

# Chapter I

## JUDICIARY & JUDGE

### 1. JUDICIAL SYSTEM IN INDIA: AN OVERVIEW

In order to have a better perspective of the modern structure/status of the judiciary, a brief historical account is given as under:

During the ancient times,<sup>1</sup> in India, administration of justice was one of the main functions performed by the king. In those days the king was regarded as the fountain of justice. His schedule required him to spend every day about a couple of hours in adjudication.<sup>2</sup> The king constituted the highest appellate court. He decided all the cases according to law and was expected to be absolutely impartial.<sup>3</sup> Village *panchayats* and guild courts were encouraged for they were based on the principle of self-government and reduced the burden of the central administration. At the bottom of the hierarchy of courts was the family court in which an arbitrator within the family decided disputes.

During the medieval period immediately preceding the British rule,<sup>4</sup> Muslim system of government came to be established in several parts of the country. The medieval judicial system was based on Islamic law that divided the people into two classes, namely believers and non-believers.<sup>5</sup> Four types of courts were established

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<sup>1</sup> During 6<sup>th</sup> century B.C. to 6<sup>th</sup> century A.D., source: Dr. Birendra Nath, *Judicial Administration in Ancient India 2* (Janaki Prakashan, 1979).

<sup>2</sup> Dr. A.S. Altekar, *State and Government in Ancient India* 247 (Delhi 1958), Arthshastra, 1.16

<sup>3</sup> *Ibid.*

<sup>4</sup> The Muslim Rule in India commenced from 1192 A.D. and continued until the East India Company came to India and took over from the *Mughals* in 1600 A.D.

<sup>5</sup> Dr. Ashirbadi Lal Srivastava, *The Moghul Empire* 214 (Agra, 1964).

under the Moghuls: Canon Law Courts, Revenue Courts, Civil Courts and Criminal Courts. The judicial system however was not well organized, jurisdiction and powers were not demarcated and hierarchy was not definite during this period.

During the British rule in India the traditional Indian judicial system was re-organised by the British authorities on the basis of Anglo-Saxon jurisprudence. Royal Charter granted in 1726, during the reign of George-I established Mayor's courts in the Presidency towns of Madras, Bombay and Calcutta. The Regulating Act, 1773 established the Supreme Court at Calcutta in 1773. 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. In tune with the changing times, a legal and judicial system developed into a well-organised modern system of law and administration of justice, which India inherited on its becoming independent.<sup>6</sup>

## **2. CLASSIFICATIONS AND HIERARCHY OF COURTS, JURISDICTION**

**(a) Classification of Courts:** The court structure in India is pyramidal in nature. Unlike the American model of dual court system, federal and state, India has monolithic system. The judiciary in all the states in India has practically the same structure with variations in designations.<sup>7</sup> The designations of courts are derived principally from the Code of Civil Procedure, 1908 (CPC) and the Code of Criminal Procedure, 1973 (Cr.P.C) further embellished by local statutes. These statutes also provide for their functions and jurisdiction. At the top of the judicial systems is the Supreme Court of India, followed by high court at the state level. There are about 21 high courts in the country. At the district level, there are subordinate courts.

### **Supreme Court of India: The apex court**

The Supreme Court of India is the apex court at the national level, which was established on 28 January 1950, under Article 124(1) of the Constitution of India. In this context Article 124(1) reads as “there shall be a Supreme Court of India consisting

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<sup>6</sup> M.Rama Jois, *Legal and Constitutional History of India*, Vol II, (N.M.Tripathi Private Ltd. 1984).

<sup>7</sup> For detailed information see *infra* p.6.

of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than 7 Judges.” Through the (Amendment) Act of 1986,<sup>8</sup> the number of Judges in the Supreme Court was raised to 25.

All proceedings in the Supreme Court are conducted in English<sup>9</sup>. The seat of the Supreme Court is in Delhi<sup>10</sup> and the proceedings are open to the public<sup>11</sup>. Except for the chamber judge who sits singly, benches of two or more judges hear all matters. Five judges hear constitutional matters and, in special cases, larger benches are constituted.<sup>12</sup> In addition to the judicial autonomy, the Supreme Court has freedom from administrative dependence and has the power to punish for contempt.

### **High Courts:**

The highest court in a state is the high court, constituted under Article 214 of the Constitution, which reads “there shall be a High Court for each State”. There are, at present 21 high courts in the country,<sup>13</sup> 5 having jurisdiction over more than one state/union territory. In few states due to large population and geographical area benches have been set up under the high courts.<sup>14</sup> Each high court comprises of a Chief Justice and such other judges as the President of India, appoints from time to time.<sup>15</sup>

### **Subordinate Judiciary / the Judicial Services of the State:**

The subordinate courts represent the first-tier of the entire judicial structure. It is the focal point on which the goodwill of the entire judiciary rests. As a general rule, civil cases are dealt with by one set of hierarchy of courts known as civil courts and criminal cases by another known as criminal courts. Workload determines whether the presiding officer would preside over both criminal and civil courts with powers under relevant statutes conferred on him. However, members of the judicial service, when posted in large urban areas are assigned either exclusively civil or exclusively criminal work. The powers and functions of the criminal courts are governed by the Code of Criminal Procedure (Cr. P.C.) and the civil courts by the Code of Civil Procedure (CPC)

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<sup>8</sup> Act 22 of 1986.

<sup>9</sup> Constitution of India, Art 348.

<sup>10</sup> *Id*, Art 130.

<sup>11</sup> *Id*, Art 145(1) (cc).

<sup>12</sup> SC Rules 1966, Order VII.

<sup>13</sup> With the creation of 3 new states viz., Uttarakhand, Chhattisgarh and Jharkhand in 2000, three new high courts have been created in these states, thus raising the number of high courts from 18 to 21.

<sup>14</sup> For a detailed description of the high courts and their place of functioning and benches attached with them see *infra* p.11.

respectively. The Cr.P.C. provides following classes of criminal courts: courts of session, courts of judicial magistrates, courts of executive magistrate and, courts constituted under the laws other than the Cr.P.C. like, Prevention of Corruption Act, 1991, Terrorist and Disruptive Activities (Prevention) Act, 1984 etc.

Every state is divided into a sessions' division and every sessions' division into districts. The state government in consultation with the high court alters the limits / numbers of such divisions and districts.<sup>16</sup> There is only one Court of Sessions for every session's division, though it may be manned by several judges. In every district, following courts of judicial magistrates are constituted: chief Judicial magistrate,<sup>17</sup> additional chief judicial magistrates,<sup>18</sup> sub-divisional judicial magistrates,<sup>19</sup> judicial magistrates of the first class,<sup>20</sup> judicial magistrates of the second class<sup>21</sup> and special judicial magistrates.<sup>22</sup> The state government in consultation with the high court establishes as many courts of judicial magistrates of the first class and second class as it requires in a district.<sup>23</sup> In metropolitan areas (whose population exceeds one million) at the lower level, the courts of metropolitan magistrates are established.<sup>24</sup> The metropolitan magistrate has the powers of a magistrate of the first class and, the chief metropolitan magistrate has the powers of a chief judicial magistrate.<sup>25</sup>

Similarly, the **Code of Civil Procedure (CPC)** envisages setting up of a district court in each district as principal civil court of original jurisdiction subordinate to the high court.<sup>26</sup> All the courts in the district are subordinate to the district court, which is the highest court in every district.<sup>27</sup> Every state has enacted its own law for setting up courts subordinate to the district court. The jurisdiction to entertain cases by the civil courts mainly depends on their pecuniary limits.

There is a three-tier system of subordinate courts existing in most of the states.

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<sup>15</sup> *Supra* note 8, Art 216.

<sup>16</sup> Code of Criminal Procedure, sec 7.

<sup>17</sup> *Id.*, sec 12(1).

<sup>18</sup> *Id.*, sec 12(2).

<sup>19</sup> *Id.*, sec 12(3).

<sup>20</sup> *Id.*, sec 11(1).

<sup>21</sup> *Id.*, sec 11(1).

<sup>22</sup> *Id.*, sec 13(1)

<sup>23</sup> *Id.*, sec 11.

<sup>24</sup> *Id.*, sec 8.

<sup>25</sup> *Id.*, sec 16.

<sup>26</sup> Code of Civil Procedure, 1908, sec 3.

<sup>27</sup> *Ibid.*

In fact each state is divided into districts as units of administration and each district is further divided into *taluks* or *tehsils* comprising certain villages contiguously situated. These are but administrative units. The court structure more or less corresponds with these administrative units except in urban areas. Ordinarily, a court of *munsif* / district *munsif-cum-magistrate* / civil judge (junior division) / subordinate judge, class-III and the sub-judge, class-II is set up at a *taluk* or *tehsil* level. Immediately above the district *munsif's* court in the hierarchy is the court of subordinate civil judge, class-I, whose jurisdiction so far as money matters are concerned, is unlimited in most cases.<sup>28</sup> In some states, these courts with unlimited pecuniary jurisdiction are called courts of civil judge (senior division) and in some states they are described as courts of subordinate judge. Vertically moving upward, the next set of courts are described as courts of district and sessions judge which also include the courts of additional judge, joint judge or assistant judge. In some states there is a court of civil and sessions judge. District judge when hears criminal cases, is known as Sessions Judge.<sup>29</sup> The court of the district and sessions judge at the district level is the principal court of original jurisdiction and is presided over by an officer called the District and Sessions Judge.<sup>30</sup>

In some states where workload does not justify existence of two separate cadres, the *munsif* (civil judge) is also invested with power of judicial magistrate of first class (criminal court). For example, in Maharashtra and Gujarat and few other states, at the base level, there are courts variously described as *munsif* magistrate or civil judge (junior division), or judicial magistrate second class. In some states, *munsif* is also described as district *munsif*. In most of the states, the posts of judicial magistrates, second class have ceased to exist. In metropolitan capitals such as Delhi, Bombay, Calcutta, Madras, etc., at the lower end, are the courts of small causes, which are subject to the administrative control of the district court and to the superintendent of the high court.<sup>31</sup>

**(b) Hierarchy of Courts:** Judges are not infallible and, as human beings, they are capable of committing mistakes even in the best of their judgments, reflective of their hard labour, impartial thinking and objective assessment of the problems put before

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<sup>28</sup> This value differs from state to state.

