Judicial System and Legal Remedies

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Introduction

Any organised society must have some machinery for adjudication of disputes arising between the people constituting the community. Courts have, therefore, always existed in one form or the other since the birth of societies and community-living. However, at no time in the history of human civilisation the need for an independent judiciary has been felt as now, as the judiciary has *often* to adjudicate on constitutional validity of the laws enacted by the legislature and the validity of executive action. The past gospel of *laissez faire* has given place to the philosophy of welfare state with an emphasis on securing economic and social justice to all citizens by the state. This has given rise to the state regulation of the activities of the individual on a large scale, and consequently, enactment of multitudinous laws and conferment of wide powers on the administration to interfere with the individual liberty. Naturally there are now many more occasions than in the past when the individual is at loggerheads with the state. An independent and fearless judiciary is the greatest bulwark against executive excesses or even executive tyranny, and protector of individual liberty. A judiciary independent of the executive and the legislature is a necessity of the present age so that it could dispense proper justice in disputes between an individual and the state and help in the maintenance of the rule of law. Not only does the Constitution of India provide for an institutional framework for an independent judiciary in India but also guarantees certain judicial remedies to the individual against both legislative and executive action, so that the institutional framework may not remain an empty formality.

Like the United States, India has a federal constitution but unlike the United States, India does not have a dual system of courts. The judiciary is one integrated whole. It is true that there are state courts but these state courts decide both federal and state questions and an appeal from their decisions whether involving state questions or federal

questions lie to the Supreme Court of India. There are no federal courts as such to decide federal questions exclusively as in the United States. There is a hierarchy of courts in India. At the apex is the Supreme Court of India; immediately below the Supreme Court there is a High Court in each state, and below that the subordinate courts. The organisation and composition of the Supreme Court and High Courts is given in the Constitution. But as far as lower or subordinate civil judiciary is concerned, each state has to constitute such courts as it deems necessary, subject to certain safeguards contained in the Constitution. These courts owe their existence and jurisdiction to the enactments of the state concerned. The subordinate criminal courts in each state function under the provisions of the Code of Criminal Procedure, a central enactment.

The distribution of powers with regard to the judiciary between the centre and the states is broadly as follows : In the centre sphere falls the following matters : Constitution, organisation, jurisdiction and powers of the Supreme Court ; constitution and organisation of the High Courts; and jurisdiction and powers of all courts with respect to matters in the union list and the concurrent list. The states have power over the following matters : Constitution and organisation of all courts, except the Supreme and High Court; jurisdiction and powers of all courts, except the Supreme Court, with respect to matters in the state list and the concurrent list. Thus as far as the jurisdiction of the High Court is concerned, the states have power in matters falling within the state and concurrent lists, whereas the constitution and organisation of the High Courts lies within the exclusive purview of the centre.

It may be pertinent to point out here that the judicial system as it operates up to the High Court level is basically the same as given by the British during the colonial days. The British from the very start realised the importance of having a sound judicial system over territories under their control. They, therefore, took steps to evolve a judicial system practically from the beginning of their administration in India.

Supreme Court

The Supreme Court of India is to consist of such number of judges as Parliament by law may prescribe. The Supreme Court (Number of Judges) Act, 1956 provides for 17 judges of the court, excluding the Chief Justice. Every judge of the Supreme Court is to be appointed by the President of India after consulting such judges of the Supreme Court and High Courts in the states as the President may deem necessary,

provided that for the appointment of a judge other than the Chief Justice, the Chief Justice of India is to be always consulted. The Constitution makes adequate provisions for the independence of judges. Every judge is to hold office till he attains the age of 65 years. He cannot be removed by the executive but there is a special procedure of impeachment for his removal prescribed by the Constitution. It is provided that a judge of the Supreme Court shall only be removed from office by the President after an address by each House of Parliament supported by a majority of total membership of that House and by a majority of not less that two-thirds of the members of that House present and voting presented to the President on the ground of *proved* misbehaviour or incapacity. Further, the salaries to be paid to the Supreme Court judges are specified in the Constitution. The privileges and allowances of the judges are to be determined by Parliament by law provided that they shall not be varied to the disadvantage of a judge after his appointment, and until so determined such privileges and allowances are as specified in the Second Schedule of the Constitution. The conduct of the Supreme Court judges in the discharge of their duties is not to be discussed in either of the Houses of Parliament. Unlike the American Supreme Court which sits in full to decide a case, the Indian Supreme Court sits in benches (divisions). It is provided by the Constitution that for deciding a case involving a substantial question of law as to interpretation of the Constitution there shall be a minimum of five judges. For deciding other questions, the rules of the court are to fix the minimum number of judges. The court sits in benches consisting of not less than two judges nominated by the Chief Justice.

