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Distance Learning Programme (DLP)

INDIAN POLITY - I

(UPSC PRELIMS)



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INDIAN POLITY-I

641, First Floor, Dr. Mukherjee Nagar, New Delhi-110009

Contact No.: 011-47532596, 8448485520

Web : www.drishtias.com

E-mail : dlpsupport@groupdrishti.in

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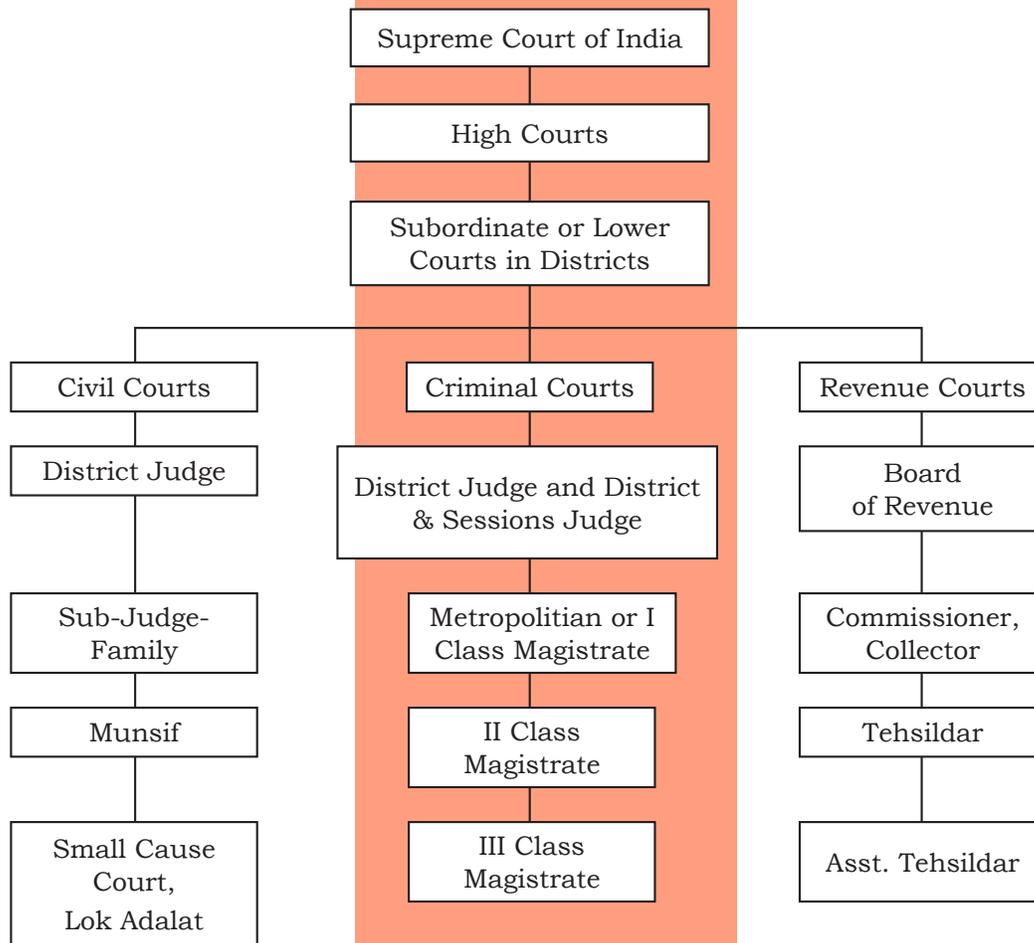
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SUBORDINATE COURTS

Introduction

One of the features of the Indian judicial system is its hierarchical structure of the courts. There are different levels of the judicial system in India empowered with distinct types of courts. The Supreme Court of India is placed at the top of the hierarchy followed by High Courts at the regional level and lower courts or the subordinate courts at the local level with the assignment of power and exercising of the same for the people of India.