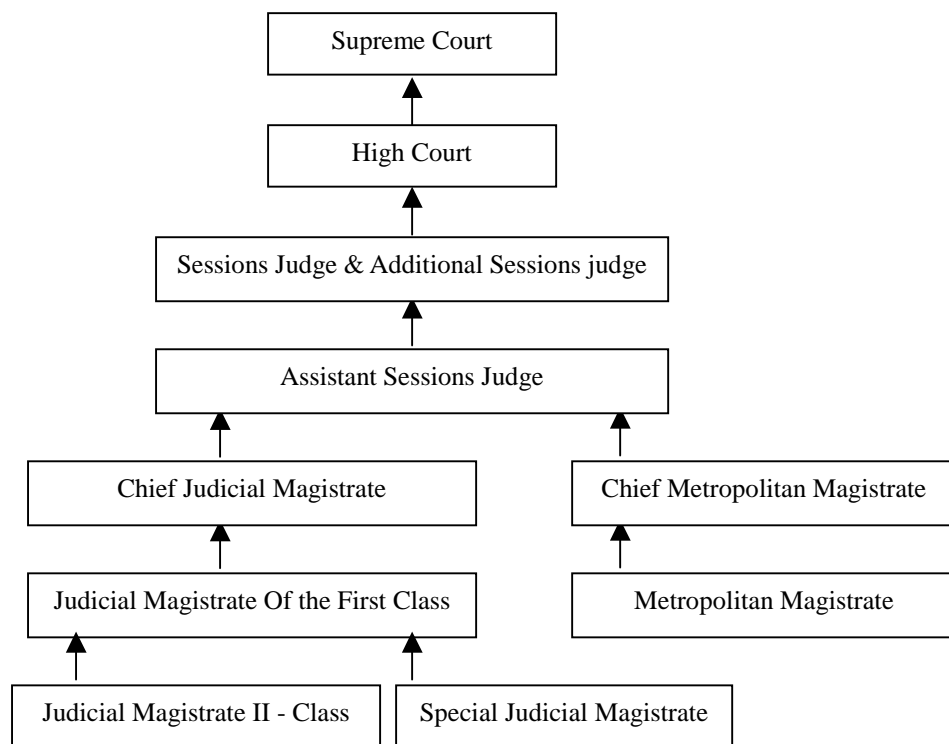
<sup>29</sup> "Our Legal System," Andhra Pradesh Law Times, 70 (1992).

<sup>30</sup> G.O.I., 118<sup>th</sup> Report of the Law Commission of India 1 (December 1986).

<sup>31</sup> Code of Civil Procedure, 1908, sec 7.

them, either in the matter of interpretation of statutory provision / while assessing evidence in particular case or deciding the question of law or facts. Such mistakes committed by them are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts.<sup>32</sup> General hierarchy of civil and criminal courts as well as hierarchy for every state is depicted beneath:

### HIERARCHY OF CRIMINAL JUDICIAL SYSTEM:<sup>33</sup>

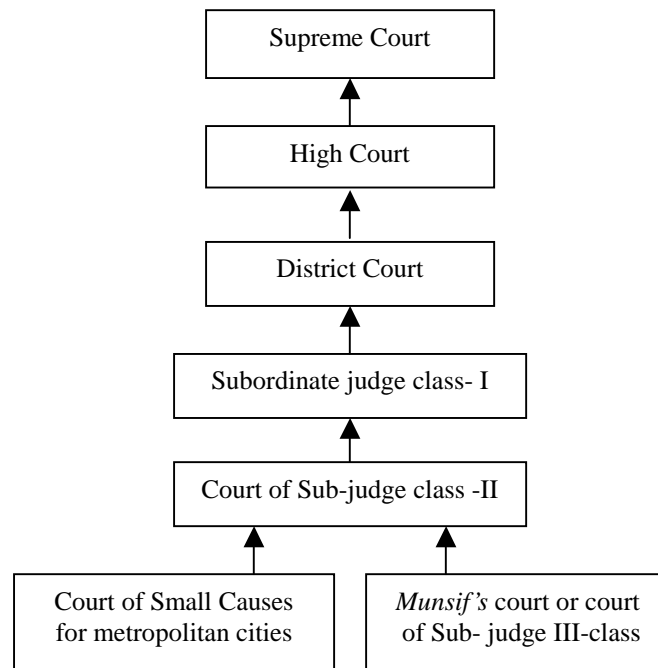


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<sup>32</sup> *State of West Bengal v. Shivananda Pathak* 1998 (5) SCC 515.

<sup>33</sup> Criminal Procedure Code, 1973, sec 6.

## HIERARCHY OF CIVIL JUDICIAL SYSTEM:<sup>34</sup>

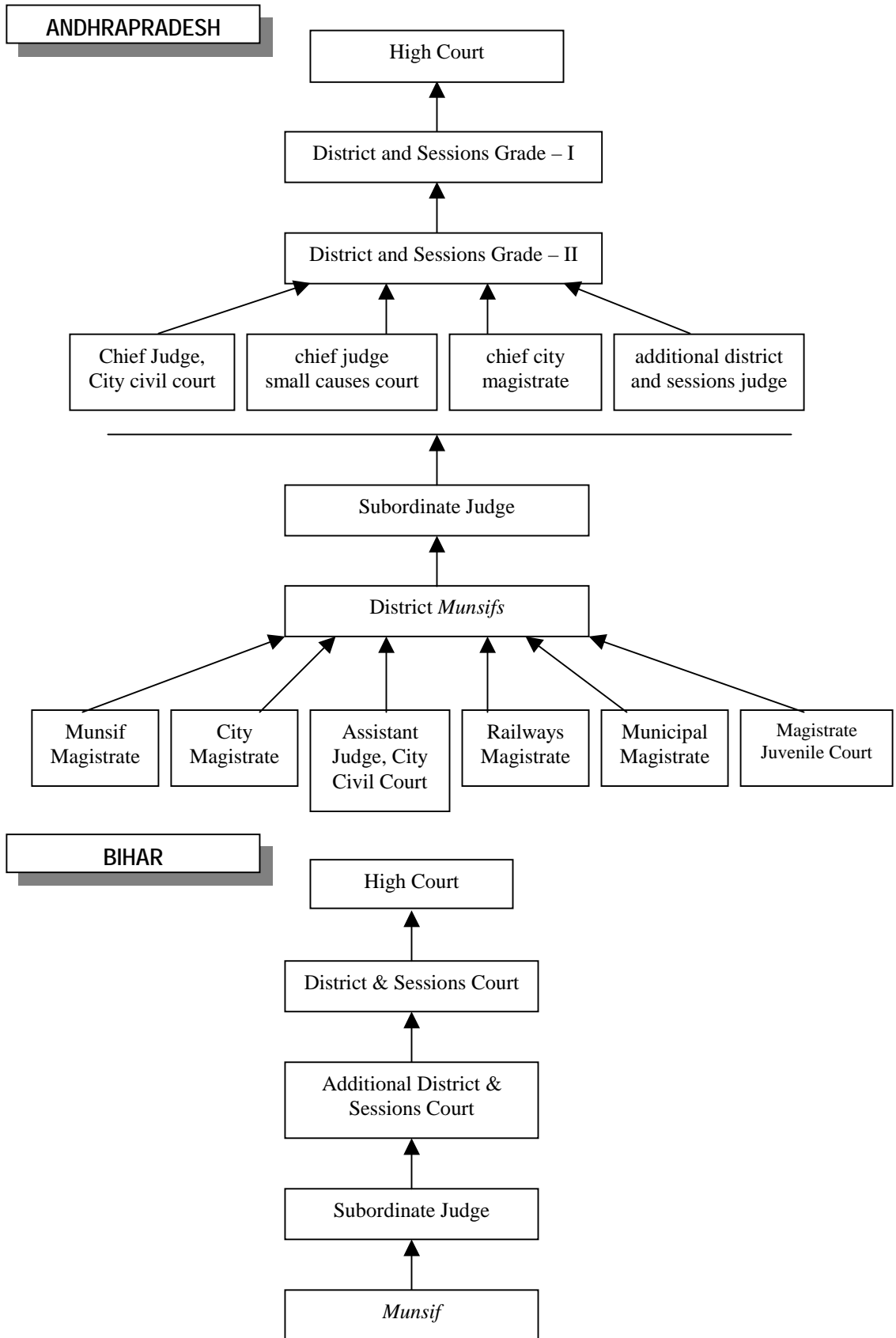


**The state wise hierarchy of Indian Judiciary:**<sup>35</sup> In some of the states like, Maharashtra and Tamil Nadu separate courts exist to deal with civil and criminal cases. However, in majority of the states it is the workload that decides the jurisdiction of a court and assignment of work to a judge. Many a times a single judge entertains both civil and criminal cases. The following is a description of the hierarchy of courts in some of the states in India:

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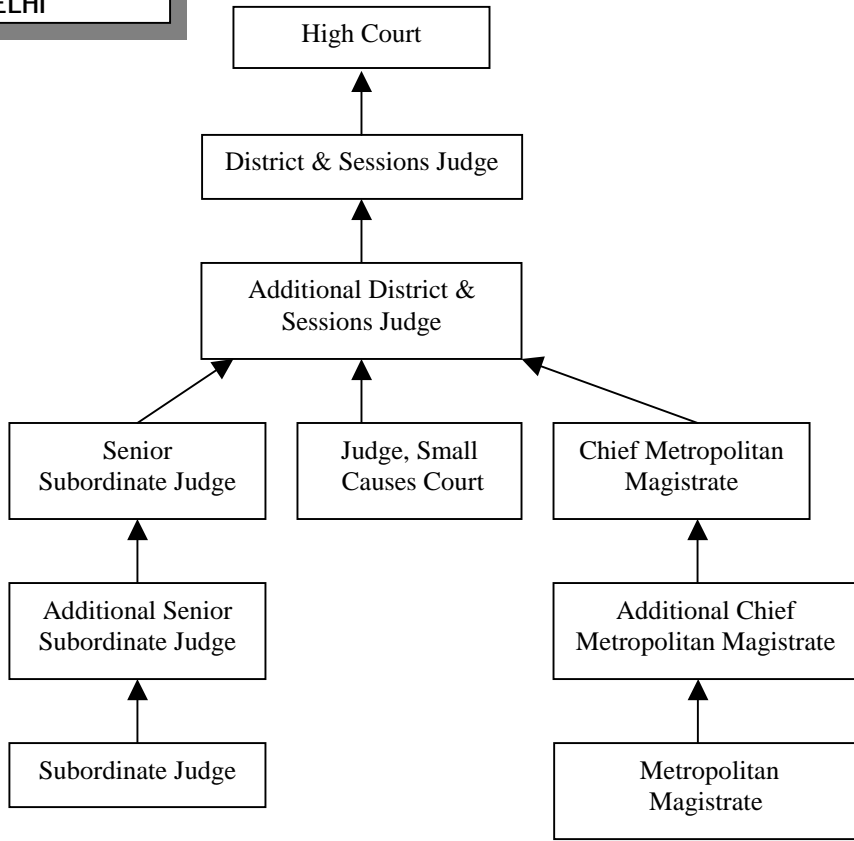
<sup>34</sup> *Supra* note 29, sec 3.

<sup>35</sup> *Supra* note 28.

