

INDIAN JUDICIAL AND LEGAL SYSTEM

Prof. (Dr.) Chitrapu Kama Raju
M.Sc., (Psy) LLM, Ph.D, (NALSAR)

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INTRODUCTION



The Government of India has three different independent branches

- Executive
- Legislative
- Judiciary.

The Indian judicial system was formed by the British during their colonial rule in the country. This system is known as the Common Law System in which the judges develop the laws with their judgments, orders and decisions.

The different types of courts form the different levels of judiciary in the country.

- The apex court of India is the Supreme Court, located in New Delhi, followed by the high courts in different states.**
- The high courts are followed by the district courts and subordinate courts which are also known as the lower courts.**

INTRODUCTION

- The Constitution of India provides for a single integrated judicial system with the Supreme Court at the apex, High Courts at the middle (state) level and District Courts at the local level.
- It also provides for an independent and powerful judicial system.
- Judiciary in India acts as the guardian protector of the Constitution and the fundamental rights of the people.

INDEPENDENT INDIAN JUDICIARY



- The judiciary is that branch of the government that interprets the law, settles disputes and administers justice to all citizens. The judiciary is considered the watchdog of democracy, and also the guardian of the Constitution.
- It means that the other branches of the government, namely, the executive and the legislature, does not interfere with the judiciary's functioning.
- The judiciary's decision is respected and not interfered with by the other organs.
- It also means that judges can perform their duties without fear or favour.
- Independence of the judiciary also does not mean that the judiciary functions arbitrarily and without any accountability. It is accountable to the Constitution of the country.