Subordinate courts were established as a result of the enactments by the state governments in India, so their nomenclatures and designations vary from state to state. But it is important to note that with respect to organizational structure, there is uniformity among the subordinate courts.



In each district of India there are various types of subordinate or lower courts. They are civil courts, criminal courts and revenue courts. These courts hear civil cases, criminal cases and revenue cases, respectively. They function below and under the high court at district and lower levels.

Constitutional Provisions

Articles 233 to 237 of Part VI of the Constitution have made provisions for subordinate courts related to the judicial system. The provision has been made to regulate the organization of the subordinate courts and to ensure their independence from the executive.

Appointment of District Judges

These courts are at the state level under the direct superintendence of the High Court. The activities like appointment, promotion and posting of district judges are made by the Governor of the state by consulting the respective High Court. Article 233 (2) of the Constitution deals with the appointment of district judge. In order to be eligible to be appointed as a district judge, a person must have the following qualifications:

- He should not be already in the service of the Union or of the state.
- He should have been an advocate or a pleader for not less than seven years.
- He should be recommended by the High Court for appointment.

Appointment of Other Judges

Appointment of persons (other than district judges) to the judicial service of a state is made by the Governor of the state after consultation with the State Public Service Commission and the High Court.

Control Over Subordinate Courts

The administrative control of the High Court over the district courts and other lower courts is complete in terms of postings, promotions, grants of leave, etc. over any person belonging to the judicial service of a state and holding any post inferior to the post of a judge. It is the district court, which hears appeals from the subordinate courts.

Subordinate Courts in India

Civil Courts

- The Court of the District Judge is the highest civil court in a district to deal with civil cases.
- Very often the same court is called the Court of District and Sessions Judge, when it deals with both civil and criminal cases at the district level.
- Below the Court of District Judge, there may be one or more courts of sub judges in the district. Below them there are courts of munsifs and small causes courts, which decide cases involving petty amounts. All these courts hear and settle civil disputes.

- Most of the civil cases are filed in the court of munsif. A case can be taken on appeal from the court of munsif to the court of the sub-judge or the additional sub-judge. Appeals from the courts of the sub-judges and additional sub-judges shall lie in the District Court.
- 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.
- The Court of District Judge (called the District Courts) hears not only appeals against the decisions of the courts of sub judges, but also some of the cases begin directly in the Court of District Judge itself.
- The Court of the District Judge has both original and appellate jurisdiction. Appeals against the decisions of this court may be heard by the High Court of the state.
- Civil Courts deal with cases pertaining to disputes between two or more persons regarding property, divorce, contract, and breach of agreement or landlord – tenant disputes.

Criminal Courts

- In every district there are civil courts and criminal courts. Under criminal courts, there are courts of the District and Sessions Judge, Additional Sessions Judges, Assistant Sessions Judge and the courts of Magistrates of First, Second and Third class.
- The Court of the Sessions Judge (known as Sessions Court) is the highest court for criminal cases in a district.
- In metropolitan cities like Delhi, Kolkata, Mumbai and Chennai, First Class Magistrates are called Metropolitan Magistrates.
- All these criminal courts are competent to try the accused and to award the punishment, as sanctioned by law, to those who are found guilty of violation of law.
- Criminal Courts hear criminal cases which are related to violation of laws. These cases involve theft, dacoity, rape, arson, pick-pocketing, physical assault, murder, etc. In such cases the guilty person is awarded punishment which may be fine, imprisonment or even death sentence.
- An accused who is awarded death sentence by the sessions court, can be hanged to death only after his sentence is confirmed by the High Court.

Revenue Courts

- Revenue courts deal with cases of land revenue in the state. The highest revenue court in the district is the Board of Revenue.
- Under it are the Courts of Commissioners, Collectors, Tehsildars and Assistant Tehsildars. Every dispute related to land revenue first comes before the Court of
- Tehsildar. An appeal against its decision lies in Court of Collector or Deputy Commissioner.
- Thereafter an appeal against the decision of the Deputy Commissioner's Court can be made in the Court of Commissioner.
- Further appeals can be made to the Board of Revenue which is the highest court in district in revenue matters.