The Supreme Court has been given wide jurisdiction under the Constitution. It has an exclusive original jurisdiction over disputes between the Government of India and states and states *inter se*. It has also power to issue writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for the enforcement of Fundamental Rights; this is also the original jurisdiction of the Supreme Court, though not exclusive. The Constitution, thus, not only provides for the fundamental rights to the people, but also provides a machinery for their enforceability so that they may not remain mere pious hopes or platitudes devoid of effectiveness.

The court has been given wide appellate jurisdiction. Thus, in constitutional cases an appeal lies to the Supreme Court from any judgment if the High Court certifies that the case involves a substantial question as to the interpretation of the Constitution. In civil matters an appeal lies to the Supreme Court from any judgment of a High Court if the

High Court certifies that the case involves a substantial question of law of general importance, and that in the opinion of the High Court the question needs to be decided by the Supreme Court. In criminal cases an appeal lies to the Supreme Court from a High Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; (b) has withdrawn from trial before itself any case from any court subordinate to its authority and in such trial convicted the accused person and sentenced him to death; or (c) certifies that the case is a fit one for appeal.

Further, the Supreme Court has power akin to the *certiorari* jurisdiction of the American Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India. Under this provision the Supreme Court hears appeals not only from courts but also administrative bodies characterised as tribunals. The only condition for appeal is that the circumstances must be special and extraordinary, *i.e.* cases of gross miscarriage of justice. Every year the court hears a large number of appeals under its special leave jurisdiction.

The Supreme Court has also been given an advisory jurisdiction. The President is empowered to refer any question of law or fact which is of public importance to the Supreme Court for its opinion. The Supreme Court has so far delivered about half a dozen advisory opinions.

The above jurisdiction of the Supreme Court is as specified in the Constitution. However, Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, etc., in a criminal proceeding of a High Court subject to such conditions and limitations as may be specified in such law. Further, Parliament may by law confer further jurisdiction and powers with respect to any of the matters in the union list, and to issue prerogative writs for purposes other than enforcement of fundamental rights.

High Courts

The Constitution provides that there shall be a High Court in each state. However, Parliament may by law establish a common High Court for two or more states. At present there is one High Court for Punjab and Haryana, and one High Court for the states of Assam, Nagaland, Meghalaya, Manipur and Tripura. Further, Parliament may by law extend the jurisdiction of a High Court to, or exclude the

jurisdiction of a High Court from, any union territory, or create a High Court for any union territory. Delhi, a union territory, has a separate High Court of its own. High Courts exercising jurisdiction over the union territories are : Madras High Court over Pondicherry; Kerala over Lakshadweep; Bombay over Dadra and Nagar Haveli; Calcutta over the Andaman and Nicobar Islands; Punjab and Haryana over Chandigarh; Gauhati over Mizoram and Arunachal Pradesh.

Every High Court is to consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint.

In appointing the judge of a High Court the President is required to consult the Chief Justice of India, Governor of the State, and in the case of the appointment of judges other than the Chief Justice, the Chief Justice of the High Court. A judge of the High Court is to hold office till he attains the age of 62 years.

Judges of the High Court are to be paid such salary as is specified in the Constitution. The procedure for the impeachment of High Court judges is the same as in the case of a judge of the Supreme Court.

High Courts are comparatively old institutions and were in existence before the Constitution came into operation. Accordingly, the Constitution keeps the existing jurisdiction of the High Courts intact. Therefore, sometimes to find their jurisdiction and powers one may have to look at the old charters establishing the High Courts. The appropriate legislature may by law change the jurisdiction of a High Court.