Types of Courts in India

▪ There are 3 types of courts in India:-

Judiciary



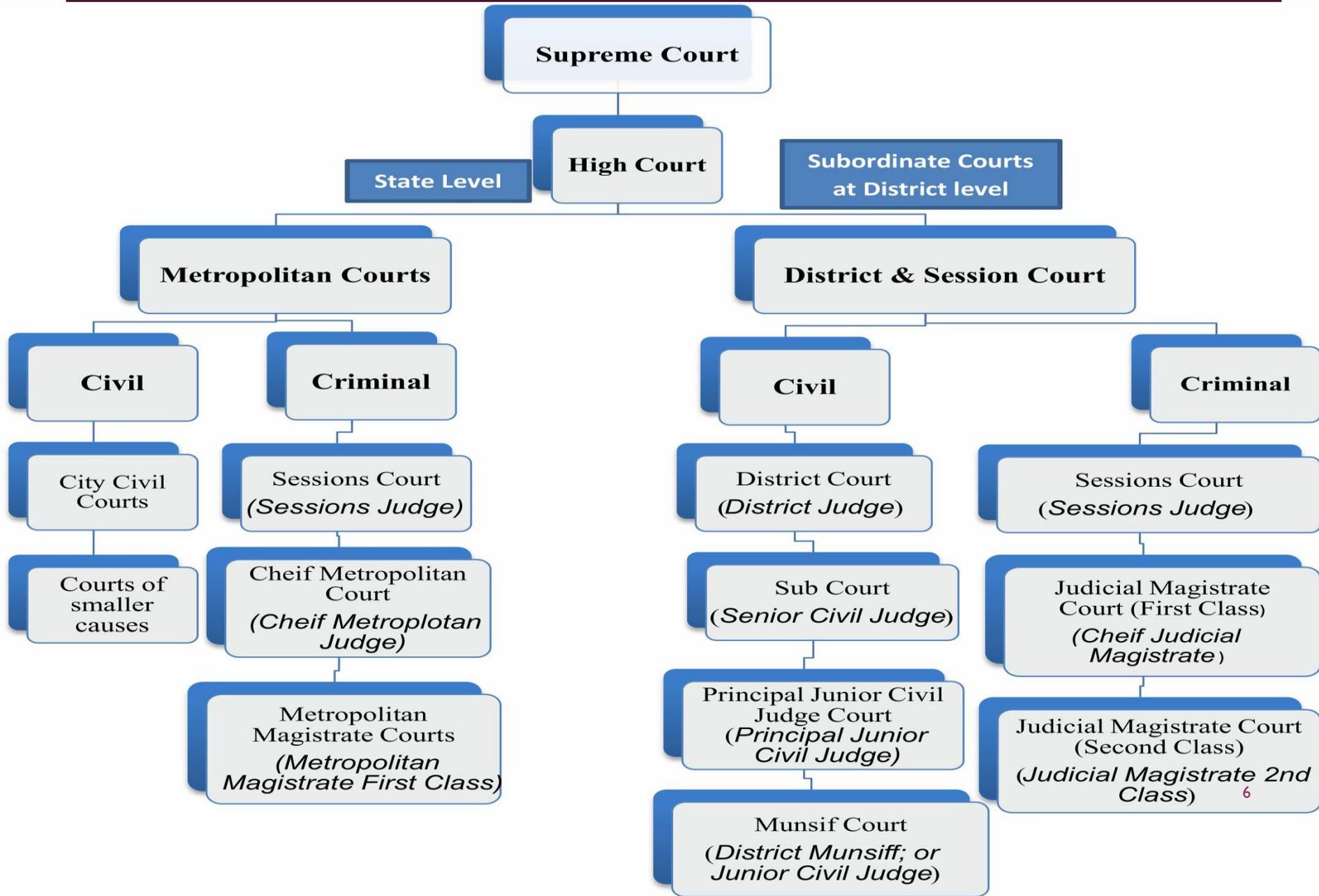
Supreme
court

High
court

District
courts



HIERARCHY OF JUDICIARY IN INDIA



FUNCTIONS OF JUDICIARY

Supreme Court of India

- Its decisions are binding on all courts
- Can transfer judges of High Courts
- Can move cases from any court to itself
- Can transfer cases from one high court to another

High Court

- Can hear appeals from lower courts
- Can issue writs to restore fundamental rights
- Can deal with the cases within the jurisdiction of state
- Exercises superintendence and control over courts below it

District Court

- Deals with cases arising in the district
- Considers appeals on decisions given by lower courts
- Decides cases involving serious criminal offenses

Subordinate courts

- Consider cases of civil and criminal nature

The Supreme Court of India





Supreme Court of India

- ❑ The Supreme Court of India came into being on 28 January 1950 and substituted the Judicial Committee of the Privy Council and the Federal Court of India which were the apex legal system under the colonial rule in India.
