The background of the journal cover features a collection of professional items: a pair of black leather brogue shoes in the top left, a black leather bag in the top right, an open notebook with a silver pen on the left, and a black leather watch with a silver face on the right. All items are set against a light-colored wooden surface.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

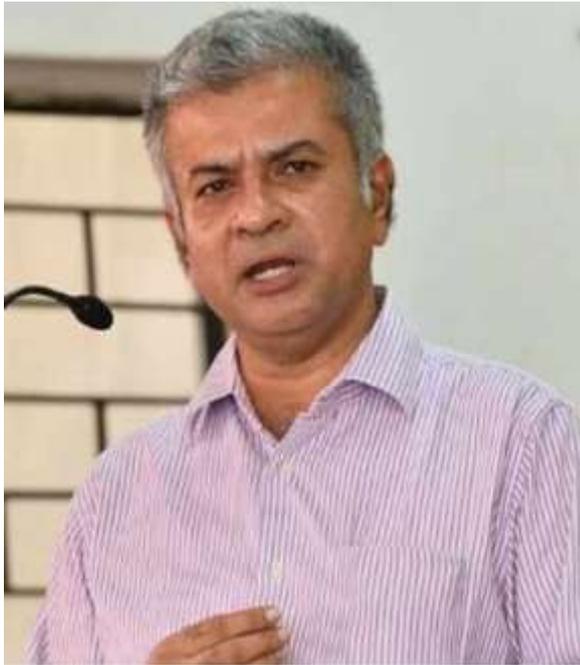
No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service officer

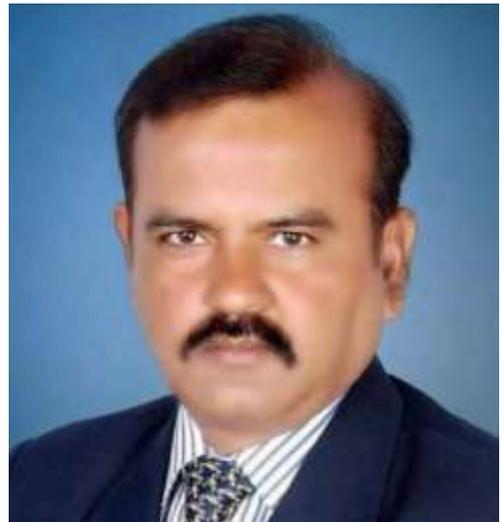


a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JURISDICTION AND HIERARCHY OF CRIMINAL COURTS IN INDIA AN OVERVIEW”

AUTHORED BY - ANTARA ROY

LL.M Criminal Law and Criminology (Final Sem)

Kazi Nazrul University, Asansol

Paschim Bardhaman, West Bengal

Keywords- Justice, Constitution, Criminal Court, Supreme Court, Judges and the judicial system

Abstract

In order to ensure the efficient administration of justice, the criminal justice system in India operates within a clearly defined hierarchy of courts and framework of jurisdiction. This summary gives a brief explanation of this framework. The Magistrates' Courts are at the bottom of the hierarchy. They have control over both preliminary hearings for more serious crimes and smaller criminal charges. Every district has one of these courts, and they usually only have authority within their own borders. The Sessions Courts, commonly referred to as District Courts, are located above Magistrates' Courts. These courts have greater authority and handle more serious criminal matters, including those carrying sentences of more than seven years in jail. Sessions Courts typically exist in each district. The State High Courts are the higher courts in the hierarchy. Inside each state, respectively. They have the authority to preside over Sessions Courts within their jurisdiction and to supervise all courts and tribunals located there. In addition to hearing appeals from Sessions Courts, High Courts can also issue writs to defend basic rights.

Introduction

The largest and most complicated judicial system in the world is found in India. Due to its diversity, the system for delivering justice is highly effective and has a variety of courts, tribunals, and forums. The Indian Constitution is the source of authority for all judicial bodies. Along with being a custodian of the citizens' Fundamental Rights, the Indian Judiciary protects the Indian Constitution. The criminal justice system is a system in which the government is focused on maintaining social control, preventing and minimizing crime, or punishing those who break the