Generally speaking, the High Courts have an appellate jurisdiction. The three High Courts of Calcutta, Bombay and Madras have ordinary original civil jurisdiction[1] above a particular value within the presidency towns.[2] This is a survival of the past and is a special power enjoyed by the three High Courts. However, when the Delhi High Court was established in 1966 it was given ordinary original civil jurisdiction over

1. To a certain extent this power has been curtailed by the creation of subordinate courts in those towns.
2. The presidency towns are Calcutta, Bombay and Madras. These were early British settlements. Each of these towns had a factory of the East India Company which was headed by a President and Council. They were accordingly known as the presidency towns.

rupees fifty thousand. Also, all the High Courts have some kind of original jurisdiction under special enactments like the Income Tax Act, sales tax laws, the Workmen's Compensation Act, the Companies Act, etc.

An important power conferred on the High Court by the Constitution is the power to issue writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*. These writs are available not only for the enforcement of fundamental rights but for any other purpose.[3] This may also be considered the original jurisdiction of the High Courts. These writs are available against administration and provide an important safeguard to an individual against administrative abuses. An injured individual can promptly approach the High Court for a suitable remedy if his rights are trampled upon by the state. He can challenge both the constitutional validity of legislative action and the legal (including constitutional) validity of administrative action. These writs are widely taken recourse to by individuals adversely affected by state action at the present day, particularly when it is usual for statutes these days to accord finality to administrative action or to expressly exclude judicial review. Since these are constitutionally guaranteed writs they cannot be restricted by a statute in spite of the use of the ouster clause in it.[4]

Every High Court has been given power of superintendence over all courts and tribunals[5] throughout territories in relation to which it

3. The Constitution (Forty-second) Amendment Act, 1976 has in some respects tried to restrict the powers of the High Courts to issue writs. *Status quo* has been maintained with respect to the enforcement of fundamental rights but for other purposes these writs can be issued "for redress of any injury of a substantial nature" and for "substantial failure of justice" due to any illegality in any proceedings. The implications as regards the degree to which this amendment affects the scope of judicial review have still to be worked out. As it was, the scope of judicial review under the writs was restrictive and limited. The courts gave relief only on such grounds as error of jurisdiction, error of law on the face of the record, abuse of discretion, complete lack of evidence in support of a finding, violation of principles of natural justice, disregard by the administration of the procedural requirements regarded as mandatory.
4. The Forty-second Amendment, however, provides that the appropriate legislature may exclude the writ jurisdiction once it establishes administrative tribunals for certain matters.
5. The Forty-second Amendment, takes away the power of superintendence of the High Courts over tribunals. Both the writ jurisdiction and the power of superintendence covered practically the same grounds as regards judicial review of decisions of administrative tribunals, and to that extent there was duplication in the constitutional provisions.

exercises jurisdiction, including the power to call for returns from such courts and make rules etc. for regulating the practice and procedure of such courts. The High Court may itself deal with a case pending in a subordinate court if it involves a substantial question of law as to the interpretation of the Constitution.

There is a court of Judicial Commissioner for Union Territory of Goa, Daman and Diu. The court has been declared to be the High Court for that territory.

Subordinate civil judiciary

The nomenclature and designation of the subordinate civil judiciary differs from state to state as these courts owe their existence to state enactments. However, there is a basic uniformity in the organization of these courts. Every state is divided into districts and each district has a district court which is the principal appellate court in that district. Under the district courts there function a number of lower courts. The district courts hear appeals from the lower courts in the district in all cases up to Rs. 5,000 though in some cases this limit has been raised to Rs. 10,000. Appeals in cases involving more than this amount go direct to the High Court instead of the district court. The main function of the district court is thus to hear appeals from the subordinate courts but they also take cognizance of original matters under special statutes, for instance, the Indian Succession Act, the Guardian and Wards Act, the Land Acquisition Act, etc. It is not possible to give a description of the various courts subordinate to the district court in all the states. Here may be briefly mentioned those courts which exist in Punjab and Delhi. The present system of subordinate courts in Punjab and Delhi is to be found in the Punjab Courts Act, 1918. There are various categories of courts in the two states. There is first a district court and a number of subordinate courts which are classified into the following four categories : (1) Subordinate judge of IV class authorised to deal with cases of the value of Rs. 1,000; (2) Subordinate judge of III class authorised to decide cases up to Rs. 2000; (3) Subordinate judge of II class authorised to decide cases up to Rs. 5000; and (4) Subordinate judge of I class to decide cases without any monetary restrictions. The district courts hear appeals from the subordinate judges in cases where the subject matter does not exceed Rs. 5000. In other cases appeals lie directly to the High Court.