- ❑ There is **one Chief Justice** and 30 other judges in the Supreme Court who are appointed by the Indian President.
- ❑ These **judges retire after the attainment of the age of 65 years**. The apex court works extensively for the protection of the fundamental rights of the Indian citizens.
- ❑ It is also a **supreme authority as it settles the disputes within several governments of the country**.
- ❑ It also has an authority to review any judgement or order earlier passed by it and can also transfer cases from one high court to another and from one district court to another.

CURRENT JUDGES IN SUPREME COURT



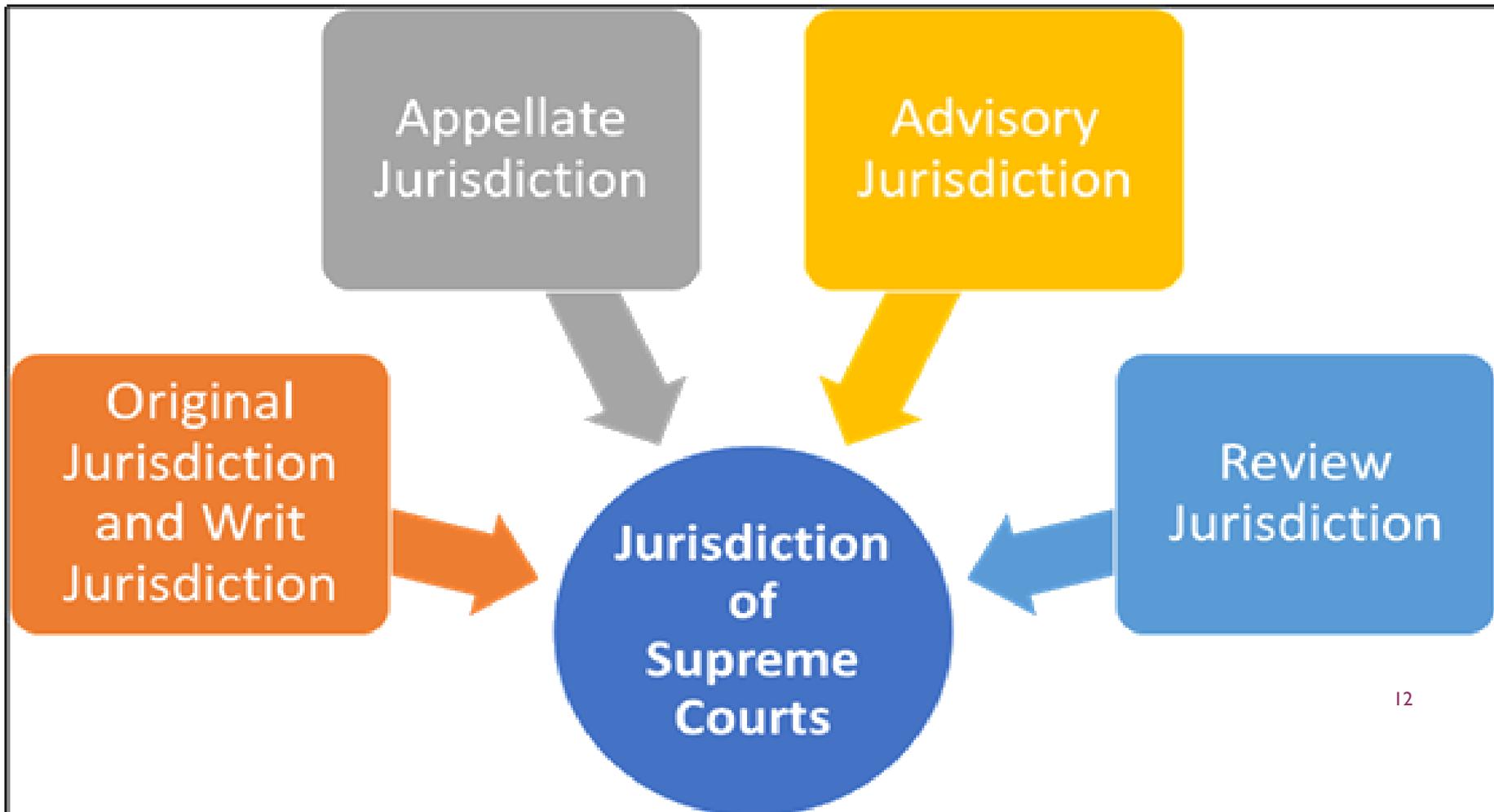
- There are currently 29 judges (including the chief justice of India) who comprise the Supreme Court of India, the highest court in the country. The maximum possible strength is 34. According to the Constitution of India, the judges of the Supreme Court retire at the age of 65.

