

JUSTICE DELIVERY SYSTEM

GROUP - 5



TOPICS COVERED

Overview of JDS in India

Hierarchy of courts in India

General Functions of courts

Pendency of cases:bare facts

Role of investigative agencies

Philosophy of prosecution

Recent amendments in CrPC

Alternate dispute resolution

Gram nyayalaya

NALSA

Way forward

OVERVIEW OF JUSTICE DELIVERY SYSTEM IN INDIA

Independence

of

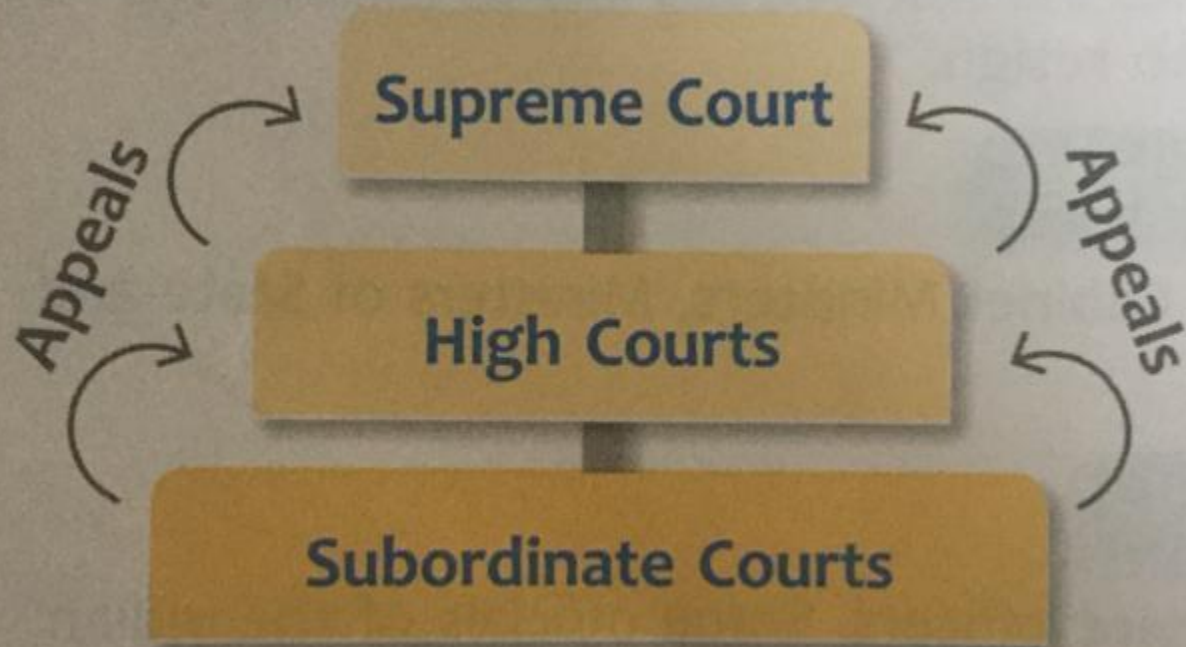
Judiciary



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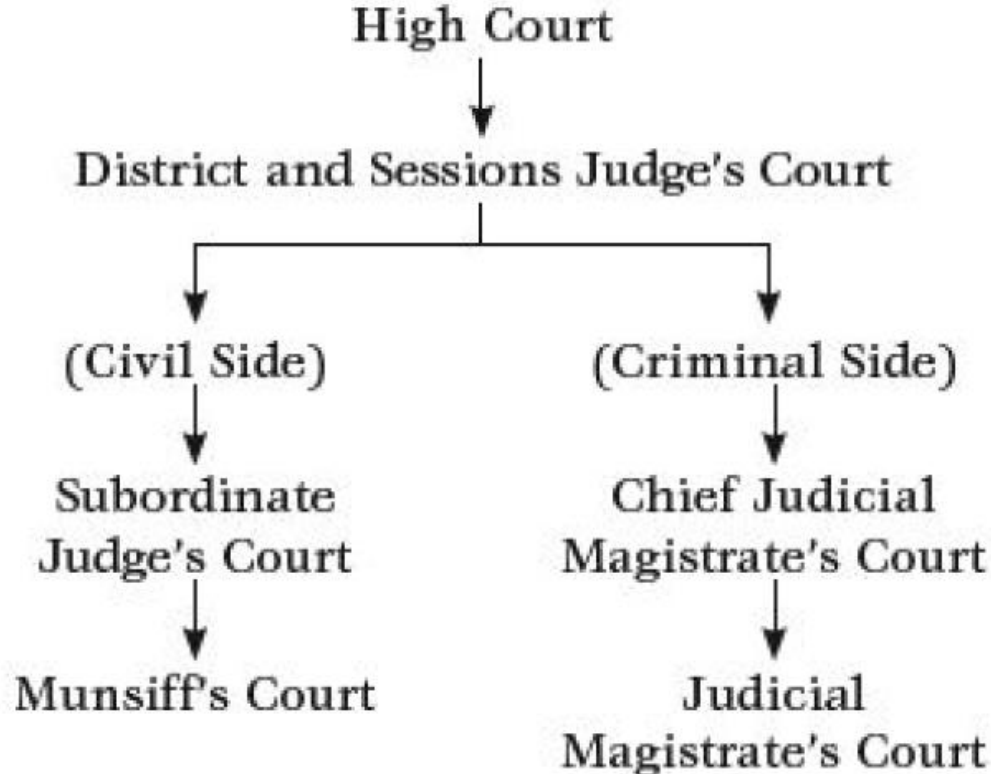