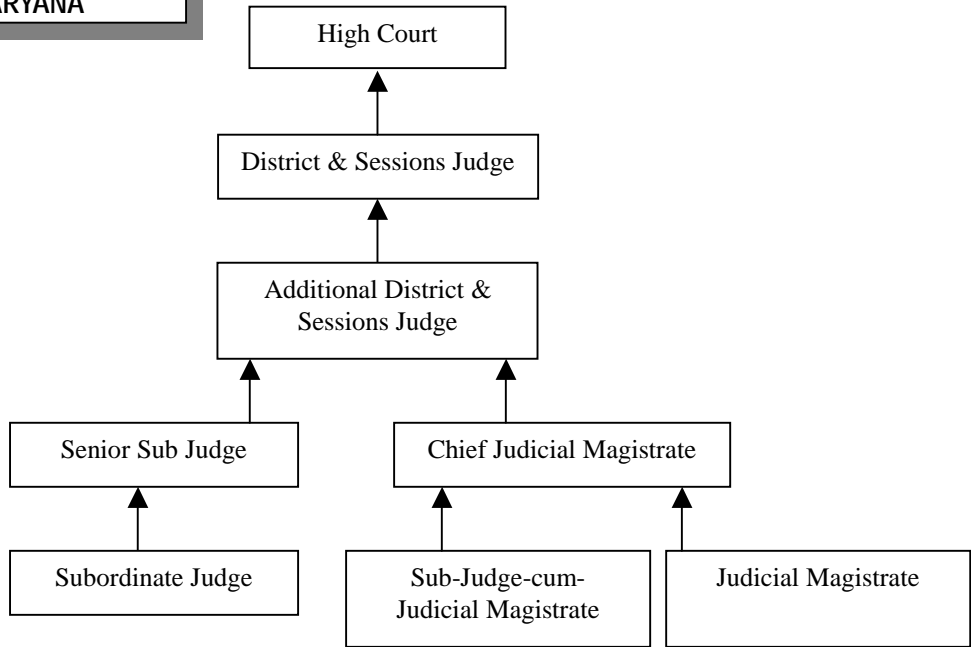




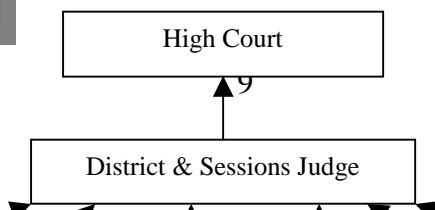
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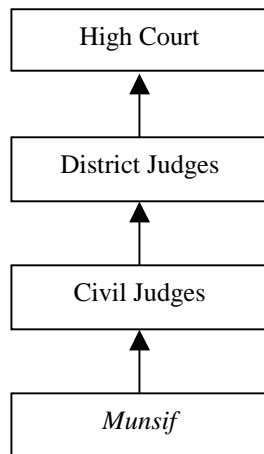
**HARYANA**



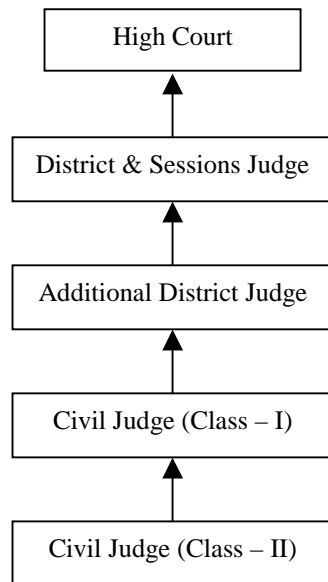
**GUJARAT**



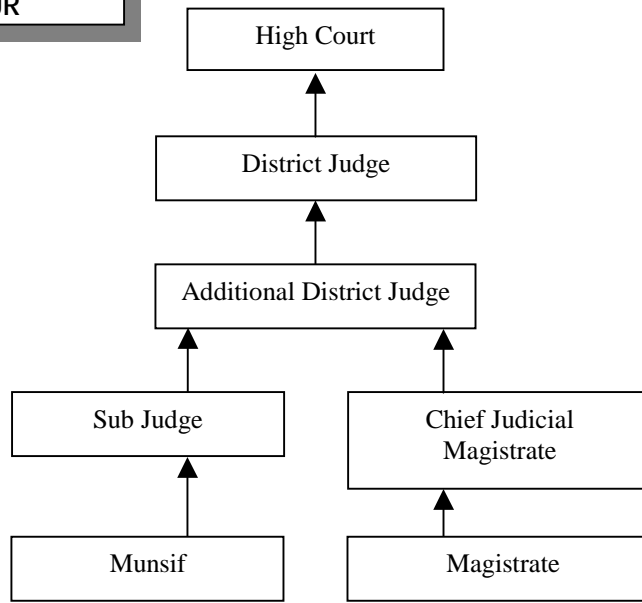
**KARNATAKA**



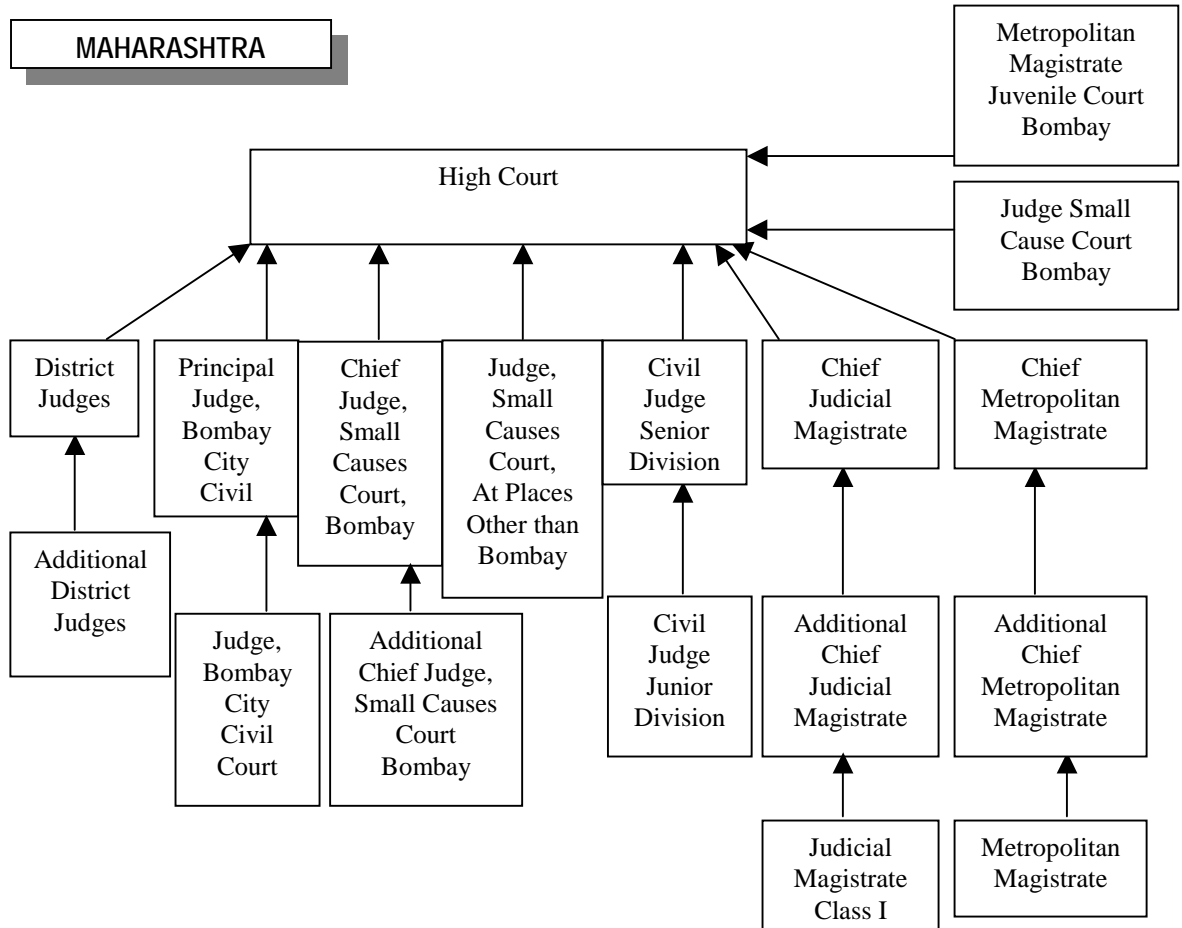
**MADHYA PRADESH**

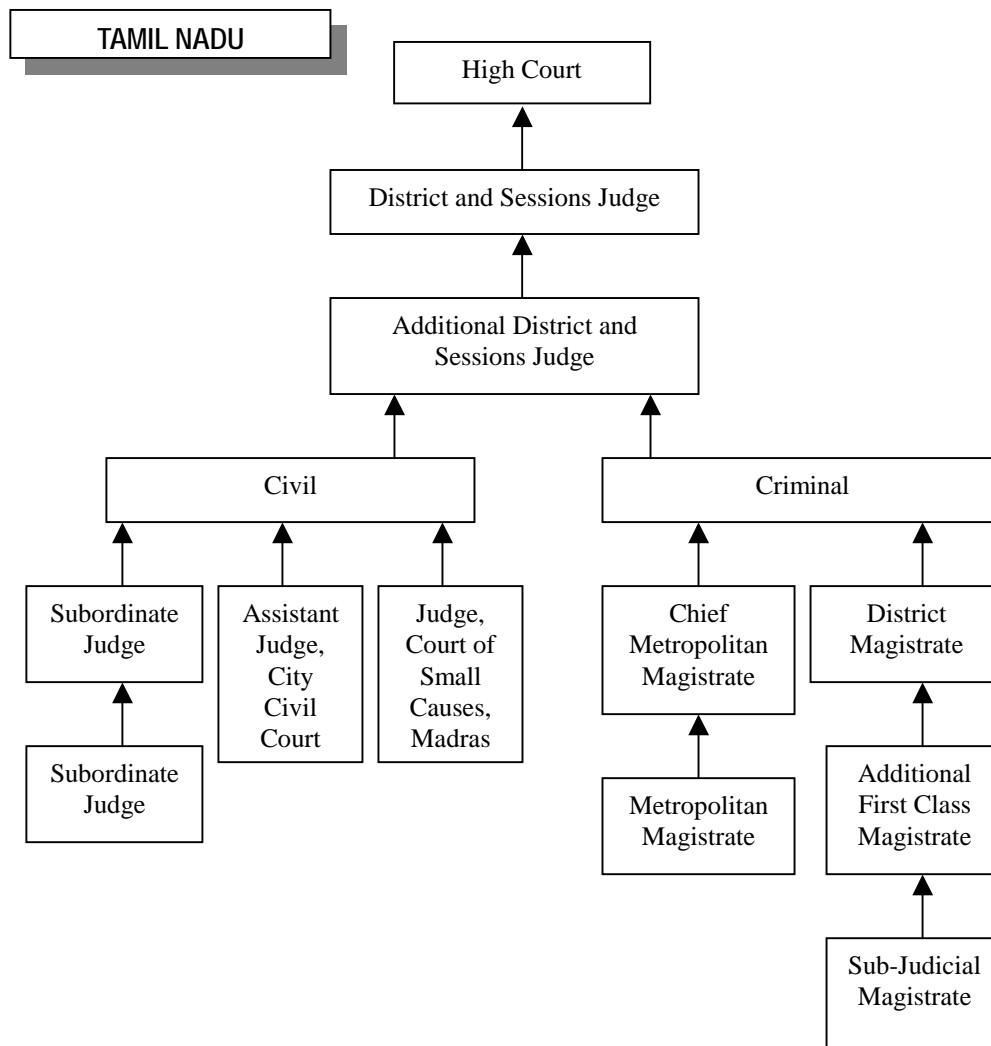


**MANIPUR**



**MAHARASHTRA**





(c) **Jurisdiction:** Jurisdiction distinguishes one court from another. It connotes the authority of a court to consider certain types of cases. The jurisdiction and function of the Supreme Court and high courts are precisely laid down in the Constitution of India and other procedural legislations, whereas in the matters of subordinate judiciary, the Cr. P.C., the C.P.C. and different state laws lay down the jurisdiction of these courts.

