

# CONSTITUTIONAL MATTERS AND PUBLIC INTEREST LITIGATION



# TABLE OF CONTENTS

Contents	Page no.
Introduction	3
Legal system of India	4
History of Indian Constitution	5
Structure of Indian judicial system	6
Jurisdiction of Supreme Court	9
Public Interest Litigation	13
How we can help?	15



# INTRODUCTION

A Constitution is the fundamental governing document of a country that guarantees fundamental rights to its citizens as a safeguard against the oppressive, unreasonable and despotic acts of the legislature and executives. It labels the relationship between the fundamental or apex organs of the government and administration and describes the structure, composition, powers and principal functions of these institutions.

The Constitution sets out the interrelationship between these organs and regulates their relationship with the people, more particularly, the political relationship and even these basic institutions.



The Indian Constitution is the supreme law of India, it lays down the framework that demarcates fundamental political code, structure, procedures, powers, and duties of government institutions. It also sets out fundamental rights, directive principles and the duties of citizens.

The structure of a country's government is divided into three institutional components-

- (1) Legislature to make laws.
- (2) Executive to implement and execute laws.
- (3) Judiciary to interpret the laws and administer justice.

The Constitution provides rules for the working of these institutions and sets up the hierarchy among these institutions.

# THE LEGAL SYSTEM OF INDIA

India has a federal judicial system that is primarily a composite of mixed laws that are based on the parliamentary legislature, court laws, customary and religious laws.

The legal system of India is divided into -

(i) **Law governing the state** i.e., the Constitution of India provides several rights to its citizens and protects such rights which bring peace and harmony among individuals.

(ii) **Law by which the state governs** or regulates the conduct of its members. Laws like contracts, torts, property and criminal law fall in the second category as these laws set out their principle from the Constitution of India.

The laws in India are interconnected which forms a hybrid legal system. However the classification of laws in the Indian judiciary system is as follows -

Crimes against the rule of law or other wrongdoings against the public are covered by criminal law. The Indian Penal Code, 1860 and the Criminal Procedure Code, 1973 govern criminal law. The purpose of the criminal justice system is to provide an instrument for society to control, protect, serve and safeguard human actions and help guide human behavior.

Civil Law -

Civil law is used to resolve conflicts between individuals or organizations. Through the filing of a civil lawsuit, civil courts hold parties accountable when their rights and obligations are violated. The Code of Civil Procedure 1908, governs the act of procedure and the execution of civil law. Instead of emphasizing punishment, civil law focuses on conflict resolution. Tort law, family law, property law and contract law come under the wide ambit of civil law.

Common Law -

Common law is the body of unwritten laws established by case law or judicial precedent. According to Article 141 of the Indian Constitution, a law issued by the Supreme Court would be binding on all courts and within the boundaries of India. The case laws and judicial precedents influence the decision-making process. Common law is based on the theory of natural justice and common law doctrines are followed in decision-making.





## HISTORY OF THE INDIAN CONSTITUTION

Indian Constitution is one of the longest-written Constitutions in the world and it took 2 years 11 months and 18 days to write the Indian Constitution. The lawmakers tried to make such a document that can put the public in power. The principal embedded in the Constitution can be understood from the Preamble of the Constitution which states that India should be a Sovereign, Socialist, Secular, Democratic, Republic to protect its citizens.

The historical evolution of the Constitution of India can be traced back to many regulations and Acts passed before India gained its Independence. The formation of the Indian Constitution, the largest written Constitution in the world, was the outcome of numerous incidents and events. In terms of its people, culture and geography, India has always been a diverse nation. Therefore, creating a supreme code of law to successfully govern this wealthy, diverse nation was a challenging task for the Constitution's writers.



# STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

The Indian judicial system follows a common law system and controls how laws are interpreted and disputes are managed for the country's residents. The Supreme Court is at the top, followed by the High Courts at the state level and district courts at the subordinate level.

## Supreme Court

The Supreme Court is the highest court within the hierarchy of courts. It is also known as the court of last resort or the final court of appeal. Chapter IV of Part V of the Indian Constitution contains the provisions establishing the Supreme Court of India. The Supreme Court has authority over three types of cases: original (Article 131), appellate (Articles 133 and 134), and advisory (Article 143). The principles and judicial precedents applied by the Supreme Court are binding upon all lower courts of the country.

## High Court

The High Courts are the highest form of authority in the state and union territories and the principles and judicial precedents of high courts are binding on all the subordinate courts. The High Court is authorized to hear appeals and to exercise original and supervisory jurisdiction. Articles 214 to 231 of the Constitution provide for a High Court's authority. Each state and union territory in India has its own High Court, making a total of twenty-five in the country.