law with harsh punishments and efforts at rehabilitation. The Indian criminal justice system is committed to changing criminals through various forms of punishment. The alleged offender always contains certain safeguards against prosecutorial power misuse. Depending on the nation, criminal justice systems vary greatly around the world. The judiciary is one of democracy's most important pillars. India's judicial system is composed of the Supreme Court, High Courts, District Courts or Subordinate Courts, and Constitutional Courts. The Indian Constitution is the final authority on all matters of law, and the courts—the judiciary—are regarded as the guardians of the Indian Constitution. The Court has the authority to render decisions that are enforceable against both the public and the government. The rulings of the courts decide what is the law of the land. The independent judicial system established by our Constitution implies that the legislative and executive branches lack direct control over the Court. Judges and the judicial system are described as having a "Independent Judiciary" since they are free from both internal and external influences. In order to preserve a system of checks and balances among the many institutions of government, the judiciary must be independent. People should have confidence in their nation's system for delivering justice, and this confidence can be strengthened by creating a powerful and independent judicial system. The hierarchy of the Indian judicial system places each having its own set of powers and responsibilities, as defined by the Constitution. This order may vary for civil and criminal cases. One of the most effective legal systems in the world, India was created with the needs of each citizen of the nation in mind. The Indian Court System is extensive and intricate, and it has a long history. The Supreme Court of India is at the summit of a pyramid-shaped organizational structure for the judicial system.

Part 1

“Hierarchy of Courts in Ancient India”

The protection of the accused's rights, which must be ensured at all costs while a criminal system determines responsibilities, appears to be the guiding premise for how criminal justice is administered around the world. The criminal justice system is more interested in protecting the rights of the accused than in meted-out punishment. Private retaliation is transformed into the administration of criminal justice, while violent self-defence is replaced by civil justice.¹

Concept of Crime- Only transgressions of laws issued and upheld by government bodies are considered crimes in today's civilized societies. Even though crime is occasionally perceived in a

¹ K. Madhavan, *The Criminal Justice System*, *CBI Bulletin*, July 1992, pp. 4-5.

very wide sense as the breach of any significant group standard or as the equal of anti-social, immoral, and wicked behaviour. socially damaging or dangerous, and is typically specifically defined, as against the law, and subject to punishment.²

Genesis of Criminal Justice Administration

from India One of the most significant duties of the State is the administration of justice. Despite being somewhat inferior to angels, man still sheds the beast. Rule of law is necessary in order to restrain and control that brute (cruel like-beast) and to stop society from deteriorating into a State of tooth and claw. Human beings will inevitably disagree with one another. Guidelines in the form of legislation are required for the resolution of these conflicts so that the courts can address any grievances. Courts and laws have always been related. A growing feeling of injustice irritates people's hearts more than anything else. No society can allow a scenario to develop where the perception is that there is no adequate and efficient remedy for member complaints.³

Criminal Justice Administration in India (Organs of Criminal Justice)

It seeks to fulfil its goal of protection through enforcement of reducing the risk of crime and apprehending, prosecuting, convicting, and sentencing those individuals who violate the rules and laws promulgated by society. court system in ancient India

In Ancient India, there existed a hierarchy of courts that went from the family Courts to the King, according to Brihaspati Smritis. The family arbitrator was the least effective. The court of the judge was the next higher court, followed by the Chief Justice, also known as *Praadivivaka* or *adhyaksha*, and finally the King's court. The significance of the matter determined which court had jurisdiction over it, with the lowest court having control over small conflicts and the king having jurisdiction over major ones. Each higher court's judgment superseded that of the lower court. The rulings of these tribunals, concluding with the king's, have a binding force, according to Vachaspati Misra. Due to the increased level of study and expertise, the decisions will be made in ascending sequence, and each decision will have precedence over the one before it.

² Shiv Kumar Dogra: *Criminal Justice Administration in India*, p. 62

³ H.R. Khanna, *Judiciary in India and Judicial Process*, (1985), p. 4

The Criminal Courts in India

Men discovered as society advanced that the only way they could survive as a group was to conform to the rules of a structured society. When someone is suspected of breaking the law, the focus is on bringing them properly before the courts, giving them a fair trial, and carrying out the decision or sentence rendered by the court.⁴ Its duty is to safeguard criminal defendants from being subjected to rights violations by criminal agents while also upholding the criminal law against defendants who violate it. Everyone looks to the courts to ensure that justice is served⁵.

CRIMINAL JUSTICE DELIVERY SYSTEM IN INDIA:

The experience of crime is not merely recent. Criminality “proceeds from the very nature of humanity itself, it is not transcendent but immanent,” according to sociologists Prins and *Durkhain*. Furthering his case, he remarked, “Crime is natural in human society since the basic preconditions of social organization logically necessitate it. A society free from crime would necessitate the uniformization of everyone's moral principles, which is neither feasible nor desirable.”⁶

Altering traditions

Adapting the legislation, The State was compelled to keep an official record of the customs observed in the various regions of the nation due to the important role that custom (*Achara, sadachara, and charitra*) plays in society.