**Jurisdiction and powers of the Supreme Court of India:** The Supreme Court's jurisdiction is remarkably broad. It has exclusive jurisdiction in disputes between the Union and a State and between one State and another State or States;<sup>36</sup> exclusive jurisdiction with respect to matters arising out of territories of India;<sup>37</sup> jurisdiction in respect to such other matters within the competence of the Union as the

<sup>36</sup> *Supra* note 34, Art 131.

<sup>37</sup> *Ibid.*

Parliament may prescribe;<sup>38</sup> jurisdiction for the purpose of enforcement of fundamental rights guaranteed by the Constitution;<sup>39</sup> general appellate jurisdiction enjoyed by the Privy Council;<sup>40</sup> special jurisdiction to entertain by special leave, appeals from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India;<sup>41</sup> advisory jurisdiction to hear reference from the President on any question of law or facts;<sup>42</sup> special jurisdiction to decide disputes relating to the election of the President and the Vice-President of India;<sup>43</sup> and to enquire into the misconduct of the Chairman and members of the Union Public Service Commission.<sup>44</sup> Writ jurisdiction under Article 32 is an important and integral part of the basic structure of the Constitution. Through this the Court has extended its powerful and long hands to protect any person/body whose fundamental rights are violated or are under threat of violation. In order to ensure that an error is not perpetuated, the Court itself has decided that it is not bound by earlier pronouncements.<sup>45</sup>

The appellate jurisdiction of Supreme Court empowers it to determine its own jurisdiction and its decision in that regard is final.<sup>46</sup> The Supreme Court of India is not merely an interpreter of law but is by itself a source of law.<sup>47</sup> The law declared by the Supreme Court is binding on all the courts within the territory of India.<sup>48</sup> The Constitution has made the Court as a Court of record expressly conferring it with power to punish for contempt.<sup>49</sup> Further to give the Supreme Court freedom to regulate proceedings before itself, Constitution empowers it with rule making power whereby it can make rules for the regulation of the procedure for hearing appeals, reviews, writ petitions, other applications and for grant of bail, levy of fess on petitions, applications,

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<sup>38</sup> *Id*, Art 138.

<sup>39</sup> *Id*, Art 32.

<sup>40</sup> *Id*, Art 132 and 133.

<sup>41</sup> *Id*, Art 136

<sup>42</sup> *Id*, Art 143.

<sup>43</sup> *Id*, Art 71.

<sup>44</sup> *Id*, Art 371.

<sup>45</sup> The Supreme Court under *Art. 137* of the Constitution has power to review any judgement pronounced/Order made by it and the Court is not bound by its earlier pronouncements, see also *Mohindroo v. The District Judge, Delhi* (1970) 2 S.C.W.R. 619.

<sup>46</sup> *Commissioner of Police v. Registrar of High Court* 1996 (6) SCC 606.

<sup>47</sup> *Nand Kishore v. State of Punjab* 1995 (6) SCC 616.

<sup>48</sup> *Supra* note 34, Art141.

<sup>49</sup> *Id*, Art 129.

etc. and to make rules regarding the persons, practising or entitled to practice before it.<sup>50</sup>

**Jurisdiction and power of High Courts:** High courts have original as well as appellate jurisdiction.<sup>51</sup> The jurisdiction of the high court is coterminous with the territory of a state. Territorial jurisdiction of various high courts is given as under:

Name	Year	Territorial Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
Bombay	1862	Maharashtra, Goa, Dadra & Nagar Haveli, and Daman & diu	Bombay (Benches at Nagpur, Panaji, Goa, Aurangabad and Daman & diu)
Calcutta	1862	West Bengal	Calcutta (Circuit Bench at Port Blair)
Delhi	1966	Delhi	Delhi
Guwahati	1948	Assam, Manipur, Nagaland, Tripura, Mizoram & Arunachal Pradesh	Guwahati (Benches at Kohima, Aizwal, Imphal, Shilong and Agartala)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Shimla
Jammu & Kashmir	1928	Jammu & Kashmir	Srinagar and Jammu
Karnataka	1884	Karnataka	Bangalore
Kerala	1958	Kerala & Lakshdweep	Earnakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
Madras	1862	Tamil Nadu & Pondicherry	Madras
Orissa	1948	Orissa	Cuttack
Patna	1916	Bihar	Patna (Bench at Ranchi)
Punjab & Haryana	1966	Punjab, Haryana, Chandigarh	Chandigarh
Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Ranchi	2000	Jharkhand	Ranchi
Raipur	2000	Chattisgarh	Raipur
Nainital	2000	Uttaranchal	Nainital

No High Court is superior over other. All the high courts have the same status under the Constitution.<sup>52</sup> Each High Court is a court of record,<sup>53</sup> with power to determine questions about its own jurisdiction and the power to punish for contempt of itself.<sup>54</sup> High court is the only court, other than the Supreme Court, vested with the

<sup>50</sup> *Id*, Art 145.

<sup>51</sup> *Id*, Art 225 and 227.

<sup>52</sup> *Id*, chapter v, part VI.

<sup>53</sup> *Id*, Art. 215.

<sup>54</sup> *Id*, Art 215.

jurisdiction to interpret the Constitution.

In the sphere of the states, high courts are given wide powers for issuing directions or writs or orders to all persons or authorities, including even governments, falling under the jurisdiction of the High Court, whether original or appellate, primarily for the enforcement of fundamental rights.<sup>55</sup> The supervisory jurisdiction of the High Court<sup>56</sup> obliges the High Court to confine to the scrutiny of records and proceedings of the lower tribunal, except when such conclusion is so perverse/unreasonable that no court could ever have reached them.<sup>57</sup> The High Court exercises its administrative, judicial, and disciplinary control over the members of the Judicial Service of the State.<sup>58</sup> Which includes general superintendence of the working of the subordinate courts, disciplinary control over the presiding officers of the subordinate courts and to recommend the imposition of punishment of dismissal, removal, and reduction in rank or compulsory retirement. Control also include suspension of a member of the Judicial Service for purposes of holding a disciplinary inquiry, transfer, confirmation and promotion.<sup>59</sup> The High Court is empowered to rise/lower the pecuniary jurisdiction of the subordinate civil judiciary/ withdraw powers of an Additional Sessions Judge, if some complaint is received against his conduct<sup>60</sup> / constitute a committee to deal with disciplinary matters pertaining to the subordinate judiciary and the staff working therein.<sup>61</sup> All persons convicted by Sessions Court or the State against acquittal appeal to the High Court<sup>62</sup>. High Court awards any sentence authorized by law as a criminal court.<sup>63</sup>

Single bench, division bench and full bench hear the appeals. Division bench is empowered to hear second appeal from the decision of judge constituting single bench. But that does not make single bench subordinate court to the high court. High Courts use local languages as specified by the notification issued by the state governments.<sup>64</sup> The High Court has power of revision if a civil court subordinate to the High Court

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<sup>55</sup> *Id*, Art. 226.

<sup>56</sup> *Id*, Art. 227.

<sup>57</sup> *Rena Drego v. Lalchand Soni* 1998 (3) SCC 341.

<sup>58</sup> *Supra* note 50 Art. 235.

<sup>59</sup> *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal* 1998 (3) SCC 75.

<sup>60</sup> *High Court withdraws sessions judge's powers*, Hindustan Times 6-7-2000.

<sup>61</sup> *High Court of Judicature at Bombay v. Shirish Kumar Rangarao Patil* 1997 (6) SCC 339.

<sup>62</sup> *Supra* note 31, sec 377, 378.

<sup>63</sup> *Id*, sec 28, 29.

decides the case in cases where no appeal lies.<sup>65</sup>

**Jurisdiction and power of subordinate Criminal Courts:** The jurisdiction of every criminal court to try a particular offence is derived from the statute.

**Jurisdiction of Sessions Court:** A Sessions Judge hears appeals from the orders of first class magistrate and apply revision powers.<sup>66</sup> The serious cases such as death, murder, rape, etc. are tried by the sessions judge / additional sessions judge and not by assistant sessions judge.<sup>67</sup> A sessions judge has jurisdiction only inside his division. If the preliminary inquiry by the magistrate reveals any grave offence that requires a severe sentence to be awarded, beyond the powers of the magistrate, the case is referred to the sessions court for trial.<sup>68</sup> Maximum sentences that can be awarded by the Court of Session, are:<sup>69</sup>

**SESSIONS JUDGE /  
ADDITIONAL SESSIONS JUDGE**

Any sentence authorized by law, but any sentence of death passed shall be subject to confirmation by the High Court.

**ASSISTANT SESSIONS JUDGE**

Any sentence authorized by law other than a sentence of death, imprisonment for life or imprisonment for a term exceeding 10 years.

**Jurisdiction and Powers of Chief Judicial Magistrate / Chief Metropolitan Magistrate:**<sup>70</sup> To define the local jurisdiction of Judicial Magistrates; to control and supervise the work of other Judicial Magistrates subordinate to him and to distribute business of the court among them; to determine claims or objections to property attached or to make it over for disposal to any other Judicial Magistrate; to require the postal authority to deliver postal articles necessary for investigation, etc., and to grant warrant to search for such articles; to release persons imprisoned for failure to give security; to forward to a subordinate Magistrate for trial any case of which he / she has taken cognisance or to transfer a case from one Magistrate to another Magistrate, on

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<sup>64</sup> *Supra* note 51, sec 138, see also, Constitution of India, Art. 348.

<sup>65</sup> *Supra* note 29, sec 115.

<sup>66</sup> *Supra* note 31, sec 399.

<sup>67</sup> *Id*, sec 28(3).

<sup>68</sup> *Id*, sec 201 and 202.

<sup>69</sup> *Id*, sec 28 and 29.



application of the accused; to receive a case from another Magistrate if in their opinion, the case needs to be tried by the Chief Judicial Magistrate / the Chief Metropolitan Magistrate; to withdraw or recall any case made over to any subordinate Magistrate. Maximum sentences that can be awarded by the Court are:

**Chief Judicial Magistrate /  
Chief Metropolitan Magistrate**

Any sentence authorized by law other than a sentence of death, imprisonment for life or imprisonment for a term exceeding 7 years.

**Metropolitan Magistrate /  
Magistrate Of The First Class**

Imprisonment for a term not exceeding 3 years; fine not exceeding Rupees 5000/-

**Jurisdiction and Powers of the Judicial Magistrate / Metropolitan Magistrate are:** Prevention of offences; order for maintenance of wives, children and parents unable to maintain themselves; to order a police officer to investigate a non-cognisable case or a cognisable offence of which he has taken cognisance; to hold investigation or preliminary inquiry on receipt of the report of a police officer; to record confessions and statements made in the course of investigations; to police and to authorise detention of arrested persons pending investigations; to stop investigations where it is not concluded within six months; to receive the accused for trial along with police reports; if, the offence of which the Magistrate has taken cognisance is such that it can be only tried by a Court of Session, he must commit that case to that court for trial; a Magistrate of the first class has wider jurisdiction and powers than a second class Magistrate.