HIERARCHY OF COURTS IN INDIA



■ The structure of Indian judiciary

STRUCTURE OF COURTS IN THE STATE



*Articles 233 to 237 in Part VI of the Constitution

GENERAL FUNCTIONS OF COURTS

- Justice Delivery
- Adjudication of Civil and Criminal Cases
- Interpretation of Constitution
- Advisory Functions
- Protection of Fundamental Rights
- Guardian of the Constitution

FUNCTIONS OF SUPREME COURT

- Articles 124 to 147 in Part V of the Constitution
- Final court of appeal, Guardian of the Constitution and the Guarantor of Fundamental Rights.
- The jurisdiction and powers of the Supreme Court can be classified into the following:
 - 1.Original Jurisdiction.
 - 2.Writ Jurisdiction.
 - 3.Appellate Jurisdiction.
 - 4.Advisory Jurisdiction.
 - 5.A Court of Record.
 - 6.Power of Judicial Review.
 - 7.Constitutional Interpretation
 - 8.Other Powers.

FUNCTIONS OF HIGH COURT

- Articles 214 to 231 in Part VI of the Constitution
- Single integrated judicial system
- The High Court occupies the top position in the judicial administration of a state
- Following is the jurisdiction and powers of High Court:
 - 1.Original jurisdiction.
 - 2.Writ jurisdiction.
 - 3.Appellate jurisdiction.
 - 4.Supervisory jurisdiction.
 - 5.Control over subordinate courts.
 - 6.A court of record.
 - 7.Power of judicial review.

JUDICIAL PENDENCY

Statistics :

Total Pendency (as of Jan 2021) : > 4 crore cases

Court	Pending Cases
Supreme Court	Nearly 66000
High Courts	Nearly 57 Lakh
Subordinate courts	Nearly 3.65 crore

REASONS FOR HIGH PENDENCY

- **Inordinate delay in filling up the vacancies of judicial officers** :As of 2017, High Courts have 403 vacancies against a sanctioned strength of 1,079 judges, and subordinate courts have 5,676 vacancies against a sanctioned strength of 22,704 judges.
- **Frequent adjournments.**
- **High vacancies of courtroom staff leads to delay in paperwork.**
- The Supreme Court's **increased activity** is being **driven by appeals from lower courts.**
- The **special leave petition (SLP)** which the Constituent Assembly hoped would be used sparingly, but which **now dwarfs the work of the Supreme Court.**
- **Increasing number of state and central legislations.**
- In addition to judicial shortages, **courts are underfunded** - lack of efficient infrastructure
- **Due to Government Litigation.** According to the Ministry of Law and Justice, **government departments are a party to around "46 percent" of court cases.**
- **Supreme Court works on average for 188 days a year**, while apex court rules specify **minimum of 225 days of work.**
- **Police are quite often handicapped in undertaking effective investigation** for want of modern and scientific tools to collect evidences - causes delays
- **Lack of adoption of technology** such as e-courts, tele-law initiative etc

ROLE OF INVESTIGATIVE AGENCIES

- The process between Filing of FIR and filing of chargesheet.
- collect all material necessary for establishing the accusation
- Collection of evidences
- Recording statement, search and seizure , arrest
- Use of scientific methods
- Even after filing of charge sheet-

