

Indian Judiciary:

ORGANIZATIONAL STRUCTURE AND JURISDICTION



INTRODUCTION

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- The Indian Judiciary is an independent body divested from the executive and legislative wings of the Government of India.
- Judiciary is that branch of government which interprets the law, settles disputes and administers justice.
- Laws are like dead letters without courts to explain and expound their meaning.
- Judiciary is the watchdog of democracy, guardian of the constitution as well as the champion of liberty.
- Bryce, while extolling the role of the judiciary, observed:
 - “If the lamp of justice goes out in darkness, how great is that darkness”.
- The judiciary, in order to be fair and uniform, is structurally hierarchically organized.

Formation of Judiciary

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- Indian judiciary is a single integrated system of courts for the union as well as the states, which administers both the union and state laws, and at the head of the entire system stands the Supreme Court of India.
- The development of the judicial system can be traced to the growth of modern-nation states and constitutionalism.
- During ancient times, the concept of justice was inextricably linked with religion and was embedded in the ascriptive norms of socially stratified caste groups.
- Caste panchayats performed the role of judiciary at the local level, which was tied up with the religious laws made by the monarchs.
- Most of the Kings' courts dispensed justice according to 'dharma', a set of eternal laws rested upon the individual duty to be performed in four stages of life (ashrama) and status of the individual according to his status (varna).
- The King's power to make laws depended on the religious texts and the King had virtually no power to legislate 'on his own initiative and pleasure'.
- Ancient state laws were largely customary laws and any deviation from it or contradiction from dharma was rejected by the community.
- In medieval times, the dictum 'King can do no wrong' was applied and the King arrogated to himself an important role in administering justice. He became the apostle of justice and so the highest judge in the kingdom.
- Perhaps, the theory of institutionalism guided justice, manifesting gross arbitrariness and authoritarianism.

Modern Judiciary in India

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- With the advent of the British colonial administration, India witnessed a judicial system introduced on the basis of Anglo-Saxon jurisprudence.
- The Royal Charter of Charles II of the year 1661 gave the Governor and Council the power to adjudicate both civil and criminal cases according to the laws of England.
- However, the Regulating Act of 1773 established for the first time the Supreme Court of India in Calcutta, consisting of the Chief Justice and three judges (later reduced to two) appointed by the Crown acting as King's court and not East India Company's court.
- Later, Supreme Courts were established in Madras and Bombay. The Court held jurisdiction over "His Majesty's subjects".
- In this period the judicial system had two distinct systems of courts,
 - the English system of Royal Courts, which followed the English law and procedure in the presidencies and
 - the Indian system of Adalat/Sadr courts, which followed the Regulation laws and Personal laws in the provinces.
- Under the High Court Act of 1861, these two systems were merged, replacing the Supreme Courts and the native courts (Sadr Dewani Adalat and Sadr Nizamat Adalat) in the presidency towns of Calcutta, Bombay and Madras with High Courts.
- However, the highest court of appeal was the judicial committee of the Privy Council.
- British efforts were made to develop the Indian legal system as a unified court system.
- Indians had neither laws nor courts of their own, and both the courts and laws had been designed to meet the needs of the colonial power.
- The Government of India Act of 1935 (section 200) set up the Federal Court of India to act as an intermediate appellant between High courts and the Privy Council in regard to matters involving the interpretation of the Indian Constitution.
- It was not to 'pronounce any judgment other than a declaratory judgment' which meant that it could declare what the law was but did not have authority to exact compliance with its decisions.
- The Federal Court's power of 'judicial review' was largely a paper work and therefore a body with very limited power.
- Despite the restrictions placed on it, the Federal Court continued to function till 26th January 1950, when independent India's Constitution came into force.

Structure of Judiciary

- The members of the Constituent Assembly envisaged the judiciary as the bastion of rights and justice.
- They wanted to insulate the courts from attempted coercion from forces within and outside the government.
- Sapru Committee Report on judiciary and the Constituent Assembly's ad hoc committee on the Supreme Court report formed the bulk of the guidelines for judiciary.
- A.K.Ayyar, K.Santhanam, M.A.Ayyangar, Tej Bahadur Sapru, B.N.Rau, K.M. Munshi, Saadulla and B.R.Ambedkar played important roles in shaping the judicial system of India.
- The unitary judicial system seems to have been accepted with the least questioning.
- The Supreme Court was to have a special, countrywide responsibility for the protection of individual rights.
- Ambedkar was perhaps the greatest apostle in the Assembly of what he described as 'one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the Constitutional law, the Civil, or the criminal law, essential to maintain the unity of the country'.