**Jurisdiction and Powers of Subordinate Civil Courts:** The jurisdiction and powers of the subordinate courts are derived mainly from the C.P.C. and the Cr. P.C. Ordinarily, the district court has jurisdiction over a district demarcated as a unit of administration in every state also known as revenue district, but there are also cases of one district court having jurisdiction over two revenue districts.<sup>71</sup> Court of Munsif/ District Munsif-cum-Magistrate/ Civil Judge (Junior Division) / Judicial Magistrate set up at a *taluk* or *tehsil* level may have jurisdiction over more than one taluk/ tehsil. Similarly, depending upon the workload, a district court may have jurisdiction over

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<sup>70</sup> *Supra* note, sec 14, 15, 19.

<sup>71</sup> *Supra* note 28.

more than one district.<sup>72</sup>

The power of appeal is given to senior sub- judges of the first class from the decree and order of the Small Causes Court of a value not exceeding rupees 1000; and in land suits where the value of the suit does not exceed rupees 250. While hearing the appeal, the court of such senior sub- judge is regarded as a District Court for the purposes of appeal. A second appeal from such appellate orders, however, lies only to the High Court. Appeals from decrees and orders of the Subordinate Courts usually lie to the District Court. In some states, the appeal up to a particular amount lies to the District Court and if the amount is in excess of what is stipulated, the appeal lies directly to the High Court as a regular first appeal. Every Civil Court has three kinds of jurisdiction namely;

**Territorial jurisdiction:** Every court has its own local or territorial limits beyond which it cannot exercise its jurisdiction. The State Government in consultation with the High Court fixes these limits.

**Pecuniary jurisdiction:** Courts have jurisdiction only over those suits, the amount/ subject matter of which does not exceed the pecuniary limits of its jurisdiction.<sup>73</sup>

**Jurisdiction as to subject matter:** Different courts are empowered to decide different types of suits. Certain courts are precluded from entertaining some suits. For example, the court of small causes has no jurisdiction to try suits for specific performance of a contract, partition of immovable property, foreclosure or redemption of a mortgage, etc. In respect of testamentary matters, divorce cases, probate proceedings, insolvency proceedings, etc., only district court has jurisdiction.<sup>74</sup>

### **3. JUDGES: QUALIFICATION, APPOINTMENT AND POSITION**

#### **(a) Qualifications:**

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<sup>72</sup> *Ibid.*

<sup>73</sup> *Supra* note 29, sec 6.

<sup>74</sup> C.K Takwani, *Civil Procedure* 7 (Eastern Book Co, 1997).

**Supreme Court of India:** Only a citizen of India who has been: (i) for at least 5 years a judge of a high court or (ii) for 10 years an advocate of high court 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>75</sup>

**High Court:** for appointment as a judge in 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 / two / more such courts in succession for a similar period.<sup>76</sup>

**Subordinate Courts:** Entry into subordinate judiciary pre-supposes knowledge of law and the practical experience of the working of the courts. Accordingly, eligibility criteria prescribing minimum requirements are prescribed as under:

(a) **Academic qualifications:** A degree in law is necessary requirement by way of academic qualifications.

(b) **Age:** Recruitment rules of most of the states provide for minimum and maximum age with relaxation in favour of weaker sections of society for recruitment to the subordinate judiciary. It varies from 21 to 45 years.

(c) **Experience:** The candidates who appear in the competitive examination held by the state public service commission is required to possess experience of practice as an advocate for the duration of one to five years.<sup>77</sup>

For recruitment to the Delhi Judicial Service, to be eligible to appear in the examination conducted by the Union Public Service Commission or High Court of Delhi, a person should: (i) be a citizen of India; (ii) practised as an advocate for not less than 3 years; (iii) should not be more than 32 years of age.<sup>78</sup>

The qualifying standards are not lowered for any category of candidates by prescribing lower qualifying marks as such relaxation can injure the institutional structure of the judiciary.<sup>79,80</sup>

## **(b) Appointments:**

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<sup>75</sup> *Supra* note 34, Art 124 (3).

<sup>76</sup> *Id*, Art 217 (2).

<sup>77</sup> *Supra* note 61.

<sup>78</sup> "Exam to Delhi Judicial Service", Employment News, (5- 11 August 2000).

<sup>79</sup> The service Rules framed under the appropriate laws provide for reservation of seats and relaxation of qualifications and age for persons belonging to scheduled castes, schedule tribes and other backward classes.

<sup>80</sup> *Surendra Narayan Singh v. State of Bihar*, 1998 (5) SCC 246.

**Supreme Court:** Under Article 124(2) of the Constitution the President appoints every judge in the court after consultation with Chief Justice of India. The consultation with the Chief Justice along with his four senior colleagues is now mandatory.<sup>81</sup> In this context Article 124 (2) of the Constitution states that every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme court and of the high courts in the states as the President may deem necessary.

**High Court:** The President appoints the Chief Justice of High Court by warrant under his hand and seal after consultation with the Chief Justice of India and the Governor of the state. The Chief Justice of India in consultation with the two senior most *puisne* judges of the Supreme Court makes the recommendation.<sup>82</sup> Article 217 of the Constitution states that (1) every judge of a high court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court shall be consulted.

**Subordinate Courts:** Appointment, posting and promotion of district judges in any state is made by the Governor in consultation with the High Court exercising jurisdiction in relation to such state.<sup>83</sup> In this context Article 233 of the Constitution of India states that (1) appointment of persons to be, and the posting and promotion of, district judges in any state shall be made by the Governor of the state in consultation with the High Court exercising jurisdiction in relation to such state. (2) a person not already in the service of the Union or of the state shall only be eligible to be appointed a district judge if he has been for not less than 7 years an advocate and is recommended by the High Court for appointment. Recruitment to the cadre of district judge is made from two sources, viz. promotion from the subordinate judiciary and direct recruitment from the bar. In the matter of promotion from the subordinate judiciary, power is conferred on the Governor to give promotion in consultation with the high court exercising jurisdiction in relation to it. In some states the recruitment from the bar is made on the recommendation of the high court.<sup>84</sup> The provision of consultation with the

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<sup>81</sup> *Special Reference No. 1 of 1998*, RE: 1998 (7) SCC 773.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Supra* note 34, Art 233.

<sup>84</sup> *Supra* note 61.

High Court in the matter of appointment is not a bare formality but is the vital essence of the Governor's power of appointment.<sup>85</sup>

Every state has made rules for recruitment of persons other than district judge to the state judicial service. These rules broadly lay down the age of entry, academic qualifications and practice at the bar, if any. Except where recruitment is by promotion, the state public service commission undertakes the process of recruitment on an indent received from the high court about existing and possible vacancies in the cadre in near future. The state public service commission invites applications by issuing advertisements setting out therein the minimum qualifications and other requirements. Some states provide for written examination conducted by public service commission and interview. Some states provide only for an interview by members of the state public service commission. The public service commission submits a list of candidates recommended by it as being eligible for appointment. The state government makes the appointments from the list. The relevant rules in this behalf vary from state to state.<sup>86</sup> In some states a sitting judge of high court is nominated by the Chief Justice for conducting interview test for such appointments.

If recruitment is by way of promotion, power is conferred on the high court alone to make recommendations even though the power to make appointment vests with the Governor. The state of Karnataka has made a departure from this practice. Even in the matter of recruitment from the bar to posts in the subordinate judiciary, a committee of five judges of the high court constituted by the high court of Karnataka conducts both written and viva-voce tests. In accordance with the merit list prepared by this committee, the Governor makes appointments. In case of Assam, recruitment to what is described as Grade III in subordinate judicial service is from two sources. Fifty percent of posts are filled by recruitment on the recommendation of the state public service commission by the governor and the Governor fills the remaining fifty percent on the recommendation of the high court. The state public service commission in order to select candidates holds a written examination. The high court, while making its recommendation, holds only a viva-voce test and the recruitment is from the members of the bar. The state of

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<sup>85</sup> *A.C. Thalawal v. High Court of Himachal Pradesh & Ors.* 2000 (5) SCALE, 204; see also, *Raj Kumar Bindlish v. State of Haryana* 1996 (9) SCC 5; see also, *Chandra Mohan v. State of Uttar Pradesh* 1966 A.L.J 778.

<sup>86</sup> *Supra* note 61.

Haryana has set up a committee charged with the duty of recommending persons for induction in subordinate judiciary from amongst members of Haryana Civil Service for whom there is a reserved quota of 20% of the total posts. It consists of three high court judges, the state advocate-general and the legal remembrancer of the government of Haryana and is called as Selection Committee. The remaining 80% of the posts are filled on the recommendations of the state public service commission based on the combined result of written and *viva-voce* tests.<sup>87</sup> The Supreme Court has directed the public service commission in every state to recruit the finest talent to the judicial service by having a real expert (sitting judge of the high court) whose advice constitutes a determinative factor in the selective process<sup>88</sup>. Thus, in majority of states candidates for recruitment to subordinate judiciary is done on the basis of combined result of written and *viva-voce* tests. The states of Assam and Punjab do not hold interview test and the selections are made on the basis of the written test by the public service commission. In Maharashtra and Gujarat, there is no provision for holding a written test and the candidates are selected on the basis of interview only.<sup>89</sup>

**(c) Position:**

**Supreme Court Judge:** The framers of the Constitution accorded highest respect and regard to higher Judiciary while laying down relevant provisions in the Constitution. They were mindful to maintain the independence of the Judiciary and to keep the Judges beyond the pale of executive favours. Very stringent provisions are thus, provided for the removal of a Judge. Every Judge of the Supreme Court on his appointment is irremovable from office during his tenure except on the ground of proved misbehaviour or incapacity.<sup>90</sup> The judges hold office until they attain the age of 65 years.<sup>91</sup> A judge of the Supreme Court can be removed only through impeachment by the Parliament.<sup>92</sup> The judges get high position in protocol. No discussion in Parliament is allowed in respect of their conduct in regard to discharge of their duties except upon a motion for presenting an address to the President praying for removal of the Judge as

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<sup>87</sup> *Id.*, 6.

<sup>88</sup> *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417.

<sup>89</sup> *Supra* note 61.

<sup>90</sup> *Supra* note 34, Art 124 (4) and (5).

<sup>91</sup> *Id.*, Art 124 (2).

<sup>92</sup> Judges (Inquiry) Act, 1968, Sec 3.

provided in the Constitution.

