



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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CONSTITUTIONAL COURTS- ANALYZING THE STRUCTURES AND FUNCTIONING OF COURTS IN INDIA AND U.S.A

AUTHORED BY - ANKITA SAMBHAJI KHOPADE

Abstract:

The judicial system in India was introduced in the year 1726, when the British East India Company was granted a charter by King George I to establish "Mayor's courts" in Bombay, Madras, and Calcutta. The functions of the Privy Council were to act as an appellate body since the mayor's courts were established. A court is the institution or any person often as a government institution, which have the authority to adjudicate legal disputes between parties and carry out the administration of justice in civil, criminal, and administrative matters in compliance with the rule of law. After struggle for independence in 1947, the Constitution of India came into force on 26 January 1950. The Supreme Court of India also came into existence on 28 January 1950 and the law declared by the Supreme Court is binding on all the Courts within the territory of India. Article III of the U.S. Constitution establish the Supreme Court and authorized Congress to pass laws establishing a system of lower courts. In the federal court system, there are 13 courts of appeals and 94 district level courts of trial which perform below the Supreme Court.

Key Words: Courts, Judiciary, Law, Judicial Magistrate, Imprisonment, Metropolitan Magistrate, Federal courts, circuit court.

Introduction:

A court is the institution or any person often as a government institution, which have the authority to adjudicate legal disputes between parties and carry out the administration of justice in civil, criminal, and administrative matters in compliance with the rule of law. After struggle for independence in 1947, the Constitution of India came into force on 26 January 1950. The Supreme Court of India also came into existence on 28 January 1950 and the law declared by the Supreme Court is binding on all Courts within the territory of India.

The Courts:

(1) Supreme Court---The Indian Constitution establishes the Supreme Court and define its jurisdiction and powers.¹ The Code further makes provision of appeal to the Supreme Court under certain circumstances,"² and also enables the Supreme Court to transfer cases and appeals in the interest of justice.³ The Supreme Court exercises appellate jurisdiction in criminal cases under the provisions of the Supreme Court Act, 1970.

(2) High Court--- The Constitution provides for the establishment of a High Court for each State and generally defines the jurisdiction of such High Court.⁴ The High Court has got superintendence over all courts throughout the concerned State.⁵ The Code also provides that the super- intendence over the Courts of Judicial Magistrates is to be so exercised as to ensure an expeditious and proper disposal of cases in such courts.⁶ The Code gives to the High Court various powers including those relating to reference, appeal, revision, and transfer of cases. It also recognises the inherent power of the High Court to prevent the abuse of the process of any court, or to secure the ends of justice.⁷

(3) Sessions Court---The State establish a Sessions Court for every sessions division. The court may be presided over by a judge appointed by the High Court. The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in the Sessions Court. An Assistant Session Judge is subordinate to the Session Judge.⁸

(4) Courts of Judicial Magistrates--- In every district the State Government may, after consultation with the High Court, established Courts of Judicial Magistrates of the I class and of the II class as it may consider necessary; the State Government may also, after consultation with the High Court, establish, for any local area, one or more Special Courts of JMFC or the II class to try any specific class of cases. Where any such Special Court has been established, no other Court of Magistrate in the local area shall have jurisdiction to try any such case or class of cases.⁹ The presiding officers of the courts including Special Courts shall be appointed by the High Court.¹⁰ The High Court may also grant powers of a Judicial Magistrate to any member of the

¹ Arts. 124, 129, 130, 132, 134, 136-139, 141, 144, 145 of the Constitution.

²See, Ss. 374 and 379.

³ See, S. 406.

⁴ See, Arts. 214, 215, 227, 228, etc. of the Constitution

⁵ See, Art. 227 of the Constitution. See, observations in R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106: (2010) 2 SCC (Cri) 563.

⁶ 30. See, S.483.

⁷ See, S. 482. See, observations on the role of courts in State of T.N. v. R. Vasanti Stanley, (2016) 1 SCC 376: (2016) 1 SCC (Cri) 292 and CBI v. Mahinder Singh, (2016) 1 SCC 389: (2016) 1 SCC (Cri) 292.

⁸ See, S. 9.

⁹ See, S. 11(1).

¹⁰ See, S. 11(2)

Judicial Service of the State functioning as a judge in a civil court.¹¹

The High Court is also requires to appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate (CJM) of the district.¹² The main function is to guide, supervise and control other Judicial Magistrates. He might also try important cases. He might also try important cases.