The Constitution has taken precautions to ensure independence of the subordinate judiciary. Thus, appointments, postings and promotion of the district judges in a state are to be made by the Governor in

consultation with the High Court. Appointment of persons to the judicial service of the state other than district judges is made by the Governor of the state in accordance with the rules made by him in consultation with the state public service commission and the High Court of the state. After the appointment, the government ceases to have any control over subordinate judicial officers. The control over district courts and courts subordinate thereto including the posting and promotion of, and of grant of leave to, persons belonging to the judicial service of the state is vested in the High Court. Control includes disciplinary jurisdiction as well. There is thus ample administrative control of the High Courts over the subordinate judiciary. As stated earlier, on the judicial side the High Courts have been given powers of superintendence over subordinate courts.

Subordinate criminal courts

The nomenclature and the powers of the criminal courts are described with utmost detail by the Code of Criminal Procedure, 1973. There exists the following subordinate criminal courts in the states : (i) Courts of session; (ii) judicial magistrates of first and second classes; (iii) metropolitan magistrates in a metropolitan area (it is an area in the state comprising a city or town whose population exceeds one million and which is declared by the state government to be the metropolitan area); (iv) special magistrates (commonly known as honorary magistrates).

It is the district court which acts as a session court. Thus, at the district level the civil and criminal fuuctions are combined in the same hands. In the three presidency towns, the High Courts had exercised till recently original criminal jurisdiction within the presidency towns. The High Courts of Madras and Bombay have been deprived of this jurisdiction by the creation of session courts at the seats of the High Courts. In the case of Calcutta High Court also a session court has been created and the jurisdiction of the Calcutta High Court is limited to a few serious crimes. A session court has jurisdiction to try only serious types of offences such as sedition, waging war against the state, dacoities, all types of homicide, habitually dealing in stolen property, etc. Such offences are not tried by the magistrates. The session court may pass any sentence authorised by law, but a sentence of death has to be confirmed by the High Court. Session courts also hear appeals from sentences passed by the magistrates. Any person convicted on a trial held by the session court may appeal to the High Court.

The magistrates of first and second classes have power to try different offences and to impose sentences up to a certain degree. Thus, the

chief judicial magistrate (a magistrate of first class appointed by the High Court as the chief judicial magistrate whose functions include supervision and control over the work of other magistrates in his area) is empowered to pass any sentence authorised by law except a sentence of death or life imprisonment or imprisonment for a term exceeding seven years, the magistrates of the first class are empowered to award the sentence of imprisonment up to three years and a fine not exceeding Rs. 5000; and magistrates of second class, imprisonment for a term up to one year and a fine not exceeding Rs. 1000.

Apart from the above classes of magistrates, the Code of Criminal Procedure authorises the High Court to confer, at the request of the government, the powers of a second class magistrate on government servants, whether retired or in service, fulfilling such qualifications as may be prescribed by rules by the High Court. Such magistrates are known as special or honorary magistrates.