THREE-TIER STRUCTURE

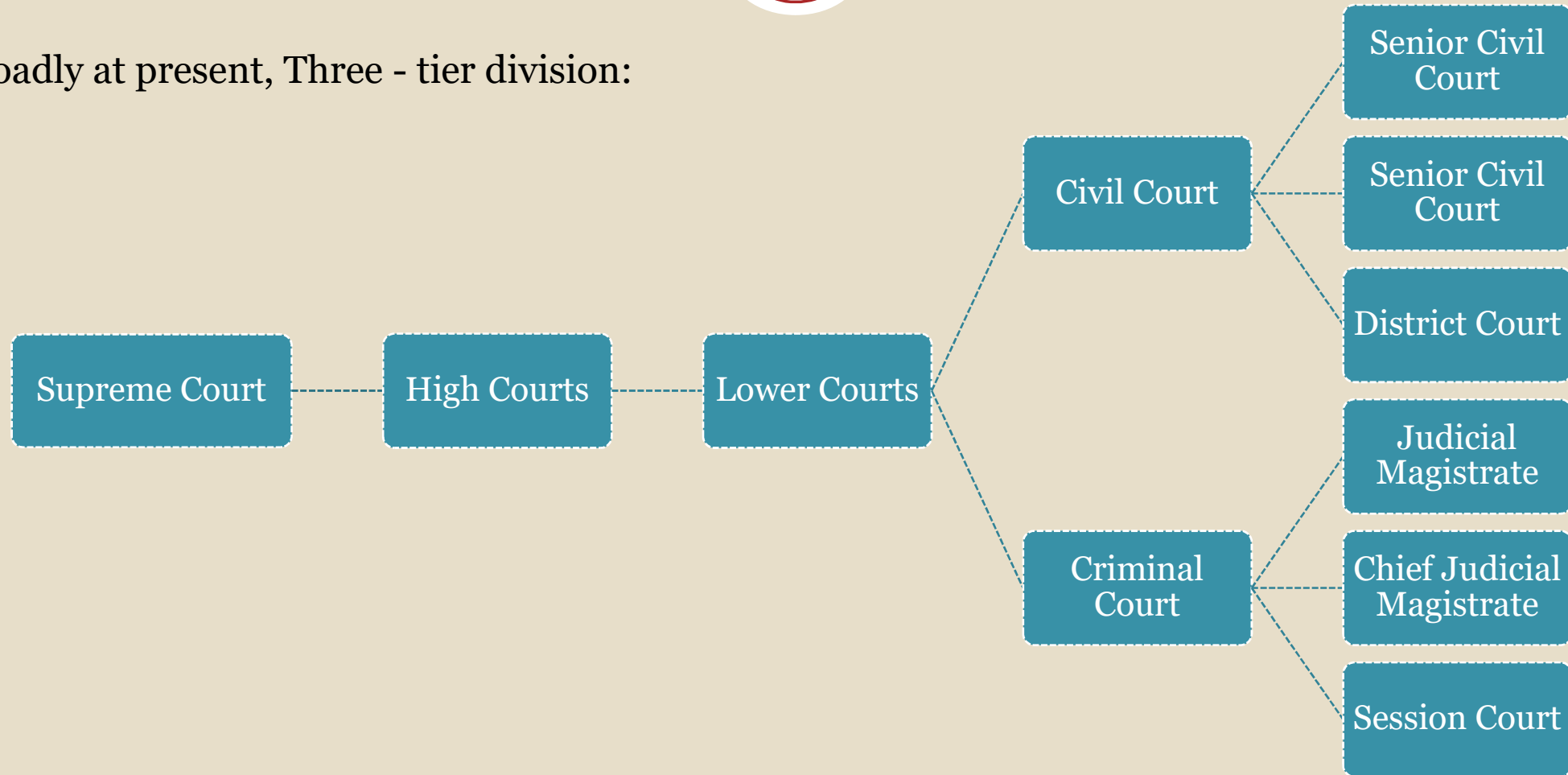
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- The Judicial system however has a unified structure.
- **Structure of Judiciary in India:**
 - Supreme Court of India
 - High Court (in each of the states)
 - District & Session Judges' Court (In Districts)
 - Subordinate Judges' Court (Civil)
 - Court of Session (Criminal)
 - Subordinate Magistrates' Courts

The court structure is set as per the judiciary system prevailing in India with differentiation of applicability as per the merit of the case. The normal trend of the judiciary system is to start any general dispute in the lower court which is being escalated as per the satisfaction of the parties to the higher courts. Applicability (jurisdiction) can be determined on 3 basis:

1. Pecuniary
2. Territorial
3. Subjectorial

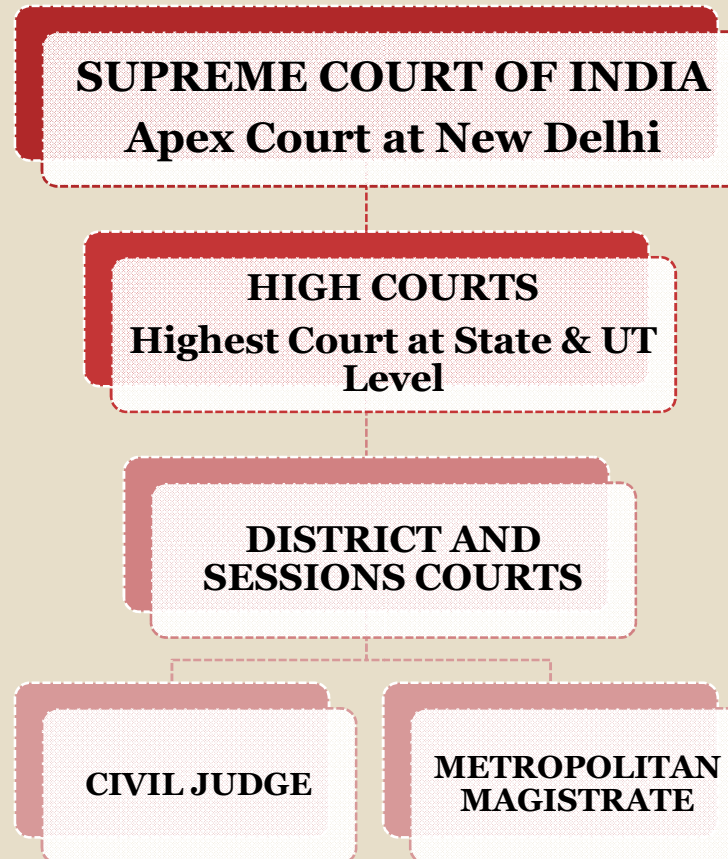
Broadly at present, Three - tier division:



INDIAN COURT STRUCTURE

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Hierarchy of Criminal Justice System in India



Hierarchy of Civil Justice System in India

SUPREME COURTS

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graph TD; A[SUPREME COURTS] --- B[HIGH COURTS]; B --- C[DISTRICT & SESSIONS COURTS];
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HIGH COURTS

DISTRICT & SESSIONS COURTS

Supreme Court of India:



Chapter V: THE UNION
Articles 124-147 of Constitution

- ❑ The Supreme Court is the highest court of law in India.
- ❑ It has appellate jurisdiction over the high courts and is the highest tribunal of the land.
- ❑ The law declared by the Supreme Court is binding on all the courts within the territory of India.
- ❑ It has the final authority to interpret the Constitution.
- ❑ Thus, independence and integrity, the powers and functions and judicial review are the issues of utmost importance concerned with the Supreme Court.

Composition and Appointment:

❖ **Article 124 of the Indian Constitution: Establishment & Constitution of Supreme Court:**

- The Supreme Court consists of the Chief Justice of India and not more than thirty other judges.
- Every judge of the Supreme Court shall be appointed by the president by warrant under his hand & seal on the recommendation of the National Judicial Appointments Commission. There can be ad hoc judges for a temporary period due to lack of quorum of the permanent judges.
- Once appointed, a judge holds office until he attains 65 years of age.
- He may resign his office
 - By writing addressed to the President or
 - By an order of the President after an address by each House of Parliament supported by a majority of the total membership of that house & by a majority of not less than 2/3rd of the members the House present and voting on grounds of 'proved misbehaviour' and 'incapacity'.
- A person shall not be qualified for appointment as a judge of the Supreme Court unless he is:
 - a) a citizen of India, and
 - b) either i) a distinguished jurist; or ii) has been a High Court judge for at least 5 years, or iii) has been an Advocate of a High Court for at least 10 years.

❖ **Article 124C of Indian Constitution: Power of Parliament to make laws:**

- Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.

❖ **Article 125 of the Constitution: Salaries, etc. of Judge:**

- The salaries shall be paid to the judges as may be determined by Parliament by law,
 - Every Judge shall be entitled to privileges & allowances,
 - The salaries of the judges cannot be changed to their disadvantage, except in times of a financial emergency.
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- When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of office, the President may appoint an acting Chief Justice. **(Article 126).**

 - There can be ad hoc judges for a temporary period due to lack of quorum of the permanent judges. **(Article 127).**

Powers of Supreme Court:

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- **Article 129:** Supreme Court is the court of record with the power to punish for contempt of itself.
- Curative petition under **Article 137** -Power to review judgment / pronounced or order made by it:
 - Could be if it is vitiated by the non-observance of the principles of natural justice or on account of abuse of the process of the Court
 - Cannot be allowed for re-appreciation of evidence.
- Law laid down by the SC is binding on all courts within the territory of India: **Article 141**
 - Doctrine of precedent
 - Per incuriam decisions do not constitute binding precedent
 - Obiter dicta of the Supreme Court is binding on the HCs –Persuasive value for SC

Jurisdiction:

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A. Article 131: Original Jurisdiction of the Supreme Court:

- ❖ Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute
 - a) between the Government of India and one or more States; or
 - b) between the Government of India and any State or States on one side and one or more other States on the other; or
 - c) between two or more States,
- ❖ if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.
- ❑ Disputes excluded from Article 131
 - ❑ Proviso to Article 131 –Article 131 does not extend to treaty, agreement, covenant, etc. executed before the commencement of the Constitution
 - ❑ Parliament may by law exclude jurisdiction of SC in state disputes on the use, distribution or control of waters of any inter-State river –Article 262.

Writ Jurisdiction:-

- **‘Dr. Ambedkar’** considered the right to constitutional remedies as ‘*heart and soul of the constitution*’.
- SC being the guardian of Fundamental Rights and thus has non-exclusive original jurisdiction has the power to issue writs, such as *Habeas Corpus, Quo Warranto, Prohibition, Certiorari and Mandamus* to protect the violation of Fundamental Rights.