Mode of Proof (Law of Evidence)

The law of evidence (the mode of proof) is an index of the quality of a judicial system. In this respect, the Indian judicial system was in advance of any other system of antiquity.

Discovery of truth is a real test

The real test of any judicial system is that it should enable the law courts to discover the truth, and that of ancient India stands high under this test.

⁴ Dean Roscoe Pound, *Justice According to Law*. (1952), pp. 89-91.

⁵ Gerald D. Robin, *Introduction to the Criminal Justice System*, (1990), p. 168

⁶ K.D. Gaur, *Criminal Law and Criminology*, (2002), p. 52

Administrative Courts

An important feature of the judicial system of ancient India was the Special Courts of criminal jurisdiction called the *Kantakasodhana* Courts.

Medieval India's Judicial System

The collapse of the Harsha dynasty casts a shadow over India's history that didn't lift until the arrival of the Muslims. He is also supposed to have declared that a second spent enforcing justice is superior to a man's dedication who follows a fast every day and prays every night for 60 years.

➤ **Evolution of Judicial System:**

Since the very inception of human beings, it was noticed that the mighty and superiors try to dominate the weak and downtrodden. In the Hindu scriptures, the concept is known as '*Matsaya Nyaya*'. On the other hand, the man never wanted to lead a chaotic life. Obviously, he opposed the concept of *matsaya nyaya*. Hence, he initially organized himself into family, groups, and associations so he may lead a peaceful life in ancient Hindu scriptures justice has been considered an instrument to punish the wrongdoers who acted against the established norms of society.⁷ An argument that was originally exploited by certain of the sophists and which had been noticed (and in intention refuted) by Plato in the discussion of justice in 'Republic'. Later, it was vastly elaborated by the cynics against the stoics.⁸ Anything committed against such tenets was considered by these testaments as an injustice, and Christianity became the sole directing star of justice during the period⁹. The Federal Court of India was called upon to give its advisory opinion in four cases and in each case, it gave its opinion but not without expressing, on occasion, some misgivings about both the expediency and utility of this consultative role.¹⁰

Criminal Courts: Procedure and Hierarchy

Private vengeance is typically assumed to have been the first type of punishment for actions that could be considered unlawful. Retaliation for damage inflicted was the victims' or their surviving kin's personal matter, which frequently resulted in blood feuds between families, classes, or tribes. India is thought to have developed the Manu Code between the thirteenth and nineteenth centuries

⁷ This view has been substantiated by manu, sukracharys, yajnowalkanyal in Mahabharata also.a. Sukracharya 1, 14 and Narad Parinka 23, b. Kautilya Arthshastra 1, 19, c. Manu 8, 128, d. Maha Shanti 69, 32, e. Yajnowalkaya 1, 359-60

⁸ Golden Maxism 23, R.O. Hicks, Stories and Epicurean (1910), P. 177

⁹ V.O. Kulshrestha; *Landmarks in Indian Legal and Constitutional History*. Eastern Book Co., New Delhi – January 1969. P. 17

¹⁰ George H. Godbois Jr. "*The Federal Court of India*" (1964) 6JILI253; at P. 280

B.C. The code said that one of the judge's duties was to delve into the soul and expression of the accused; the Cr. P.C. still retains comparable language.¹¹

Part 2

“Jurisdiction And Hierarchy of Criminal Courts in India an Overview”

The primary duty of the State is the administration of justice. Our Constitution has established a court system with a hierarchy for this reason. The Constitution itself established the Supreme Court of India, which is the country's highest court. The Constitution also establishes the High Courts for each state. The Cr. P. C. grants the other criminal courts their authority and performs their duties.