The laws made by the Parliament determine salaries, privileges and allowances paid to the judges. After their appointment nothing can be varied to their disadvantage. All salaries, allowances and pensions payable to the judges remain a charge upon the consolidated fund of India<sup>93</sup> and are sufficient to maintain good standard of living. A retired Judge of the Supreme Court is not allowed to practice in any court of law or before any authority in India.<sup>94</sup> No other member of the public service in the government or public sector undertaking, exercises such powers, immunity and independence in the discharge of his functions and duties as the judge of the Supreme Court. They exercise wide powers in the exercise of their original and appellate jurisdiction.<sup>95</sup> Scurrilous abuse of a Judge or Court, or attacks on the personal character of a Judge, is punishable contempt.<sup>96</sup>

**Chief Justice of India:** The opinion of the Chief Justice of India has the greatest weight in the matter of selection of Judges of the Supreme Court, High Court and in the transfer of the High Court Judges. The Chief Justice has the power to appoint the staff of the court, to lay down the conditions of service of the said staff (without reference to any authority except in regard to pension, salary and allowances and leave, where consultation with the President is stipulated).<sup>97</sup> However, recommendations made by the Chief Justice of India without consulting four senior most puisne Judges of the Supreme Court are not binding on the Government of India in the matter of appointment of judges to the Supreme Court.<sup>98</sup> When the Bar of the High Court reasonably and honestly doubts the conduct of the Chief Justice of that High Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country.<sup>99</sup> The Chief Justice makes rules regarding timing of offices of the Court and length of summer vacation and other holidays of the Court<sup>100</sup> and appoints one or more Judges as vacation

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<sup>93</sup> The Delhi High Court Act, 1966, Sec 3-A.

<sup>94</sup> Supreme Court Rules, 1966.

<sup>95</sup> J. N.M.Kasliwal, "Removal of judges & judicial accountability," *50 years of Rajasthan HC*, (1999).

<sup>96</sup> *C.Ravichandran Iyer v. Justice A.M.Bhattacharjee*, 1995 (5) SCC 462.

<sup>97</sup> *Supra* note 34, Art 146.

<sup>98</sup> *Special Reference No. 1 of 1998*, RE, 1998 (7) SCC 773.

<sup>99</sup> *Supra* note 87.

<sup>100</sup> Supreme Court Rules, 1966, Order II Part I, Rule 1 and 4(1).

judges to hear matters of urgent nature.<sup>101</sup>

**High Court Judge:** A Judge of the high court holds office until he attains the age of 62<sup>102</sup> and is removable in the same manner as a Judge of the Supreme Court. Each judge is appointed to a particular high court and may be transferred to another high court.<sup>103</sup> As per the express provisions of the Constitution a judge of a high court is, independent of other two organs, the Executive and the Legislature.<sup>104</sup> High court judge is the holder of a constitutional office and not a government servant.<sup>105</sup> No minister or creation of the state can be conferred the rank of a high court judge by the State Legislature or Executive. The high position, access to justice and extraordinary powers of a judge cannot be diluted by the process of a political government selecting any appointments to services and posts and declaring them as enjoying the status of high court judges.<sup>106</sup> A judge of the high court beside his salary and allowances is provided with other official perks, in order to maintain his independence and impartiality. They dispose of heavy work, encounter issues of great national importance, discharge duties which demand high scholarship, and expected to perform without fear or favour.<sup>107</sup>

**Chief Justice of the High Court:** The power available to the Chief Justice of a High Court is akin to the power of the Chief Justice of India.<sup>108</sup> However, once appointed, any judge of the high court, including an additional, acting or *ad-hoc* judge has a single vote in the matter of deciding a case, heard by a Bench of which he is a member and the Chief Justice, if he is on the Bench, has no primacy on this point. The case will be decided according to the majority of the equal votes of all judges comprising the Bench. It is not unusual for a Chief Justice to be outvoted by two or more junior judges of the court. Administratively, however, chief justice has some special functions and powers, which the *puisne* judges do not have. Any proposal for establishing a permanent bench of the High Court in any other place in the State needs approval by the Chief Justice of that High Court.<sup>109</sup> The Chief Justice frames rules

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<sup>101</sup> *Id*, Order II, Part I, Rule 6.

<sup>102</sup> *Supra* note 34, Art 217(1).

<sup>103</sup> *Id*, Art 222.

<sup>104</sup> *Id*, Art 50, 214, 217, 219,221.

<sup>105</sup> *UOI v. Pratibha Bonnerjea*, 1995 (6) SCC 765.

<sup>106</sup> V.R.Krishna Iyer, "Why stultify judges status?" 10 *The Hindu* (23 -8 -2000).

<sup>107</sup> The High Court Judges (Conditions of Service) Act, 1954, Chapter IV.

<sup>108</sup> *Supra* note 34, Art 146 and 229.

<sup>109</sup> "SC of India", *The Hindu* (11-8-2000).



relating to the conditions of service of the staff, in matter of salaries, allowances, leave or pensions with the approval of the Governor.<sup>110</sup> The Chief Justice has power to grant advance or premature increments without Governor's approval.<sup>111</sup> An Acting Chief Justice,<sup>112</sup> however, is not equal to the Chief Justice.<sup>113</sup> The Chief Justice alone determines jurisdiction and work of various judges of the court.<sup>114</sup>

**Members of the Subordinate Judiciary:** The judicial officers belonging to the subordinate courts are placed under the protective umbrella of the high court.<sup>115</sup> Even the law made by the State Legislature concerning conditions of service of such officers and servants, is made separately,<sup>116</sup> emphasizing the separation of judiciary from the state services. Those who are promoted from the lower service of judiciary get advantage in the age of retirement as well as in the salary, allowances, perks and privileges and increase in dignity, status and judicial powers. No court is entitled to entertain or continue any civil or criminal proceedings against any member of the Judiciary for any act done in the course of acting or purporting to act in the discharge of his/her official or judicial duty or function.<sup>117</sup> Temporary appointments of judicial officers, who remain in the service for a long period, are not termed as makeshift or casual or purely *ad-hoc*. They are not excluded from the seniority list.<sup>118</sup> However, they are suspended or removed by the high court on account of misconduct, fraud, non-performance, judicial indiscipline and corruption.

The district judge has a higher position than the senior subordinate judge or subordinate judge 1<sup>st</sup> class. Delegation of certain powers of district judge to the latter does not equate posts of the two. The powers of the senior subordinate judge or subordinate judge 1<sup>st</sup> class and that of the additional district judge are also not co-extensive. Additional district judge is higher in rank than a senior subordinate judge or subordinate judge 1<sup>st</sup> class and is empowered to conduct session's trials exclusively.<sup>119</sup> The judicial officers are insulated from any pressure of whatsoever nature to adjudicate

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<sup>110</sup> *Supra* note 34, Art 229.

<sup>111</sup> *State of Uttar Pradesh and Another v. C.L. Agarwal and Another*, 1997 (5) SCC 1

<sup>112</sup> Appointed under Art 223 of the Constitution

<sup>113</sup> *Id*, Art 217.

<sup>114</sup> *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal* 1998 (3) SCC 84.

<sup>115</sup> *Supra* note 108 Art 233 to 237.

<sup>116</sup> Under Entry 3, List – II and not under Entry 41 dealing with Public Services of the State.

<sup>117</sup> Judges Protection Act, 1985, sec 3.

<sup>118</sup> “Re- determine judicial officers’ seniority list: SC of India”, *The Hindustan Times* (23-8-2000).

disputes between the citizens and the state, without any favour or fear, prejudice or predilection.<sup>120</sup> Judicial officers are allotted quarters, a working library and efforts are made to bring in uniformity in the pay scales of judicial officers in different states.<sup>121</sup> In *the High Court of Judicature at Bombay v. Shirish Kumar Rangarao Patil*,<sup>122</sup> the apex court ruled that the judges, at every level represent the state and its authority, unlike the bureaucracy or the members of other service.

#### **4. STAFF OTHER THAN JUDGES IN THE COURTS AND OTHER JUDICIAL FORA**

**Staff other than judges in the Supreme Court:**<sup>123</sup>

**(i) Law officers of the central Government:**

**(a) Attorney General:** The Attorney General of India, is appointed by the President of India to give advice to the Government of India upon legal matters and to perform such other duties of a legal character, as assigned to him by the President and discharge the functions conferred on him by Constitution or any other law for the time being in force. The Attorney General is the highest law officer in the country.

**(b) Other law officers:** Apart from Attorney General, the other law officers are the Solicitor General of India and Additional Solicitors General of India. These law officers represent the interest of the Government of India, public corporations, state governments in any high court or other subordinate courts as and when required.<sup>124</sup>

**(ii) Central law agency:**<sup>125</sup> The central and state governments and their agencies are today the biggest litigants causing maximum litigation in various courts and tribunals of India including the Supreme Court. The central government and its agencies are represented by Advocates-on-Record who are collectively designated as Central Law Agency. It consists of one administrative head having judicial experience and 12 Advocates-on-Record. They are allotted different types of work- civil, criminal,

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<sup>119</sup> *Gyan Prakash v. UOI* 1997 (11) SCC 670.

<sup>120</sup> *The High Court of Judicature at Bombay v. Shirish Kumar Rangarao Patil*, 1997 (6) SCC 343.

<sup>121</sup> *All India Judges' Association v. UOI* 1998 (9) SCC 246.

<sup>122</sup> 1997 (6) SCC 343.

<sup>123</sup> For a detailed description of officers of the court see chapter-ii.

<sup>124</sup> Supreme Court Rules, 1966.

<sup>125</sup> B.R. Agarwala, *SC Practice and Procedure* 18 (Eastern Book Company 4<sup>th</sup> edition, 1993).

income tax, customs and excise, gold control, constitutional etc. and are fully employed to initiate, prosecute or defend proceedings for the central government, its agencies and states.

**(iii) Standing Advocates:** Various state governments are represented in the Supreme Court by their own Advocates-on-Record and such persons are known as Standing Advocates of a particular state.<sup>126</sup>

**(iv) Registry of the Supreme Court:** It consists of one Registrar, Deputy Registrar, Additional Registrars, Joint Registrars, and Assistant Registrars. The Registrar has the custody of the records of the court.<sup>127</sup> They have wide powers and duties in relation to the business of the court.<sup>128</sup>

**(v) Clerks of Advocates-on-Record:** Every advocate-on-record or a firm of record employing clerks to attend the registry for presenting and receiving any papers on its behalf has to register their clerk with the registry.<sup>129</sup> Every clerk upon his registration with the registry of the Supreme Court is issued an identity card that is to be produced whenever desired. No advocate-on-record or firm of record can employ their own clerk or tout.<sup>130</sup>

### **Staff other than Judges in the High Court:**

**Advocate General:** Advocate General is the highest law officer in the State. He is appointed by the State and holds office during the pleasure of the state government. Apart from the Advocate General there are Additional Advocates General and Government Advocates who attend to litigation in the courts in the state on behalf of the state, its agencies and the central government if they are required to do so.

**Standing Counsels:** They are Public Prosecutors in the High Court.<sup>131</sup>

The following is a brief description of the cadre wise strength of staff of Rajasthan High Court along with service conditions and existing pay scales. Same pattern exists for other 21 *high courts* of the country.

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<sup>126</sup> Source, Central Agency, Supreme Court of India, (2000).

<sup>127</sup> Supreme Court Rules, 1966, Rule 1, Order III, Part I.

<sup>128</sup> *Id*, Order VI, Part I, Rule 1.

<sup>129</sup> *Id*, Order IV, Part I, Rule 12.