The High Court may appoints any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate (CJM), and such a Magistrate shall have all the powers of a Chief Judicial Magistrate (CJM) as the High Court may direct.¹³

For any sub-division of a district, the High Court may appoints any Judicial Magistrate of the first class as the Sub-divisional Magistrate who shall have powers of supervise and control the work of the Judicial Magistrates in the sub-division of a district.¹⁴

Unless defined differently by the Chief Judicial Magistrate (CJM), the local jurisdiction and the powers of a Judicial Magistrate would extend throughout the district.¹⁵

Every Chief Judicial Magistrate (CJM) shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall be subordinate to the Chief Judicial Magistrate (CJM) subjected to the control of the Sessions Judge.¹⁶

(5) Courts of Metropolitan Magistrates--- In every metropolitan area, the State Government may, after consultation with the High Court, establish Courts of Metropolitan Magistrates, at such places and in such numbers as it thinks necessary. The presiding officers of courts shall be appointed by the High Courts. The powers and jurisdiction of every such Magistrate may extended throughout the metropolitan area.¹⁷

In every metropolitan areas, the High Court shall appoints a Metropolitan Magistrate as a Chief Metropolitan Magistrate (CMM). It may also appoints Additional Chief Metropolitan Magistrate (CMM), and such Magistrates shall have all the powers of a Chief Metropolitan Magistrate (CMM).¹⁸

The Chief Metropolitan Magistrate (CMM) and every Additional Chief Metropolitan Magistrate (CMM) shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall be subordinate to the Chief Metropolitan Magistrate (CMM) subjected to the

¹¹ 36. See, S. 11(3).

¹² 37. See, S. 12(1).

¹³ See, S. 12(2)

¹⁴ See, S. 12(3).

¹⁵ See, S. 14

¹⁶ See, S. 15(1).

¹⁷ See, S. 16.

¹⁸ See, S. 17

control of the Sessions Judge.¹⁹

(6) Special Judicial or Metropolitan Magistrates--- In any district or metropolitan area, the High Court, on the request of the government concerned, may confer upon any government servant or retired government servant all or any of the powers of a Judicial Magistrate or of a Metropolitan Magistrate as the case may be, in respect of particular classes of cases. Such a government servant must, however, possess such qualification or experience in relation to legal affairs as specified in the rules made by the High Court in this behalf. The appointment of any such special Magistrate shall be only for a period not exceeding one year at a time.²⁰

The Supreme Court²¹ in its judgment has upheld the constitutional validity of Sections 13(1) and 18(1) of the Code as not violative of Article 14 of the Constitution, thereby overruling the judgment of the Madras High Court.²² The Supreme Court has directed that even though the High Court is the sole appointing authority, special care has to be taken that persons with necessary qualifications and experience in relation to legal affairs are appointed.

(7) Courts of Executive Magistrates--- The Code has adopted the policy of separation of the judiciary from the executive. Therefore, it has created a separate category of courts which are distinct from the Courts of Judicial Magistrates. The object of the policy of separation to ensure the independent functioning of the judiciary free of all suspicion of executive influence and control. Therefore, the Judicial Magistrates and Metropolitan Magistrates are put under the control of the High Court, while the Executive Magistrates are kept under the control of the State Government. As the functions which are essentially judicial in nature are the concern of the Judicial Magistrates, while functions which are "police" or "administrative" in nature are the concern of the Executive Magistrates.

In every district and in every metropolitan area, the State Government shall appoint Executive Magistrate and shall appoint one of them to be the District Magistrate; it may also appoint an Additional District Magistrate (ADM), and for a sub-division a Sub-divisional Magistrate. The State Governments may, by general or special orders, delegate its powers under Section 20(4) of appointing Sub-divisional Magistrates, to the District Magistrate.²³ These provisions would not, however, affect the practice (sanctioned by local laws) of granting magisterial powers of executive nature on a Commissioner of Police.²⁴

¹⁹ See, S. 19.

²⁰ See, Ss. 13 and 18.

²¹ *Kadra Pahadiya v. State of Bihar*, (1997) 4 SCC 287: 1997 SCC (Cri) 553: 1997 Cri

²² *M. Narayanaswamy v. State of T.N.*, 1984 Cri LJ 1583 (Mad).