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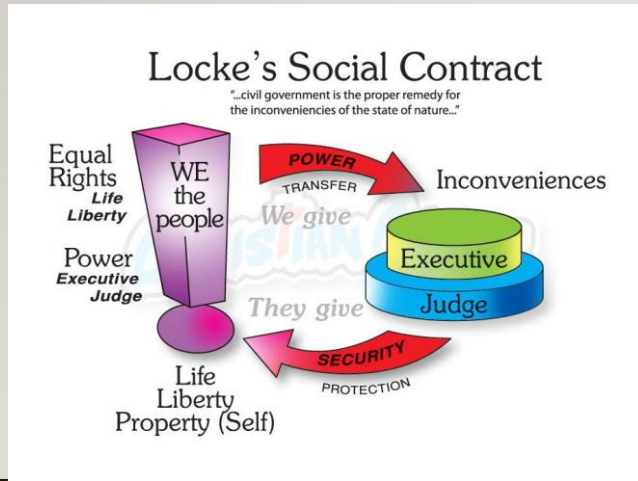
- Responsibility of Investigative agency does not end with filing of charge sheet.
- summons to witnesses
- end relevant case files to the prosecutor on time
- to ensure that witnesses are not intimidated or bribed during the trial

INVESTIGATION – A WEAK LINK

- Excessive workload.
- Poor evidence collection.
- No separate cadre of investigators.
- Inadequacy of logistical and forensic backup support .
- Lack of coordination with prosecution.
- Lack of accountability of prosecution lawyers.
- Witnesses not independent and turn hostile frequently.

PHILOSOPHY OF PROSECUTION

- Any crime committed is not merely against the victim, but against the social order.
- State acting on behalf of victims



PROSECUTION

SYSTEM OF PROSECUTION IN INDIA

Pre-1973

- Police prosecutor for lower court
- Public prosecutor for sessions court (a lawyer from the local Bar)

Post-1973

- CrPC 1973 Sections 24 and 25
- Separation of prosecution and police
- “Degree of detachment necessary” – 14th Law Commission Report

ROLE OF THE PROSECUTOR

'MINISTERS OF JUSTICE' AND 'GATEKEEPERS OF THE CRIMINAL JUSTICE PROCESS'

- **Not about securing convictions but an agent of justice.**

“that justice is vindicated and that he should not obtain an unrighteous conviction”. (Allahabad HC)

- **Represents the State. Not the Police**

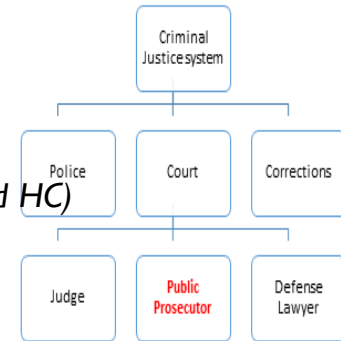
the State is not actuated by any motives of revenge but seeks only to protect the community.

Independent Statutory authority. Free from control of the police department

- **Aid the court in discovering truth.**

prosecution should not mean persecution and the Prosecutor should be scrupulously fair to the accused and should not strive for conviction in all these cases.

- **Present all evidence before court so that there might not be miscarriage of justice.**
- **Statutory responsibility for deciding upon withdrawal**



DUTIES OF PUBLIC PROSECUTOR

In Investigating Process

- **Appearance in the Court** and obtain an arrest warrant
- **Search warrants**
- obtain **police custody remand** for interrogation (including custodial interrogation) of the accused
- Initiate a proceeding for the declaration of the **non-traceable offender** as the proclaimed offender
- **To record the evidence of accused** in the police report regarding the advisability of the prosecutions

During the trial

- **Sentencing:** Adequate punishment keeping in mind the facts, circumstances of case and gravity of the offence
- **speedy trial-** Right to a speedy trial is a fundamental right, implied under Article 21
- To ensure **Justice** is done

DEPARTMENT OF PROSECUTION

- List III of the 7th Schedule of the Constitution
- Home ministry vs. Law ministry
- Police Officer vs. Judicial Officer
- Post-1973 lack of coordination, especially at the district level

APPOINTMENT OF PROSECUTORS

- Appointment of Prosecutors
- HC/Sessions Court – lawyer from the Bar - Political Appointees
- Magistrate's court – cadre based APP

THE PROBLEM OF POLITICAL APPOINTEES

- “Such appointments (if incompetent) are affecting the functioning of the judiciary, and the lawyers’ lack of expertise is undermining the government’s chance of fighting its cases in an efficient manner.” – Kerala HC, Sep 2013
- Similar SC observation in Kumari Srilekha Vidyarthi Vs. State of UP (1991)

LACUNAE IN THE PROSECUTION SYSTEM

- Appointment of prosecutors – permanent cadre vs. political appointees
- Competence of prosecutors
- Police perception – lack of coordination between prosecutors and police
- Lack of independence in cases where the State is the defendant e.g. corruption cases, Best Bakery Case

RECENT AMENDMENT IN CRPC

1. 2005 – Plea bargaining was introduced. (Chapter XXI A, CrPC). Plea bargaining – “process whereby accused and prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval.”
2. 41A CrPC and *Arsensh Kumar Vs State of Bihar* Judgement.