- **Article 32 of the Constitution – Right to constitutional remedies:**

- 1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- 2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- 3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- 4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Judgments under Article 32 of Constitution

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- Article 32 does not merely confer power on this Court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights.
- The power of the Court is not only injunctive in ambit, that is, preventing the infringement of fundamental right but it is also remedial in scope and provides relief against a breach of the fundamental right already committed.
- The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases.

-M.C. Mehta And Anr vs Union Of India & Ors AIR 1987 sc 1086

- Supreme Court has jurisdiction to enforce the fundamental rights against private bodies & individuals and can award compensation for violation of the fundamental rights.
- It can exercise its jurisdiction suo motu or on the basis of PIL.

-Shri Bodhisattwa Gautam vs Miss Subhra Chakraborty AIR 1996 SC 922

- ***Vishaka v/s State Of Rajasthan***

AIR 1997 SUPREME COURT 3011

RAPE ON WORKING WOMEN - Rehabilitation & compensation:

- Supreme Court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work until legislation is enacted for this purpose.
- The Court observed that:
 - In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

- **Pratibha Ramesh Patel v Union of India and Others (2016) 12 SCC 375**
 - Having invoked a constitutional remedy before the High Court under Article 226 of the Constitution of India, the petitioner cannot, under Law, file another petition under Article 32 of the Constitution of India on identical set of facts for identical reliefs.

- **Meera Santosh Pal and Others v Union of India and Others Civil Original Jurisdiction, Writ Petition No 17 OF 2017**
(Medical termination of pregnancy of a 24-week foetus)
 - Deciding the question as to whether the right to bodily integrity calls for a permission to allow her to terminate her pregnancy, the Court said that the report of the Medical Board clearly warrants the inference that the continuance of the pregnancy involves the risk to the life of the pregnant woman and a possible grave injury to her physical or mental health as required by Section 3 (2)(i) of the Medical Termination of Pregnancy Act, 1971.
 - The bench allowed a woman to undergo medical termination of her 24 weeks pregnancy in the light of the apprehended danger to her physical and mental health in case of continuance of pregnancy.

Writ of Habeas Corpus

- The expression “Habeas Corpus” is a Latin term which means ‘to have the body’.
- If a person is detained unlawfully, his relatives or friends or any person can move the Court by filing an application under Article 226 in High Court or under Article 32 in Supreme Court for the writ of Habeas Corpus.
- This writ is in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for the confinement.
- An application for habeas corpus can be made by any person on the behalf of the prisoner/detenu as well as the prisoner/detenu himself.
- Even a letter to the judge mentioning illegalities committed on prisoners in jail can be admitted.
- Courts can also act suo motu in the interests of justice on any information received by it from any quarter/source.
- The general principle is that a person illegally detained in confinement without legal proceedings is entitled to seek the remedy of habeas corpus.

❖ ***Sunil Batra Vs Delhi Administration*** (AIR 1980 SC 1579):
Appalling Condition prevailing in jails:

- A convict had written a letter to one of the Judges of the Supreme Court alleging inhuman torture to a fellow convict.
- The Court treated this letter as a petition of habeas corpus and passed appropriate orders.
- The handcuffing of under trial prisoners & convict and pulling fetters on them was the subject matter of complaint.
- Supreme Court issued appropriate direction to put a stop to such inhuman practices in jails.

❖ ***Hussainara Khatoon v/s State of Bihar*** (1980) 1 SCC 98:
Under trials who had suffered long incarceration:

- Several under trial prisoners in the State of Bihar are languishing in jail for period longer than the period for which they could have sentenced for the offences for which they were arrested.
- The court held that:
 - ✦ While referring to Article 39A of Constitution that a procedure which does not provide legal services to the accused, who is already too poor to afford a lawyer resulting into a trial where one side does not have any legal assistance, cannot be considered as reasonable, fair & just.
 - ✦ The state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to improving speedy trial.

❖ ***Sheela Barse v. State of Maharashtra:*** (1983) 2 SCC 96:

Legal Aid to the poor:

- A letter from Sheela Barse, a journalist, complaining of custodial violence to women prisoners while confined in the police lock-ups in the city of Mumbai, was treated as a Writ Petition.
- Supreme Court held that:
 - ✦ Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Art. 39A but also by Articles 14 and 21 of the Constitution. It is a Necessary sine qua non of justice and where it is not provided, injustice is likely to result and every act of injustice corrodes the foundations of democracy and rule of law. It is possible that a prisoner lodged in a jail does not know to whom he can turn for help to indicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment, oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated. It may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore essential that legal assistance must be made available to prisoners in jails whether they be under-trials or convicted prisoners.
- The Court issued various directions to the State of Maharashtra conferring protection to women prisoners in police lock ups.

❖ ***Rudal Shah v/s State of Bihar:*** (1983) 4 SCC 141

Compensation for illegal Detention for 14 years

- The petition sought the release of Rudul Shah from illegal detention, and also ancillary relief such as rehabilitation and compensation.
- The Court held that:
 - ✦ Detention of petitioner was illegal.
 - ✦ Article 21's guarantee of the right to life and personal liberty would be stripped of its significant content if the Court was limited to passing orders releasing individuals illegally detained.
 - ✦ The "right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield."
- Accordingly, the Court ordered the State to pay 30,000 rupees to the petitioner as an interim measure, in addition to the 5,000 already paid, noting that the judgment did not preclude the petitioner from bringing future lawsuits against the State and its officials for appropriate damages relating to his unlawful detention.

