fountain of justice.

During the British rule in India for about 200 years, the traditional Indian judicial system was re-organized by the British authorities on the basis of Anglo-Saxon jurisprudence. The Royal Charter of 1726, during the reign of George-I, established Mayor's courts in the Presidency towns of Madras, Bombay and Calcutta. The Regulating

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\* Director, Indian Law Institute.

Act, 1773 established the Supreme Court at Calcutta. The Indian judicial system during this period consisted of two systems of courts: Supreme Courts in the Presidency Towns of Calcutta, Madras and Bombay and *Sadar* Courts in the provinces. In 1861, three high courts were established at Calcutta, Madras and Bombay.<sup>3</sup> In tune with the changing needs and times, a well-structured legal and judicial system developed. Legal system introduced by the British, became the harbinger of the modern legal system of the country, which it inherited from the British on attaining independence in 1947. The British system, based on common law, became a part and parcel of Indian judicial system. India is a common law country, like other British colonies in Asia and Africa.

The Constitution of India, adopted on January 26, 1950, declared India a **sovereign socialist secular democratic republic**,<sup>4</sup> which shall strive to achieve justice, liberty and equality for all its citizens. Part III of the Constitution guarantees Fundamental Rights to all persons, which are enforceable through the Supreme Court and high courts. Part IV (Directive Principles of State Policy) enjoins the State to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.<sup>5</sup> Besides, a provision on “Fundamental Duties” (Article 51-A) was inserted in the Constitution by the 42<sup>nd</sup> Amendment Act in 1976.

The Constitution of India, however, did not make any fundamental change in the legal system left behind by the Britishers. Article 372(1) of the Constitution, explicitly states that:

Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

The relevant expression “law in force” under Article 372 of the Constitution includes not only statutory law, but also custom or usage having the force of law and as such, it must

be interpreted as including the common law of England which was adopted as the law of this country before the Constitution came into force.<sup>6</sup>

The Indian Constitution is basically federal in character, marked by the salient features of a federal system, namely, supremacy of the Constitution, division of power between the centre and the state governments, the existence of an independent judiciary and a well-defined procedure for the amendment of the Constitution. It establishes a system of legislation / administration and clearly defines the spheres of authority between the Union and the states, each endowed with sovereign powers to be exercised in fields assigned to them respectively. There is a fine-tuning of the center-state relations. An amendment in the respective jurisdictions of the Union and the states can be brought about through a special procedure in Parliament and ratification by a majority of the states thereto.<sup>7</sup> The mode of establishment and jurisdiction of courts and the appointment of judges are also defined therein.

The Indian Constitution provides for a parliamentary form of government. There is a separation of powers between the legislative, executive and judiciary. The executive power of the Union vests in the President and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.<sup>8</sup> The officers subordinate to him also includes a minister.<sup>9</sup> The President is also the supreme commander of the defence forces, but this power is subject to laws made by the Parliament.<sup>10</sup> Besides, there are several other provisions which mention specific functions of the President.<sup>11</sup> The President in the exercise of his functions acts on the advice of the Council of Ministers, which is headed by the Prime Minister.<sup>12</sup> All executive actions are taken in the name of the President,<sup>13</sup> though such power, in practice, is exercised by the Council of Ministers.

Legislative activities in India are carried out at the Centre by the Parliament and in the states by the state legislatures. At the Centre, the legislative body consists of the *Lok Sabha*, *Rajya Sabha* and the President of India (who is also empowered to promulgate ordinances – a law making function). It is essential that all enactments must have the approval of these three organs before they become Acts.<sup>14</sup> Except the finance bill, and bills relating to the financial matters, all the bills can be introduced either in the *Lok Sabha* or in the *Rajya Sabha*. However, the finance bill and the bills relating to the financial matters

must be introduced in the *Lok Sabha* only.<sup>15</sup> The same is the position in the states also.<sup>16</sup> Annexure I and II provide an overview of the powers of the Legislature and the Executive at the Central and State levels.

### ***Indian Judicial System***

India's court system is a coordinated, pyramid structure of judicial authority. At the head is the Supreme Court with a high court for each state or group of states. Under the high courts, subordinate courts, including district and sessions courts, function, and, at the grass-root level, in some states, *Nyaya panchayats* decide petty civil and criminal matters. Subordinate judiciary is divided into civil and criminal courts, presided over by a district (civil matters) and/or sessions (criminal matters) court judge. Below district and sessions courts are courts of civil jurisdiction, known as *munsifs* or civil judges, and magistrates courts that exercise criminal jurisdiction. Small causes courts have been established in some districts. Courts apply central and state law, as the case may be. Annexure III gives the court hierarchy of Indian Judicial System.

Though the country has a vibrant legal system with progressive laws, well established institutions, independent judiciary and private activists organizations (NGOs), but the system faces few insurmountable challenges, viz., huge backlog of court cases, delay in dispensing justice, lack of accountability and transparency, high cost of litigation and large scale acquittals in the criminal cases. Among these, the greatest challenge is the failure of the judiciary to deliver justice expeditiously. There are more than 20 million cases pending with the subordinate judiciary, 3.6 million in different high courts and 23,000 in the Supreme Court.<sup>17</sup>

Reasons for backlog and delay are linked to a plethora of problems, viz., poor infrastructure; minimal access to new technology, such as computerization in every segment of the justice delivery system, including courts; inadequate resources; procedural complexity; outdated laws or provisions in certain laws, particularly in the Indian Evidence Act, Code of Civil Procedure, 1973, Code of Criminal Procedure, Indian Penal Code, etc; inadequate, inequitable and arbitrary implementation of laws and judicial decisions; lack of training in the law enforcement agencies; inadequate remuneration, with no accountability

mechanism for judicial acts. There is also the ineffective alternative dispute resolution (ADR) machinery, viz., *Nyaya Panchayats*, arbitration, conciliation, etc. leading to cramming up of the court-dockets, and insufficient/incomplete legal aid for the poor. Delay, procedural complexity and unlimited appeal mechanisms also make litigation costly.

The report of the Arrears Committee, 1989-90 had also highlighted and identified some of the causes. Though this report is not based on any scientific study, it opined that unfilled vacancies in the high courts largely accounted for the accumulation of cases. It also emphasized on the settlement of cases by mutual compromise as a better method than seeking adjudication in the adversary system.<sup>18</sup>

The National Judicial Pay Commission, in its first report submitted in 1999, examined the work methods and environment in courts and noted following difficulties faced in court system that affect the interests of litigant public:

- (i) The Courts are over burdened with work. The experience is that even at the stage of framing of issues, there is no assistance from advocates in most of the courts. Interrogatories are seldom resorted to and very often documents are filed after the commencement of trial with an application seeking permission.
- (ii) Advocates produce hindrance in observing the procedure and a very insisting officer is likely to be harassed in many ways.
- (iii) Considerable long time is being wasted in securing the presence of the parties for the purpose of admission and denial and seeking reply to the interrogatories.
- (iv) Language of the courts is an additional problem. In almost all states, the judicial proceedings in lower courts are recorded in local language of the state concerned. Proceedings, including evidence, are recorded by the *Peshkar* (Reader) in vernacular while the presiding officer records the proceedings in English. On account of implementation of transfer policy of judges of the high courts, generally judges in a high court are from outside the state concerned, who are not familiar with local language of the state and face considerable difficulty in dealing with cases when the records are only in local language. The translation of all the records into English is an enormous task besides the cost factor and even if it be done, it would cause delay in disposal of cases.<sup>19</sup>

The number of judges required in the justice delivery system is also very low which affects the speedy disposal of cases. The ratio of judges per million population in India is the lowest in the world. In 1987, India had only 10.5 (presently, it is 11) judges per million as against 41.6 in Australia, 75.2 in Canada, 50.9 in England and 107 in USA.<sup>20</sup> However, it is not merely the raising of strength of the judges in the subordinate courts and the high courts that is needed, it is equally crucial that the right appointments are made, based on merit, suitability, ability and integrity. The job of judgeship needs to be made attractive to have the best brains and persons with integrity on the Bench. It is a known fact that the leading members of the Bar are always reluctant to adore the mantle of judgeship.

The procedure for disposal of cases is another area of concern, which needs to be made more exact and time bound. Too many appeals and revisions against even interim orders help vested interests to prolong litigation. The Government of India amended the Code of Civil Procedure in 1999 in order to speed up the justice delivery system by settling cases within a time-frame, with minimum adjournment on stated grounds and a limited rights to appeal. The Act is in operation since July 2002.<sup>21</sup>

On the criminal side, often, investigating (police) and prosecuting agencies are not well equipped with modern means and scientific training to deal with the volume and types of crimes occurring, which leads to rising crime and acquittal rates. The average conviction rate is of 39.02 as per the information from the National Crime Records Bureau.<sup>22</sup> The reasons for poor conviction rate are attributed to the nature of the procedural laws and practices followed by criminal courts. It is also to a great extent because of improper and deficient investigations. Speedy trial holds the key to the sentencing policy. In this regard, the Indian Penal Code, Evidence Act and Code of Criminal Procedure are in many respects antiquated laws. Heavy back-log of cases, increasing rate of acquittal, lack of trained police staff lead to overcrowding of jails as well.<sup>23</sup> There are an estimated two lakhs under-trials in different jails of the country on which states spend more than 461crores annually.<sup>24</sup> Sentencing ought to be strict with limited alternatives to incarceration. Corruption within the police and among lower-level court administrators is said to be quite widespread.

A *Code of Criminal Procedure (Amendment Bill), 1994* proposed an overhaul of criminal procedure law and practice. Various government committees and the Law Commission of India<sup>25</sup> have over the past forty years produced comprehensive reports and recommendations for reform of India's criminal law and procedure. Different stakeholders in the criminal administrative system, including the Supreme Court, high courts and sessions courts, prison authorities and legal services authorities – constituted under the Legal Services Authorities Act, 1987, have implemented a variety of *ad hoc* measures within their jurisdictions to reduce delay and increase efficiency. However, no coordinated and comprehensive plan to reform criminal law and procedure led by the Government of India has been initiated. Presently, Justice Malimath Committee, constituted on 28.11.2000, is looking into different aspects of criminal justice system.