²³ See, S. 20(4-A) inserted by Act 25 of 2005 (w.e.f. a date to be notified).

²⁴ See, S. 20.

The State Government may appoints Special Executive Magistrates for particular areas or for performing particular functions of an Executive Magistrate.

Hierarchy of courts in the India

- Supreme Court may pass (Any sentence authorised by law)
- High Court may pass (Any sentence)
- Sessions Court/Sessions Judge or Additional Sessions Judge may pass (Any sentence authorised by law: sentence of death is subject to confirmation by High Court)
- Assistant Sessions Judge may pass (Imprisonment up to ten years or/and fine)
- Chief Metropolitan Magistrate/Additional Chief Metropolitan Magistrate may pass (Imprisonment up to 7 years or/and fine)
- Chief Judicial Magistrate/Additional Chief Judicial Magistrate may pass (Imprisonment up to 7 years or/and fine)
- Metropolitan Magistrate may pass (Imprisonment up to 3 years or/and fine up to 10,000)
- Special Metropolitan Magistrate may pass (Imprisonment up to 3 years or/and fine up to 10,000)
- Judicial Magistrate/Special Judicial Magistrate of first class may pass (Imprisonment up to 3 years or/and fine up to ₹10,000)
- Sub-divisional Judicial Magistrate up to 3 years or/and fine up to 10,000)
- Judicial Magistrate/Special Judicial Magistrate of Second class may pass (Imprisonment up to 1 year or/and fine up to 5000)

Hierarchy of Courts in the U.S.A

The hierarchy of courts in the USA is mainly divided into 3 parts.

The USA constitution is Federal in nature. The Federal courts systems are classified in main three levels which are follows-

1. District courts (the trial court)
2. Circuit courts which are the Courts of Appeals
3. The Supreme Court of the United States, which are the final level of appeal in the federal system.²⁵

²⁵ <https://blog.iplayers.in/usa-justice-system/>

- **Courts in the federal system work** differently in other ways than state courts. The primary difference for civil cases as well as criminal cases is the types of cases that can be heard in the federal system.
- **Federal courts are courts of limited jurisdiction**, they can only hear cases authorized by the United States Constitution or federal statutes.
- **The federal district court is the starting point of any case** arising under federal statutes. This type of jurisdiction is called **“original jurisdiction.”**²⁶

The jurisdiction of state courts will overlap with the federal courts, means that some cases can be brought in both courts. The plaintiff has the initial choice of brings the case in state court or federal court. However, if the plaintiff chooses state court, the defendant may choose to “remove” to federal court.

- Cases that are generally based on state law may be brought in federal court under the court’s “diversity jurisdiction”. Diversity jurisdiction allows a plaintiff of one state to file a suit in federal court but when the defendant is located in a different state. The defendant may also seek to “remove” from the state court for the same reason.²⁷
- To bring a state law claim in federal court, all the plaintiffs must be located in different states than all of the defendants, and the “amount in controversy” shall be more than \$75,000/-
- Criminal cases shall not be brought under diversity jurisdiction. States shall only bring criminal prosecutions in state courts, and the federal government shall only bring criminal prosecutions in federal court.²⁸
- The principle of double jeopardy, which does not allows a defendant to be tried twice for the same charge, does not apply between the federal government and state government. If the state government brings a murder charge and does not get a conviction, it is possible for the federal government in some cases to file charges against the defendant, when the act is illegal under federal law.
- Federal judges and Supreme Court judges are selected by the President and confirmed “with the advice and consent” of the Senate and “shall hold their Offices during good behavior.”

Judges shall hold their position for the rest of their lives, but many resign or retire earlier. They

²⁶ <https://www.uscourts.gov/about-federal-courts/court-role-and-structure>

²⁷ <https://www.democracymagazine.com/analysis/the-u-s-court-system-explained/>

²⁸ <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts>

can also be removed by impeachment by the House of Representatives and conviction by the Senate.

District Courts:

- The district courts are trial courts of the federal court system. Each district court has at least one United States District Judge, appointed by the President and confirmed by the Senate for a life term.²⁹
- District courts look over the trials within the federal court system, both civil cases and criminal cases. The district courts are the same as those for the U.S. Attorneys, and the U.S. Attorney is the primary prosecutor for the federal government in his/her particular areas.
- District court judges are responsible for managing the court and supervising the court's employees. They are able to continue to serve for long as they maintained "good behavior" and they may be impeached and removed by Congress.

