



LAW COMMISSION OF INDIA

**ONE HUNDRED EIGHTEENTH
REPORT**

ON

**METHOD OF APPOINTMENTS TO
SUBORDINATE COURTS/
SUBORDINATE JUDICIARY**

DECEMBER, 1986

URRA/14

One Hundred Seventeenth Report

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LAW COMMISSION OF INDIA

One Hundred Eighteenth Report on Method of Appointments to Subordinate Courts/Subordinate Judiciary.

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B. A. DESAI
Chairman

Tel. No. 384475

D.O. No. F. 2(6)/86-LC
Shri Ashok Kumar Sen,
Minister for Law and Justice,
Government of India,
Shastri Bhavan,
New Delhi.

विधि आयोग
LAW COMMISSION
भारत सरकार
GOVERNMENT OF INDIA
शास्त्री भवन
SHASTRI BHAWAN
नई दिल्ली
NEW DELHI
December 26, 1986.

Dear Minister for Law and Justice,

The Law Commission is happy to forward its 5th report (118th Report of the Law Commission) dealing with item No. 4; The Method of Appointments to Subordinate Courts/Subordinate Judiciary: of the terms of reference in the context of studying judicial reforms.

As you must have noted by now that the reports submitted by the Law Commission form a chain and they are interlinked and inter-connected.

As I was happy to inform you in my earlier letter, the Law Commission has by now given adequate and enough material for undertaking the task of ushering in judicial reforms by setting-up Gram Nyayalayas (114th Report of the Law Commission), setting-up an All-India Judicial Service (116th Report of the Law Commission), setting-up an Academy for Training Judicial Officers at all levels (117th Report of the Law Commission) and re-organising and re-structuring of the subordinate courts/subordinate judiciary forming part of the present report. You will immediately appreciate the inter-connection and linkage between these reports. Coupled with this is the Report on Central Tax Court (115th Report of the Law Commission). If all these reports submitted by now are effectively implemented, it will have a visible impact on the backlog of cases in the High Courts, easy access for the rural poor to the seat of justice, expanding the horizons of knowledge of judicial personnel with a view to equipping them with the philosophy of the Constitution, the economic planning and the national expectation from the Judiciary.

You are more than aware that the structure of judiciary at the State level has deteriorated to such an extent as to deprive it of its glory and credibility. The present report will assist the Government in re-structuring subordinate judiciary at State level by Parliamentary legislation. The whole structure will undergo a change.

On the time-table of the Law Commission, the next topic of enquiry is National Judicial Service Commission, a collegium for judicial appointments and judicial service tribunal.

With regards,

Yours faithfully,
(Sd.)
(D. A. DESAI)

Encl: A Report

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CHAPTER I

INTRODUCTORY

1.1. Court structure in India is pyramidal in nature. Unlike the American model of dual court system—federal and state—India has monolithic system. The judicial service has practically the same structure with variations in designations. Designations of courts connote their functions. They have been derived principally from important codes prescribing procedure, the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, further embellished by local statutes. Workload determines whether the Presiding Officer should preside over both courts with power under the relevant statutes conferred on him. The courts at the base level cater to the needs of the society in respect of disputes not involving high pecuniary stakes though the designations of the courts and the personnel manning them differ from State to State. By and large, they fall into a pattern starting from the bottom.

At the base level, there are courts variously described as Munsif Magistrate or Civil Judge (J.D.): Judicial Magistrate First Class. In some States, Munsif is also described as District Munsif. In some States, there are posts of Judicial Magistrates, Second Class but they have ceased to exist. The situation as evident at present is that at the base level, there is the court of Munsif: District Munsif/Magistrate or Civil Judge (J.D.)/JMFC. This is what is called the court of primary or initial jurisdiction. Most of the disputes, subject to a ceiling on pecuniary limit, are brought to these courts for their resolution. In some States where workload does not justify existence of two separate cadres, the Munsif is also invested with the power of Judicial Magistrate, First Class. Similar is the situation with regard to Civil Judge (J.D.) as in the case of Maharashtra and Gujarat. Members of this cadre, when posted in large urban areas, are assigned either exclusively civil or exclusively criminal work. When they are posted in Metropolitan areas as envisaged in section 6 and 8 of the Code of Criminal Procedure, they are described as Metropolitan Magistrates, and as Chief Judicial Magistrate, as envisaged in section 12 of the Cr.P.C.