❖ ***Mrs. Nilima Priyadarshini v/s State Of Bihar*** (AIR 1987 SC 2021):

Illegal Confinement:

- When an illegal confinement of a woman was the basis of a habeas corpus petition before Supreme Court.
- Supreme Court directed the person against whom the complaint was made to produce the lady before the Additional Chief Judicial Magistrate.
 - ✦ Addl. Chief Judicial Magistrate was directed to enquire into the matter & report it to the Supreme Court to issue appropriate direction.

❖ ***Joginder Kumar v/s State of UP*** [1994 SCC (4) 260]:

Illegal Arrest: Condemned the Practice of arresting people without Bonafide investigation:

- Petitioner was called by the SSP Ghaziabad for making enquiries in some case.
- When he did not return his brother not knowing his whereabouts moved Supreme Court in a petition for habeas corpus.
- Court held that
- the police shall not arrest any person because it is lawful for him to do so & should only do so on making some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest, otherwise the constitutional rights of a citizen are infringed.
- Thus Supreme Court issued various guidelines for arrest by police.

Mandamus

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- The expression 'Mandamus' is a Latin term which means " We Command".
- Mandamus is a Judicial order issued in the form of a command to any Constitutional, Statutory or Non-Statutory authority asking to carry out a public duty imposed by law or to refrain from doing a particular act, which the authority is not entitled to do under the law.
- It is an important writ to check arbitrariness of an administrative action.
- It is also called 'Writ of Justice'.
- ❖ The petitioner can approach the High Court or Supreme Court for issuing the writ of mandamus on the following grounds:-
 - i. Error of jurisdiction
 - a) Lack of jurisdiction
 - b) Excess of jurisdiction
 - ii. Jurisdictional facts;
 - iii. Violation of the principles of natural justice i.e. principles of Rule against bias and Rule of Audi alterem partem;
 - iv. Error of law apparent on the face of record
 - v. Abuse of jurisdiction
- Mandamus will not be issued unless the applicant has a legal right to the performance of legal duty of a public nature and the party against whom the writ is sought is bound to perform that duty.
- This writ is also available against inferior Courts or other Judicial bodies when they have refused to exercise their jurisdiction and thus to perform their duty.

❖ **Anandi Mukta Sadguru Shree Mukta v/s V.R. Rudani & Ors**
AIR 1989 SC 1607

- Writ of mandamus is confined only to public authorities to compel performance of public duty and therefore will not be available in respect of duties of private nature.
- If the rights are purely of a private character no mandamus can issue, if the authority is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied.
- Issue of mandamus is not confined only to statutory authorities or instrumentalities of the State. They may cover any other person or body performing public duty.
- Mandamus cannot be denied on the ground that duty to be enforced is not imposed by statute.

Prohibition

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- The expression ‘prohibition’ literally means ‘to prohibit’.
- The Writ of Prohibition is a Judicial order issued by the Supreme Court or a High Court to an inferior Court or quasi-judicial body forbidding the latter to continue proceedings therein in excess of its jurisdiction or to usurp a jurisdiction with which it is not legally vested.
- Object of the writ:
 - to compel inferior courts to keep themselves within the limits of their jurisdiction.
 - to secure that the jurisdiction of an inferior court or tribunal is properly exercised and
 - that it does not usurp the jurisdiction which it does not possess.
- ❖ **The writ of prohibition can be issued on the following grounds:**
 - i. Absence or Excess of jurisdiction;
 - ii. Violation of the principles of natural justice;
 - iii. Unconstitutionality of a Statute;
 - iv. Infraction of Fundamental Rights
- Thus, writ of prohibition is available during the pendency of the proceedings and before the order is made.

Certiorari

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- The expression “ certiorari” is a Latin word which means “ to certify”.
- This writ confers power on the Supreme Court and High Courts to correct illegality of their decisions.
- ‘Certiorari’ is a judicial order issued by the Supreme Court under Article 32 and/or by the High Court under Article 226 of the Constitution to an inferior Court or quasi-judicial or any administrative body to transmit to the Court of records of proceedings pending therein for scrutiny and decide the legality and validity of the orders passed by them.
- ❖ **The conditions necessary for the issue of the writ of certiorari are:-**
 - i. Any body of persons;
 - ii. Having legal authority;
 - iii. To determine questions affecting the rights of subjects;
 - iv. Having the duty to act judicially;
 - v. Act in excess of legal authority
- ❖ **The grounds on which the writ of certiorari may be issued are:**
 - a) Error of Jurisdiction
 - i. Lack of jurisdiction
 - ii. Excess of jurisdiction
 - b) Abuse of jurisdiction
 - c) Error of law apparent on the face of the record
 - d) Violation of principles of natural justice
- In **A.K. Kripak Vs Union of India**, AIR 1970 SC 150, the Supreme Court issued the writ of certiorari to quash the selection list of the Indian Forest Service on the ground that one of the selected candidates was the ex-officio member of the selection committee.