The delay in the disposal of cases, is, to an extent, also “judge-made”. Lack of punctuality, laxity and lack of control over the case file and court proceedings contribute in no small measure to the delay in the disposal of cases. Habitually coming late in court or rising early or failing to deliver judgments for long periods of time are some of the malaises afflicting the judiciary, which in no small measure compound the problem of justice delivery system and compromise the image of the judiciary. Slow motion justice is no justice, particularly when significant rights of the parties are involved in litigation.

### ***Appointment of Judges in the Courts***

Only a citizen of India who has been: (i) a judge of a high court for at least 5 years or (ii) an advocate of high court for 10 years or (iii) a person, who in the opinion of the President, a distinguished jurist - can qualify for appointment as a judge of the Supreme Court of India.<sup>26</sup> Similarly, to be a judge of the high court, one must be a citizen of India and (i) held a judicial office in India for 10 years or (ii) practiced as an advocate of a High Court for a similar period.<sup>27</sup> For recruitment to the subordinate judiciary, known as the State Judicial Service, one has to appear in the examination conducted by the Union Public Service Commission or High Court of State and he should just possess a degree in law and should not be more than 32 years of age.<sup>28</sup>

A judge of a high court or the Supreme Court can be removed from service only through impeachment by the Parliament.<sup>29</sup> The legal mechanism needs to be devised through law to deal with less serious cases, not deserving impeachment, by an independent judicial body. Judges of subordinate courts can be removed by the High Court to which they are subordinate.

### **Alternative Dispute Resolution Mechanism**

In order to meet the challenge of monumental backlog of cases in courts, and also to dispense speedy justice the Government is increasingly resorting to alternative dispute resolution (ADR) mechanism. The necessary laws have been enacted towards this end and tribunals and forums have been constituted. There are family courts, consumer forums, administrative service tribunals, railway claims tribunals, Motor Accident Claims Tribunals, etc. An appeal may lie against their rulings to a high court or to the Supreme Court.

In the new economy, the ADRs will have the central role in the quick disposal of cases, where the parties will not be saddled too much with the dilating court procedure. They give the party a certain degree of control over the procedure, law, venue and speed in the disposal of a commercial dispute. The Government, in 1996, enacted Arbitration and Conciliation Act, replacing thereby the earlier laws on arbitration – the Arbitration Act, 1940; the Arbitration (Protocol and Convention) Act, 1937; and the Foreign Awards (Recognition and Enforcement) Act, 1961. The new Act (now under amendment) is based on the UNCITRAL's Model Law on International Commercial Arbitration, 1985, to repose the confidence of the foreign entrepreneurs in the legal system. The award of the arbitral tribunal may, however, be challenged before the high court or the Supreme Court on specified grounds as mentioned in the Act. It may, however, be noted that to make the ADR system to work effectively, there should be minimal intervention from the court. Once the appeal comes before the court, there are all the chances that it will take years to settle. Annexure III gives an overview of the ADRs in the appellate set-up.



### ***Lok Adalats and Nyaya Panchayats***

The Legal Services Authority Act, 1987 has constituted the National Legal Services Authority (NALSA) and state legal services authorities, which provide legal aid to poor and hold *Lok Adalats* for quick disposal of cases. These authorities, function under the Supreme Court and respective high courts. Through their legal aid programmes, they help in spreading the legal literacy among the masses about their rights. In contrast to other ADRs, the cases disposed of by *Lok Adalats* are final, with no right to appeal. At present, these *Lok Adalats* are limited mainly to road accident and matrimonial cases, primarily to marginalized groups. Under the amended Civil Procedure Code, 1999, the permanent Lok Adalats could be constituted at the discretion of the Chief Justice of India. Besides, permanent and continuous Lok Adalats have been set-up in every district throughout the country which meet regularly.

Similarly, *Nyaya Panchayats*, mainly operating in villages and constituted under the 73<sup>th</sup> Amendment of the Constitution in 1992,<sup>30</sup> be assigned an accelerated role in dispute settlement, whose judgement should have the sanctity of a court verdict and right to appeal against such settlements be restricted.

In order to lessen the burden of the courts, it is also imperative to enhance the powers and jurisdiction of different tribunals, constituted for various purposes such as tax, administrative matters, debt relief, consumer, labour etc., with a very restricted right to appeal to the Supreme Court.

### ***Fast-Track Courts***

To reduce the backlog of cases in the courts<sup>31</sup> and in pursuance of the recommendations of the 11<sup>th</sup> Finance Commission, in the year 2001, proposed to establish 1,734 additional courts, known as fast track courts, to expedite the disposal of long pending cases in district and subordinate courts. The Government sanctioned Rupees 5029 million for the same. In these courts, priority is to be given to sessions (criminal) cases and cases involving under-trials in jails. These courts will continue till March 2005 and are expected to dispose of about two million cases. But the progress in starting up these courts has been for from

satisfactory. Up to January 1, 2003, about 1,300 fast track courts have become functional and over 60,000 criminal cases have been disposed of by these courts.<sup>32</sup>

## **II. SOURCE OF LAW AND TYPES OF LEGISLATION**

### **A. Source of Law**

In India, the main sources of law are:

- i. Constitution
- ii. Legislation
- iii. Ordinances
- iv. Precedents (Judicial decisions)
- v. Custom
- vi. International Conventions / treaties ratified by the Government

#### ***Constitution***

In India, like many other countries, Constitution is the *grundnorm* (in Kelsen's term), i.e., the supreme law of the land and all the three organs of the State - legislature, executive and judiciary derive their powers from and act under the limitations imposed by the Constitution. Constitution consists of rules, which establish and regulate or govern the government.

#### ***Legislation***

Legislation, in the form of Acts, statutes etc., is another source of law. It consists of formal declaration of legal rules by a competent authority duly empowered by the Constitution. Legislation lays down the general rules of conduct for the society in a given situation. Legislature may enact, modify or repeal the existing laws or lays down new rights and duties. Unlike a unitary Constitution, like Britain, where law-making power for the whole country is vested in one central legislative body, and federal Constitution like that of the United States, where power is divided subject-wise between the central legislature on the

one hand, and the state legislatures on the other, in India, the law-making power of the legislature is not unlimited. The Constitution of India lays down the precise power and procedure of law making between the Centre and states. Besides, it guarantees fundamental rights, to which the legislation, central or state, has to conform. Any law inconsistent with such constitutional provisions is declared invalid and unenforceable by the courts.

**(a) Central Legislation:** The law making power is divided between the Centre and States as per the constitutional scheme under Schedule VII. There are three lists incorporated therein, namely, Union, State and Concurrent lists. The power to make laws for the whole or any part of the territory of India<sup>33</sup> is vested in the Union Legislature, called the Parliament.<sup>34</sup> This power, however, extends only to such subjects of legislation as are enumerated in the 'Union List'<sup>35</sup> and 'Concurrent List'<sup>36</sup> of the Seventh Schedule to the Constitution and such matters as are not enumerated in any of the three lists in the Seventh Schedule (residuary power).<sup>37</sup> Fundamental Rights<sup>38</sup> and Freedom of Inter-State Trade and Commerce<sup>39</sup> are other important provisions of the Indian Constitution imposing express limitations on the legislative power of the centre. The laws made by Parliament of India are known as Central Acts or Central Statutes. The Parliament has also been empowered to make laws on any of the matter of the 'State List' under the following conditions: *First*, if the *Rajya Sabha* has declared, by resolution supported by not less than two thirds of the members present and voting, that it is necessary or expedient in the national interest that Parliament should make laws with respect to specified matters from the State List. The resolution will remain in force for one year unless relaxed.<sup>40</sup> *Second*, Parliament may legislate on any matter in the State List while a relevant proclamation of emergency is in force.<sup>41</sup> *Third*, Parliament may legislate for two or more States by their consent. Such legislation shall apply to those States and any other state that adopts it afterwards.<sup>42</sup> *Fourth*, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with other countries or any decision made at an international conference.<sup>43</sup>

**(b) State Legislation:** The power to make laws for the whole or any part of the state is vested in the State legislature, which may make laws on such subjects as are enumerated in the State List and Concurrent List. In case a law made by the State legislature on a matter enumerated in the Concurrent List is inconsistent with a Union Law on the same matter, the State Law will be inoperative to the extent of inconsistency.<sup>44</sup> There is, however, one exception. In case a law made by the state legislature is inconsistent with the Union Law, the State Law will prevail over the Union Law if the same has been referred for consideration of the President and it has received his assent.<sup>45</sup> The State legislatures, too, are subject to the limitations imposed by the fundamental rights and freedom of inter-State trade and commerce.<sup>46</sup> The laws made by the State Legislature are known as State Acts or State Statutes.