National Legal Services Authority (NALSA)

- Article 39 A of the Constitution provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.
- Articles 14 and 22 (1) of the Constitution also makes it obligatory for the State to ensure equality before the law and a legal system which promotes justice on the basis of equal opportunity to all.
- In the year 1987, the Legal Services Authorities Act was enacted by the Parliament, which came into force on 9th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity.
- The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available under the Act.
- In every state, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee has been constituted.
- District Legal Services Authorities, Taluk Legal Services Committees have been constituted in the Districts and most of the Taluks to give effect to the policies and directions of the NALSA and to provide free legal services to the people and conduct Lok Adalats in the state.
- Supreme Court Legal Services Committee has been constituted to administer and implement the legal services programme insofar as it relates to the Supreme Court of India.

Functioning of NALSA

NALSA lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities to implement the Legal Services Programmes throughout the country.

Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, etc. have been asked to discharge the following main functions on a regular basis:

- To provide free and competent legal services to the eligible persons;
- To organize Lok Adalats for amicable settlement of disputes;
- To organize legal awareness camps in the rural areas.

Free Legal Services

- Payment of court fee, processing fee and all other charges payable or incurred in connection with any legal proceeding;
- Providing service of lawyers in legal proceedings;
- Obtain and supply of certified copies of orders and other documents in legal proceedings.
- Preparation of appeal, paper book, including printing and translation of documents in legal proceedings.



Persons Eligible for Getting Free Legal Services

- Women and children.
- Members of SCs/STs.
- Industrial workmen.
- Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster.
- Disabled persons.
- Persons in custody.
- Persons whose annual income does not exceed Rs 1 lakh (in the Supreme Court Legal Services Committee the limit is `1,25,000).
- Victims of trafficking in human beings or begar

Lok Adalats

For providing speedy and economical justice to the poor and the downtrodden, some new programmes have recently been introduced in the country. Lok Adalat is one of the alternative dispute redressal mechanisms. It is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably.

History of Lok Adalats in India

BOOSTER

- The first Lok Adalat camp in the post independence era was organized in Gujarat in 1982 and subsequently spread to other parts of the country.
- Since 1985, Lok Adalats have been exclusively organized for settlement of motor third party claims, following the initiative of former Chief Justice of India, P. N. Bhagwati. The endeavour received a positive response, since both the claimant as well as the Insurance Company could derive benefits. Lok Adalat has become a Dispute Management Institution.
- It is an informal system of dispute resolution, devoid of the procedural wrangles of regular trial.
- The advent of Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39A of the Constitution of India. After this Act, the Lok Adalat settlement is no longer a voluntary concept.
- Under the said Act, the award (decision) made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law.

Meaning and Statutory Status

- The word 'Lok Adalat' means 'People's Court'. The Legal Services Authority Act makes provisions in relation to the establishment, powers and functions etc. of the Lok Adalat.
- Its basis is to provide quick justice with the mutual and free consent of the parties.
- As the Indian Courts are overburdened with the backlog of cases and the regular courts are to decide cases which involve a lengthy, expensive and tedious procedure.
- The object of the establishment of the Lok Adalat is to settle the disputes quickly by counselling and discussions, etc.
- It is supplementary to the judicial system and not a substitute thereof.



- Lok Adalat therefore, provides alternative resolution for expeditious and inexpensive justice.
- Lok Adalat saves not only time, but also the huge expenditure on judicial proceedings in the current judicial system.
- Lok Adalat is an old concept. In ancient India, it played an important role in the settlement of disputes and its validity has not been taken away even in the modern days too as observed by the Supreme Court also.
- This system is based on Gandhian Principles of DPSPs. It is one of the components of ADR (Alternative Dispute Resolution) system. In British period the institution of Lok Adalat was replaced by the centralised judicial system. Local Courts were replaced by the Royal Courts.
- Experiment of ‘Lok Adalat’ as an alternative mode of dispute settlement has come to be accepted in India as a viable, economical, sufficient and informal one.