- **Supreme Court of India:**

The Supreme Court is the apex Court of India. In India, on January 26, 1950, the Federal Court gave way to Supreme Court under the new Constitution and thus began an exciting new era in Indian legal history. It is established by Part V, Chapter IV of the Constitution. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age of 65 years. Referring to the extensive jurisdiction conferred on the Supreme Court by the Constitution, the first Attorney-General, M.C. Setalvad observed at the time of the inauguration of the courts,¹² In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Adhoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court. The Supreme Court has original, appellate and advisory jurisdiction. 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

¹¹ Section 280 Cr. P.C. provides the demeanor of the accused to be recorded by the judge/ magistrate while recording his evidence, Bare Act code of criminal procedure, central law publication, 2004, p. 104

¹² M.P. Jain, *Outlines of Indian Legal History*, (1997), pp. 348-49.

nature of habeas corpus,¹³ mandamus,¹⁴ prohibition,¹⁵ quo-warranto¹⁶ 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, of 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 134,¹⁷ 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 constitution.

Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies:

1. that the case involves a substantial question of law of general importance, and
 2. 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:**
- 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 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 certified that the case is a fit one for appeal to the Supreme Court.

➤ **High Court:**

The High Court stands at the head of a State's judicial administration. 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. They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court.

¹³ ADM Jabalpur v Shivkant Shukla

¹⁴ Gupta v. President of India, AIR, 1980.

¹⁵ Brij Khandelwal v. India, A.I.R. 1975 Del. 184

¹⁶ The Constitution of India, 1950, Article 32

¹⁷ V.S. Kulshreshtha, *Landmarks in Indian Legal and Constitutional History*, (1995), p. 204

➤ **Constitution Of Criminal Courts and Their Territorial Jurisdiction:**

The criminal courts are constituted according to the Criminal Procedure Code (Cr. P.C)1973. Section 6 of the Cr. P.C. provides that Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely: i) Courts of Session; ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates; iii) Judicial Magistrates of the second class; and v)ExecutiveMagistrates.

1. The Sessions Judge:

Section 9 of the Cr.P.C talks about the establishment of the Sessions Court. The State Government establishes the Sessions Court which has to be presided by a Judge appointed by the High Court. The High Court appoints Additional as well as Assistant Sessions Judges. The Court of Sessions ordinarily sits at such place or places as ordered by the High Court. But in any particular case, if the Court of Session is of the opinion that it will have to cater to the convenience of the parties and witnesses, it shall preside its sittings at any other place, after the consent of the prosecution and the accused. According to section 10 of the Cr.P.C, the assistant sessions judges are answerable to the sessions judge.

2. The Additional/ Assistant Sessions Judge:

These are appointed by the High Court of a particular state. They are responsible for cases relating to murders, theft, dacoity, pick-pocketing and other such cases in case of absence of the Sessions Judge.¹⁸

3. The Judicial Magistrate:

In every district, which is not a metropolitan area, there shall be as many as Judicial Magistrates of first class and of second class. The presiding officers shall be appointed by the High Courts. Every Judicial Magistrate shall be subordinate to the Sessions Judge.

4. Chief Judicial Magistrate:

Only the Judicial Magistrate of First Class may be designated as Additional Chief Judicial Magistrate.¹⁹

¹⁸ Ibid., Sec. 19

¹⁹ Ibid., Sec. 11(1)

5. Metropolitan Magistrate:

They are established in Metropolitan areas. The High Courts have the power to appoint the presiding officers. The Metropolitan Magistrate shall be appointed as the Chief Metropolitan Magistrate. The Metropolitan Magistrate shall work under the instructions of the Sessions Judge.²⁰

6. Executive Magistrate:

According to section 20 in every district and in every metropolitan area, an Executive Magistrate shall be appointed by the State Government and one of them becomes District Magistrate.

In every district and in every Metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrate; it may also appoint an Additional District Magistrate and for a sub-division a Subdivision Magistrate.

Chapter III

“Power of the Indian Criminal Courts”

Describe in brief, the Jurisdiction of Subordinate criminal courts in India

- The Sessions Court headed by the Sessions Judge is the highest Criminal Court in the district. As the District Judge also functions as the Sessions Judge, he is known as the District and Sessions Judge. It may pass any sentence authorized by provisions of law, but a death sentence, passed by it, has to be confirmed by the High Court.
- An Assistant Sessions Judge has the power to sentence a person to 10 years imprisonment.
- A First-Class Magistrate can pass a sentence of imprisonment not exceeding five years or a fine not exceeding one thousand rupees.
- A Second-Class Magistrate can pass a sentence of imprisonment up to one year or a fine of up to Rs. 1000/.

➤ Power Of Courts to Try Offences:

Chapter III of Cr.P.C. deals with powers of Courts. One of such power is to try offences. Offences are divided into two categories:

I) Those under IPC; and

²⁰ The Criminal Procedure Code, 1973, Sec. 20

II) Those under any other law.