### ***Ordinances***

In addition to the enactments passed by the Parliament or the State Legislatures, the President<sup>47</sup> of India and the Governor<sup>48</sup> of a state may issue ordinances when the Parliament or the State Legislature is not in session. An ordinance automatically lapses at the expiration of six weeks from the reassembly of Parliament.<sup>49</sup> These ordinances partake legislative character and are made in the exercise of legislative powers, within the contemplation of the Constitution.<sup>50</sup> The laws passed or ordinances issued, however, are subject to the judicial review of the higher judiciary to see their corrections in the context of the Constitution.<sup>51</sup> The Supreme Court has used this power of judicial review to venture into judicial activism going far beyond the traditional view that courts should only interpret the law and not make law. Judgments of the Supreme Court in public interest litigation, cases have verged on legislation.<sup>52</sup>

### ***Precedents***

Judicial precedents are considered to be an important source of law, which enjoy high authority at all times and in all countries. In common law system, which is adhered by India, theory of precedents enjoys a pivotal place among the sources of law, wherein the decisions laid down by the higher courts are binding on lower courts. Before Independence, the

highest court was the Privy Council and later the Federal Court. The decisions of these highest tribunals were binding on all the high courts and the courts subordinate to them in India. Under the Constitution of India, the highest court is the Supreme Court. Article 141 of the Constitution makes the law declared by the Supreme Court binding on all the courts within the territory of India,<sup>53</sup> even though they are contrary to the decisions of the House of Lords or the Privy Council.<sup>54</sup> However, the Supreme Court is not bound by its own decisions.<sup>55</sup>

The Supreme Court would not ordinarily upset its own previous decision and, in practice, the Supreme Court has observed that earlier decisions of the Court cannot be departed from unless there are extra-ordinary or special reasons to do so.<sup>56</sup> If the earlier decision is found erroneous and is thus detrimental to the general welfare of the public, the Supreme Court will not hesitate in departing from it.<sup>57</sup> In case of conflict between the decisions of the Supreme Court itself, it is the latest pronouncement which will be binding on the inferior courts, unless earlier was of a larger bench. The Supreme Court, however, is not bound by the decisions of the Privy Council or Federal Court.<sup>58</sup>

The decisions of a high court are binding on all the subordinate courts and tribunals within its jurisdiction under its power of superintendence over all courts (Art. 227).<sup>59</sup> In a high court, a single judge constitutes the smallest bench. A bench of two judges is known as Division Bench. Three or more judges constitute a Full Bench. A decision of such a Bench is binding on a smaller bench of the same high court. Thus, a decision by the Bench of a high court should be followed by other Benches unless they have reason to differ from it in which case the proper course is to refer the question for decision to a Full Bench. However, judgments of one high court are not binding on another high court or on courts subordinate to another high court.<sup>60</sup> They, however, have persuasive value.

Judgments of foreign courts are also of persuasive value. These judgments are normally cited before / by the Supreme Court and before / by in the high courts in the absence of Indian judgments on the point involved. Foreign judgments are seldom cited before the subordinate courts. In practice, the Supreme Court of India, to justify its decision on a given issue, often refers to the decisions of the Supreme Court of the United States of

America, House of Lords and Court of Appeal of the United Kingdom, or other common law countries, either to draw analogy or for showing distinction.<sup>61</sup>

### ***Custom***

In the early evolution of human society, the custom was the most important, and in some cases, the sole source of law. Over the period, its significance gradually diminished, and legislation and judicial precedents became the main sources. In every legal system, at different stages of legal development, there have been certain customs binding on the society, but in advanced societies they are more rationalized and are certain and definite.<sup>62</sup>

Custom, as a source of law, involves the study of a number of its aspects: its origin and nature, its importance, reasons for its recognition, its classification and the essentials of a valid custom. Requisites of a valid custom are stated to be:

- (i) *Reasonableness*: A custom must be reasonable. The authority of usage is not absolute but conditional on certain measure of conformity with justice, public policy and utility. It is reasonable if found to be in consonance with reason and its origin and continuance are capable of being explained. Thus, the “Sati Pratha”, could not take the place of a legal custom due to its being repugnant to the logical sense of justice and goodness in man.
- (ii) *Conformity with statute law*: No custom or prescription can take away the force of an Act of Parliament. The custom in order to be a source of law must not conflict with statute law.
- (iii) *Observance as of right*: It must have been observed as of right. Mere practice of a voluntary nature would not make custom valid.
- (iv) *Immemorial antiquity*: A custom to be valid must be immemorial. Recent and modern custom is of no account. It must have been observed for such a long time that “the memory of man runneth not to the contrary”.
- (v) *Continuity*: A custom to be valid must have continued, without interruption since time immemorial.
- (vi) *Peaceable enjoyment*: It must have been peaceably enjoyed, as custom owes its origin to common consent.

(vii) *Certainty*: Custom to be a source of law must be definite.

Customs have played an important role in moulding the ancient Hindu Law. Most of the law given in *Smritis* and the *Commentaries* had its origin in customs. The *Smritis* have strongly recommended that the customs should be followed and recognized. Customs worked as a re-orienting force in Hindu Law. In modern India also, in personal laws, despite being codified since 1950s, custom is an important source of law. In the case of Hindus and Muslims, personal laws, which are based on revealed truths in scriptures, i.e., *Dharmasastras*—in the case of Hindus, and *Shariat* - in the case of Muslims, commentaries and customs constitute important primary materials to the extent to which they have not been displaced by statutes. Mohammadan law, which is administered in respect of property and personal rights of the Muslims in India, is totally a customary law.<sup>63</sup>

Custom of the community or the personal laws of the parties have been accorded due recognition by both legislature and judiciary. The courts have relied upon the customs pleaded by parties while arriving at a decision. Parties in the court are also allowed to adduce evidence as to existing of any custom on which they place reliance in the suit.<sup>64</sup> Thus the expression “law in force” in Article 327 of the Constitution includes not only statutory law, but also custom or usage having the force of law.<sup>65</sup> However, custom can be abolished by statute either by express words or by use of words inconsistent with continued existence of the custom.<sup>66</sup> Therefore, even if there was a custom that has been recognized by law with regard to a hereditary village office, that custom may have to yield to a fundamental right.<sup>67</sup>

It is settled rule of procedural law of the country that in the matter of custom, a party has to plead in specific terms as to what is the custom pleaded by him.<sup>68</sup> The courts, in disputes and issues related to religious and charitable endowments, completely fall back on usage and custom of the institution to give justice to the parties before them.<sup>69</sup> Usage or customs is not restricted to sphere of application to personal laws only but even labour laws of the country also take note of customs, practices, etc. to determine the number of paid festival holidays per year.<sup>70</sup>

**Tribal customary laws:** India hosts number of tribes in different parts of the country. In tribal societies, the role of custom is quite significant. They rely on customs in every walk of their life. The customs are prevalent and are being followed among the tribes in matters of succession and inheritance apart from in marriage, divorce, etc. The framers of the Constitution recognized the need for a separate political and administrative structure for the tribes. Special provisions were made to prevent encroachment on their land, personal rights and other customs. In spite of the assimilation of tribal communities into the system of the state laws, there remains in tribal society a large residual area of autonomy in many matters of civil and social nature. The tribal council functions effectively in such cases even today. Tribal customary laws are ubiquitous, existing in all tribal groups, cherished, adapted and regarded as intrinsic to tribal identity. This body of law survives even among the numerically small, fragile tribal communities, facing the threat of extinction or dwindling of numbers. In spite of the lessening authority of the traditional jural authority, an attempt is made to preserve and uphold traditional norms.<sup>71</sup> The Supreme Court in *Madhu Kishwar v. State of Bihar*,<sup>72</sup> declined to declare the custom of inheritance/succession of the Schedules Tribes, which deny tribal women right to succession, as unconstitutional. They have nearly acquired the status of law among tribes.

#### ***Treaty, Convention and other obligations under International law***

Unlike many other Constitutions in the world, treaties are not a source of law in India unless legislated by the Parliament. Article 253 of the Constitution empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. There is no constitutional provision, making the treaties/conventions as a part of the municipal law automatically. Even if an international covenant or convention is ratified by the Government of India and such ratification is approved by the Parliament, it would still not be equated with the legislation<sup>73</sup> and would not be binding on the courts; they will have the persuasive value only and courts do rely on them while deciding a case. The Supreme Court, in many cases has referred to international treaties, declarations, in support of its



judgments.<sup>74</sup> In Vishakha's case,<sup>75</sup> the Court has laid down that any international convention not inconsistent with the fundamental rights and is in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. The Supreme Court, however, have referred only to human rights treaties to expand the scope of Article 21, i.e., "right to life."

## **B. Types of Legislation**

Broadly speaking legislation may be divided into two categories:

- (i) supreme legislation
  - (ii) subordinate legislation
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- (i) Supreme legislation is that which proceeds directly from the supreme or sovereign power in the State. It is supreme because no other authority can anul, modify or control it. Legislation by any other authority is subordinate legislation and is capable of being controlled by the supreme authority. In India, as already observed, the Constitution is the supreme law of the land. There are Central and state laws, enacted by the Parliament and the state legislature, as the case may be, in accordance with the constitutional scheme.
  - (ii) Subordinate legislation derives its authority to legislate only by delegation, express or implied, under an Act/statute of the Parliament or the state legislature. Municipal corporations, university bodies, railway companies and clubs get powers to make rules and orders governing themselves and their members under these Acts/statutes.

Subordinate legislation, may broadly be categorized as under:

- a. Executive Legislation – It is legislation by the executive of a State meant for supplementing the statutory provisions by the issue of more detailed regulations pertaining to the subject, viz., Trademarks Act, Plant variety and Farmers' Right Act.
- b. Judicial Legislation – It is the rule-making power of the courts for the regulation of their own procedure.

- c. Municipal Legislation – The bye-law making power of municipal authorities is another form of subordinate legislation.
- d. Autonomous Legislation – Legislation by autonomous bodies like universities or railway companies is also termed subordinate legislation.

### ***Delegated Legislation***

Delegated Legislation as mentioned earlier is a kind of subordinate legislation. In a welfare state, the functions of the Legislature get enormously increased, with the result that it becomes rather impracticable for the legislature to make laws on all matters in detail. The legislature, therefore, defines and lays down the fundamental principles and policies in the legislation and delegates powers to subordinate bodies or administrative authorities to lay down the details. The body to which the power is delegated acts as the delegate of and within the limits of the power conferred by the legislature. This process is known as delegated legislation. Legislation so made is known by the names of (i) rules, (ii) regulations, (iii) schemes, (iv) notifications, (v) orders and (vi) bye-laws.