Benefits

- There is no Court fee and if the Court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules.
- The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like Civil Procedure Code and Evidence Act while accessing the claim by the Lok Adalat.
- The parties to the dispute can directly interact with the Judge through their Counsel, which is not possible in regular Courts of Law.
- The award by the Lok Adalat is binding on the parties and it has the status of a decree of a Civil Court and it is non-appealable which does not cause the delay in the settlement of disputes finally.

Permanent Lok Adalat

Permanent Lok Adalats are a species of Lok Adalats only, but modified in certain respects. In general, Lok Adalats are held periodically under the aegis of the Legal Services Authorities/ Committees and are not a regular/ daily affair. However, Permanent Lok Adalats are permanent dispute resolution fora which work continuously as any other court/ tribunal.

The Legal services Authorities Act, 1987 originally did not provide for the establishment of Permanent Lok Adalats. However, the Act was amended in 2002 to provide for its establishment to deal with cases pertaining to the public utility services.

Features

- The Chairman of the Permanent Lok Adalat is a person who is, or has been a district judge or additional district judge or has held a judicial office higher in rank than that of a district judge. Two other persons having adequate experience in public utility services are also nominated by the government.
- The jurisdiction of the Permanent Lok Adalat may be invoked by any party to a dispute at the pre litigation stage by making an application to the Permanent Lok Adalat for the settlement of the dispute.
- Once the jurisdiction of the Permanent Lok Adalat has been invoked the parties are precluded from taking recourse to proceedings before a court of law.



- However, the Permanent Lok Adalat has no jurisdiction in respect of any matter relating to a non compoundable offence or where the value of the property in dispute exceeds rupees ten lakh.
- Permanent Lok Adalats also have no jurisdiction where the matter does not pertain to any public utility service. Permanent Lok Adalats also cannot take cognizance of a matter which is already subjudice in a court of law.
- The Permanent Lok Adalat, while conducting conciliation proceedings or deciding a dispute on the merits has to be guided by the principles of natural justice, equity and other principles of justice, and is not bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.
- Where the parties fail to reach at an agreement and if the dispute does not relate to any offence, the Permanent Lok Adalat has to decide the dispute on the merits. This is the basic area where a Permanent Lok Adalat clearly differs from an ordinary Lok Adalat.
- Thus, Permanent Lok Adalats have residuary jurisdiction, in addition to the jurisdiction enjoyed by Lok Adalats, to decide the dispute even if the parties have failed to resolve the dispute after conciliation.
- The award of the Permanent Lok Adalat is final and binding on all the parties there and on persons claiming under them and the same are deemed to be a decree of a civil court. Again, no appeal lies against the judgment award of the Permanent Lok Adalat.
- The award of the Permanent Lok Adalat is final and cannot be called in question in any original suit, application or execution proceedings. The award, however, is to be made by a majority of the persons constituting the Permanent Lok Adalat.

Family Courts

The Family Courts Act was passed in 1984 as part of the trend of legal reforms concerning women. The Act was passed with a view to promote conciliation and secure and speedy settlement of disputes relating to marriage and family affairs. It extends to the whole of India except the state of Jammu and Kashmir.

The Family Courts Act, 1984 however, does not define ‘family’. Before 1984 all family matters were seen by ordinary civil court judges who used to deal with matters like recovery of money or property.

Need

- The Committee on the Status of Women in 1975 had recommended that all matters concerning the ‘family’ should be dealt separately.
- The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family, the court ought to adopt and approach radical steps distinguished from the existing ordinary civil proceedings and that these courts should make reasonable efforts at settlement before the commencement of the trial.
- The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, the courts continued to deal with family disputes in the same manner as other civil matters and the same adversary approach prevailed. Hence, a great need was felt, in the public interest, to establish family courts for speedy settlement of family disputes.