

BASIC INFORMATION ABOUT INDIA

The subcontinent of India lies in south Asia, shares its borders with Pakistan, China Bangladesh and Nepal. The country is blessed with cultural diversities. India is inhabited with peoples of various religions, the coexistence of which makes Indian democracy the largest in the world.

India is the seventh largest and second most populous country of the world. India has an area of approximately 3,287,590 square kilometers. Indian civilization is one of the oldest in the world dates back from 3200 B.C. The climate of India varies from tropical monsoon from in south to temperate in north. The terrain varies from upland plains in the south to flat and rolling plains in north along with desert in west. India is comprised of 28 states and 7 Union territories.

India is the largest Democracy in the world. With the exception of China, India has the largest consumer market in the world. India is rich in natural resources.

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws.

JUDICIARY SYSTEM IN INDIA

India has one of the oldest legal systems in the world. Its Law and Jurisprudence stretches back into centuries, forming a living tradition, which has grown and evolved with the lives of its people.

India is a sovereign republic and is having democratic governance under written Constitution of India, which is considered as supreme. The Constitution of India is Federal in nature having the glimpses of Unitary system as well. It has Parliamentary form of Government distributed among the Union and the States. Independent Judiciary, guaranteed Fundamental Rights and Directive Principles of State policy are the important features of the Constitution.

India is said to have the most powerful and independent Judiciary system in the world. At the apex of the entire judicial system, exists the Supreme Court of India. A uniform court system is followed in India. The hierarchy of Courts (higher to lower) is as under: -

- i) Supreme Court of India
- ii) High Courts (State wise)
- iii) Courts subordinate to respective High Courts of States

At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. There are a total of 21 High Courts functioning in India. Below the High Courts lies a hierarchy of Subordinate Courts.

Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge and is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Courts of Civil Judge, Senior Civil Judge, Additional District Judge and the like. Similarly, the criminal judiciary comprises Judicial Magistrates of First and Second Class, Chief Judicial Magistrates, Metropolitan Magistrates, Additional Sessions Judge and the like.

For dealing issues or question coming under specific laws passed by Parliament or Legislatures separate Tribunals, Commissions and other judicial or quasi-judicial authorities such as BIFR, AAIFR, CLB, CEGAT, MRTTP, Consumer Courts, Labor Courts etc. have been constituted under the authority of law for discharging functions relating to specific area.

COURTS IN INDIA

The Supreme Court of India

Indian Parliament enact laws, Supreme Court gives meaning (interpretation) to laws. In India, law laid down by Supreme Court of India is binding on all courts of law, including Supreme Court itself. The only exception to this rule is that the law laid down by a Bench of two Judges of Supreme Court binds any subsequent Bench of two Judges of Supreme Court, but a higher Bench consisting of three or more Judges of Supreme Court can overrule such law. A well known proverb in this context is, "Decision of two, bind the two; Decision of three, binds the three & so on".

The Supreme Court of India comprises of the Chief Justice and 25 other Judges appointed by the President of India. The Judges of Supreme Court hold office until the age of 65 years. These Judges sit in smaller benches of two and three. However, for matters involving substantial questions of law as to interpretation of Constitution, a minimum of 5 Judges' Bench hears the matter. A maximum of 13 Judges' Bench has been constituted in the history of the Supreme Court of India, till date. The Constitution seeks to ensure the independence of Supreme Court Judges. It is important to mention that a person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India. The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 regulate the practice and procedure of the Supreme Court.

Jurisdiction Of The Supreme Court

The Supreme Court has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends.

In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.

The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court. The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself.

Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.

The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgment, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution.

Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies: (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court.

In criminal cases, an appeal lies to the Supreme Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (c) certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court.

The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution 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.

The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution.

There are provisions for reference or appeal to this Court under Article 317(1) of the Constitution, Section 257 of the Income Tax Act, 1961, Section 7(2) of the Monopolies and Restrictive Trade Practices Act, 1969, Section 130-A of the Customs Act, 1962, Section 35-H of the Central Excises and Salt Act, 1944 and Section 82C of the Gold (Control) Act, 1968. Appeals also lie to the Supreme Court under the Representation of

the People Act, 1951, Monopolies and Restrictive Trade Practices Act, 1969, Advocates Act, 1961, Contempt of Courts Act, 1971, Customs Act, 1962, Central Excises and Salt Act, 1944, Enlargement of Criminal Appellate Jurisdiction Act, 1970, Trial of Offences Relating to Transactions in Securities Act, 1992, Terrorist and Disruptive Activities (Prevention) Act, 1987 and Consumer Protection Act, 1986. Election Petitions under Part III of the Presidential and Vice Presidential Elections Act, 1952 are also filed directly in the Supreme Court.

Under Articles 129 and 142 of the Constitution the Supreme Court has been vested with power to punish for contempt of Court including the power to punish for contempt of itself. In case of contempt other than the contempt referred to in Rule 2, Part-I of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, the Court may take action (a) Suo motu, or (b) on a petition made by Attorney General, or Solicitor General, or (c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor General.

Under Order XL of the Supreme Court Rules the Supreme Court may review its judgment or order but no application for review is to be entertained in a civil proceeding except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding except on the ground of an error apparent on the face of the record.