It was an unfortunate legacy of the past that till recently the magistracy had not been separated from the executive in several states. Historically, the powers of the magistracy were conferred on the collectors by the British Government operating in India on account of economy and also on account of efficiency of collection of revenue. The constitution-makers were conscious of this defect and they provided in the Directive Principles of State Policy through article 50 that "The state shall take steps to separate the judiciary from the executive in the public services of the State." Till the enactment of the Code of Criminal Procedure, 1973, the position was that in a few states the separation was achieved either through the amendment of the Code of Criminal Procedure 1898 or through a special enactment, and in a few other states by executive orders. However, this has now been achieved uniformly in all the states through the 1973 Code by introducing suitable provisions. Thus, now all the judicial magistrates are to be appointed by the High Court. Chief judicial magistrates are to be subordinate to the sessions judge, other judicial magistrates to the chief judicial magistrate, subject to the general control of the sessions judge.

Nyaya panchayats

Panchayats are institutions of antiquity and their functions included the adjudication of disputes between villagers without any elaborate or complicated machinery and procedure. These organisations continued to function during the Mughal rule but suffered during the British period because of the highly centralised system of the British administration. After Independence the village panchayats got a boost. Article 40 of

the Constitution expressly provides : "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." All the states have enacted statutes on panchayats establishing, amongst others, Nyaya Panchayats, except that Panchayati Raj does not extend to the States of Nagaland and Meghalaya and 24 out of 29 districts in Bihar. The institution of village panchayats exists in all the Union Territories except Pondicherry, Lakshdweep, and Mizoram.

The method of constituting these panchayats varies from state to state. In some states the panchas are directly elected and in some indirectly (*e.g.* the village panchayat electing members of the Nyaya Panchayat from amongst themselves or the entire village). In the State of Kerala members of the Nyaya Panchayat are appointed by the government in consultation with the village panchayats. The members of these panchayats are lay persons and there is no requirement for any educational qualifications. There is hardly any provision for training of these lay judges after their election as panchas. They discharge civil and criminal jurisdiction of petty nature. Generally, Nyaya Panchayats do not enjoy powers to impose substantive sentences of imprisonment. The maximum fine they are empowered to impose ranges from Rs. 15 to Rs. 250. The procedure followed by these courts is simple and the Evidence Act and the procedural codes do not apply to them. Quorum for each bench of the panchayat is usually three persons. Generally there is power of revision of the decisions of a Nyaya Panchat vested in the courts on such grounds as want of jurisdiction, corruption, partiality or misconduct on the part of panchas. The statutes contain a provision for the transfer of criminal cases from a Nyaya Panchat to a criminal court if the facts warrant it. Panchas are removable on such grounds as incapacity, neglect in the performance of duties, misconduct and corruption. Generally the power of removal is vested in the executive.

Administrative justice

The narration with regard to the judicial system will not be complete without saying a few words on administrative justice. Side by side with the courts, innumerable administrative bodies have sprung up to carry on the function of adjudication in a variety of situations. These bodies, created by legislation, determine a variety of applications, claims and controversies. Sometimes, the task of adjudication is merely incidental to administration; sometimes, it is more than incidental and

it begins to assume a very close resemblance to the work usually assigned to the judiciary.

In India administrative justice is imparted either in the chambers of civil servants or by administrative tribunals. Administrative tribunals are not a part of the bureaucratic machinery. Nor can they be described as courts. The number of such tribunals is small. Some of them are : Income Tax Appellate Tribunal; Railway Rates Tribunal; Employees' Insurance Court; Court of Survey under the Merchant Shipping Act, 1958; labour tribunals; rent tribunals; tribunals under the Motor Vehicles Act, 1939; and *ad hoc* compensation tribunals created under various enactments like the Life Insurance Act, 1956 and the Air Corporations Act, 1953.

A government department generally adjudicates disputes between itself and the individual, though occasionally it might dispense justice between two or more individuals. One example of the latter is provided by section 110 of the Companies Act, 1956 which empowers the Central Government to decide a dispute between a company and its shareholders with regard to the registration of shares. There are multifarious adjudicatory bodies within the government departments. In fact no one knows for sure as to how many of these exist as no comprehensive study of these bodies has yet been attempted in India.