CHIEF JUSTICE OF INDIA

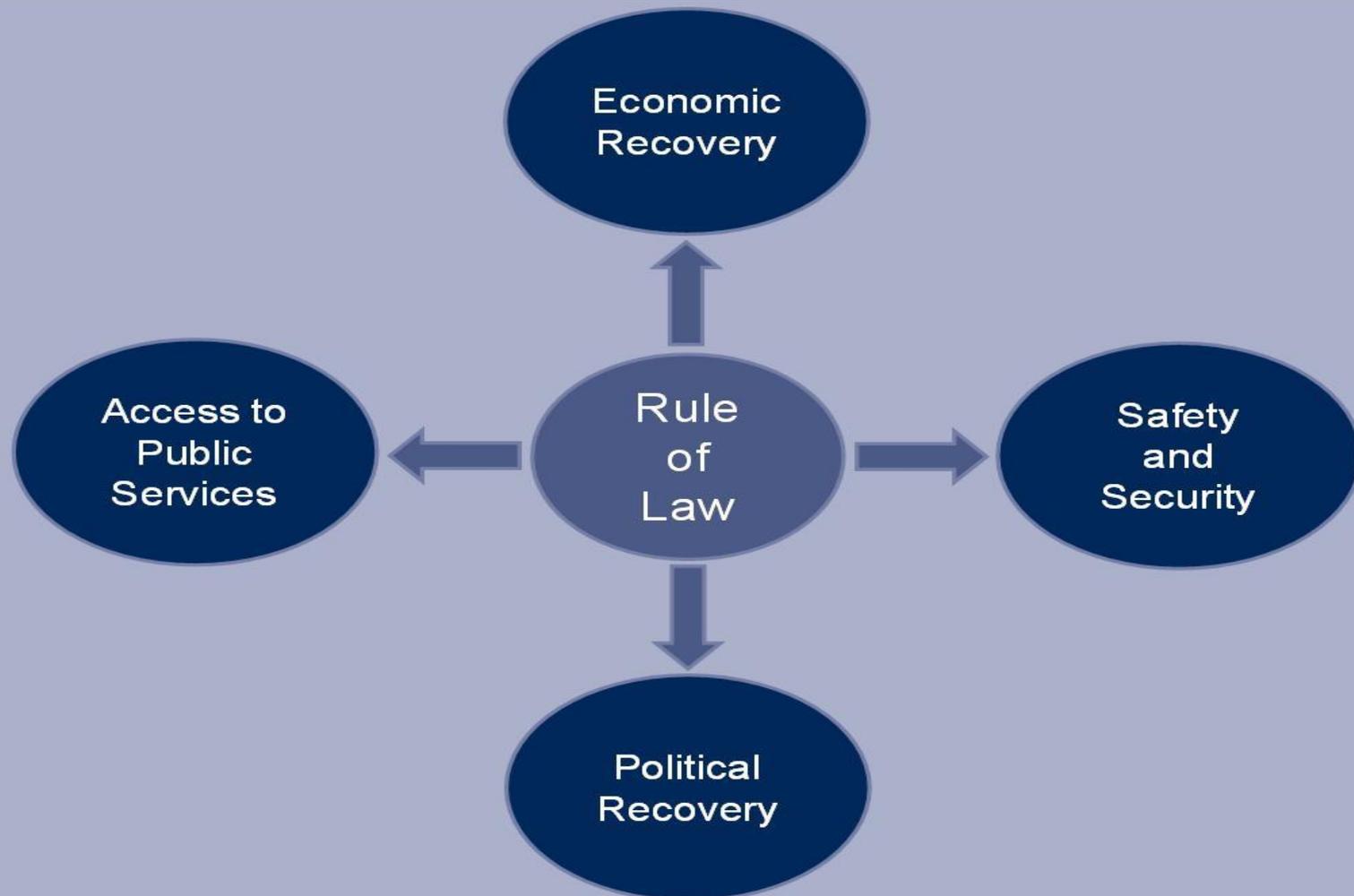


Dhananjaya Yeshwant Chandrachud (born 11 November 1959) is a judge of the Supreme Court of India. He is set to assume the office of Chief Justice of India in November 2022

