

# Judiciary of India

There are various levels of judiciary in India – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the [Supreme Court of India](#) at the top, followed by [High Courts](#) of respective states with district judges sitting in [District Courts](#) and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. Courts hear criminal and civil cases, including disputes between individuals and the government. The Indian judiciary is independent of the [executive](#) and [legislative](#) branches of government according to the Constitution.

## Courts-

### Supreme Court of India

On 26 January 1950, the day India's constitution came into force, the [Supreme Court of India](#) was formed in Delhi.

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 puisne Judges – leaving it to Parliament to increase this number. In the early years, all the Judges of the Supreme Court sit together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to accumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the Judges has increased, they sit in smaller Benches of two and three – coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President of India, as the sanctioned full strength. Supreme Court Judges retire upon attaining the age of 65 years. 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 ad hoc 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 Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A judge of the Supreme Court cannot be removed from office except by an order of the president passed after an address in each House of Parliament

supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the president in the same Session for such removal on the ground of proved misbehaviour or incapacity. A person who has been a Judge of the Supreme Court is debarred from practising 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](#) are framed under [Article 145 of the Constitution](#) to regulate the practice and procedure of the Supreme Court.

The [Supreme Court of India](#) is the highest court of the land as established by [Part V, Chapter IV](#) of the [Constitution of India](#). According to the Constitution of India, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court which takes up appeals against judgments of the High Courts of the states and territories. However, it also takes writ petitions in cases of<sup>[2]</sup> serious human rights violations or any petition filed under Article 32 which is the right to constitutional remedies or if a case involves a serious issue that needs immediate resolution. The Supreme Court of India had its inaugural sitting on 28 January 1950, and since then has delivered more than 24,000 reported judgments.

## **High Courts**

There are 29 High Courts at the State level. [Article 141](#) of the Constitution of India mandates that they are bound by the judgments and orders of the [Supreme Court of India](#) by precedence. These courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate courts such as the civil courts, family courts, criminal courts and various other [district courts](#). High courts are instituted as [constitutional courts](#) under [Part VI, Chapter V](#), Article 214 of the [Indian Constitution](#).

The High Courts are the principal civil courts of [original jurisdiction](#) in the state along with District Courts which are subordinate to the High courts. However, High courts exercise their original civil and criminal jurisdiction only if the courts subordinate to the high court in the state are not competent (not authorised by law) to try such matters for lack of pecuniary, territorial jurisdiction. High courts may also enjoy original jurisdiction in certain matters if so designated specifically in a state or Federal law. e.g.: Company law cases are instituted only in a high court.

However, primarily the work of most High Courts consists of Appeals from lower courts and writ petitions in terms of [Article 226](#) of the [Constitution of India](#). Writ Jurisdiction is also original jurisdiction of High Court. The precise territorial jurisdiction of each High Court varies.

Judges in a high court are appointed by the President after consultation with the [Chief Justice of India](#), Chief Justice of High Court and the governor of the state. The number of judges in a court is decided by dividing the average institution of main cases during the last five years by the national average, or the average rate of disposal of main cases per judge per year in that High Court, whichever is higher.<sup>[14]</sup>

The [Calcutta High Court](#) is the oldest High Court in the country, established on 2 July 1862, whereas the [Allahabad High Court](#) is the largest, having a sanctioned strength of judges at 160.

High courts which handle a large number of cases of a particular region, have permanent \_\_\_\_\_ (or a branch of the court) established there. For litigants of remote regions, 'circuit benches' are set up, which work for those days in a month when judges visit.<sup>[14]</sup>

### **District courts**

The [District Courts of India](#) are established by the [State governments in India](#) for every district or for one or more districts together taking into account the number of cases, population distribution in the district. They administer justice in India at a [district](#) level. These courts are under administrative control of the [High Court](#) of the [State](#) to which the district concerned belongs. The decisions of District court are subject to the appellate jurisdiction of the concerned High court.<sup>[15]</sup>

The district court is presided over by one District Judge appointed by the state Government. In addition to the district judge there may be number of Additional District Judges and Assistant District Judges depending on the workload. The Additional District Judge and the court presided have equivalent jurisdiction as the District Judge and his district court.<sup>[16]</sup> The district judge is also called "Metropolitan session judge" when he is presiding over a district court in a city which is designated "Metropolitan area" by the state Government.<sup>[17]</sup> The district court has appellate jurisdiction over all subordinate courts situated in the district on both civil and criminal matters. Subordinate courts, on the civil side (in ascending order) are, Junior Civil Judge Court, Principal Junior Civil Judge Court, Senior Civil Judge Court (also called sub-court). Subordinate courts, on the criminal side (in ascending order) are, Second Class Judicial Magistrate Court, First Class Judicial Magistrate Court, Chief Judicial Magistrate Court. In addition 'Family Courts' are established to deal with matrimonial disputes alone. The Principal judge of family court is equivalent to District Judge.