Writ of Quo Warranto

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- The Writ of 'Quo Warranto' questions the title as to the holder of an office.
- The term 'Quo Warranto' means 'what is your authority'.
- It is a judicial order asking a person, who occupies public office, to show by what authority s/he holds the office.
- If it is found that the holder of the office has no valid title, then this writ is issued to him to oust from the office.
- ❖ **The conditions necessary for the issue of a writ of Quo Warranto are:**
 - i. The office must be public and it must be created by a statute or by the constitution itself.
 - ii. The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
 - iii. There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.

B. Appellate Jurisdiction:

- The Supreme Court is the highest court and appeal lies before it from any judgment, decree or final order of High Court in the following cases:-
 - i. Article 132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases:**
 - Substantial question of law as to interpretation of the Constitution as certified by High Court
 - ✦ Appeal to SC against a civil, criminal or other proceeding of High Court.
 - ii. Article 133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matter:**
 - Substantial question of law of general importance; &
 - In the opinion of High Court the said question needs to be decided by the SC.
 - iii. Article 134. Appellate jurisdiction of Supreme Court in regard to criminal matters:**
 - An appeal reversed an order of acquittal of an accused person and sentenced him to death; or
 - has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
 - certifies under Article 134A that the case is a fit one for appeal to the Supreme Court.

C. Advisory Jurisdiction:

- **Article 143** –Authorises the President the power to seek advice regarding any question of law or fact of public importance, or cases belonging to the disputes arising out of pre-constitution treaties and agreements which are excluded from its original jurisdiction.

D. Review Jurisdiction:

- **Article 137** provides for review of judgment or orders by the Supreme Court wherein, subject to the provisions of any law made by the Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgment pronounced or made by it.

Article 136: Special leave to appeal by the Supreme Court:

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1. Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India
 2. Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.
- Power under article 136 is exercisable outside the purview of ordinary law to meet demand of justice.
 - Article 136 is a special jurisdiction extraordinary in its amplitude.
 - *A. Subash Babu v/s State of Andhra Pradesh [AIR 2011 SC 3031]*
 - Article 136 of the Constitution does not confer any right of appeal on any party but it confers a discretionary power on the Supreme Court to interfere in suitable cases. Article 136 commences with a non- obstante clause, the words are of over-riding effect and clearly indicate the intention of the framers of the Constitution that it is a special jurisdiction and residuary power unfettered by any statute or other provisions of Chapter IV of Part V of the Constitution. The jurisdiction under Article 136 of the Constitution, of course, cannot be barred by statute since it is extraordinary power under Article 136.
 - *Khoday Distilleries Ltd. & Ors. v/s Mahadeshwara S.S.K. LTD. [2012 (10) SCALE 499].*

High Courts:



Chapter VI: THE STATES Articles 214-231 of Constitution

- ❑ The High Court is the highest Court of Justice in the State on questions of law.
- ❑ It is the only court, other than Supreme Court, which is vested with the jurisdiction to interpret the Constitution.
- ❑ There shall be a High Court for each State. (Article 214)
- ❑ Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself (Article 215).

Composition and Appointment:

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❖ **Article 216: Constitution of High Courts:**

- Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint.

❖ **Article 217: Appointment & Conditions of the office of a Judge of a High Court:**

- Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointments Commission and shall hold office,
 - in the case of an additional or acting Judge, as provided in article 224, &
 - in any other case, until he attains the age of 62 years.
- Provided that :
 - A Judge may, by writing addressed to the President, resign his office;
 - A Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;
 - The office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.
- A person shall not be qualified for appointment as a Judge of a High Court
 - Unless he is a citizen of India and
 - a) has for at least ten years held a judicial office in the territory of India; or
 - b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession

- ❖ **Article 221 of the Constitution: Salaries, etc. of Judge:**
 - The salaries shall be paid to the judges as may be determined by Parliament by law,
 - Every Judge shall be entitled to privileges & allowances.

- ❖ **Article 222: Transfer of a Judge from one High Court to another:**
 1. The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court
 2. When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963 , as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

- ❖ When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of office, the President may appoint an acting Chief Justice. **(Article 223)**

Powers of a High Court:

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❖ Article 227: Power of superintendence over all courts by the High Court:

- Extends to all courts and tribunals, except those dealing with armed forces.
- Also includes a revisional jurisdiction to intervene in case of gross injustice or non-exercise or abuse of jurisdiction, even though no appeal or revision against the orders of such courts was otherwise provided.

❖ Power to take over cases: (Article 228)

- If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may
 - (a) either dispose of the case itself, or
 - (b) determine the said question of law and return the case to the court concerned.

Jurisdiction:

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A. Territorial Jurisdiction:

- Except where Parliament makes a provision for a Common High Court for two or more States or extends the jurisdiction of a High Court to a Union Territory, the jurisdiction of the High Court of a state is co-terminus with the territorial limits of that state.

B. Original jurisdiction:

- Includes the enforcement of the Fundamental Rights, issue of Writs to any person or authority including Government, settlement of disputes relating to the election to the Union and State legislatures and jurisdiction over revenue matters.