However, beyond a certain limit there can be no delegation of power by the legislature. The majority judgment in *re: Delhi Laws Act*,<sup>76</sup> settled that a legislature cannot delegate its *essential powers* of legislation, which includes its functions of laying down legislative policy in respect of a measure and its formulation as rules of conduct. Thus, in India, the legislature cannot delegate its essential functions or power to the executive. The essential function of the legislature is the determination of the legislative policy and enacting that policy into a binding rule of conduct. This function of laying down of policy and enacting it, therefore, cannot be delegated. But when the legislature has once laid down the policy and a standard is established by the statute, the executive may be given the power to make subordinate rules within that limit. Such delegation is not unconstitutional. In other words, where the law lays down the principles and affords guidance to the subordinate law-making authority, details may be left for being filled up by the executive or by other authorities vested with quasi-legislative power.<sup>77</sup>

The Acts passed by the Parliament may delegate powers to the Central Government, the State Governments and to other authorities. A few Acts, which delegated powers to

such authorities, are Defence of India Act, 1939 (delegation to the Central Government, to Provincial Governments or to any other authority), the Essential Supplies Act, 1946 (delegation to the Central Government-Provincial Government), the Essential Commodities Act, 1955 (to their officers) and Central Sales Tax Act, 1956 (delegation to Central Government and State Government).

Delegation of powers under the Central Acts is made to the local bodies of the centrally-administered territories of Lakshdweep, Andaman, Nicobar, Manipur etc. Under Central Acts, many public corporations in India have been established and they, being more or less independent statutory bodies, have been vested with wide rule-making powers regarding their organizational and business activities. The Central Acts also delegate powers to the Central Government to make rules in respect of public corporations. For example, under section 59 of the Damodar Valley Corporation Act 1948, the Central Government is empowered to make rules with respect to all or any of the matters of D.V.C. Similar instances may be found in the Indian Lac Cess Act, 1930 under section 9; the Tea Act, 1953 under Sec. 50 and the Coir Industry Act 1953 under section 27.

Where a statute passed by a State Legislature delegates powers to administrative authorities in order to supplement the statute in necessary details, it is known as State Delegated Legislation. State Governments, mostly in respect of their activities in relation to the items mentioned in List II of the Constitution of India, have been delegated powers under the Acts passed by their respective legislatures. Section 237 of the U.P. *Kshettra Samittees and Zila Parishads* Act, 1961, delegates powers to the State Government to make rules. Similarly, under the U.P. Panchayat Raj Act, 1947; the U.P. municipalities Act 1916 and the U.P. District Board Act, 1922, the State Government has been delegated powers to make rules. The local bodies created under these Acts have been delegated powers to make bye-laws. State Legislation may also delegate powers to public corporations. Under their respective State statutes, public corporations like U.P. Warehousing Corporation and Calcutta State Transport Corporation have been delegated powers to make rules.

### **C. Hierarchy of Law**

The above discussion has made it clear that in India, Constitution is the supreme law of the land. Laws are enacted by the Parliament and the state legislatures as per the constitutional scheme. Rules, regulations, bye-laws can be framed under these laws by the executive in the form of subordinate legislation which is a prominent source of law. Together with the ordinances issued by the President or the Governor of a state, they constitute the primary sources of law and can be over ruled by another properly enacted law on the same subject.

The decisions of the Supreme Court are the law of the land and binding on all the courts, unless over-ruled through an enactment by the Parliament. Similarly, custom and common law, unless in conflict with a statutory law, are other important sources. International treaties / conventions are only of persuasive value in India, unless legislated. Though they constitute important sources of law under the Constitution, but statutory law gets precedence over them. Broadly the hierarchy of law is as follows:

- I. Constitution of India
- II. Legislation
  1. Central & State Legislation
  2. Subordinate Legislation
  3. Ordinances
- III. Precedent (Judgements of the Supreme Court)
- IV. Customs
- V. Common Law
- VI. Conventions/ Treaties, if legislated (otherwise only have persuasive value)

Sources III, IV and V are law and followed by courts unless legislated otherwise by the Parliament.

### III. HOW TO FIND LEGISLATION

#### A. Legislation Material

There are official and unofficial sources to access the legislative material. The most important official publication is the Gazette of India, which publishes all the legislation brought out by the Central Government. A state gazette publishes state Acts.

#### *Official publications*

- (i) The Constitution: An official copy of the Constitution of India is available with the office of the Controller of Publications (Government of India, Delhi) and at its branches and authorised agents. As the amendments are quite frequent, it is always advisable to check further amendments, if any, after the date of publication of the new edition. For this purpose, one has to consult the Acts-section of the *Gazette of India*.
- (ii) Gazette of India: The legislative material, i.e., Bills, Acts, rules, notifications, orders etc. are published in the **Gazette of India**. The following table shows the details of the publication of the material in the Gazette:

#### PART I -

Section 1 = Notifications relating to non-statutory rules, regulations, orders, and resolutions issued by the ministries of the Government of India (Other than the Ministry of Defence) and by the Supreme Court.

Section 2 = Notifications regarding appointments, promotions, leave, etc. of Government officers issued by the ministries of the Government of India (Other than the Ministry of Defence) and by the Supreme Court.

Section 3 = Notifications relating to non-statutory rules, regulations, orders, and resolutions issued by the Ministry of Defence.

Section 4 = Notifications regarding appointments, promotions, leave, etc. of officers issued by the Ministry of Defence.

## PART II -

Section 1 = Acts, ordinances and regulations.

Section 2 = Bills and reports of the select committee on bills.

Section 3(i) = General statutory rules (including orders, byelaws etc. of general character) issued by the ministries of the Government of India (Other than the Ministry of Defence) and by central authorities (other than the administrations of Union territories).

Section 3(ii) = Statutory orders and notifications issued by the Ministries of the Government of India (Other than the Ministry of Defence) and by the central authorities (other than the administrations of Union territories).

Section 4 = Statutory rules and orders notified by the Ministry of Defence.

## PART III-

Section 1 = Notifications issued by the Auditor General, Union Public Service Commission, Railway Administration, high courts and the attached and subordinate offices of the Government of India.

Section 2 = Notifications and notices issued by the Patent Offices, Calcutta.

Section 3 = Notifications issued by or under the authority of Chief Commissioners.

Section 4= Miscellaneous notifications including notifications, orders, advertisements, and notices issued by statutory bodies.

PART IV-Advertisements and notices by private individuals and private bodies.<sup>78</sup>

### (iii) Codes

*India Code*- This is the official publication containing all the Acts in force in India without commentaries. This is kept up-to-date by issuing correction slips from time to time.

*Acts of Parliament*- This is an official annual publication containing all the bare Acts passed in a particular year.

*Non-official Publications* - There are many private publications, which are brought out at regular intervals and contain the central as well as the state legislative

materials. Some publications also contain the rules issued by the central and state governments, for example, A.I.R. Manual (22 volumes) (3<sup>rd</sup> ed. 1969-75) published by the All India Reporter Ltd., Nagpur, *Civil Court Manual* – Published by the Madras Law Journal Ltd., Madras.

## **B. Places of Research**

### ***Law libraries and other useful places for legal research***

Law Libraries are the important places for legal research, which hold the research materials with them. A law library is different from others in the sense that, by its nature, it has to be a reference library. Mainly it is a research library where one reference leads to another and, therefore, a reader has to consult a number of books / periodicals simultaneously to conduct research on a particular issue/problem. Another peculiar nature of a law library is that it has to keep its collection up-to-date.<sup>79</sup> Beside legislative material and the law reports, other material for reference is also available therein, like newspaper reports, government reports (e.g. reports of various Commissions appointed by the Government of India or state governments), magazines (both Indian and foreign), etc.

In India, all categories of libraries are more or less departmental libraries and hence it is natural that they are located in the department which they are supposed to serve. The various categories of law libraries are (i) the law college libraries; (ii) the Supreme Court and high court libraries (iii) the law ministry and the legal remembrancer's libraries (iv) the bar association libraries and, among others, the libraries owned by many law firms and individual lawyers. Quite apart from these, library of the Indian Law Institute caters the needs of persons interested in legal research. It is one of the leading law libraries of the country. It has over 65,000 volumes and receives about 263 current legal periodicals, on a regular basis. A plan for automation of the library is in progress. The library will be totally computerized & placed on website very soon.

Apart from the law libraries, the following are other useful places for legal research from where valuable information or data may be collected and used, particularly in empirical research:

- (i) Government Departments
- (ii) National Archives
- (iii) Social and Welfare Organizations, such as the Indian Social Institute
- (iv) Non-Governmental Organizations, viz., Lawyers Collective, Kali's Yug, Haq, Prayas, etc.
- (v) Law Commission of India, Human Rights Commission, Schedule Caste & Schedule Tribes Commission, Minority Commission, etc.

## **C. Citation of Legislation**

### ***1. Citation of the articles of the Constitution***

The provisions of the Constitution of India are cited by articles and clauses. In footnotes, the symbol "Art." is generally used and if more articles are to be mentioned, it is cited as "Arts." One refer to "Constitution" only if reference is to the Indian Constitution; otherwise the Constitution is specified, viz., "the U.S. Constitution".<sup>80</sup> However, where it refers to certain amendments made in the Constitution, one mentions the amendment therein, for example, Art. 43A of the Constitution (42<sup>nd</sup> Amendment) Act, 1976. If a reference is to be made to the Constitution Assembly Debates, it is cited by referring to volume and pages, for example, as *Constituent Assembly Debates*, Vol. III, P. 488.

### ***2. Citation of sections of the Legislation***

In India, there are both Central and State legislations. While referring to Central legislation, only the name of the Act followed by the year of passing of such legislation is mentioned. Wherever applicable, the section is also referred to. In the footnotes, for section and sections generally "S" and "Ss" are used. Wherever a mention has to be made to the amended Act, the reference to the amendment must be mentioned, for example, Indian Divorce (Amendment) Act, 2001. In case of State Acts, the name of the State Acts must be mentioned, for example, Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.