### **Village Courts**

Village courts, called [Lok Adalat](#) (people’s court) or [Nyaya Panchayat](#) (justice of the villages), compose a system of [alternative dispute resolution](#).<sup>[8]</sup> They were recognized through the 1888 [Madras Village Court Act](#), then developed (after 1935) in various provinces and (after 1947) Indian states.<sup>[8]</sup> The model from the Gujarat State (with a judge and two assessors) was used from the 1970s onwards.<sup>[8]</sup> In 1984 the Law Commission recommended to create Nyaya Panchayats in rural areas with laymen (“having educational attainments”).<sup>[8]</sup> The 2008 [Gram Nyayalayas Act](#) have foreseen 5,000 mobile courts in the country for judging petty civil (property cases) and criminal (up to 2 years of prison) cases.<sup>[8]</sup> However, the Act has not been enforced properly, with only 151 functional Gram Nyayalayas in the country (as of May 2012) against a target of 5000 such courts.<sup>[9]</sup> The major reasons behind the non-enforcement includes financial constraints, reluctance of lawyers, police and other government officials.<sup>[9]</sup>

## **Issues**

According to the World Bank, “although India’s courts are notoriously inefficient, they at least comprise a functioning independent judiciary”<sup>[10]</sup> A functioning judiciary is the guarantor of fairness and a powerful weapon against corruption. But people’s experiences fall far short of this ideal. Corruption in the judiciary goes beyond the bribing of judges. Court personnel are paid off to slow down or speed up a trial, or to make a complainant go away.

Citizens are often unaware of their rights, or resigned, after so many negative experiences, to their fate before a corrupt court. Court efficiency is also crucial, as a serious backlog of cases creates opportunities for demanding unscheduled payments to fast-track a case.<sup>[11]</sup>

Indian Judiciary Issues have been depicted in several films, one of them being a 2015, Marathi film, \_\_\_\_\_.

## **Pendency of cases**

Indian courts have millions of pending cases.<sup>[12]</sup> For instance, the [Delhi High Court](#) could take 466 years to clear all cases with it despite taking an average of about five minutes to dispose each.<sup>[13]</sup> Traffic \_\_\_\_\_, police \_\_\_\_\_ and cheque bounce cases make up nearly half of all pending cases.<sup>[14][15]</sup> It is an established fact which the Govt. of India accepts that there is 40% shortage of judicial staff <sup>[16]</sup>

The vast number of cases pending in the Supreme Court as well as the other lower courts has defeated the very purpose of the judicial system. For justice delayed, is in effect justice denied. Judiciary is no longer attracting the best legal talent because of disparity in the income of bright young lawyers and the emoluments of judicial officers. In order to attract persons of the right caliber to the judicial cadre, System must improve their service conditions, particularly of the trial court judges. In recent years scandals about lack of integrity have besmirched the reputation of the judiciary.

The sub-ordinate judiciary works in appalling conditions. Any reform undertaken must be in its totality rather than in isolation.<sup>[17]</sup>

On 12 January 2012, a Supreme Court bench said that people's faith in judiciary was decreasing at an alarming rate, posing a grave threat to constitutional and democratic governance of the country. It acknowledged some of the serious problems of a large number of vacancies in trial courts, unwillingness of lawyers to become judges, and the failure of the apex judiciary in filling vacant HC judges posts.

It wanted to seek answers from the government on [amicus curiae](#)'s suggestion that access to justice must be made a [constitutional right](#) and consequently the executive must provide necessary infrastructure for ensuring every citizen enjoyed this right. It also wanted the Government of India to detail the work being done by the National Mission for Justice Delivery and Legal Reforms.<sup>[18][19][20]</sup>

There have been cases where ordinary citizens have been charged for espionage while overstaying their visa or straying across the international land or maritime boundary and languishing in prison for years due to the slow redressal process.<sup>[21]</sup>

To reduce pendency, 'Fast-track courts', 'Evening courts/Morning courts' were set up and have met with mixed success so far.<sup>[22][23]</sup> 'Mobile courts' are being set up to bring 'justice at the doorsteps'<sup>[24]</sup> of litigants of far-flung remote and backward rural areas.<sup>[25]</sup> However, Lok Adalats an informal, alternative mechanism has been a phenomenal success in tackling pendency, especially in pre-litigation matters, settling fresh cases before they become full-blown disputes and enter the courts.<sup>[26][27][28]</sup>

### **Judicial corruption**

Corruption is rampant in India's courts. According to [Transparency International](#), judicial corruption in India is attributable to factors such as "delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws".<sup>[29]</sup> Most disturbing is the fact that corruption has reached the highest judicial forum i.e. [Supreme Court of India](#). Some notable cases include:

1. In December 2009, legal activist and Supreme Court lawyer [Prashant Bhushan](#) stated in court, "out of the last 16 to 17 Chief Justices, half have been corrupt"<sup>[30][31]</sup> In November 2010, former Law Minister, [Shanti Bhushan](#) echoed [Prashant Bhushan](#)'s claim.<sup>[32]</sup>
2. There have been allegations that judges with doubtful integrity were elevated within the higher judiciary and campaigns held for their impeachment.<sup>[33]</sup>
3. In November 2011, a former Supreme Court Justice [Ruma Pal](#) slammed the higher judiciary for what she called the seven sins. She listed the sins as:
  1. Turning a blind eye to the injudicious conduct of a colleague
  2. Hypocrisy – the complete distortion of the norm of judicial independence
  3. Secrecy – the fact that no aspect of judicial conduct including the appointment of judges to the High and Supreme Court is transparent
  4. Plagiarism and prolixity – meaning that very often SC judges lift whole passages from earlier decisions by their predecessors and do not acknowledge this – and use long-winded, verbose language

5. Self Arrogance – wherein the higher judiciary has claimed crass superiority and independence to mask their own indiscipline and transgression of norms and procedures
  6. Professional arrogance – whereby judges do not do their homework and arrive at decisions of grave importance ignoring precedent or judicial principle
  7. Nepotism – wherein favors are sought and dispensed by some judges for gratification of varying manner.<sup>[34]</sup>
4. In 2011, [Soumitra Sen](#), former judge at the [Calcutta High Court](#) became the first judge in the India to be impeached by the [Rajya Sabha](#) for misappropriation of funds.<sup>[35]</sup>

## **E-Courts Mission Mode Project**

The [E-courts](#) project was established in the year 2005.<sup>[36]</sup> According to the project, all the courts including taluk courts will get computerised. As per the project in 2008, all the District courts were initialised under the project. In 2010, all the District court were computerised. The entry of back log case has started. The IT department had one system officer and two system assistants in each court. They initiated the services in the Supreme Court in June 2011. The case lists and the judgements of most district courts are available in <http://lobis.nic.in>. <http://judis.nic.in> is used to connect all High Courts and Supreme Court judgements and cause list. These websites are updated daily by a technical team. Now the establishment work is going on taluk courts.

The project also includes producing witnesses through [video conferencing](#). Filing cases, proceedings, and all other details will be in computers. Each district court contains 1 system officer and 2 system assistants. This technical manpower is involved in training the staff, updating web sites. [\_\_\_\_\_]

## **Judicial Service Centre**

This is a part of e-court project. The judicial service centres are available in all court campus. The Public as well as the advocates can walk in directly and ask for the case status, stage and next hearing dates. This service is provided for free. [\_\_\_\_\_]

## **History**

### **Jury trial**

The first [jury trial](#) decided by an English jury in India happened in Madras (today Chennai) in 1665, for which Ascentia Dawes (probably a British woman) was charged by a grand jury with the murder of her slave girl, and a petty jury, with six Englishmen and six Portuguese, found her not guilty.<sup>[8]</sup> With the development of the East India Company empire in India, the jury system was implemented inside a dual system of courts: In Presidency Towns (Calcutta, Madras, Bombay), there were Crown Courts and in criminal cases juries had to judge British and European people (as a privilege) and in some cases Indian people; and in the territories outside the Presidency Towns (called “moffussil”), there were Company Courts (composed with

Company officials) without jury to judge most of the cases implying indigenous people.<sup>[8]</sup>

After the Crown Government of India (Raj) adopted the Indian Penal Code (1860) and the Indian Code of Criminal Procedure (1861, amended in 1872, 1882, 1898), the criminal jury was obligatory only in the High Courts of the Presidency Towns; elsewhere, it was optional and rarely used.<sup>[8]</sup> According sections 274 and 275 of the Code of Criminal Procedure, the jury was composed from 3 (for smaller offences judged in session courts) to 9 (for severe offences judges in High Courts) men; and when the accused were European or American, at least half of the jurors had to be European or American men.<sup>[8]</sup>

The jury found no place in the 1950 Indian Constitution, and it was ignored in many Indian states.<sup>[8]</sup> The Law Commission recommended its abolition in 1958 in its 14th Report.<sup>[8]</sup> Jury trials were abolished in India by a very discrete process during the 1960s, finishing with the [1973 Code of Criminal Procedure](#), which is still in force today.<sup>[8]</sup>

It has been argued that the 8:1 acquittal of Kawas Nanavati in \_\_\_\_\_, which was overturned by higher courts on the grounds that the jury was misled by the presiding judge and were susceptible to media and public influence, was the reason. A study by Elisabeth Kolsky argues that many “perverse verdicts” were delivered by white juries in trial of “European British subjects” charged with murder, assault, confinement of Indians.<sup>[8]</sup>

The **Indian Judiciary** administers a \_\_\_\_\_ of legal jurisdiction, in which customs, precedents and legislation, all codify the law of the land. The [Constitution of India](#) is the supreme legal document of its jurisdiction which extends throughout the territory of the country.<sup>[8]</sup> It has in part, inherited the legacy of the legal system established by the then colonial powers and the princely states since the mid-19th century, and has partly retained characteristics of practices from the ancient and medieval times