## District Courts

District Courts in India are local courts of the Indian state government. A district court is given the authority to establish provisions or settle disputes for a single or multiple districts. These courts hear matters from one or more districts in their respective states. District Courts are empowered to administer justice, law and order at the district level in India. These courts hear appeals from lower courts on a variety of decisions and statutes. They involve major criminal offenses or cases.

### Jurisdiction of District Court

- **Territorial jurisdiction**- A court is said to have territorial jurisdiction when it exercises its jurisdiction locally i.e., within its jurisdictional authority within a specific geographical area and it is not permitted to do so elsewhere.
- **Pecuniary jurisdiction**- By this jurisdiction, the Court may hear cases and deliver a judgment based on the financial merits of the contended action or case.
- **Subject matter jurisdiction**- The Court has the competence to handle cases of a specific type about a specific subject area under the jurisdiction of this Court.
- The hierarchy of the district court is divided on these jurisdictional parameters and the cases are directed from the court of a district judge to the court of sessions judge.



### **The Court Of District Judge**

Civil cases are handled by the Court of District judges. It receives and uses its authority from the Code of Civil Procedure of 1908. Both original and appellate jurisdictions belong to it. District courts have appellate authority over lower courts.

District courts for civil cases are divided into three categories: junior civil judge, principal junior civil judge court and senior civil judge court. Territorial jurisdiction, pecuniary jurisdiction, and appellate jurisdiction are all cited in the appeal's filing.

### **Munsiff Courts**

The lowest tier of courts in a district is called munsiff courts. Typically, the District Court for that area has control over it. The State Government establishes the financial and territorial jurisdictional boundaries

### **Court of session**

The highest authority in the district for criminal affairs is a Court of Sessions Judge, which manages cases of criminal nature. It derives its authority from the 1973 Code of Criminal Procedure.







## JURISDICTION OF SUPREME COURT

The Supreme Court is the highest Constitutional court in India. It has been embedded with varied functions and duties to resolve and settle disputes and to use its jurisdiction to do complete justice. The Supreme Court is regarded as the final interpreter and guardian of the Indian Constitution because it is the highest court within the Indian judicial system responsible for upholding the nation's ideals of the rule of law and the country's Constitution.

The jurisdiction of the Supreme Court can be classified into the following categories-

1. Original jurisdiction
2. Appellate jurisdiction
3. Advisory jurisdiction

### Original Jurisdiction

The Constitution of India has conferred the Supreme Court with the power of original jurisdiction under Article 131, allowing the Supreme Court to hear the cases directly brought up to the Supreme Court.

The issues heard by Supreme Court under original jurisdiction are-

1. In disputes between the Union Government and one or more States.
2. In such disputes where the Union Government and one or more states constitute one party, and one or more states constitute the other party.



### 3. In disputes between two or more states

Hence, where such a dispute arises then the Supreme Court can use the original jurisdiction to resolve the issue.

### Appellate Jurisdiction

One of the most important jurisdictions used by the High Court and Supreme Court in the nation is the appellate jurisdiction. If a person is dissatisfied with the decisions made by the lower courts, this jurisdiction enables them to appeal to the higher court. In an appeal, the higher court is tasked with reviewing and amending the decision made by the lower courts.

The appellate jurisdiction of the Supreme Court is further divided into –

- **Civil matters-** A plaintiff has the right, under Article 133, to appeal about the High Court's decision, decree or final order in a civil case to the Supreme Court.
- **Criminal Matters-** A plaintiff has the right, under article 134, to appeal about the high court's decision, decree or final order in a civil case to the Supreme Court.
- **Constitutional Matters-** A Constitutional case is not a civil lawsuit or a criminal prosecution. It is a case that resulted from various constitutional interpretations, particularly regarding fundamental rights. In these constitutional cases, the Supreme Court will only hear an appeal if a High Court certifies that the issue at hand includes a significant legal issue.





- **Special Leave Petition-** A special leave petition ("SLP") is a request for special permission to appeal a decision made by a lower court. As a result, the petition is for an appeal rather than an appeal itself. Thus, following the filing of an SLP, the Supreme Court may review the case, decide whether to grant the "leave" and then turn the petition into an "appeal" if it so chooses. As an appeal, it will be heard by the Court, which will subsequently render a decision.

### Advisory Jurisdiction

The Supreme Court enjoys the power to express its opinion on an issue referred by the President seeking opinion under Article 143 of the Indian Constitution. The President can refer to an issue of law or fact that is of public importance to the advisory opinion of the Supreme Court.