According to section 26 any offence under IPC 1860 may be tried by the HC or the Court of Session or any other Court by which such offence is shown in the first schedule to be triable, whereas any offence under any other law shall be tried by the Court mentioned in that law and if not mentioned, it may be tried by the HC or any other Court by which such offence is shown in the First Schedule to be triable. This section is a general section and is subject to the other provisions of the Code.

- **Powers of Criminal Courts-**

- **1.The Apex Court**

- The Supreme Court is the ultimate court, at the top of the Judicial system. It has the supreme judicial authority in our country.

- **Federal Court**

- Article 131 gives the power of original jurisdiction to the Supreme Court, to resolve the dispute arising between the Centre and the States or between two States.

- **Interpretation of the Constitution**

- Only the Apex Court has the power to settle a question based on any issue related to the Constitution.

- **Power Of Judicial Review (Article 137)**

- All the laws enacted are subjected to scrutiny by the Judiciary.

- **Court of Appeal**

- The apex court is the highest court for appeal in India. It has the power to hear appeals from all the cases lying in the various High Courts and subordinate courts of our country. A certificate of the grant is to be provided according to Article 132(1), 133(1) and 134 of the Constitution with respect to any judgment, decree or final order of all cases of the High Court involving the question of law. Appeals to the Supreme Court can be made under the following categories: -1. Constitutional Matters. 2.Civil Matters, 3. Criminal Matters, 4. Special Leave Petition

2. The High Courts-

I. Original Jurisdiction

In some issues, the case can be directly filed in the High Courts. This is known as the original jurisdiction of the High Court. E.g., In matters related to fundamental rights, Marriage and Divorce cases.

II. Appellate Jurisdiction

The High Court is the Appellate Court for the cases coming up from the trial court.

III. Supervisory Jurisdiction

This refers to the power of general superintendence of the High Court over the matters of all the subordinate courts.

The powers of the various courts have been highlighted in the Constitution of India. Apart from these courts, the power and functions of the subordinate criminal courts have been provided under the Code of Criminal Procedure, 1973, as mentioned under section 6.

- Court of Session
- First Class Judicial Magistrate and, a metropolitan magistrate in any metropolitan area
- Second Class Judicial Magistrate
- Executive Magistrates

The power of the various subordinate courts is mentioned from section 26-35, under the Code of Criminal Procedure, which has been described below. Section 26 mentions the list of Courts which are eligible to try offences – According to Section 26, any offence mentioned under the Indian Penal Code may be tried by:

- the High Court
- the Court of Session
- any other Court as specified in the First Schedule of the Code of Criminal Procedure

Although it has to be ensured that any offence committed under section 376, section 376A, section 376B, section 376C, section 376D and also section 376E of the Indian Penal Code, be tried by a woman judge.

3. The Sessions Court-

The State Government establishes the Sessions Court which has to be presided by a Judge appointed by the High Court. The High Court appoints Additional as well as Assistant Sessions Judges. The Court of Sessions ordinarily sits at such place or places as ordered by the High Court.

4. The Magistrate Court

The Magistrate judges are usually appointed by the High Court.

The jurisdiction in case of Juveniles (Section 27)

Any person who is below the age of sixteen years, who is a juvenile is exempted from the death penalty and punishment for imprisonment for life. The Chief Judicial Magistrate, or any other Court specially empowered under the Children Act, 1960 (60 of 1960).

➤ **Miscellaneous Powers-**

- **Mode of Conferring Powers**

Section 32 states that the High Court or the State Governments have the power by virtue of an order to empower people by their titles.

- **Withdrawal of Powers**

According to Section 33, the High Court or the State Government, have the power to withdraw the powers conferred by them under this code.

- **Powers of Judges and Magistrate exercisable by their successors-in-office-**According to Section 35, subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by their successors-in-chief.