JURISDICTION OF SUPREME COURT



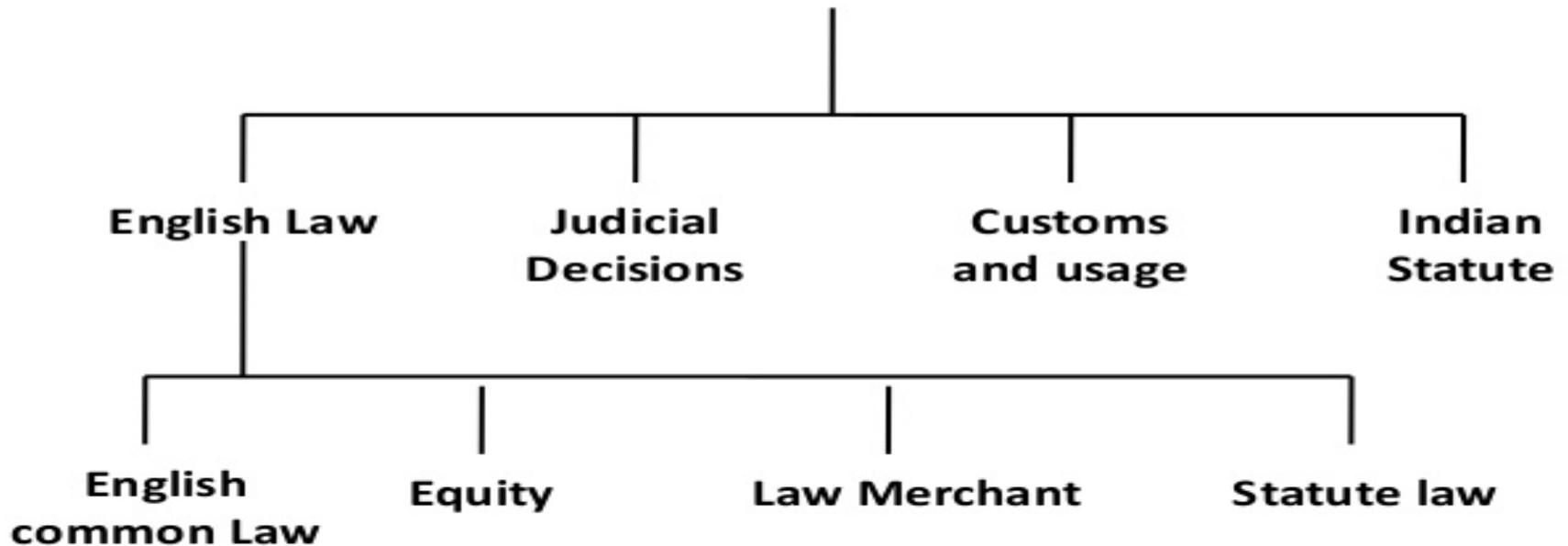
OBJECTIVES OF THE LAW AND LEGISLATION



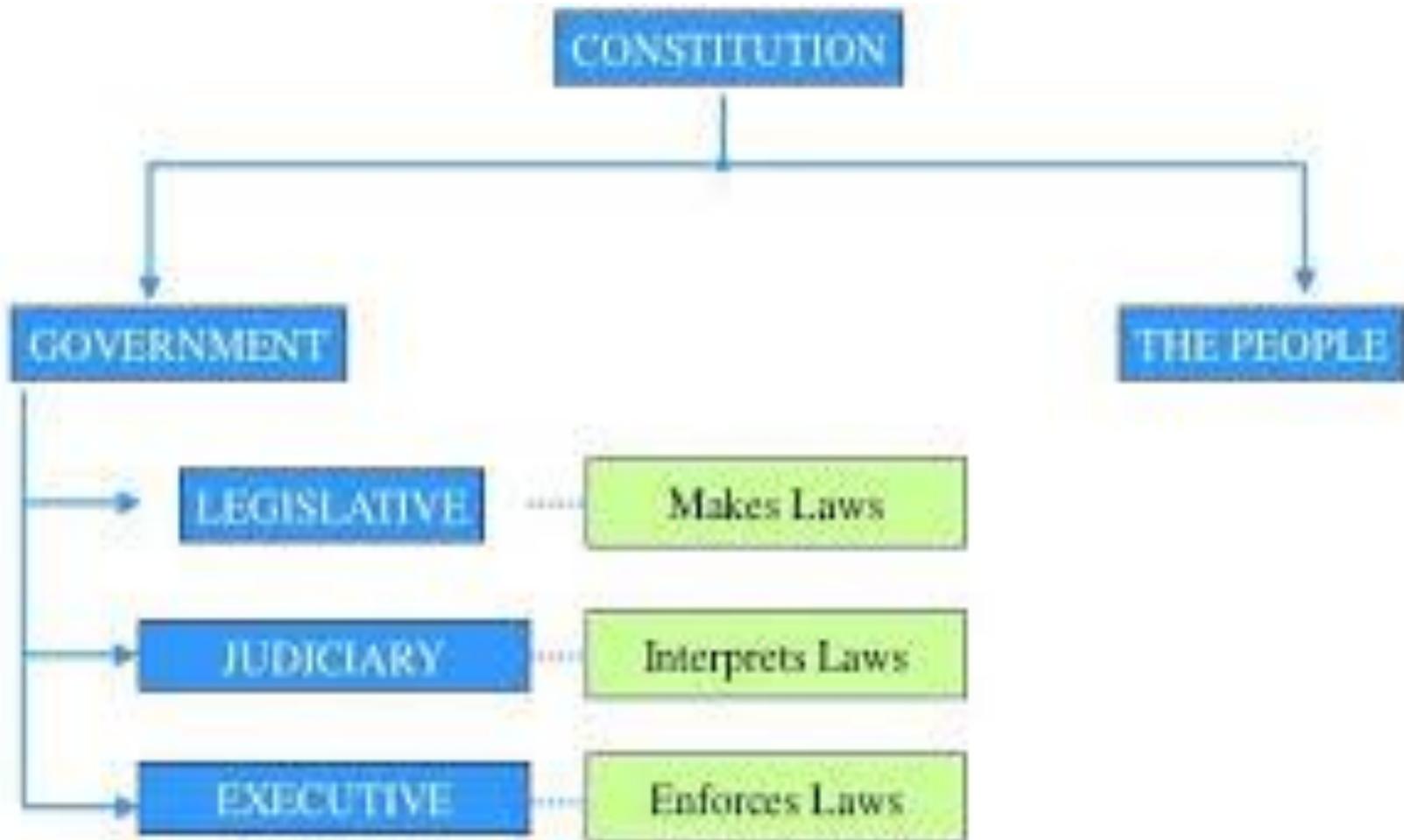
SOURCES LAW AND LEGISLATION



Sources of Law



CONSTITUTION AND SEPARATION OF POWERS



ORIGINAL JURISDICTION



- Original jurisdiction is the power of the court to hear and adjudicate upon the matter as the court of first instance.
- Article 131 elucidates the original jurisdiction of the Apex Court. It provides that the Court will be competent to exercise original jurisdiction:
 - In disputes between the Union Government and one or more States
 - In such disputes, where the Union Government and one or more states constitute one party and one or more states constitute the other party
 - In disputes between two or more states

WRIT JURISDICTION



- 1. **Habeas Corpus:** Writ ordering the production of the detainee before the Court in order to ascertain whether the detention is legal or unlawful.
- 2. **Quo warranto:** This writ is issued by a court to a public officer requiring him to explain the authority behind his actions. **Quo warranto:** This writ is issued by a court to a public officer requiring him to explain the authority behind his actions.
- 3. **Mandamus:** The Court issues a writ of Mandamus to direct a public official to resume the discharge of his public duty.
- 4. **Prohibition:** The Court issues this writ to prevent a subordinate court from exceeding or usurping its jurisdiction or from acting in contravention of the law. This writ is issued at the time when a subordinate court decides to try a matter in excess of its jurisdiction.
- 5. **Certiorari:** Where the Subordinate Court decides a matter which is beyond its jurisdiction or where the matter is decided in contravention of the natural justice principles, the Court is empowered to issue the writ of certiorari, thereby setting aside or quashing the erroneous decision.

ADVISORY JURISDICTION OF SC



Advisory Jurisdiction of Supreme Court

Article 143 confers the advisory jurisdiction upon the Apex Court. The advisory opinion of the Supreme Court can be requested by the President on any question of law or fact which is of public importance and where the President considers obtaining such opinion to be expedient. Similar to the original jurisdiction, the advisory jurisdiction also stems from the Government of India Act, 1935. Section 213(1) of the Government of India Act, 1935, provided for the advisory jurisdiction of the Federal Court. The essence of this Section was incorporated in Article 143 of the Constitution.

POWERS OF SUPREME COURT



- Article 141 of the Constitution provides a binding force to the laws declared by the Apex Court. The judgments of the Court have precedential value when dealing with the same question of law. Furthermore, the judgments of the Court have to be read as a whole. Even the ex-parte decisions of the Court are binding on the subordinate courts.
- Article 137 provides the Court with the power to review its own judgments and orders.
- The Court can punish those who refuse to abide by its orders or those who make scandalous and derogatory remarks against the Court. The Apex Court's power to punish for its contempt is envisaged under Article 129.