AMENDMENT TO THE CODE OF CIVIL PROCEDURE CODE IN 2002

1. Institution of Suits: that is plaint to be accompanied by an Affidavit.
2. Time limit to serve the summons: 30 days time limit provided for this.
3. Alternate Dispute Resolution: Courts were given power of referring the disputes to:
 - a. Arbitration
 - b. Conciliation
 - c. Judicial Settlements including settlement through Lok Adalats
 - d. Mediation

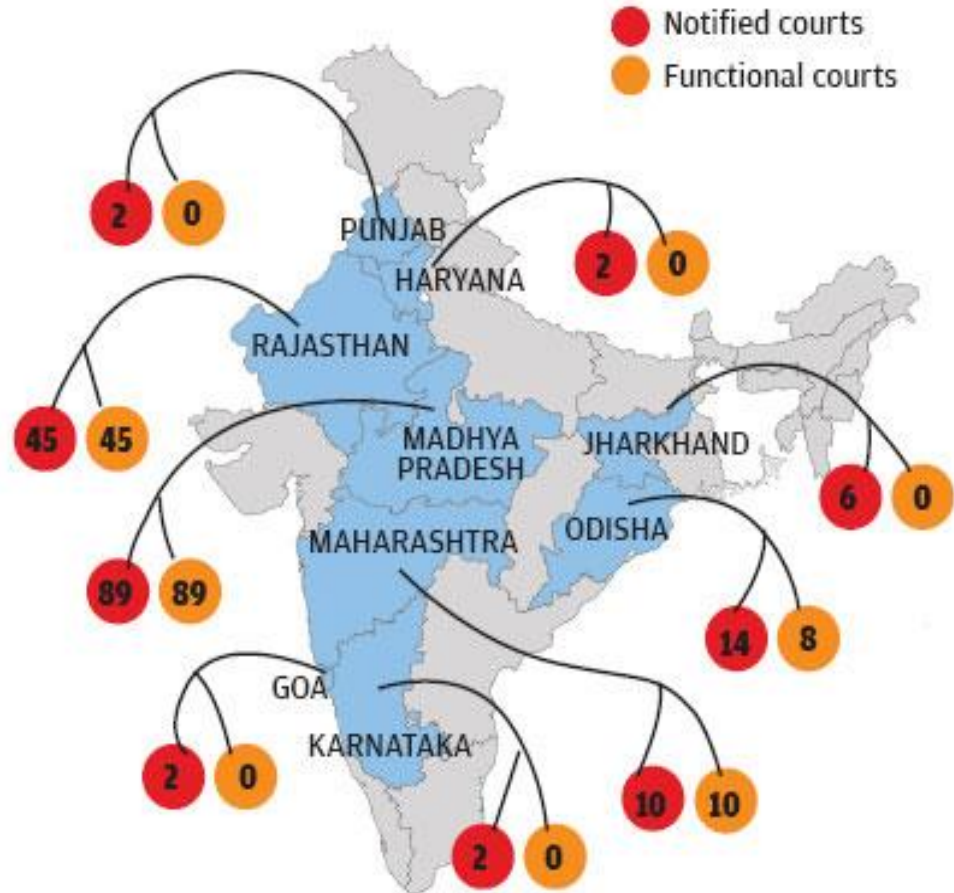
ALTERNATE DISPUTE RESOLUTION MECHANISM



GRAM NYAYALAYA

Lukewarm response

Only nine states have notified gram nyayalayas, and of these only four have functional courts



LOK ADALAT



WHAT IS THE WAY FORWARD??

- Few steps have already been taken:
 1. Fast Track Courts
 2. ADRs (already explained)



FAST TRACK COURTS

- Timely delivery of justice (no adjournment normally)
- Eleventh Finance Commission recommended
- For the period of 2000-2005
- For criminal cases
- Outside regular court system
- Nearly 33 lakh cases were disposed of by the fast track courts over a period of 11 years of central assistance from 2000-01 to 2010-11

- Other Initiatives

- 1.National e-Court Project

- 2.Court cases Monitoring System

- 3.CCTNS

- 4.And most importantly – JUDICIAL REFORMS



JUDICIAL REFORMS

- 2 major goals in judicial reforms

1. Increasing access by reducing delay

2. Enhancing accountability through structural changes and setting benchmarks



THANK YOU

QUESTIONS
TIME...