The word "tribunal" has no fixed connotation as the word has been used in article 136 of the Constitution and it has been liberally interpreted by the Supreme Court as including all those bodies, whether part and parcel of a government department or not, which exercise the inherent judicial powers of the state and possess some of the trappings of the court. However, here the word "tribunal" has been used in the strict sense as covering only those statutory bodies which adjudicate upon disputes between two or more private parties or between a government department and the individual and which are somewhat autonomous bodies being outside and independent of the department concerned. Their autonomous character arises mainly owing to the nature of their composition. For instance, the tribunals are largely manned not by civil servants but persons possessing legal qualifications and the tenure of their members is fixed by the respective statute creating them. Thus the Railway Rates Tribunal consists of a chairman who is, or has been, a judge of the Supreme Court or of a High Court and two other persons who have, in the opinion of the Central Government, special knowledge of commercial, industrial or economic conditions of the country or of the commercial working of

the railways. The chairman and the members hold office for such period, not exceeding five years, as may be specified in the order of appointment. The tribunals have been created exclusively for adjudication of disputes. Unlike an administrator who may have multifarious duties to discharge including that of adjudicating between his department and the individual, tribunals do not have other functions to discharge. Another feature of these bodies is that they are not an integral part of the departmental machinery of the government and do not function as appendages of the government departments.

With regard to the qualifications of the members of the tribunals, there is an emphasis on legal qualifications. In some cases provisions exits for taking the help of assessors having knowledge of, and experience, in the fields other than law. Proceedings of some of the tribunals are open to the public. Generally parties are entitled to appear through lawyers. Practically all tribunals have ample powers of investigation, summoning of witnesses and examining them on oath. The tribunals, except the rent controllers and the rent tribunal, are not bound by the Indian Evidence Act. In the case of certain tribunals a reference on questions of law to the High Courts is provided for.

The procedures of administrative tribunals are more formal than of departmental bodies, though they are less formal than of the courts. Further, since the tribunals are free from departmental control, they are in a position to determine questions before them in an objective manner and a higher degree of fairness can be expected from them than in the case of other quasi-judicial authorities. In India, administrative adjudication has grown in a somewhat haphazard manner without a consistent pattern. The tribunal-system has not been fully developed in spite of its efficacy and potential.

All adjudicatory and quasi-judicial bodies are required to follow principles of natural justice. Natural justice means that an adjudicatory authority should be free from bias; parties should have adequate notice, should be shown all the relevant and material evidence against them and should be given a reasonable opportunity of meeting the case against them. The norms of fair hearing are not rigid or fixed but remain somewhat vague and flexible, producing uncertainty.

Judicial review of the decisions of administrative tribunals or other adjudicatory bodies may be obtained either under the statutory provisions creating them (if there is a provision for judicial review), or under articles 32, 136, 226 and 227 of the Constitution.

Legal Remedies

An individual gets the right to approach the court and seek relief from it either under the Constitution or a statutory provision. There is nothing like the inherent power of the court to assume jurisdiction or to give relief and the inherent right of the individual to seek a judicial remedy. The constitutional remedies to start the judicial process are those contained in articles 32, 136, 226, 227. Under article 32, the Supreme Court possesses power to issue prerogative writs for the enforcement of the Fundamental Rights. Under article 226, the High Court possesses power to issue these writs for any purpose including enforcement of the Fundamental Rights.[6] The scope of judicial review under these writs is practically the same as in England, though India has not inherited all the technicalities of the English law surrounding these writs. The review is restrictive and limited and is somewhat half-way between review on appeal and no review at all. The basis of judicial review under these writs generally is the doctrine of *ultra vires*. The courts do not go into the merits of the case, and they review findings of fact only on such rare grounds as when the finding is perverse or there is no legal evidence (that is, complete lack of evidence) to support it. The review is based on such grounds as abuse of power, excess of jurisdiction, lack of jurisdiction, error of law apparent on the face of the record, and no legal evidence in case of a finding of fact, etc. These writs are not available to enforce payment of money or claim for damages arising from a civil liability. It is not also usual for the court to go into complicated questions of fact in a writ petition particularly where the matter involves recording of detailed evidence. A great deal of technicality has developed around these writs. A person cannot have recourse to these writs if he is guilty of laches and has an adequate alternative legal remedy. These writs are primarily available against administrative and public authorities including administrative tribunals.