Certain cases of the district court are given to the federal magistrate judges.

Magistrates are appointed by the district court by a majority vote of the judges and serve for a term of eight years, but they cannot be reappointed after completion of their terms.

- **In criminal matters**, magistrate judges shall oversee certain cases, issue search warrants and arrest warrants, conduct the initial hearings, grant bail, decide certain matters (such as a motion to suppress evidence), and other similar actions.
- **In civil cases**, magistrates overlook a variety of issues such as pre-trials and discovery.
- **Federal trial courts** have also been established for specific areas. Each federal district court shall have a bankruptcy court for proceedings. However, some courts have nationwide jurisdiction for issues such as tax, claims against the federal government, and international trade.

Circuit Courts:

The federal district court has decided a case once, the case can be appealed to a United States court for appeal. There are twelve federal circuits which divide the country into different regions.

²⁹ <https://study.com/academy/lesson/the-3-levels-of-the-federal-court-system-structure-and-organization.html>

The Fifth Circuit, includes the states of Texas, Louisiana, and Mississippi.³⁰

Cases from the district courts of those states are appealed to the United States Court for Appeals for the Fifth Circuit, which is headquartered in New Orleans, Louisiana. Additionally, **the Federal Circuit Court of Appeals has a nationwide jurisdiction over an specific issues such as patents.**

Each circuit court has many judges, ranging from six on the First Circuit to twenty-nine on the Ninth Circuit. Circuit court judges may appointed for life by the president and confirmation by the Senate.

once the district court has finalized a decision, any case shall be appealed to the circuit court (some issues can be appealed before a final decision by making an “interlocutory appeal”)

Appeals to circuit courts are heard first by a panel, consisting of 3 circuit court judges. The Parties file “suits” in the court, arguing that why the trial courts decision should be “affirmed” or “reversed.” After the suits are filed, the court will schedule “oral argument” in which the lawyers come infront of the court to make their arguments and answer the judges’ questions.

The entire circuit court shall consider some appeals in a process called an **“en banc hearing.”**

En banc opinion tends to carry more weight and are usually decided only after a panel has first heard the case. Once a panel has ruled on an issue and “published” the opinion, no future panel can overruled the previous decision. The panel may suggest that the circuit take up the case en banc to reconsider the first panel’s decision.³¹

Beyond the Federal Circuit, a few courts has established to deal with appeals on specific subjects such as veterans claims and military matters.

Supreme Court of the USA

The Supreme Court of the USA is the highest court in the American judicial system and has the power to decide appeals on all cases of federal court as well as state court but dealing with federal law and exercises appellate jurisdiction in criminal cases.³²

³⁰ <https://www.state.gov/briefings-foreign-press-centers/an-overview-of-the-us-court-system>

³¹ <https://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page>

³² <https://sociallawstoday.com/hierarchy-of-courts-in-usa-uk-and-india/>

For example, in a First Amendment freedom of speech case was decided by the highest court of a state (the state supreme court), the case shall be appealed to the federal Supreme Court. However, if that same case were decided by a state law similar to the First Amendment, the Supreme Court of the United States would not be able to consider the case.

After the circuit court or state Supreme court has ruled on a case, party can choose to appeal to the Supreme Court. **Unlike the circuit court appeals, the Supreme Court usually not required to hear the appeal.** In this Situation Parties may file a “writ of certiorari” in the court, asking it to hear the case. Thus the “writ of certiorari” can only be filed in the apex court.

If the writ is granted, the Supreme Court will conduct oral argument. **If the writ is not granted**, then the lower court’s opinion stands. "writ of Certiorari" is not often granted, less than 1% of appeals to the high court are actually heard by it. The Court listen cases on a particular issue across the country or when there is an egregious errors in a case and a conflicting decisions in a case.

The members of the Court are referred to as “justices” and like other federal judges, they are appointed by the President and confirmation by the Senate for a life term.