### ***3. Mode of Citation of various legislation***

There is no uniform system of citation of legislation followed in India. There are, however, certain common abbreviations for some legislations, as mentioned below:

IPC	-	Indian Penal Code, 1860
Cr. PC	-	Code of Criminal Procedure, 1973.
CPC	-	Code of Civil Procedure, 1890
IDA	-	Industrial Disputes Act, 1947.
IESOA	-	Industrial Employment (Standing Orders) Act, 1946.
TUA	-	Trade Unions Act, 1926
CLRA Act	-	Contract Labour (Regulation & Abolition) Act, 1970
I T Act	-	Income Tax Act
CST Act	-	Central Sales Tax Act
PBA	-	Payment of Bonus Act
PGA	-	Payment of Gratuity Act, 1972
PWA	-	Payment of Wages Act, 1936.
WCA	-	Workmen's Compensation Act, 1923.

## **IV. HOW TO FIND CASE LAW (PRECEDENT)**

### **A. Case Law Material**

Cases decided by the Supreme Court and high courts, if certified, are published in official and unofficial reports. Decisions of the lower courts are not published. One may access these judgments from the registry of the respective courts. The decisions rendered by Tribunals or Consumer forums are published by the private publishers.

#### ***Official reports***

- (i) *Federal Court Reports* (11 volumes) (1939-50) (Manager of Publications, Delhi) – This is the official publication of the cases decided by the Federal Court which was abolished with the setting up of the Supreme Court in 1950.

- (ii) Supreme Court Reports, (since 1950) (Manager of Publications, Delhi) – This is a monthly publication reporting cases, decided by the Supreme Court.
- (iii) *Cyclostyled Judgments* – The Supreme Court Registry, with the permission of the Chief Justice, also supplies copies of the judgments to a few select libraries, like the Library of the Indian Law Institute.
- (iv) *Indian Law Reports*- These are the official publications for the state high courts, published monthly and cited, for example, as “I.L.R. Allahabad”, “I.L.R. Bombay”, after the name of the concerned High Court.

### ***Unofficial reports***

*All India Reporter (A.I.R.)* - Among the private law reports, the most commonly used and relied upon, even by the courts, is the A.I.R. Apart from the Supreme Court and high court cases, it contains several useful features such as the tables of cases cited and cases reversed or affirmed. It is published every month.

***Other reports*** - There are few law reports exclusively devoted to Supreme Court cases, such as, Supreme Court Journal (published since 1950 by Madras Law Journal Ltd., Madras), Supreme Court Cases (published since 1969 by Eastern Book Co., Lucknow), and SCALES (published by National Law Review, New Delhi).

### ***High Court reports***

Apart from the A.I.R., almost in each state at least one law report containing cases decided by the High Court of that state are published as High Court Reports. Some of the reports of long standing are Allahabad Law Journal, Bombay Law Reporter, Calcutta Weekly Notes and Madras Law Journal.

### ***Specialized law reports***

These law reports specialize in cases pertaining to particular branches of law. They report cases decided by the Supreme Court, high courts and tribunals. Some of the popular ones are Labour Law Journal, Labour and Industrial Cases, Industrial Court Reporter, Labour

Law Reporter, Criminal Law Journal, Income Tax Reports, Company Cases and Sales Tax Cases, Patent and Trademark cases.

## **B. Citation of Cases**

### *Case Citations*

The core of a case citation consists of:

=> the parties' names - names are underlined or italicized

- a lower case "v." replaces "versus"
- names are followed by a comma

=> an address for the case consisting of:

- reporter volume number
- reporter name (abbreviated )
- the first page of the case in that volume
- if the reference is to a portion of the opinion, the page or pages of that part will follow the first page, set off by a comma

=> in most situations only one address is required, in a single preferred reporter

### *Citation of law reports*

Citations may sometimes be confusing and, therefore, it may become difficult to know the exact location of the case. For example, the same report may be cited differently or two reports may be cited in the same way. For example, A.I.R. which is usually cited as A.I.R. 1966 S.C. 1466 may also be cited at times as A 1966 S.C. 1466, or I.L.R. may be cited as I.L.R. (1966) All. 141 or (1966) I.L.R. All. 141. Similarly, A.L.J. could be read as *Allahabad Law Journal*. The names of reports of cases are cited in abbreviated form only.

A list of some of the law reports, publishing cases, is given below:

- |       |   |
|-------|---|
| A C J | Accident claims Journal (Monthly): 12 Malka Ganj, Delhi – 110 007.                        |
| A I R | All India Reporter (Monthly): All India Reporter Ltd., Post Box No. 209, Nagpur- 440 012. |

- An L T Andhra Law Times (Weekly): Andhra Law Times, 16.11.418/3 Balaji Sadan, Dilsukhnagar, Hyderabad – 500 035.
- Arb L R All India Arbitration Law Reporter (Monthly): 27-28, Gokhale Market, Opp. Tis Hazari Court, Delhi – 110 054.
- C P R Consumer Protection Reporter c/o Vinod Publications. P.B. No. 1002, Church Road, Kashmiri Gate, Delhi 110 006.
- Cri L J Criminal Law Journal (Monthly): All India Reporter Ltd., Post Box No. 209, Nagpur- 440 012.
- C L T Cuttack Law Times (Fortnightly): The Law Times Press, Cuttack – 753 002.
- Exc L T Excise Law Times (Fortnightly): Central Law Office, 1512-B, Bhishm Pitamah Marg, (Opp. P.T. College, Defence Colony) New Delhi – 110 003.
- G L T Gauhati Law Times (Monthly): North Eastern Law House, Gandhi Basti, Guwahati 781 003.
- Kar L J The Karnataka Law Journal (Weekly): No. 5, 2<sup>nd</sup> floor, Sujatha Complex, 1<sup>st</sup> Cross, Gandhi Nagar, Bangalore – 560 009.
- K L T Kerala Law Times (Fortnightly): Kerala Times Press, Ernakulam, Kerala.
- Lab I C Labour and Industrial Cases (Monthly): All India Reporter Ltd., Post Box No. 209, Nagpur – 440 012.
- M L J Madras Law Journal (Weekly): M L J Office, Post Box No 604, Mylapore, Madras – 600 004.
- S C C Supreme Court Cases (Fortnightly): Eastern Book Company, 34, Lal Bagh Lucknow - 266 001.
- S C J Supreme Court Journal (Monthly): Orient Law House, B-12, Amar Colony, Lajpat Nagar IV, New Delhi.
- S C R Supreme Court Reports: The Controller of Publications, Delhi 110 001.
- Tax L R Taxation Law Reports (Monthly): Post Box No. 209, Nagpur – 440 012.

## **V. OTHER MATERIALS**

### **A. General**

Law has an intimate connection with other disciplines like history, economics and politics. For example, if the economic policy of a village is being mapped out, the question would arise as to how such taxes should be collected and what would be the machinery to collect them. Here the law of taxation comes in and works side by side with the economic policy to make the scheme a success. In these circumstances, it is natural that many treatises published, articles written and data collected in these subjects, will be of great help in legal research. Such material, referred to as non-legal material, is an important source of information to legal researcher. For example, if an article in an “Economic Times” deals with the impact of taxation, will be equally helpful not only to a student of economics but to a law student who has taken up taxation. Similarly, many treatises and articles treat various topics in a non-legal fashion, but they are, nevertheless, a source of valuable information to a person conducting legal research.

**Value of Non-Legal Materials:** Though the value of non-legal materials is undisputable in legal research, especially to those who are writing a legal paper or a thesis, it is, however, not possible to give any clue as to where the non-legal materials can be found. One who is doing research on a specific branch of law like taxation, labour and commercial law could look up publications in the allied fields of Economics and Commerce or a student working in Constitutional law may consult publications in History and Political Science. In empirical research, the importance of non-legal material is unparalleled.

### **B. Law Dictionary**

The law dictionary defines and illustrates the meaning of words terms and phrases which are legal or have a legal stant. These words are listed in alphabetical order and the authorities for their definitions are cited or quoted. It is, however, not considered as a legal authority. It is not intended to state the law, but to define common meanings of words and terms of legal import. Even when it cites authority, it is not to be relied upon entirely, as the

authority cited defines each word or term only in its special context, and the meaning may be modified as conditions change. Nevertheless, the law dictionary is indispensable because it gives workable definitions which are necessary for the understanding of any legal work. Since most definitions cite their authority, a student may look up the cases themselves and find out how and why that particular meaning has been used.

A legal dictionary is a must for every law student and he should refer to it frequently so that he may get the correct meaning of the words and phrases he has been reading. Since India follows the common law system, the maxims, phrases and words as defined under the English law are part and parcel of the Indian law. The legal dictionaries used in England or the United States are quite popular with the legal practitioners and students. The most commonly used law dictionaries are: Black's Law Dictionary, Legal Thesaurus by William C. Burton, the Law Lexicon by T.P. Mukherjee and K.K. Singh, Concise Law Dictionary by Aiyer, etc., which are invariably found in every law library in India.

### **C. Law journals and Legal Periodicals**

Legal periodicals or reviews constitute one of the important groups of material of secondary authority. A legal periodical is very useful to students, practitioners and researchers in law. It is the most versatile among all the materials available in a law library. It represents diverse points of views and examine various legal topics.

The legal periodicals or reviews contain discussion, analysis and review of case law and statutes and highlights the emerging legal issues of the day. Since the writers of good articles in periodicals generally select a very narrow field of law to write on, like a court decision or a statute or a current legal problem, they are able to offer a thorough critical analysis of the topic, which is generally not to be found in any other media or books. These articles present a closer approach to the legal bases and juristic philosophy which underlie the changes in the social and economic life of the society. Thus, they reflect the changed concept of social justice which the general law books ordinarily do not do. The legal periodical discusses the law as it was, as it is, and as it ought to be with a thoroughness and thoughtfulness. They are also referred by the higher judiciary in its judgments.

The value of a legal periodical might well be judged in the context of the following:

- (a) The standing of the publication.
- (b) The learning ability of the writer.
- (c) The authenticity of its data.
- (d) The inherent reasonableness of his deductions in the light of legal history, existing social conditions and the known truths of all sciences affecting human conduct.