<sup>130</sup> *Id*, Order IV, Part I, Rule 12, 13(3).

<sup>131</sup> For a detailed description see chapter II – Prosecutor / Prosecuting Attorney.

<b>Cadre</b>	<b>Service conditions</b>	<b>No.</b>	<b>Pay scales</b>	<b>Nature of job</b>
Deputy Registrars (Administrative, record, accounts, confidential)	By selection amongst Assistant registrars	8	12000- 16500	Administrative
Assistant Registrars/court officers	By selection amongst the Superintendents, seniority cum merit	6	10000- 15200	do
Assistant Registrars (paper books & translation)	No rules framed. As per practice post is being filled up according to seniority basis amongst the superintendents	2	10000- 15200	do
Private secretary	Seniority basis amongst the senior P.A.	33	10000- 15200	do
Senior librarians	Selection post	2	10000- 15200	do
Senior accounts officer	Deputation post	1	10000- 15200	do
Superintendents	Seniority basis- senior court masters	26	6500 - 10500	do
Chief accountant	By selection amongst superintendents	1	6500 - 10500	do
Assistant account officers	No rules framed. As per practice the post are being filled up from accountants of high court roll according to seniority cum merit	4	6500 - 10500	do
Senior P.A.	Seniority cum efficiency amongst the P.A's.	10	6500 - 10500	do
Senior court master	Seniority basis amongst court masters	1	6500 - 10500	do
Librarians	No rules framed	2	5500 - 9000	do
Assistant librarians	No rules framed	2	5500 - 8000	do
Court masters	Seniority cum suitability amongst stamp reporter / court fee examiners	34	5500 - 8000	do
Senior translators	By promotion amongst the translators	3	5500 - 9000	do
Translators	By holding qualification test amongst the graduate or lower division clerks on high court roll for at least 5 years.	10	5500 - 9000	do
Personal Assistants	Seniority basis amongst steno grade – II	8	5500 - 9000	do
Accountants	No rules framed. As per practice by promotion amongst the junior accountant on high court roll	4	5500 - 9000	do
Stamp reporter / court fee examiners	By holding qualifying test amongst Upper division clerks of high court roll	17	5500 - 9000	do
Office assistants	Seniority cum merit amongst the caretaker / U.D.C.s and L.D.Cs with at least 5 years on roll of high court	28	5500 - 9000	do
Care takers	No rules framed as per practice by selection amongst the UDCs/LDCs on high court roll	3	5000 - 8000	do
Manager (grade-II)	No rules framed	1	5000 - 8000	do

Stenographer	No direct recruitment (senior higher secondary exam must be passed)	45	5500 - 9000	do
Computer informers	No rules framed	2	5000 - 8000	Technical
UDCs	By promotion amongst LDCs on the basis of seniority subject to efficiency	111	4000 - 6000	Administrative
LDCs/ Enquiry Clerk / House Keeper	Direct recruitment (senior higher secondary exam must be passed)	301	3050 - 4590	do
Record Weeders	No rules framed	16	3050 - 4590	do
Reference assistants	Direct recruitment	2	3050 - 4590	Technical
Library restorers	No rules framed	30	3050 - 4590	Technical
Data entry operators	Direct recruitment – Graduate with knowledge of computer operations	6	4000 – 6000	Technical
Cataloger cum classifiers	By direct recruitment – certificate course in library science	2	4000 – 6000	Technical
EPABX operators / Telex operators / Typewriter mechanics / generator operators	By direct recruitment – senior higher secondary trained	7	3050 – 4590	Technical
Pump drivers/ carpenters/ driver/library boys/cook/ chowkidar/gardeners	No rules framed. As per practice applications are invited amongst the class IV of high court having passed 8 <sup>th</sup> and 5 years experience in relevant work.	70	3050 – 4590	Technical

### **Staff other than Judges in the Subordinate Judiciary:**

The service conditions of the staff of the subordinate courts is a significant factor having bearing on the working of the subordinate courts and is directly connected to the administration of justice and thereby the rule of law.<sup>132</sup> Staff pattern for subordinate judiciary under the administrative control of Rajasthan High Court is illustrated below. In other states the pattern is more or less the same.

#### **(A) Staff pattern for the courts of District & Sessions Judges:**

<b>MINISTERIAL STAFF</b>		
<b>DESIGNATION</b>	<b>STRENGTH</b>	<b>PAY SCALE</b>
Senior Munsarim	1	6500 - 10500
Senior personal assistant	1	5500 - 9000
Senior reader	1	6500 - 10500
Junior Accountant	1	5000 - 8000
<b>UPPER DIVISION CLERKS</b>		
Senior Clerk	1	4000 – 6000
Head Copyist	1	4000 – 6000
Record keeper	1	4000 – 6000

<sup>132</sup> *All India Judges' Association v. U.O.I*, 1998 (2) 205.

Sale Amen – cum –Return clerk	1	4000 – 6000
Civil	1	4000 – 6000
Execution	1	4000 – 6000
Sessions	1	4000 – 6000
<b>LOWER DIVISION CLERKS</b>		
Assistant Nazir	2	3050 – 4590
Assistant record keeper	2	3050 – 4590
Copyist	2	3050 – 4590
Typist	1	3050 – 4590
Relieving clerk	3	3050 – 4590
Rept. And dispatch	1	3050 – 4590
<b>CLASS – IV</b>		
Orderly	3	2550 – 3200
Office peon	3	2550 – 3200
Record lifter	2	2550 – 3200
Waterman	1	2550 – 3200
Chowkidar	1	2550 - 3200
<b>PROCESS SERVER</b>		
On foot	4	3050 - 4590
On any animal, like camel	4	3050 - 4590
On cycle	As per load	3050 - 4590
Driver	1	3050 - 4590

**(B) Staff pattern for the courts of Additional District & Sessions Judges, located at the headquarter of the district & sessions judges:**

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
P.A.	1	5500 - 9000
Senior reader	1	5000 - 8000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4590
Executive clerk	1	3050 - 4590
Sessions clerk	1	3050 - 4590
CLASS – IV STAFF		
Orderly	2	2550 – 3200
Office peon	2	2550 - 3200

**(C) Staff pattern for the courts of Additional District & Sessions Judges, NOT located at the headquarter of the district & sessions judges:**

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
P.A.	1	5500 - 9000
Senior reader	1	5000 - 8000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4590
Executive clerk	1	3050 - 4590
Sessions clerk	1	3050 - 4590
Assistant Nazir	1	3050 - 4590
Assistant record keeper	1	3050 - 4590
Copyist	1 or more	3050 - 4590
CLASS – IV STAFF		
Orderly	2	2550 – 3200
Office peon	2	2550 - 3200
Record lifter	1	2550 - 3200
Chowkidar	1	2550 - 3200
Process servers	4 or more	2550 - 3200

**(D) Staff pattern for the courts of Civil Judge (senior division) chief judicial magistrate located at the headquarter:**

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
Stenographer	1	5500 – 8000
Reader	1	4000 – 6000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 – 4950
Executive clerk	1	3050 – 4950
Driver	1	3050 – 4950
Typist –cum-Copyist	1	3050 – 4950
CLASS – IV STAFF		
Orderly	1	2550 – 3200
Office peon	1	2550 – 3200

**(E) Staff pattern for the courts of Civil Judge (senior division) chief judicial magistrate NOT located at the headquarter of the district & sessions judge:**

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
Stenographer	1	5500 - 8000
Reader	1	4000 - 6000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4950
Executive clerk	1	3050 - 4950
Copyist	1 or more	3050 - 4590
Typist –cum-Copyist	1	3050 - 4950
Assistant Nazir	1	3050 - 4590
Assistant record keeper	1	3050 - 4590
CLASS – IV STAFF		
Orderly	1	2550 – 3200
Office peon	1	2550 – 3200
Record lifter	1	2550 – 3200
Chowkidar	1	2550 – 3200
Process servers	4 or more	2550 – 3200



**(F) Staff pattern for the courts of Civil Judge (junior division) & judicial magistrate class – I, located at the headquarter of the district & sessions judge:**

DESIGNATION	STRENGTH	PAY SCALE
<b>MINISTERIAL STAFF</b>		
Stenographer	1	5500 - 8000
Reader	1	4000 - 6000
<b>LOWER DIVISION CLERKS</b>		
Civil clerk	1	3050 - 4950
Executive clerk	1	3050 - 4950
Criminal clerk	1	3050 - 4590
Typist –cum- Copyist	1	3050 - 4590
<b>CLASS – IV STAFF</b>		
Orderly	1	2550 – 3200
Office peon	1	2550 - 3200

**(G) Staff pattern for the courts of Civil Judge (junior division) & judicial magistrate class-I, NOT located at the headquarter of the district & sessions judge:**

DESIGNATION	STRENGTH	PAY SCALE
<b>MINISTERIAL STAFF</b>		
Stenographer	1	5500 - 8000
Reader	1	4000 - 6000
<b>LOWER DIVISION CLERKS</b>		
Civil clerk	1	3050 - 4950
Executive clerk	1	3050 - 4950
Copyist	1 or more	3050 - 4590
Typist –cum- Copyist	1	3050 - 4950
Assistant Nazir	1	3050 - 4590
Assistant record keeper	1	3050 - 4590
Criminal Clerk	1	3050 - 4590
<b>CLASS – IV STAFF</b>		
Orderly	1	2550 – 3200
Office peon	1	2550 - 3200
Record lifter	1	2550 - 3200
Chowkidar	1	2550 - 3200
Process servers	4 or more	2550 - 3200

Apart from above staff in various subordinate courts, there are following class of Public Prosecutors appointed to look after the matters in such courts:<sup>133</sup>

Public Prosecutors appointed by the central government; appointed by the state government; Additional Public Prosecutors appointed by the central or state government; Special Public Prosecutors appointed by the central government; Special Public Prosecutors appointed by the state government for special cases and for a particular time, working in the Criminal Courts.

## 5. STATISTICAL DATA<sup>134</sup>

### (A) Statement of cases pending in Supreme Court as on 2.11.2000

Total	More than 2 years	More than 10 years
21657	8472	645

### (B) Statement of pendency of cases in *high courts* as on 31.12.1999

High court of:	Number of cases pending:	Cases pending for more than	
		Two years:	Ten years:
Allahabad	815026	602292	201460
Andhra Pradesh	150222	7883	2823
Bombay	284203	155982	28404
Calcutta	310914	259054	146476
Delhi	178186	107427	33774
Gauhati	38702	19790	162
Gujarat	143274	87753	18592
Himachal Pradesh	11928	6367	37
Jammu & Kashmir	70336	44207	2392
Karnataka	84486	29214	1081
Kerala	308237	98512	533
Madhya Pradesh	106293	56176	5050
Madras	355382	129267	9655
Orissa	117339	60994	3313
Patna	82697	35880	6657
Punjab & Haryana	184970	122672	33791
Rajasthan	122899	62453	6674
Sikkim	206	11	2
TOTAL	3204083	1885934	500876

<sup>133</sup> B.R.Agarwala, *Our Judiciary* 44 (Eastern Book Co., 1993).

<sup>134</sup> Source: Ministry of Law, Justice & Company Affairs, Government of India, New Delhi (2000).