Under article 136, the Supreme Court, in its discretion, can grant special leave to appeal to it from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The court's jurisdiction under article 136 is of an exceptional nature. It is to be used only in an extraordinary and exceptional situation whenever there is a miscarriage of justice. Some of the circumstances in which the court interferes under article 136 are excess of jurisdiction, failure to exercise jurisdiction, error of law, violation of principles of natural justice or accepted

6. See *supra* note 3.

principles of jurisprudence, etc. Again in the matter of findings of fact the court interferes only in special circumstances, *e.g.*, complete lack of evidence.

Under article 227, the High Court has power of superintendence over courts and tribunals.[7] Articles 227 and 226 cover practically the same area as far as courts and tribunals are concerned. However, under article 227, the High Court may interfere *suo moto* but under article 226 it may interfere only on the application of a party. Further through its power to issue *certiorari* under article 226, the High Court can annul the decision of a tribunal, while under article 227 it can do that and something more, namely, it can issue further directions to the tribunal in the matter.

The classical statutory remedy which a person has to vindicate his legal right is by way of filing a civil suit in a court claiming the proper relief. To enable a person to file a civil suit, section 9 of the Code of Civil Procedure provides that the court shall have jurisdiction to try "all suits of civil nature except suits of which their cognizance is either expressly or impliedly barred". This provision confers jurisdiction on civil courts to hear and decide all disputes of civil nature. But this is circumscribed by the rider that a suit barred expressly or impliedly may not lie. However, the courts narrowly interpret clauses ousting their jurisdiction. The normal presumption is where there is a right there is a remedy, and the ouster of civil courts' jurisdiction is not readily inferred.

Under section 9 of the Code of Civil Procedure suits for damages arising out of tort or breach of contract may be filed, but such suits against the government are subject to a few statutory and constitutional restrictions. Apart from suits for damages, a person may be interested in the compliance of the law by the other party so that either it desists from taking an action which may be injurious to him or it remedies the wrong done to him. Suits for injunction and declaration under the Specific Relief Act, 1963 are the remedies appropriate to achieve these ends.

Apart from the ordinary civil remedies mentioned above, a statute itself may contain a provision of its own for judicial review. For example, section 18 of the Land Acquisition Act, 1894 enables a person, whose land has been acquired but who has not accepted the award of compensation for the same, by written application to the collector, to

7. See *supra* note 5.

"require that the matter may be referred by the collector for the determination of the Court". Just to give another illustration, section 169(1) of the Delhi Municipal Corporation Act, 1957 provides that "an appeal against the levy or assessment of any tax under this Act shall lie to the court of the district judge of Delhi". Further, under section 169 (2), questions of law may be referred by the court to the High Court for decision. Certain statutes confer a limited power of judicial review of questions of law, and an oft-repeated formula found in the statutes in this regard is to give to the authority concerned the power of making a reference on a point of law to the court, usually the High Court. The example *par excellence* of the reference technique is furnished by the provisions of the Income Tax Act, 1961 stipulating reference by the Income Tax Appellate Tribunal to a High Court on questions of law.

Suggested Readings

1. *The Code of Criminal Procedure*, 1973.
2. U. Baxi, "Access, Development and Distributive Justice : Access Problems of the 'Rural' Population," 18 *J..IL.I.* 375 (1976).
3. Dubey, *The Judicial System of India and Some Foreign Countries* (1968).
4. M. P. Jain, *Outlines of Indian Legal History* (3rd ed., 1972).
5. M. P. Jain, *Indian Constitutional Law* (2nd ed., 1970).
6. M. P. Jain and S. N. Jain, *Principles of Administrative Law* (2nd ed., 1973).
7. S. N. Jain, *Administrative Tribunals in India* (1977).
8. R. Kushawaha, *Working of Nyaya Panchayats in India* (1977).
9. The Law Commission of India, *Fourteenth Report* (1958).
10. D. F. Mulla, *The Code of Civil Procedure* (13th ed., 1951).
11. *Report* of the Study Team on Nyaya Panchayats, (1962).
12. G. C. V. Subba Rao, *The Law of Specific Relief* (1965).