*Classification of Periodicals or Reviews:* Legal periodicals published in India, may be conveniently divided into three groups:

- (a) University/College/Law School reviews and journals
- (b) Private Reviews
- (c) Review published by Research Institutes

(a) *University/College/Law School reviews and journals:* These publications belong to the academic class. Their function is to express current legal criticism and to interpret trends of modern juristic philosophy which underline the present day court decisions. Often they reflect the scholarly character of attainment of their respective colleges. A list of some of the journals are given below:

Ban. L.J.	Banaras Law Journal, Banaras Law School
D L R	Delhi Law Review, Delhi University
K.u. L.J.	Kurukshetra Law Journal, Kurukshetra University
K U L R	Kashmir University Law Review
L R	Law Review: Shri Jai Narain Post Graduate College, Lucknow University
M O L	March of the Law, National Law School of India University, Bangalore
N C L J	National Capital Law Journal, Law Centre-II, Faculty of Law, University of Delhi

N L S J National Law School Journal, National Law School of India University,  
Bangalore

(b) *Private Reviews*: They contain articles of every branch of law, for example, the Indian Law Review, or it may deal only with a special field of law as the Indian Year Book of International Affairs. Each legal periodical has its own purpose to fulfil and its own function to perform. A list of some of the Journals are given below:

C M L J Civil & Military Law Journal (Quarterly): D-124, Rajouri Garden, New Delhi – 110 027.

Corp L Ad Corporate Law Adviser (Monthly): R.B.S. Publishing, 158, Basant Enclave, Palam Road, New Delhi – 110 057.

E N C Encounter (Bi-Monthly): Upalabdhi Trust for Developmental Initiatives. C-9, East of Kailash, New Delhi-110 065.

E P W Economic and Political Weekly (Weekly): Skylark, 284 Shahid Bhagat Singh Road, Bombay – 400 038.

Kali Yug Kali's Yug: Warlaw Trust, 9-10, Bahadurshah Zafar Marg, New Delhi – 110 001.

Law Col The Lawyers Collective, (Monthly): 818 Stock Exchange Towers, Delhi – 110 001.

Mah L J The Maharashtra Law Journal: Chandurkar Publishing House, Road No. 12, Dhantolia, Nagpur – 440 012.

Mains Mainstream (Weekly): F-24, Bhagat Singh Market, New Delhi-110 001.

M & C Management on Change: 3, Lodhi Institutional Area, Lodhi Road, New Delhi – 110 003.

PRP JHR The PRP Journal of Human Rights (Quarterly): No. 101, A-14, Bhandari House, Dr. Mukherjee Nagar, Delhi – 110 009.

R L R Religion and Law Review: Institute of Objective Studies (IOS): 162, Jagapal Extension, Jamia Nagar, New Delhi – 110 025.



(c) *Review published by Research Institutes:* Several Research Institutes in India bring out legal periodicals which contain articles, case notes, reviews and other information. A list of some of the Journals are given below:

- A d m      The Administrator (Quarterly): Lal Bahadur Shastri National Academy of Administration, Mussorie. (U.P.) 248179.
- A S I L      Annual Survey of Indian Law (Annual): The Indian Law Institute, Bhagwan Das Road, New Delhi – 110 001.
- C I L Q      Central India Law (Quarterly): The Central India Law Institute, 1601, Kasturba Primary School Bldg., Wright Town, Jabalpur – 482 002.
- C S          Chartered Secretary (Monthly): 22 Institutional Area, Lodhi Road, New Delhi – 110 022.
- F T R      Foreign Trade Review (Quarterly): Indian Institute of Foreign Trade, B-21, Institutional Area, South of IIT, New Delhi – 110 016.
- Guj L H      Gujarat Law Herald: City & District Law Library, Bhadra, Ahmedabad 380 001 (Gujarat)
- Helpage India RDJ      Helpage India: Research and Development Journal, Head Research and Development Helpage India, C-14, Qutab Institutional Area, New Delhi – 110 016.
- I A          The Indian Advocate (Quarterly): The Bar Association of India, Room No. 20, Supreme Court Building, New Delhi – 110 001.
- Ind Bar Rev      Indian Bar Review (Monthly): The Bar Council of India Trust, AB/21, Lal Bahadur Shastri Marg, Facing Supreme Court Building, New Delhi – 110 001.
- I A S S I Q      IASSI Quarterly: Indian Association of Social Science Institutions (IASSI) Institute of Applied Manpower Research, Indraprastha Estate, New Delhi – 110 001.
- I I C Q      India International Centre Quarterly: 40, Max Muller Marg, New Delhi – 110 003.
- I J C C      The Indian Journal of Criminology & Criminalistics (Quarterly): The Controller, Department of Publications, Civil Lines, Delhi – 110 054.

- I J I L Indian Journal of International Law (Quarterly): Indian Society of International Law, 7-8, Scindia House, New Delhi – 110 001.
- I J I R Indian Journal of Industrial Relations (Quarterly): Sri Ram Centre for Industrial Relations and Human Resources 4E/16, Jhandewalan Extension, New Delhi – 110 055.
- I J P A Indian Journal of Public Administration (Quarterly): Indian Institute of Public Administration, Indraprastha Estate, Ring Road (East), New Delhi – 110 002.
- I J S W Indian Journal of Social Work (Monthly): Department of Publications, Tata Institute of Social Science, Deonar, Bombay – 400 008.
- I Q India Quarterly (Quarterly): Indian Council of World Affairs, Sapru House, New Delhi – 110 001.
- I S L J Indian Socio-Legal Journal (Annually): Indian Institute of Comparative Law, Bhardwaj Bhawan, Rani Bazar, Bikaner – 334 001 Rajasthan.
- J C P S Journal of the Institute of Human Rights: Institute of Human Rights, Jarikatha, Nagpur – 440 014.
- J I L I Journal of the Indian Law Institute (Quarterly): The Indian Law Institute, Bhagwan Das Road, New Delhi – 110 001.
- J P I Journal of Parliamentary Information (Quarterly): Lok Sabha Secretariat, Parliament House, New Delhi – 110 001.
- P C I R The Press Council of India Review (Quarterly): Faridkot House, New Delhi – 110 001.
- S A Social Action (Quarterly): Indian Social Institute, Lodhi Road, New Delhi – 110 003.

*Authority of Periodicals:* Legal periodicals are only persuasive in value. No court ever cites a law review article as mandatory authority, but they are frequently referred to in opinions and footnotes in such a manner as to leave no doubt as to their persuasiveness.

#### **D. Internet, CD-ROMS, Etc.**

Now a days, computers are being considered as valuable aids in the law teaching and legal research. As a matter of fact, there are so many ways in which computers can be of a great help and utility in the modern legal education.<sup>81</sup> Faculties, institutions, departments concerned with law have realized the importance of internet revolution.

As for legal research, computers and internet can eliminate the need of physical presence in the library to do research, as library sources can be simulated on the computer.<sup>82</sup> Realizing the potential of internet, many law colleges, law institutes and law faculties have launched their own websites and provide their useful links and search engines. For instance, Dr.Ambedkar Law University, Chennai is using computer for the creation of data base for books and journals. The Supreme Court Case Finder (CD-ROM), with updated versions, is available for use by lawyers, law faculty members and research scholars. Direct Taxes Ready Reckoner on CD is available in the library.

A Lucknow-based law publishing company –Messrs Eastern Book Company Ltd. has also successfully ventured in this field. It has introduced, “Extremely user friendly” and a revolutionary research tool for the legal community-a computerized law information database. The said company has come out with a unique Case Finder –SCC Online. This software package is in the form of a Compact Disc-Read Only Memory (CD-ROM) that contains the case law on all topics right from the year 1950 with a regular update service. It can be installed on one’s personal desktop or portable computer. This package is not only useful for lawyers but for scholars, jurists, teachers, researchers, students, social scientists as well. Most of the law libraries have either acquired this package or are in the process of acquiring it.<sup>83</sup>

**Legal Resource Links:** Besides, there are many useful websites designed by the Government as well as private organizations, institutes, lawyers’ firms and textbook publishers that are good source for a legal research. The site [www.nic.in](http://www.nic.in) is the product of National Informatics Centre, Department of Information Technology under the Ministry of Communication and Information Technology. On “search” option provided by this site, one may have access to number of useful information in the field of law, in html format as well

as in pdf. format. Then, after clicking on:: Parliament and Apex Institutions one may find listed along with other apex organization of the country, Supreme Court of India. On clicking mouse on this site, one gets web addresses of the Supreme Court of India, i.e., <http://supremecourtsofindia.nic.in> On this site, various links could be found. The link of Constitution gives information as to the constitution of the court and its various departments, officers, types of advocates entitled to practice before it, etc. On opening the link of jurisdiction one would be able to find very useful and detailed information about jurisdiction of the court. It does not limit there but proceeds to give full write-up on the aspects of Public Interest Litigation, Legal Aid, Amicus Curiae, Lok Adalats, High Courts, etc. Similarly, there are other useful links provided by this site which are very useful, informative and helpful to legal luminaries as well as scholars, practitioners, clients, editors, etc. These are:

“Golden jubilee”, “Rules”, “Former CJI’s”, “CJI and Judges”, “Calendar”, “Indian Courts”, “JUDIS”, “Daily Orders”, “Case Status”, “Cause list”, “Courts web-sites”, “Indian Code”.

Link of “Rules” contains the Supreme Court Rules, 1966 along with (i) Regulations regarding advocates-on-record examination, (ii) Rules to regulate proceedings for contempt of the Supreme Court, 1975 and (iii) the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Every provision is listed and could be copied from there in any word file.