APPOINTMENT OF JUDGES OF THE SC



- Every Judge of the Supreme Court shall be appointed by the President by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States as President may deem necessary for the purpose and shall hold office until he attains the age of 65 years.
- Supreme Court held that the consultation with Chief Justice is not binding on the President. But the Court held that consultation should be effective.

ELIGIBILITY CRITERIA FOR JUDGE



The Indian Constitution says in Article 124 [3] that in order to be appointed as a judge in the Supreme Court of India, the person has to fit in the following criteria:

- He/She is a **citizen of India** and
- has been for at least **five years a Judge of a High Court** or of two or more such Courts in succession; or
- has been for at least **ten years an advocate of a High Court** or of two or more such Courts in succession; or
- is, in the **opinion of the President**, a distinguished jurist.

REMOVAL OF JUDGES FROM SC



- The Constitution of India also provides a set of regulations for the removal of the Supreme Court judge. **Article 124(4)** mentions those Removal regulations of the Supreme court judge as follows:
- *A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by 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 the members of that House** present and voting has been presented to the president in same session for such removal on the ground of proved misbehaviour or incapacity.*

INDIAN JUDICIARY CIVIL COURTS



- Civil courts deal with civil cases. Civil law is referred to in almost all cases other than criminal cases. Criminal law applies when a crime such as a robbery, murder, arson, etc. is perpetrated.
- Civil law is applied in disputes when one person sues another person or entity. Examples of civil cases include divorce, eviction, consumer problems, debt or bankruptcy, etc.
- Judges in civil courts and criminal courts have different powers. While a judge in a criminal court can punish the convicted person by sending him/her to jail, a judge in a civil court can make the guilty pay fines, etc.
- District Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) are at the bottom of the judicial hierarchy in India.

JURISDICTION OF HIGH COURT



- Every High Court enjoys original jurisdiction with respect to revenue and its collection, cases of succession, divorce etc.
- In its appellate Jurisdiction, it hears appeals from the lower courts in cases concerning sales-tax, income tax, copy right, patent-right etc. The High Court is a court of record and its proceedings and decisions are referred to in future cases.
- A High court can issue writs for the enforcement of fundamental rights or for any other such purpose.
- A High Court supervises the working of all subordinate courts and frames rules and regulations for the transaction of business.
- The High Court is empowered to interpret the constitution of India. It can review the laws of the State Legislature and may declare them null and void if they go against the provisions of the constitution.
- Again, if a High court is satisfied that a case pending in a lower court involves a substantial question of law as to the interpretation of the constitution, it may dispose of the case itself.

SUBORDINATE COURTS



- There are subordinate courts below the High court in each state.
- The courts are under the complete control of the High court. The lower court (e.g. Nyaya Panchayat or Munsiffs court) deals with minor cases while the higher courts (e.g., subordinate Judge's court or District Judge's court) deal with important cases.
- Appeals lie to the higher courts from the lower courts. An appeal may also lie to the High Court against the decisions of the District judge's court or the Session Judge's court.
- In a Presidency town, there are city civil courts and Metropolitan Magistrates courts.
- In this connection, we are to note that most of the Judges of the subordinate courts are appointed by the Governor in consultation with the High Court of the concerned State.



CIVIL COURTS FOUR TYPES OF JURISDICTIONS

- **Subject Matter Jurisdiction:** It can try cases of a particular type and relate to a particular subject.
- **Territorial Jurisdiction:** It can try cases within its geographical limit, and not beyond the territory.
- **Pecuniary Jurisdiction:** Cases related to money matters, suits of monetary value.
- **Appellate Jurisdiction:** This is the authority of a court to hear appeals or review a case that has already been decided by a lower court. The Supreme Court and the High Courts have appellate jurisdiction to hear cases that were decided by a lower court.

Salient Features of Indian Judiciary



TYPES OF COURTS IN INDIA



- 1) Supreme Court
- 2) High Court
- 3) District/Sessions/Sub Court
- 4) Magistrate Court
- 5) Special Court
- 6) Family Issue Court
- 7) Village Court
- 8) Economic Court
- 9) Juvenile Justice Court

I. SINGLE AND INTEGRATED JUDICIAL SYSTEM



- The Constitution establishes a single integrated judicial system for the whole of India.
- The Supreme Court of India is the highest court of the country and below it are the High Courts at the state level.
- Other courts (Subordinate Courts) work under the High Courts.
- The Supreme Court controls and runs the judicial administration of India.
- All courts in India form links of a single judicial system.

2. INDEPENDENCE OF JUDICIARY



The Constitution of India makes judiciary truly independent.

It provides for:

- (i) Appointment of judges by the President,
- (ii) High qualifications for appointment as judges,
- (iii) Removal of judges by a difficult method of impeachment,
- (iv) High salaries, pension and other service benefits for judges,
- (v) Independent establishment for the Judiciary, and
- (vi) Adequate powers and functional autonomy for the Judiciary.