The views so expressed by the Supreme Court are not binding on the President, as it is not of the nature of a judicial pronouncement. It is not obligatory for the supreme court to give an opinion on the issue and it is totally at the discretion of the court to decide whether to respond to the issue or not.



## Writ Jurisdiction

Writs are written orders issued by the Supreme Court or a High Court directing Indian citizens to pursue Constitutional remedies if their basic rights have been violated. Following Article 32 of the Indian Constitution a citizen of India may petition the Supreme Court of India and the High Court for Constitutional remedies if his or her fundamental rights have been violated. The Supreme Court has the authority to issue writs to enforce rights under the same article where as the High Court has the same authority under Article 226 of the Constitution of India.

## Types Of Writs in India

The judiciary is the custodian of the fundamental rights of the citizens. For that, it has original and wide powers. It issues five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are:

1. **Habeas Corpus** – The writ is used where a person is illegally detained. Habeas Corpus means ‘to have the body’ and it is one of the most effective remedies available to a person detained.
2. **Mandamus**- Under this writ the higher courts direct the subordinate courts to take a certain action or to refrain from taking a certain action. An inferior tribunal, board, corporation or any other administrative authority may also receive this order.
3. **Prohibition**- It means ‘to forbid’ It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
4. **Certiorari**- This writ is issued where there is a violation in following the principles of natural justice by the inferior court then the superior court can quash the order of an inferior court.
5. **Quo-Warranto**- It means ‘by what authority or warrant.’ It is issued by the court to enquire into the legality of the claim of a person to a public office. Hence, it prevents the illegal usurpation of public office by a person.





## PUBLIC INTEREST LITIGATION

The term Public Interest Litigation or ("PIL") refers to a legal action brought in a court of law to protect the interest of the public against any issue that affects their legal rights or obligations. For example- Pollution, Terrorism, Road safety, Constructional hazards, etc.

A PIL can be filed by any individual or organization in their standing to defend or uphold a right that the government owes to them, or on behalf of a group in society that is oppressed or disadvantaged and unable to uphold their rights.

In the case of PILs, the "Locus Standi" which refers to the legal right of a person to file a lawsuit, the court only allows for such aggrieved person to file a suit in a court. However the principle has been eased to allow the Hon'ble Court to consider grievances brought on behalf of people who are poor, ignorant, underprivileged or disabled and are unable to personally approach the courts. However, only a person with sufficient locus standi can file a PIL.



## PROVISIONS OF PIL

The Hon'ble Supreme Court of India may receive PILs according to Article 32 of the Indian Constitution, or any High Court according to Article 226 of the Indian Constitution. The procedure of filing a PIL is the same as writs as PILs are Writ Jurisdiction extensions.

Hence a PIL is a crucial legal instrument, particularly for the defense of the rights of individuals unable to personally approach the courts. To prevent people from filing PILs in the public interest or on behalf of the underprivileged, disabled, or poor, the courts have tried to simplify the rules governing PILs. However, there have been several instances where individuals have attempted to use PILs to advance their objectives. Therefore, to prevent the abuse of PILs, courts must continue to exercise utmost caution.

### The procedure for filing a PIL

Any Indian citizen can file a PIL; the only need is that it should be done with a wider public interest rather than a private one. If the issue is crucial to the public, the courts can consider it.

If the PIL is being filed in High Court, then two copies of the petition have to be submitted to the court and a copy of the petition has to be served to the respondent in advance.

If the PIL is filed in the Supreme Court, then five copies of the petition are to be filed before the court. Respondent is served with the copy only when the notice is issued from the court. The cost of filing is very economical as the court fee is Rs. 50 per person and the fees have to be affixed with the petition.

A PIL can be filed individually or by several persons, if it is filed in a group then the consent of all group members is required. Once a PIL is filed in the court it can be argued by the petitioners or by appointing an advocate to file the case.





## HOW WE CAN HELP?

We have built a robust practice and are recognized by anchoring upon our vast experience, established expertise and diverse capabilities in handling matters for our clients before several District Courts, High Courts and the Supreme Court of India. Our team of professionals provides a wide range of services in the following areas of Constitutional matters -

- Professional assistance to the weaker sections by highlighting their concerns and providing them with the strength to file a Public Interest Litigation.
- Our professional assistance includes filing appeals in the Supreme Court in civil, criminal and constitutional disputes.
- Our team assists in filing petitions for illegal detention, illegal termination, illegal attachment of the allowances and protection of life and liberty.
- We advise on possible constitutional challenges to statutes and challenging the constitutionality of law and policies.
- We provide opinions on matters involving substantial questions of law relating to the interpretation of statutory provisions.
- Guidance is offered for the filing of SLP, appeal, revision, review and curative petition on behalf of the clients before the Supreme Court.



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