Laws passed by the Parliament are easily accessible at India Code which is a subscription site. [www.judis.nic.in](http://www.judis.nic.in) is a subscription site. [www.supremecourtsonline.com](http://www.supremecourtsonline.com) and [www.mahalibrary.com](http://www.mahalibrary.com) are free sites. The AIR (All India Reporter) Manual of Central Laws is an exhaustive collection of laws enacted by the Parliament together with decisions of the Supreme Court and the high court on these laws. The AIR manual can be a good starting point for research on the laws enacted by the Union. This site, however, is not easily accessible. Laws passed by the states are more difficult to access. The states are slowly attempting to launch web sites and may take sometime to complete. For the present, state laws are accessible through book sellers in India.

**Other Legal Sites:** Other Indian legal sites are <http://lawsinindia.com> and [vakilno1.com](http://vakilno1.com) (free sites), [lexsite.com](http://lexsite.com) and [indlaw.com](http://indlaw.com) (subscription sites).<sup>84</sup>

Then there are private law firms that have come together and opened up firms which run pay sites or subscription sites as they are commonly referred with the objectives:

- 1) To collect, analyse, process, store, generate, retrieve and transmit full and updated information related to law and other connected fields.
- 2) To disseminate and/or make available the aforesaid information to all concerned, in India and overseas. All these service providers charge fee for queries.

Examples of such service providers are:

**DIAL-N - from ignorance to knowledge**

Daily Indian Abridged Legal-News - Date and subject-wise legal news as available from the judgements of Supreme Court, Bar and leading newspapers.<sup>85</sup>

**SPOTLAW - from the ocean of chaos - a pearl of wisdom:** It is largest reservoir of database in India of case law. Not merely a text search software but interlinked data relating to Cause Title, Corresponding Citations, Noter/Follow up, Statute Index, Subject Index, Books and Periodicals, Maxims, Words and Phrases and Random Search with respect to the judgments of the Supreme Court and high courts of India and of the courts of Australia, Canada, United Kingdom, U. S. A and others considered therein.

**E. Text Books or Treatises**

Text books have long been accorded an important place in the literature of law. When treatises are mentioned in opinions and briefs it is because the judge or attorney citing them adopts their reasoning or statements, with accompanying citations to authority, as their own. But it is the cases which are the authority, not the author's analysis.

## **F. Encyclopaedias**

While a text book deals with one subject or one branch of a subject of law, an encyclopaedia treats all subjects. It is like a comprehensive treatise on the entire field of law. However, legal encyclopaedias are not primary authority, but only guides to it and they are at most persuasive.

## **G. Digests**

Besides the local statutes, text books and law reports no group of law books is more frequently consulted than the digests. A digest is a subject index to the rules of law raised or discussed in reported cases. The common form of a legal digest presents a collection of paragraphs containing concise statements of legal principles arranged under a heading of classified headings. These principles may be deducted from statutory enactments to form a digest of statute law, or may be gathered from careful study of the decisions to form a digest of case law. The digest, however, is not an authority but only a guide to it. Its purpose is to serve as a topical index of the decisions or as a “handle to be used in picking up the law”.

## **H. Press Reports**

The important cases decided by Supreme Court or High Court are published and also commented upon in standard English and some Hindi Daily newspapers as soon as the judgment is delivered by the court concerned. These cases, however, are not exhaustively reported, and for this purpose law reports are the useful reference.

## ENDNOTES

- <sup>1</sup> Between 6<sup>th</sup> century B.C. to 6<sup>th</sup> century A.D., See Dr. Birendra Nath, *Judicial Administration in Ancient India*, Janaki Prakashan, 1979, p. 2.
- <sup>2</sup> The Muslim Rule of India commenced from 1192 A.D. and continued until the East India Company came and started developing legal institutions in 1600 A.D. See M.P. Jain, *Outlines of Indian Legal History*, 5<sup>th</sup> Ed., N.M. Tripathi Pvt. Ltd., Bombay, 1990, p. 1.
- <sup>3</sup> M.P. Jain, *Supra* note 1, at 276.
- <sup>4</sup> Words *socialist* and *secular* were inserted by the Constitution (Forty-Second Amendment) Act, 1976.
- <sup>5</sup> Article 38 of the Constitution reads as:  
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
- <sup>6</sup> *Director of Rationing v. Corpn. of Calcutta* (1961) 1 SCR 158, at 173.
- <sup>7</sup> The Constitution of India, Article 368.
- <sup>8</sup> *Id.*, Article 53(1).
- <sup>9</sup> *Emperor v. Shibnath*, A.I.R. 1945 P.C. 163.
- <sup>10</sup> The Constitution of India, Art. 53(2).
- <sup>11</sup> *Id.*, Arts 72,77, 75, 155, 124(2), 217, 316, 76(1), 324(2), 148, 324, 280, 339(1), 340, 344(1), 352-360, 123, 242, 244, 111, 85(2), 86, 87, 112, 117, 200, 286(3), 288(2), 31(3), 304 (proviso).
- <sup>12</sup> *Id.*, Art. 74(1).
- <sup>13</sup> *Id.*, Art. 77.
- <sup>14</sup> *Id.*, Art. 107.
- <sup>15</sup> *Id.*, Article 109.
- <sup>16</sup> *Id.*, Articles 196-207.
- <sup>17</sup> J. Venkatesan, "Expedite process of filing judges' vacancies: Centre", *The Hindu*, 8.1.2003; Jana Krishnamurthy in the *Navbharat Times*, January 20, 2003.
- <sup>18</sup> Constituted by the Government of India in 1989 on the recommendation of the Chief Justices' Conference, published by the Supreme Court of India, 1990, at p. 109.
- <sup>19</sup> *Ibid.*
- <sup>20</sup> Krishan Mahajan, "Judges the right number", *Indian Express*, p.8, 18 May, 2000
- <sup>21</sup> Act 46 of 1999, Bill No. 50 of 1999, which received the assent of the President of India on December 30, 1999.
- <sup>22</sup> Low Conviction Rate in Criminal Cases, PIB Release, August 22, 2001, Govt. of India.
- <sup>23</sup> In Tihar Jail, Delhi, as against the sanctioned capacity of 3,300, there are 9,000-10,000 inmates, out of which 90% are undertrials. This is against the Supreme Court decision on speedy trial in *Hussainara Katoon v. State of Bihar* (1980) 1 SCC 81.
- <sup>24</sup> See *The Hindu*, June 15, 2002, p.8.
- <sup>25</sup> See 113<sup>th</sup> Report of the Law Commission of India (1985); 154<sup>th</sup> Report on the Code of Criminal Procedure, in two volumes (1996).
- <sup>26</sup> The Constitution of India, Art 124 (3).
- <sup>27</sup> *Id.*, Art 217 (2).
- <sup>28</sup> In *All India Judges' Association v. Union of India* (2002) 4 SCC 247 the Supreme Court directed the high courts and the state governments to amend rules to enable even a fresh law graduate to compete for and enter judicial service. Accordingly all the high courts in the country have amended the rules in November 2002 so as to enable fresh law graduates entry into judicial service.
- <sup>29</sup> The Constitution of India, Arts. 124(4) and 217 (1)(b).
- <sup>30</sup> The Amendment became effective on April 20, 1973.
- <sup>31</sup> As on June 30, 2001, approximately 20.3 million cases were pending in the subordinate courts in the country.
- <sup>32</sup> J. Venkatesan, "Centre to frame rules for permanent Lok Adalats", *The Hindu*, December 31, 2002.

- <sup>33</sup> According to Article 245(2) of the Constitution declares that no law passed by Parliament can be declared invalid on the ground that it would apply out-side the territory of India.
- <sup>34</sup> This power is given under Article 245(1).
- <sup>35</sup> Union List (List I) contains 97 items of legislation e.g. Defence of India; Foreign Affairs; Railways, Airways; Posts and Telegraph; Currency coinage and legal tender; Trade and Commerce with foreign countries; Banking; Insurance; Income Tax; Duties of custom including export duties.
- <sup>36</sup> Concurrent List (List III) contains 47 items of Legislation e.g. Criminal Law; Criminal Procedure; Transfer of Property; Contracts; Civil Procedure; Economics and Social Planning; Trade Union and Industrial and labour disputes; Price Control; Electricity.
- <sup>37</sup> The Constitution of India, Art. 248, and entry 97, List I.
- <sup>38</sup> As enumerated in Part III of the Constitution.
- <sup>39</sup> As provided in Part XIII of the Constitution.
- <sup>40</sup> *Id.*, Art. 249.
- <sup>41</sup> *Id.*, Art. 250.
- <sup>42</sup> *Id.*, Art. 252.
- <sup>43</sup> *Id.*, Art. 253.
- <sup>44</sup> *Id.*, Art. 254 (1).
- <sup>45</sup> *Id.*, Art. 254 (2).
- <sup>46</sup> See Part III and Part XIII of the Constitution.
- <sup>47</sup> *Id.*, Article 123.
- <sup>48</sup> *Id.*, Article 213.
- <sup>49</sup> *Id.*, Article 123 (2).
- <sup>50</sup> *A.K. Roy v. Union of India* (1982) 1 SCC 271.
- <sup>51</sup> *S.R. Bommai v. Union of India* JT (1994) 2 S.C. 215.
- <sup>52</sup> *PUDR v. Union of India* (1982) 3 SCC 235; *D.S. Nakara v. Union of India* (1983) 1 SCC 305; *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161; *D.C. Wadhwa v. State of Bihar* (1987) 1 SCC 378; etc. etc.
- <sup>53</sup> Art 141: "The law declared by the Supreme Court shall be binding on all courts within the territory of India."
- <sup>54</sup> *IT Comm. v. Shrinibbai* AIR 1965 Bom 586; *Dwarka Das v. Sholapur Spinning Co.*, AIR 1954 SC 119.
- <sup>55</sup> *Bengal Immunity Co. v. State of Bihar* A.I.R. 1955 S.C. 661.
- <sup>56</sup> *Union of India v. Subramaniam* (1976) 3 S.C.C. 677, (para 12).
- <sup>57</sup> *Sajjan Singh v. State of Rajasthan*, AIR 1965 S.C. at P. 845.
- <sup>58</sup> See the observations of Krishna Iyer in *K.C. Dora v. G. Annamaniaidu* AIR 1974 S.C. 1061.
- <sup>59</sup> *Cf. East India Commercial Co. v. Collector of Customs*, AIR 1962 SC 1893.
- <sup>60</sup> *Rupa Ashok Hurra v. Ashok Hurra* (2002) 4 SCC 388.
- <sup>61</sup> For instance see the *Christian Medical College Hospital Employees' Union and another v. Christian Medical College Vellore Association and others*, AND *State of Tamil Nadu v. Christian Medical College and others*. (1987) 4 SCC 691.
- <sup>62</sup> The customs may be divided into two classes:
- (1) Customs without sanction -which are non-obligatory and are observed due to the pressure of public opinion.
  - (2) Customs with sanction - which are enforced by the State.
- <sup>63</sup> *Bhagwati Prasad Sah v. Bhagwati Prasad Sah* (1964) 5 SCR 105.
- <sup>64</sup> *Bhagat Singh v. Jaswant Singh*, AIR 1966 SC 1861.
- <sup>65</sup> *Builders Supply Corpn. v. Union of India*, AIR 1965 SC 1061.
- <sup>66</sup> *Darshan Singh v. Ram Pal Singh* 1992 Supp (1) SCC 191.
- <sup>67</sup> *Gazula Dasaratha Rama Rao v. State of A.P.*, AIR 1961 SC 564.
- <sup>68</sup> *Kochan Kani Kumjuraman Kani v. Mathevan Kani Sankaran Kani* (1971) 2 SCC 345.
- <sup>69</sup> *Bihar State Board Religious Trust v. Mahant Sri Biseshwar Das* (1971) 1 ACC 574.
- <sup>70</sup> *Bijli Cotton Mills (P) Ltd. v. Presiding Officer, Industrial Tribunal II* (1972) 1 SCC 840.