The court consists of nine justices – one chief justice and eight associate justices . The Constitution as no requirements for Supreme Court justices, though all current members of the court are lawyers and most have served as circuit court judges. Justices are also often former law professors. The chief justice acts as the administrator of the court and appointed by the President and approved by the Congress when the position is vacant.³³

Sources of Law in The U.S.A

1. Constitutional law.
2. Statutory law.
3. Treaties.
4. Administrative regulations.
5. The Common Law.

³³ <https://sociallawstoday.com/hierarchy-of-courts-in-usa-uk-and-india/>

Constitutionality

Congress enacts a statute that conflicts with the Constitution and the Supreme Court find that the law which is unconstitutional in nature declare it invalid.

Levels of Law:

- **Federal law**

Federal law originates with the Constitution having the power to enact statutes for certain limited purposes like regulating interstate commerce. The USA Code is the official codification of the general and permanent federal statutes.

Many statutes give other executive branch agencies the power to create regulations which are published in the Federal Register and modified into the Code of Federal Regulations. Regulations may carry the force of law under the Chevron doctrine. Under the principle of stare decisis many lawsuits of a federal statute or regulation, and judicial interpretations carry legal force.³⁴

- **Statutes**

After the President signs a bill into a law, it is delivered to the **Office of the Federal Register (OFR)** of the **National Archives and Records Administration (NARA)** where it is sent for publication as a law and assigned a law number on it.

Public laws, but not private laws, are also given legal statutory citation by the Office of the Federal Register (OFR).

At the end of each session of Congress, the laws are compiled into bound volumes called the United States Statutes at Large, and which are also known as session laws.³⁵

Public laws are incorporated by the United States Code, which is a modification of all permanent and general laws of the United States. Thus the main edition is published every six

³⁴ <https://sociallawstoday.com/hierarchy-of-courts-in-usa-uk-and-india/>

³⁵ <https://crsreports.congress.gov/product/pdf/R/R47641>

years by the Office of the Law Revision Counsel of the House of Representatives and cumulative supplements are published annually.

The U.S. Code is arranged by subject matter and it shows the present status of laws (with amendments already incorporated in the text) that have been amended by one or more occasions.³⁶

- **Regulations**

Congress enacts statutes that grants broad rule making authority to the federal agencies. Often, Congress is simply to draft detailed statutes that explains how the agency should react to every possible situation, or the Congress believes the agency's technical specialists are best equipped to deal with certain fact situations as they arise. Therefore, federal agencies are authorized to promulgate regulations.

Under the principle of Chevron deference, regulations generally carry the force of law as long as they are based on a reasonable interpretation of the relevant statutes.

Regulations are adopted by the **Administrative Procedure Act**. Regulations are first proposed and published in the Federal Register and subject to a public comment period. thus, after a period for public comment and revisions based on comments received, a final proposal is published in the Federal Register. The regulations are codified and incorporated into the **Code of Federal Regulations (CFR)** which is published once in a year on a based schedule.³⁷

Besides regulations formally promulgated under the Administrative Procedure Act (APA), federal agencies also frequently promulgate an enormous amount of forms, manuals, policy statements, letters. These documents shall be considered by a court as persuasive authority as a particular statute or regulation may be interpreted , but are not entitled to Chevron deference.

- **State law**

The 50 American states which are separate sovereigns, with their own state governments, state constitutions, and state courts.

All states have a legislative branch that enacts state statutes, an executive branch that

³⁶ <https://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page>

³⁷ <https://sociallawstoday.com/hierarchy-of-courts-in-usa-uk-and-india/>

promulgates state regulations to statutory authorization and a judicial branch that applies, interprets, and overturns both state statutes, regulations, and local ordinances.³⁸

They retain the powers to make laws covering all the aspects of law by the federal Constitution, federal statutes, or international treaties codified by the federal Senate. **therefore, state supreme courts are the final interpreters of state constitutions and state law, until and unless their interpretation presents a federal issue**, in which a decision can be made and which may be appealed to the U.S Supreme Court by way of a "writ of certiorari" petition.

State laws which have been proposed in the centuries from since independence, to the extent that the United States cannot be regarded as one legal system, as the majority of types of traditional laws under state laws which controls but regards as fifty separate systems of tort law, family law, property law, contract law, criminal law, and so on.³⁹

Conclusion:

The judiciary in India has a pyramidal structure with the Supreme Court (SC) at the apex. High Courts of different States are below the Supreme court and below are the district and subordinate courts i.e., courts subordinate to and under the control of the High Courts. The lower courts function under the higher courts. Judiciary is a real protector of the rights of the people and the constitution.

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