All these features together make the Indian Judiciary an independent judiciary.

3. JUDICIARY AS THE INTERPRETER OF THE CONSTITUTION



- The Constitution of India is a written and enacted constitution.
- The right to interpret and clarify the Constitution has been given to the Supreme Court.
- It is the final interpreter of the provisions of the Constitution of India.

4. JUDICIAL REVIEW



- The Constitution of India is the supreme law of the land.
- The Supreme Court acts as the interpreter and protector of the Constitution.
- It is the guardian of the fundamental rights and freedoms of the people.
- For performing this role, it exercises the power of judicial review.
- The Supreme Court has the power to determine the constitutional validity of all laws.
- It can reject any such law which is held to be unconstitutional. High Courts also exercise this power.

5. HIGH COURT FOR EACH STATES AS WELL A PROVISION FOR JOINT HIGH COURTS



- The Constitution lays down that there is to be a High Court for each state.
- However, two or more states can, by mutual consent, have a Joint High Court.

DISTRICT AND SUBORDINATE COURTS



- The district and the subordinate courts are the courts below the high courts. These courts administer jurisdiction at the district level in India.
- The district courts are at the top of all the subordinate courts but fall under the administrative control of the state high court to which that district belongs to. The jurisdiction in the districts of the states is presided over by District and Sessions Judge.
- The judge is referred to as a District Judge when he presides over the civil cases and as a Sessions Judge when he presides over criminal cases. He is addressed as a Metropolitan Sessions Judge when he presides over a district court in a city which is recognized as a metropolitan city or area by the state government. The District Judge is also the highest judicial authority after the High Court Judge.
- The district courts also hold jurisdiction over the subordinate courts. For handling civil cases, the subordinate courts, in ascending order, are Junior Civil Judge Court, Principal Junior Civil Judge Court, Senior Civil Judge Courts. For handling criminal cases the ascending order of the subordinate courts is Second Class Judicial Magistrates Court, First Class Judicial magistrate Court and Chief Judicial Magistrate Court.

6. SUPREME COURT AS THE ARBITER OF LEGAL DISPUTES BETWEEN THE UNION AND STATES



The Constitution gives to the Supreme Court the jurisdiction in all cases of disputes:

- (i) Between the Government of India and one or more states,
- (ii) Between the Government of India and any state or states on one side and one or more states on the other, and
- (iii) Between two or more states.

7. GUARDIAN OF FUNDAMENTAL RIGHTS



- Indian judiciary acts as the guardian of fundamental rights and freedoms of the people.
- The people have the Right to Constitutional Remedies under which they can seek the protection of the courts for preventing a violation or for meeting any threat to their rights.
- The Supreme Court and the High Courts have the power to issue writs for this purpose.

8. SEPARATION OF JUDICIARY FROM THE EXECUTIVE



- The Constitution of India provides for a separation between the judiciary and the other two organs of the government.
- The judiciary is neither a branch of the executive nor in any way subordinate to it.
- The judicial administration in India is organised and run in accordance with the rules and orders of the Supreme Court.

9. OPEN TRIAL



- The courts in India are free.
- These conduct open trials.
- The accused is always given full opportunity to defend himself.
- The state provides free legal aid to the poor and needy.

10. JUDICIAL ACTIVISM



- Indian Judicial System has been becoming more and more active.
- The Supreme Court has been coming out with judicial decisions and directives aimed at active protection of public interest and human rights.
- Judiciary has been giving directives to public officials for ensuring a better security for the rights of the public.
- The Public Interest Litigation system has been picking up. The system of Lok Adalats has also taken a proper shape and health.

III. PUBLIC INTEREST LITIGATION SYSTEM



- Under this system the courts of law in India can initiate and enforce action for securing any significant public or general interest which is being adversely affected or is likely to be so by the action of any agency, public or private. Under it any citizen or a group or a voluntary organisation, or even a court herself, can bring to notice any case demanding action for protecting and satisfying a public interest.
- It provides for an easy, simple, speedier and less expensive system of providing judicial relief to the aggrieved public. With all these features, the Indian Judicial System is an independent, impartial, free, powerful and efficient judicial system.

OPPORTUNITY TO CHANGE



People have a stereo-typed view about District Courts being slow, rigid and secretive.

Information & Communication Technology can help us change this impression and Courts can became more efficient, fast, responsible and user friendly.

STAKEHOLDERS IN COURTS



1. Judges
2. Litigants
3. Lawyers
4. Court Staff
5. General Public
6. Government

ROLE OF ICT IMPLEMENTATION IN COURTS



- Information & Communication Technology is available for various uses in District Judiciary and allied areas and in some of the District Courts it is already in operation.
- Information & Communication Technology implementation in District Courts is possible in the areas mentioned hereinafter.