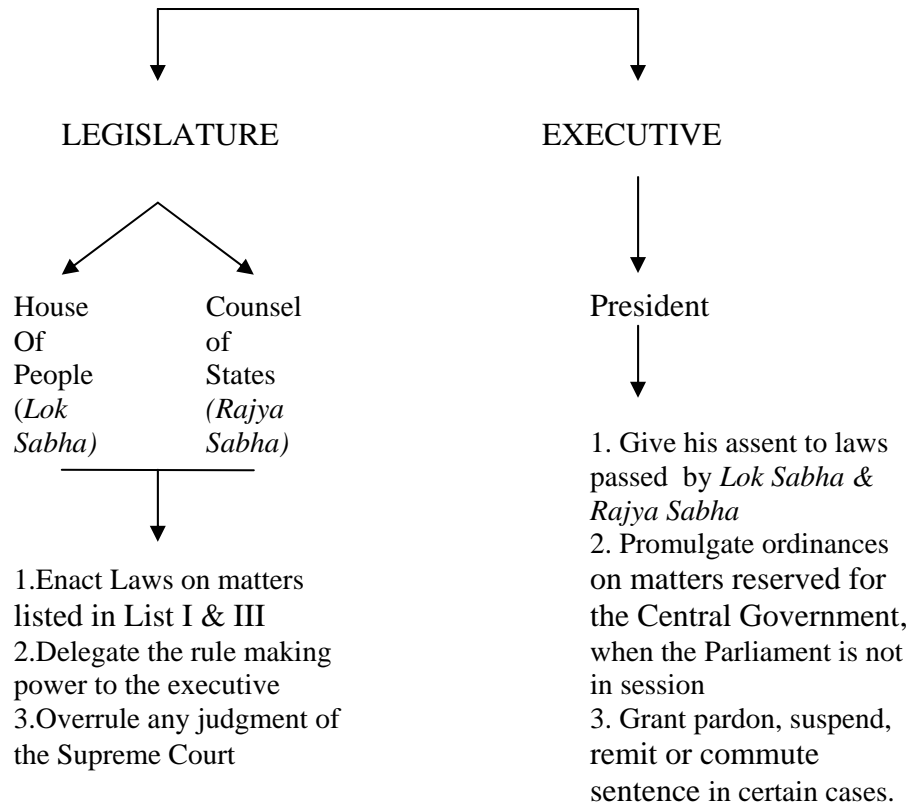


- <sup>71</sup> K. S. Singh, *Tribal Ethnography Customary Law and Change*, (Concept Publishing Co., New Delhi, 1993) at 17-20.
- <sup>72</sup> (1996) 5 SCC 125 at 158, para 46.
- <sup>73</sup> *People's Union for Civil Liberties v. Union of India* (1997) 3 SCC 433.
- <sup>74</sup> *Jolly George Verghese v. Bank of Cochin* AIR 1980 SC 470; *Francis Coralie Mullin v. The Adm. Union Territory of Delhi* AIR 1981 SC 746; *ADM Jabalpur v. Shukla* AIR 1976 SC 1207; *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461, and so on.
- <sup>75</sup> *Vishaka & Others v. State of Rajasthan & Others* (1997) 6 SCC 241; ***Apparel Export Promotion Council Vs. A.K. Chopra*** JT 1999 (1) S.C. 61.
- <sup>76</sup> A.I.R. 1951 SC 332.
- <sup>77</sup> *Corporation of Calcutta v. Liberty Cinema*, A.I.R. 1965 S.C. 1107.
- <sup>78</sup> See H.C.Jain, *Law Library Administration and Reference*, Metropolitan Book Co. (P) Ltd., Delhi, 1972, p. 37.
- <sup>79</sup> *Id.*, at.1.
- <sup>80</sup> Miles O Price & Harry Bitner, *Effective Legal Research* (4<sup>th</sup> ed.), Little, Brown & Co., Boston, USA, 1979, p. 266.
- <sup>81</sup> Gurjeet Singh, "Role of Computers in the fields of Legal Education and Research", (Ed. by S.K. Verma & M.A. Wani), *Legal Research and Methodology*, Indian Law Institute, New Delhi, 2000, p. 717.
- <sup>82</sup> Magga & Morgan, *Computer-Based Legal Education at the University of Illinois: A Report of Two Years' Experience*, 27 J. Legal Educ. 138 (1975), at 141.
- <sup>83</sup> The Indian Law Institute, New Delhi and Judges Library of the Supreme Court of India already possess these.
- <sup>84</sup> *Ibid.*
- <sup>85</sup> <http://www.indiaconnect.com/dialn.htm>

## Annexure I

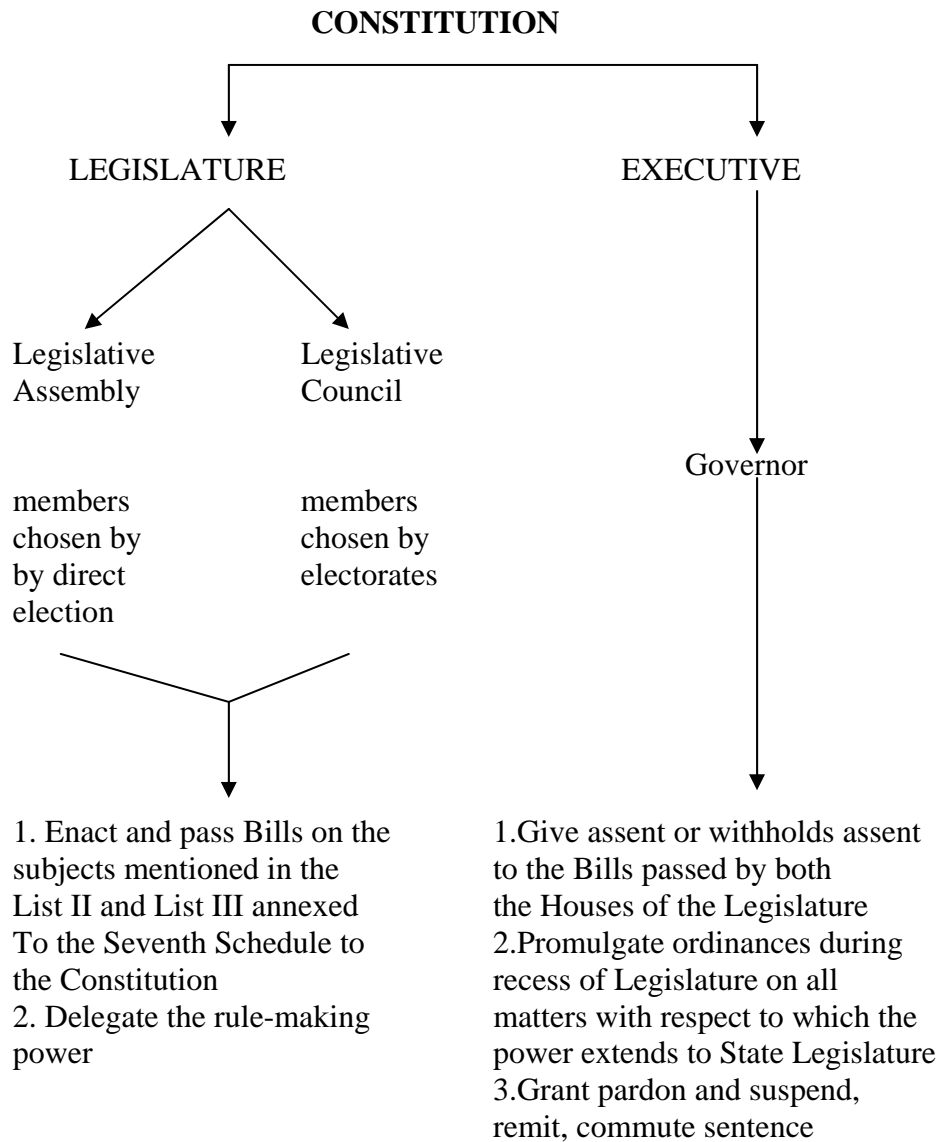
### CENTRAL LEVEL

#### CONSTITUTION



## Annexure II

### STATE LEVEL



### Annexure III

## REGULAR COURT HIERARCHY