C. Appellate jurisdiction:

- Extends to both civil and criminal matters.
 - On the civil side, an appeal to the High Court is either a first appeal or second appeal.
 - In criminal cases, the jurisdiction extends to cases tried by the Sessions and Additional Sessions Judges.
- 42nd Amendment disallowed the High Court to hear appeals against Tribunals and the decisions of various Corporations established under the law of the state. But this restriction on the High Court's appellate jurisdiction was removed by the **Forty Third** Amendment.

D. Writ Jurisdiction :

- **Article 226 of the Constitution**- Power of the HC to issue prerogative writs, throughout the territories where it exercises jurisdiction, to any person or authority, for the enforcement of fundamental rights or for any other purposes.
- **HC as a court of equity** -Wider writ jurisdiction of the HC than the SC since the HC can issue writs not only for enforcement of fundamental rights but also for any other purpose i.e. enforcement of legal right.

Subordinate Courts

Chapter VI: THE STATES
Articles 233- 237 of
Constitution

- ❑ The hierarchies of courts that lie subordinate to High Courts are referred to as subordinate courts.
- ❑ It is for the state governments to enact for the creation of subordinate courts.
- ❑ The nomenclature of these subordinate courts differs from state to state but broadly there is uniformity in terms of the organisational structure.
- ❑ There are District Courts for each district, and has appellate jurisdiction in the district.
- ❑ In each district, there are various types of subordinate or lower courts. They are a) civil courts, b) criminal courts and c) revenue courts.
- ❑ These courts are under administrative control of the High Court of the State to which the district concerned belongs.

Civil Courts

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- **Article 233 of the Constitution: Appointment of the District Judges:**

- 1) Appointments 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 or a pleader and is recommended by the high court for appointment.

- Below the Court of District Judge, there may be one or more courts of sub judges in the district.
- Separate family courts, which are equal to courts of sub judge, have been established in districts to exclusively hear cases of family disputes, like divorce, custody of children, etc.
- Below them there are courts of munsifs and small causes courts which decide cases involving petty amounts.
- No appeal can be made against the decisions of the small causes courts.
- All these courts hear and settle civil disputes.

Jurisdiction of Civil Court

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Section 9 of Code of Civil Procedure 1908: Jurisdiction of A Civil Court

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.].

As mentioned under sec-9 of the Code, the civil courts have jurisdiction to deal with all matters provided it is a matter of civil nature and it is not expressly or impliedly barred.

Subject Matter Jurisdiction:

It can be defined as the Authority vested in the court to try and hear cases of the particular type and pertaining to a particular subject matter.

Territorial Jurisdiction:

The court can decide within the geographical limits of a court's authority and it cannot exercise authority beyond that territorial and geographical limits.

Pecuniary Jurisdiction:

Pecuniary Jurisdiction is related to money, whether a court can try cases and suits of monetary value/amount of the case or suit in question.

Criminal Courts

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- **Section 6** of Criminal Procedure Code 1973 envisaged that there shall be the following classes of criminal Courts, viz.,
 - Courts of Session;
 - Judicial Magistrates of the first class,
 - Judicial Magistrates of the second class, and
 - the Executive Magistrates.

1. Court of Session

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❖ Establishment

- As per **Section 7** of CrPC, every state will have *session division and the number of such division will be decided by State Government after consulting the High Court.*
- **Section 9** of CrPC, states that the *State Government will have to establish a Court of Session for every session's division which shall be presided by a Judge and he will be appointed by the High Court.*
 - Further, the *High Court can also appoint Additional Session Judge and Assistant Session Judge.*

❖ Triable offence

- As per **Section 26**, a Court of Session can try any offence *given under IPC or any other offence which has shown to be triable by the Court of Session in the First Schedule.*

❖ Subordination

- The *Assistant or Additional Session Judge* appointed by the High Court will be *subordinate to their respective Sessions Judge* who will distribute the work among them.
- *Session Judge can make rules with respect to the additional and assistant judges but they must be consistent with the Code. [Section 9]*

❖ Punishment

- A Sessions Judge and Additional Sessions Judge *can pass any sentence that is authorised by law but, in case of death sentence confirmation of High Court is required.*
- An Assistant Sessions Judge can pass any sentence *excluding sentence of death or imprisonment for life or for a term exceeding ten years. [Section 28]*

2. Court of Metropolitan Magistrate

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❖ Establishment

- Areas having *population more than one million and notified by the State Government* are *Metropolitan areas*. The area of *Mumbai, Kolkata, Chennai and Ahmedabad* are the areas that are mentioned in the Code as Metropolitan Areas. [**Section 8**]
- As per **Section 16**, the *State Government after consulting the High Court* will establish as many courts of *Metropolitan Magistrates* as it may deem fit in the Metropolitan Area. The *High Court* will appoint the *presiding officer* and the *jurisdiction* of the officer will extend throughout the metropolitan area.
- Under **Section 17**, *High Court* will appoint a *Metropolitan Magistrate as Chief Metropolitan Magistrate (CMM)* for a particular area. *High Court* can also appoint any *Metropolitan Magistrate as Additional Chief Metropolitan Magistrate*.