**(C) Statement of number of cases pending in the district or subordinate courts in the States:**

State/Union territory	As on	Civil	Criminal
Andhra Pradesh	12/99	561351	433523
Arunachal Pradesh	6/99	331	1469
Assam	12/99	44723	116804
Bihar	12/99	253692	999204
Goa	12/99	27542	12041
Gujarat	12/99	642133	2498023
Haryana	12/98	201656	293145
Himachal Pradesh	12/99	71297	67826
Jammu & Kashmir	12/98	46259	75386
Karnataka	12/99	662269	421046
Kerala	12/99	218847	376683
Madhya Pradesh	12/99	357390	1033516
Maharashtra	12/99	860508	1828967
Manipur	12/99	4524	3614
Meghalaya	12/97	261	1968
Mizoram	12/99	1890	1001
Nagaland	-	-	-
Orissa	6/99	129757	528780
Punjab	12/98	201118	174094
Rajasthan	6/99	280893	573999
Sikkim	12/98	467	1352
Tamil Nadu	12/99	537363	305889
Tripura	12/99	5921	12767
Uttar Pradesh	12/99	1008471	2298622
West Bengal	12/98	457254	854264
Andaman & Nicobar	6/99	552	56
Chandigarh	12/98	12961	32206
Dadra & Nagar Haveli	12/99	273	1035
Daman & Diu	12/99	558	598
Delhi	12/99	157531	305542
Lakshadweep	12/99	83	110
Pondichery	12/99	5845	5789
<b>TOTAL:</b>	<b>20013309</b>		

**(D) Statement of number of cases pending in district and subordinate courts as on 31.12.1998:**

<b>State/Union territory</b>	<b>Total cases pending</b>	<b>Pending for less than 10 years:</b>	<b>Pending for more than 10 years:</b>
Andhra Pradesh	1002172	992655	9517
Arunachal Pradesh	1849	1843	6
Assam	186799	184254	2545
Bihar	1223190	1165808	57382
Goa	43163	39350	3813
Gujarat	3000330	292837	71955
Haryana	494801	492921	1880
Himachal Pradesh	136443	135226	1217
Jammu & Kashmir	121915	118088	3827
Karnataka	1254655	1231952	22703
Kerala	554566	551885	2681
Madhya Pradesh	1456853	1371454	85399
Maharashtra	2955103	2728383	226720
Manipur	7970	7647	323
Meghalaya	-	-	-
Mizoram	3730	3730	0
Nagaland	-	-	-
Orissa	637277	630198	7079
Punjab	375212	371070	4142
Rajasthan	875065	821325	53740
Sikkim	1780	1771	9
Tamil Nadu	828097	816808	11289
Tripura	18853	18322	531
Uttar Pradesh	3244351	3103745	140606
West Bengal	1305855	1210300	95555
Andabar & Nicobar	607	603	4
Chandigarh	50043	49964	79
Dadra & Nagar Haveli	894	885	9
Daman & Diu	1156	1144	12
Delhi	397814	381328	16486
Lakshadweep	142	138	4
Pondichery	6228	6212	16
<b>TOTAL</b>	<b>20186913</b>	<b>19367384</b>	<b>819529</b>

**(F) Statement of number of cases disposed of during the year 1999:**

<b>A</b>	<b>Supreme Court</b>	34836
<b>B</b>	<b>High Court of:</b>	
Allahabad		73655
Andhra Pradesh		98123
Bombay		59906
Calcutta		29182
Delhi		31453
Gauhati		-
Gujarat		-
Himachal Pradesh		6447
Jammu & Kashmir		28993
Karnataka		71976
Kerala		90897
Madhya Pradesh		61813
Madras		94930
Orissa		26888
Patna		77345
Punjab & Haryana		60328
Rajasthan		36655
Sikkim		660

**(G) Statement of number of cases disposed of during 1998 by the district or subordinate courts:**

Andhra Pradesh	1066377	Orissa	184511
Arunachal Pradesh	831	Punjab	308291
Assam	96923	Rajasthan	528308
Bihar	331785	Sikkim	4216
Goa	24147	Tamil Nadu	1393563
Gujarat	1681231	Tripura	27538
Haryana	261817	Uttar Pradesh	1998627
Himachal Pradesh	148150	West Bengal	609294
Jammu & Kashmir	133243	Andabar & Nicobar	334
Karnataka	795071	Chandigarh	66813
Kerala	799747	Dadra & Nagar Haveli	466
Madhya Pradesh	910950	Daman & Diu	840
Maharashtra	1839683	Delhi	367022
Manipur	5438	Lakshadweep	485
Meghalaya	-	Pondichery	23335
Mizoram	6747	<b>TOTAL</b>	<b>13615783</b>
Nagaland	-		

## STATISTICS OF JUDICIARY IN STATES

### 1. Rajasthan:

Number of districts: 32	Number of district judges: 33
Number of district & sessions judge: 109	Number of additional district judges: 88
Number of additional district & sessions judge: 126	Number of sessions judge: 235
Number of chief judicial magistrates: 32	Number of additional chief judicial magistrates: 187
Number of judicial magistrates: 276	Number of special magistrates: 2
Number of civil judge (senior division)-cum-CJM/ACJM: 187	
Number of civil judge (junior division) and Judicial Magistrates: 276	

#### Pecuniary limit of:

Civil judge (junior division) and Judicial Magistrates – Rupees 25000.

Civil judge (senior division)-cum-CJM/ACJM – Rupees 50000.

Number of Judges in the High Court: 20 when permanent strength is 27.

### 2. Sikkim :

Number of districts: 2	Number of district judges: 2
Number of judicial magistrate first class: 4	Number of Sessions Judge: 3

### 3. West Bengal:

Number of judicial magistrates: 168	Number of district judges: 17
Number of S.D.J.M (senior division) with sessions power: 53	Number of Civil Judges: 92
Number of Additional District Judges: 84	Number of District Courts: 565
Number of district Munsif courts / Court of Small Causes: 123	

### 4. Karnataka:

Number of Judicial First Class Magistrates: 301	Number of District Courts: 77
Number of Session Judges employed: 77	Number of Small Causes Courts: 27
Number of Chief Metropolitan Magistrates and Chief Judicial Magistrates: 108	
Number of Munsiff including Additional Munsiff Courts: 297	

### 5. Andhra Pradesh:

Number of districts: 23	Number of district judges: 23
Number of district & sessions judge: 109	Number of additional district judges: 39
Number of sessions judge: 6	Number of chief judicial magistrates: 32
Number of chief judicial magistrates: 23	Number of judicial magistrates: 395
Number of special magistrates: 207	Number of metropolitan magistrates: 39
Number of subordinate judge class - I: 129	
Number of Court of Small Causes: 2 in the cadre of district judges and 1 in the cadre of subordinate judge class – I	
Number of Judges in the High Court: 26 when permanent strength is 31.	
Pecuniary limit of jurisdiction of subordinate judge class - I: Upto Rs. 10 lakhs	
Pecuniary limit of High Court as a civil court: Upto Rs. 5 lakhs (single judge) and above Rs. 5 lakhs (division bench)	

### Observations:

In the light of available sources it may be stated that in India, there were 1000 unfilled vacancies in the subordinate judiciary and in the High courts, out of 618 High Court judges posts as on January 1,2000 there are 156 vacancies.<sup>135</sup> In 1987, India had only 10.5 judges per million, where as Australia 41.6, Canada 75.2, England 50.9 and USA 107 per million.<sup>136</sup>

The number of civil judges junior division and judicial magistrate first class in Maharashtra is over 700 now.<sup>137</sup> The Delhi High Court raised strength of senior civil judges from 1 to 9.<sup>138</sup> In addition to existing posts, 50 more posts in Delhi judicial services are created and 20 civil judges are promoted to senior level.<sup>139</sup>

**Central Government Grants for Courts:** The Central Government assistance for the upgradation of judicial infrastructure in the States has been raised from Rupees 50 crore to Rupees 75 crore for the financial year, 2000. Rupees 7.5 crore was allocated to north-eastern states for improvement of judicial infrastructure.<sup>140</sup> The union government constructed around 2000 courtrooms and judges' residences in different states and union territories at the cost of Rupees 710 crore.<sup>141</sup> Rupees 208 lakhs were allocated for use of information technology in courts and this amount was released to the states and union territories on July 5, 2000.<sup>142</sup>

**Pendency and the backlog of cases in the courts:**

India has a backlog of 2.31 crore cases in various courts, some for as long as 25 or 30 years. Over 31 lakh cases are pending in the country's 18 High courts alone. During 1998, the number of cases filed in High courts was about 15 lakhs and the disposal was about 13 lakh cases. Over 33 lakh cases are pending in high courts and more than 2 crore in subordinate courts.<sup>143</sup> The central and state governments are the single largest litigants, abetted by government owned corporations, semi- government bodies and other statutory organizations. In Bombay High Court alone, there are as many as 1,205 writ petitions filed against these bodies between January 1 to June 7,

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<sup>135</sup> P.P.Rao, "Holding up of judicial appointment" 7 *Indian Express*, (21-1-2000).

<sup>136</sup> Krishan Mahajan, "Judging the right number" 8 *Indian Express*, 18-5-2000.

<sup>137</sup> "High Court: Reservation does not apply to lower judiciary" 4 *The Hindustan Times*, dt. 14-8-2000.

<sup>138</sup> "High Court raises strength of senior civil judges" 1 *The Hindustan Times* (1-6-2000).

<sup>139</sup> Row over High Court decision on jurisdiction 3 *Times of India*, 27-7-2000.

<sup>140</sup> Rajesh Kumar, "States told to computerise courts soon" *Indian Express* 7 (22-6-2000).

<sup>141</sup> Bisheshwar Mishra, "2000 court rooms, judges' houses built" 12 *Times of India*, (17-6-2000).

<sup>142</sup> The Law Minister, in a written reply to the Lok Sabha on 4<sup>th</sup> August, 2000.

2000- excluding those filed on the appellate side, while total number of suits filed is 2,402.<sup>144</sup>

High courts and various state governments are very slow in taking steps to fill the vacancies of judges on time.<sup>145</sup> In Mumbai, for example, 50 metropolitan magistrate courts serve a population of more than 12 million. At least 13000 judicial officers across the country are loaded with 40 million cases. They have been demanding appropriate representations in the High courts and the Supreme Court, at least 50 % of the vacancies in the High courts they are demanding to be filled up by the subordinate judicial officers.<sup>146</sup>

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<sup>143</sup> Arun Jaitly, "CJI for Maintaining independence of judiciary" 4 *The Hindu*, (6-8-2000).

<sup>144</sup> Subhash Kothari, "Courting Disaster: A case for Judicial Reform" 14*Times of India*, (28-6-2000).

<sup>145</sup> Dr. A.S.Anand, CJI, at the inauguration of principal Bench of CAT, see "Needed, an internal umpire", 11 *The Hindu* (6-8-2000).

<sup>146</sup> Rakesh Bhatnagar, "Judiciary will have to lead way on Supreme Court retirement judgment", 11 *Times of India* (10-7-2000).