- **Judgement in Criminal Trial**

The main functions of the criminal courts are to decide as to the guilt or innocence of the accused person tried before it and if such person is found guilty of any offence, to determine as to the appropriate punishment or other method of dealing with him. In every trial, irrespective of its nature, the court will have to give a judgement in the case at the conclusion of the trial. Where the judgment is delivered, the presiding officer shall cause it to be taken down in short hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

➤ **The prosecutors**

A crime is wrong not only against the individual victim, but also against the society, therefore the State is representing the people and therefore participate in criminal trial

CORRECTIONAL INSTITUTION AND CRIMINAL JUSTICE ADMINISTRATION IN INDIA

Correction is the third and final phase of the criminal justice process. Beginning with law enforcement as the case-finding phase, The productivity of the entire criminal justice system is judged by the productivity of correctional.²¹ The factors that contribute to the making of delinquents and criminals are many and complex.²²

Part IV

“Our present-day Criminal Courts”

Our present-day courts are made up of law made by the legislature, meaning that their constitution, function and jurisdiction are also governed by such law. The provisions relating to the establishment of criminal courts, from the lowest to the highest, are contained in the Cr. P.C. 53 A criminal proceeding is ordinarily one which, if carried to its conclusions, may result in the imposition of sentences such as death, imprisonment, fine, and forfeiture of property in other words the proceeding which either results in acquittal or in conviction is criminal. These proceedings involve the consideration of some charge of crime, i.e., of an offence against public law and that charge is preferable before a court or tribunal which has or claims the jurisdiction to impose punishments. A person injured by a crime may start a prosecution as he can get nothing out of it other than the satisfaction of his outraged dignity, the prosecution is mostly conducted by the State, i.e., by the police through the prosecutor. There are certain injuries where both type of proceedings criminal as well as civil can be initiated, e.g., libel/defamation. criminal proceedings may be initiated.²³ Present day criminal courts lie on three separate rungs of an ascending ladder.²⁴ In every district, there are courts of judicial magistrate’s 1st class and 2nd class. One of the Magistrates of the 1st class is appointed by the High Court of the State concerned as Chief Judicial

²¹ Neil C. Chamelin, Vernon B. Fox, M. Wisenand, *Introduction to Criminal Justice*, (1975), pp. 4-5.

²² Charles, F. Hempwill, *Criminal Procedure : The Administration of Justice*, (1978), pp. 3-4

²³ Code of criminal procedure 1973 provides for grant of compensation in case of malafide prosecution Under Section 358, Bare Act Cr.P.C., Central Law Pubtion, P. 135

²⁴ Agarwala B.R., P. 66

Magistrate, who is subordinate to the sessions Judge and all other Magistrate are under C.J.M.²⁵ They have the power of the C.J.M. in a sub division of a district the High Court can appoint judicial Magistrates of the 1st class who are designated as Sub Division Judicial Magistrate, except for the general control of the C.J.M., every sub-divisional judicial Magistrate has and exercise the powers given to him by the High Court.²⁶ The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a civil Court.²⁷

❖ **Conclusion & Recommendations –**

A. Hon'ble Shri Justice Asok Kumar Ganguly, a Supreme Court Judge, in his article titled "Judicial Reforms" published in Halsbury's Law Monthly of November 2008 has suggested a few norms, which the judges and lawyers must agree to follow very rigorously, in order to liquidate the huge backlog. The suggestions are quoted below: **B.** There must be full utilization of the court working hours. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code. **C.** Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is true for many interlocutory applications filed even after the main cases 293 are disposed of. Such cases can be traced with the help of technology and disposed of very quickly. **D.** Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of *Anil Rai v. State of Bihar*, (2001) 7 SCC 318 must be scrupulously observed, both in civil and criminal cases. **E.** Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour. **F.** Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

²⁵ Section 15 Cr.P.C., Bare Act

²⁶ Agarwala B.R., P. 67

²⁷ Section 11(3), Cr.P.C., Bare Act

➤ **References-**

1. Agarwal, B.D., —Criminal Justice System:
2. Agrawal, Krishan Mohan, Kautilya on Crime and Punishment, D Shree Book Depot, New Delhi 1990.
3. K.T.S TULSI, Vinod Publications (P) LTD.

➤ **BIBLIOGRPHY-**

- Adams, Thomas F., Law Enforcement: An Introduction to the Police Role in the Community, Englewood Cliffs, New Jersey, 1968
- Agarwal, B.D., —Criminal Justice System: Is Lie Oriented, Criminal Law Journal, Vol. 99, December 1999.
- Agarwal, Rajender Saran, Crime and Punishment in New Perspective, Mittal publication, Delhi 1986.
- Agarwal, Vineet, —Recasting Criminal Justice System Using Electric Current Model, CBI Bulletin, Vol. 8, September 2000.
- Agrawal, Krishan Mohan, Kautilya on Crime and Punishment, D Shree Book Depot, New Delhi 1990.
- Agrawal, S.K. “Protective Discrimination and Backward Classes in India” in Mohammed Imam (Ed.), Minorities and the Law (1972).