VIDEO CONFERENCING FACILITIES



Benefits

- Dreaded criminals can be tried without risk
- Trial is expedited with use of this facility
- Cost and manpower in producing under trials only for remand extension can be saved
- Multiple trials of an accused lodged in one jail is possible in different states
- Evidence of witnesses unable to come to Court can be recorded
- In child sexual offences, minor witness can be screened from the accused by use of this facility

MODERN APPROACH OF DELIVERING JUSTICE



*“It is a good and fair settlement
when neither party likes the
outcome, but agree to it”*

ARBITRATION

- Form of Alternative Dispute Resolution
- Alternative to court room litigation
- Parties submit their disputes to a NEUTRAL third party called the Arbitrator (s) or Arbiter (s) for resolution
- Binding dispute resolution, equivalent to litigation in the courts

BENEFITS OF ARBITRATION



- *Confidentiality*
- *Limited Discovery*
- *Speed*
- *Expert Neutrals*
- *Cost Savings*
- *Preservation of Business Relationships*

DISADVANTAGES



- Arbitration agreements are sometimes misleading
- If arbitration is not mandatory parties waive their to access the courts.

SOURCES OF ARBITRATION



- State regulate arbitration through a variety of laws
- A number of national procedural laws may also contain provisions relating to arbitration
- Key international instrument – *1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards*

INTERNATIONAL INSTRUMENTS



- The Geneva Protocol of 1923
- The Geneva Convention of 1927
- The European Convention of 1961
- The Washington Convention of 1965 (governing settlement of international investment disputes)
- The UNCITRAL Model Law (providing a model for a national law of arbitration)
- The UNCITRAL Arbitration Rules (providing a set of rules for an ad hoc arbitration)

- Some types of arbitral disputes are



- Property
- Insurance
- Contract (including employment contracts)
- Business / partnership disputes
- Family disputes (except divorce matters)
- Construction
- Commercial recoveries

■ The following cannot be resolved by arbitration

➤ Insolvency

➤ Matrimony

➤ Criminal matters

➤ Torts etc.



Conciliation

Adjustment and settlement of a dispute in a friendly and non-antagonistic manner by using a non binding procedure.



Conciliation:-

Introduction:

- The most important method for prevention and settlement of industrial disputes through third party intervention.
- The settling of disputes without litigation.
- It is a method of settlement.
- It is a process by which discussion between parties is kept going through the participation of a conciliator.
- It brought both the parties of dispute into harmony.

CONCILIATOR:-

- ▶ The conciliator is a neutral party, who without using any force, seeks to find some middle course for mutual agreement between the disputants so that the deadlock is brought to an end at the earliest possible moment and normal peace restored.
- ▶ He tries to bridge the gulf between the two contending parties; and if he does not succeed, he tries to reduce the differences as far as possible, by tendering advice to them and working out an amicable settlement.
- ▶ He cannot suggest solutions but suggests alternative solutions

What Can Be Referred To Conciliation?

Matters of a –

- ▶ Civil nature
- ▶ Breach of contract
- ▶ Disputes of movable or immovable property

What Cannot Be Referred To Conciliation?

Matters of –

- ▶ Criminal nature
- ▶ Illegal transactions
- ▶ Matrimonial matters like divorce suit etc.

REMEMBERING MUBAI RIOTS OF 1992 AFTERMATH



SUPREME COURT DECLINES URGENT HEARING IN PIL TO BAN STUBBLE BURNING
THE MATTER WAS MENTIONED BEFORE CHIEF JUSTICE OF INDIA (CJI) DY CHANDRACHUD BUT THE CJI SAID THAT THESE ARE NOT ISSUES STRICTLY FALLING UNDER THE PURVIEW OF JUDICIARY.

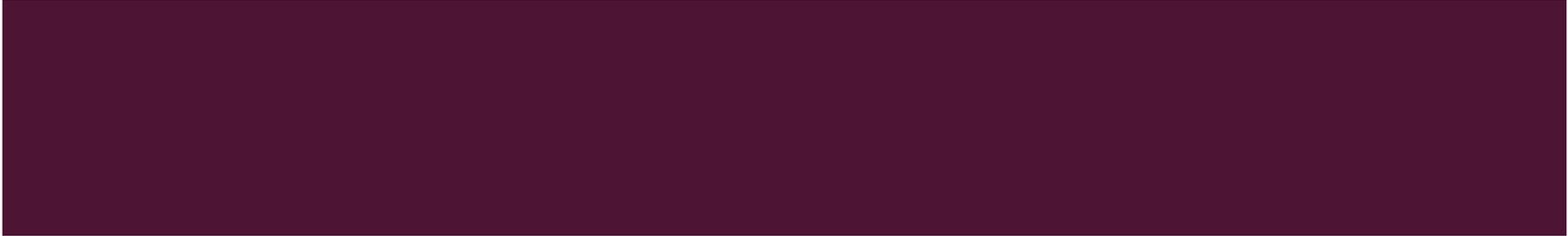




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- 
- M: +91 98492 39783
 - E: ipattorneykamaraju@gmail.com