❖ Subordination

- The *CMM* and every *Additional CMM* will be subordinate to the *Sessions Judge*. Every other *Metropolitan Magistrate* will be subordinate to *CMM* and the extent of the subordination will be defined by the *High Court*. Further, the *CMM* can make rules consistent with the Code and can also distribute the work among the *Metropolitan Magistrate*. [**Section 19**]

❖ Triable Cases

- As per **Section 26**, *Court of Metropolitan Magistrate* can try offence which has shown to be triable by the *Court of Metropolitan Magistrate* in the First Schedule.

❖ Punishment

- *CMM* may pass any sentence authorised by the law except a sentence of death or of imprisonment for life or a term exceeding seven years whereas a *Metropolitan Magistrate* can pass a sentence for a term not exceeding three years or fine not exceeding five thousand rupees or both. [**Section 29**]

3. Court of Judicial Magistrate

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❖ Establishment

- As per Section 7, each division is divided into districts and the State Government in every district after consultation with the High Court will establish as many Courts of Judicial Magistrates of First Class and Second Class as it may deem fit.
- The presiding officer of such Courts shall be appointed by the High Court. [**Section 11**]
- In every district a Judicial Magistrate of First Class (JMFC) will be appointed as a Chief Judicial Magistrate (CJM) under Section 12 of CrPC. The High Court can also appoint any JMFC to be an Additional CJM.
- A CJM, subject to the control of High Court, can define the local limit of the areas within which the Magistrates appointed under Section 11 or Section 13 can exercise their powers. [**Section 14**]

❖ Subordination

- As per **Section 15**, a CJM will be subordinate to the Sessions Judge and the other Judicial Magistrate will be subordinate to CJM, subject to general control of Sessions Judge. Also, the CJM can make rules consistent with this Code and can distribute the work among the Judicial Magistrate subordinate to him.

❖ Triable Cases

- As per **Section 26**, Court of Judicial Magistrate can try offence which has shown to be triable by the Court of Judicial Magistrate in the First Schedule.

❖ Punishment

- CJM may pass any sentence authorised by law except a sentence of death or of imprisonment for life or a term exceeding seven years whereas a JMFC can pass a sentence for a term not exceeding three years or fine not exceeding five thousand rupees or both. Judicial Magistrate of Second Class can pass a sentence of imprisonment wherein the term will not be exceeding one year and in terms of fine, the amount will not exceed one thousand rupees, or of both. [**Section 29**]

4. Court of Executive Magistrate

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❖ Establishment

- Under **Section 20**, the *State Government in every district and in every metropolitan area will appoint as many Executive Magistrates as it thinks fit and shall appoint one of them as District Magistrate (DM). The State Government can also appoint any Executive Magistrate as an Additional District Magistrate (ADM) who will have same power as that of a DM.*
- *The DM subject to the control of State Government will define the local limits in which the Executive Magistrate can exercise their power.*

❖ Subordination

- *Every Executive Magistrate other than ADM will be subordinate to the DM and every Executive Magistrate exercising power in a Sub-division shall also be subordinate to the Sub-Divisional Magistrate, subject to the general control of DM. [Section 23]*

❖ Triable Cases

- *As per **Section 3(4)(b)**, the matters which are administrative or executive in nature will be exercisable by an Executive Magistrate.*

❖ Order

- *The order that can be passed by an Executive Magistrate will be either administrative or executive in nature and hence it will depend on the facts and circumstances of the case.*

Tribunals



- ❑ Tribunals were added in the Constitution by Constitution (Forty-second Amendment) Act, 1976 as Part XIV-A, which has only two articles viz. 323-A and 323-B.
- ❑ While article 323-A deals with Administrative Tribunals;
- ❑ Article 323-B deals with tribunals for other matters.
- ❑ In general sense, the ‘tribunals’ are not courts of normal jurisdiction, but they have very specific and predefined work area.

- **Definition of Administrative Tribunal:**

- An administrative Tribunal is a multimember body to hear on cases filed by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments on those cases.

- **Jurisdiction of tribunals in service matters:**

- According to Article 323A, administrative tribunals can adjudicate the disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services and posts at:
 - Union Level
 - State Level as well as
 - Any local or other authority within the territory of India.

Establishment of Tribunals

- Article 323A provides that a law made by the parliament may provide for establishment of an Administrative Tribunal for the each state or two or more states. These tribunals exclude the jurisdiction of all courts except the special jurisdiction of the Supreme Court in Article 136. The matters for these tribunals are as follows:
 - Recruitment and conditions of service of persons appointed to public services in Union as well as States as well as Local authorities
 - Recruitment and conditions of service of persons appointed to any corporation owned or controlled by the Government.

Tribunals by State Legislatures

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- Article 323 B empowers the parliament or state legislatures to set up tribunals for matters other than those mentioned above. The matters to be covered by such tribunals are as follows:
 - a) Levy, assessment, collection and enforcement of any tax;
 - b) Foreign exchange, import and export across customs frontier;
 - c) Industrial and labour disputes;
 - d) Matters connected with Land reforms covered by Article 31A;
 - e) Ceiling on urban property;
 - f) Elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters which include:
 - Delimitation of constituencies
 - Matters which can be only questions via election petition. This means that some election matters where courts have been barred cannot be questions in tribunals also.
 - g) Production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods;
 - h) Rent, its regulation & control and tenancy issues;
 - i) Offences against laws with respect to any of the above matters.

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THANK YOU