Public Interest Litigation

Although the proceedings in the Supreme Court arise out of the judgments or orders made by the Subordinate Courts including the High Courts, but of late the Supreme Court has started entertaining matters in which interest of the public at large is involved and the Court can be moved by any individual or group of persons either by filing a Writ Petition at the Filing Counter of the Court or by addressing a letter to Hon'ble the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction. Such concept is popularly known as 'Public Interest Litigation' and several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction. A Writ Petition filed at the Filing Counter is dealt with like any other Writ Petition and processed as such. In case of a letter addressed to Hon'ble the Chief Justice of India the same is dealt with in accordance with the guidelines framed for the purpose

Supreme Court Advocates

There are three categories of Advocates who are entitled to practice law before the Supreme Court of India: -

(i) SENIOR ADVOCATES

These are Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A

Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

(ii) ADVOCATES-ON-RECORD

Only these Advocates are entitled to file any matter or document before the Supreme Court.

(iii) OTHER ADVOCATES

These are Advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

The High Courts and their sub-ordinate Courts

The High Court stands at the head of a State's judicial administration. There are 21 High Courts in the country, three having jurisdiction over more than one State. Among the Union Territories, Delhi alone has a High Court of its own. Other six Union Territories come under the jurisdiction of different State High Courts. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing puisne Judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court.

Each High Court has power to issue to any person within its jurisdiction directions, orders, or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of fundamental rights, legal rights and for any other purpose. This power may also be exercised by any High Court exercising jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power, notwithstanding that the seat of such Government or authority or residence of such person is not within those territories.

Each High Court has powers of superintendence over all Courts, either civil or criminal, within its jurisdiction.

Trial Courts

Each State is divided into judicial districts presided over by a District and Sessions Judge and is the highest judicial authority in a district. Below him, there are Courts of

civil jurisdiction, known in different States as Courts of Civil Judge, Senior Civil Judge, Additional District Judge and the like. Similarly, the criminal judiciary comprises Judicial Magistrates of First and Second Class, Chief Judicial Magistrates, Metropolitan Magistrates, Additional Sessions Judge and the like.

The Court of Civil Judge is the smallest unit of the civil judicial system in India. The Court of Senior Civil Judge, Additional District Judge and the District Judge are the other superior courts in order of their superiority. These Courts, apart from original side matters, hear Appeals from the judgments of their respective subordinate courts, for example the Court of District Judge or Additional District Judge hears and disposes of appeals arising from the decision of Court of Civil Judge or Senior Civil Judge. Regarding original side matters, a distinction regarding jurisdiction among these courts is made on the basis of valuation of a cause i.e. pecuniary jurisdiction.

SOME RELEVANT INFORMATION ABOUT JUDICIAL SYSTEM IN INDIA

Jurisdiction

Indian Legal System follows the fundamental principle of English Law that wherever there is right, there is remedy (*ubi jus ibi remedium*). Jurisdiction of a court is deciphered in the reference matter either on pecuniary basis or on the basis of territory.

On the Criminal side, any Court can inquire into any offence under whose jurisdiction the offence has been committed.

Provision Of Legal Aid

In India if a person belongs to poor section of the society or if he belongs schedule tribe, caste or other backward classes, a victim of natural calamity, is a woman or a child or mentally ill or otherwise disabled person or a industrial workman, or is in custody including custody of protective home, he /she is entitled to get free legal aid from Supreme Court Legal Aid Committee or various other legal aid committee functioning at state and district level. The Aid so granted by the committee includes cost of preparation of the matter or other related therewith. Any person desirous of availing legal service through the committee has to make an application to the Secretary concerned and hand over all the necessary documents concerning his case. The Committee after ascertaining the eligibility of the person provides necessary legal aid to him or her.

Attorney's Fees

Whoever engages an attorney pays the fee. However, provisions regarding payment of 'cost' of litigation by other party have been provided under almost all the legislations subject to discretion of the court.

Contingency Fees

Charging of contingency fee amounts to 'misconduct' as per the provisions of Rule 20 of Bar Council of India Rules framed under the Advocates Act, 1961.

Time-Duration Of Court Cases

The start to end time-duration of court cases vary from State to State because of some variation of procedure followed in courts at different States. Further, it is most difficult to assess as to how much time would any case take to be finally decided. Prior to year 2001, the situation was pathetic as procedural laws in relation to time-duration were not strict. However in the year 2001, various amendments were incorporated in the Civil Procedure Code (CPC), as a consequence the courts' rate of disposal of cases in shorter time-period has improved to a great extent. Taking average, a summary Recovery Suit filed under Order XXXVII CPC is usually disposed of within one to two years time by a court of first instance.

Theories of Recovery

There are various ways to recover money from a defaulter. A claimant may file

- Ordinary Suit under Part I of Civil Procedure Code.
- Summary Suit under Order XXXVII of Civil Procedure Code.
- Criminal Complaint under Section 138 of Negotiable Instruments Act, where a defaulting party has issued any negotiable instrument like cheque etc.
- In case of a company, apart from the abovementioned remedies, a claimant has also the option to file Winding – up petition against the defaulting company.
- Arbitration, when there is an arbitration clause in an agreement between the parties for the purpose.

Damages

In case of breach of a contract, damages arising from such contract or agreement are usually awarded under the provisions of sections 73 to 75 of Indian Contract Act. The principle is when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

It is very important that such compensation is not to be given for any remote and indirect loss or damage sustained by reason of such breach.

Another principle is when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss or proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Further, a person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the non-fulfillment of the contract.

A claimant may, instead of going for claim for damages, choose to file a Suit for 'specific performance' of the contract under Indian Specific Relief Act where the subject matter of the contract is still capable to be performed.

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