1.2. Vertically moving upward, the next set of courts are described as courts of District and Sessions Judge which also include the courts of Additional Judge, Joint Judge or Assistant Judge. In some States, there is a court called Court of Civil and Sessions Judge. These courts generally have unlimited pecuniary jurisdiction and depending upon the power conferred on the incumbent officer in charge of the court, it can handle criminal cases where maximum punishment would not exceed seven years. In some States, these courts with unlimited pecuniary jurisdiction are called courts of Civil Judge (Senior Division) and in some States, they are described as Courts of Subordinate Judge. Courts have also been set up under two statutes called the Provincial Small Causes Court Act applicable to places other than Presidency Town and the Presidency Town Small Causes Court Act applicable to Presidency Towns. The first mentioned is subordinate to District Court and the last to High Court. The judges in charge of these courts are designated as Small Causes Court Judge, the first among equals called the Chief Judge of the Court. The Court of the District and Sessions Judge at the district level is the principal court of original jurisdiction and is presided over by an officer called the District and Sessions Judge. The designation district court is derived from the Code of Civil Procedure and Sessions Court from the Code of Criminal Procedure. As a rule, same officer invested with power under both the statutes presides over the court known as District and Sessions Court.

1.3 The next hierarchical stage in the pyramidic structure of courts at State level is the High Court which is the highest court set up under art. 214 of the Constitution. The Supreme Court of India is the apex court at the national level. This can be illustrated by diagram as shown in Annexure I, which will be self-explanatory.

1.4. The courts herein delineated are called subordinate courts as the expression is understood in article 236 of the Constitution which reads as under:—

“236. **Interpretation.**—In this Chapter.—

- (a) the expression “district judge” includes judge of city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;
- (b) the expression “judicial service” means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.”

These courts deal with all the disputes of a civil nature or criminal nature as per the powers conferred on the incumbent presiding over the court. This is one common vertical and hierarchical subordinate courts/subordinate judiciary distinguishable from the American model of dual set up, Federal Judiciary and State Judiciary.

1.5. The nomenclature of the courts as well as the designations of the incumbents in charge of courts specify their functions referable to the various provisions of the statutes prescribing civil and criminal procedure providing for setting up of courts. To illustrate, Section 6 of the Code of Criminal Procedure, 1973 provides that besides the High Courts and the courts constituted under any law other than the Code of Criminal Procedure, there shall be in every State, the criminal courts of the following classes:—

- (i) Courts of Sessions;
- (ii) Judicial Magistrates of the First Class and in any Metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the Second Class;
- (iv) Executive Magistrates.

Similarly, section 3 of the Code of Civil Procedure, 1908, envisages the setting up of a district court as principal civil court of original jurisdiction subordinate to the High Court. Every State has enacted its own law for setting up courts subordinate to the district court and variously described as herein-before indicated. Ordinarily, the district court has jurisdiction over a district demarcated as a unit of administration in every State also known as revenue district, but cases are not unknown where there can be one district court having jurisdiction over two revenue districts. In fact, every State is divided into districts as units of administration and each district is divided into taluks/tehsils and each taluk/tehsil comprises certain villages contiguously situated. These are but administrative units. The court structure more or less corresponds with these administrative units except in urban areas. Ordinarily, a court described as a court of Munsif/District Munsif-cum-Magistrate or Civil Judge (J.D./Judicial Magistrate is set up at a taluk/tehsil level but given the quantum of institution of

causes and cases, such a court may have jurisdiction over more than one taluk/tehsil. Similarly, depending upon the workload, a district court may have jurisdiction over more than one district. Small Causes Court are set up under either the Provincial Small Causes Courts Act at district level or under the Presidency Town Small Causes Court Act in Presidency/Metropolitan Towns. This is the infra-structure of the courts set up in India.

1.6. Terms of reference in relation to studying judicial reforms assigned to the Law Commission requires it to examine:—

“4. the method of appointments to subordinate courts/subordinate judiciary”.

The Law Commission had drawn up its schedule of work keeping in view the continuity and interlinking of its reports. With a view to provide for decentralisation of the system of administration of justice, the Law Commission recommended restructuring of courts at grass-roots level in its report (114th Report of the Law Commission) recommending ‘Gram Nyayalaya’. The participatory forum for administration of justice therein recommended would need restructuring subordinate judiciary having an impact on subordinate courts, that again can be described as grass-root court. The next vertical stage is that of a district court presided over by a District Judge. The Law Commission was required to study, examine and opine on the question of formation of an all-India judicial service. Accordingly, as a next step, that exercise was undertaken and a detailed report (116th Report of the Law Commission) has been submitted to the Government, recommending formation, constitution and setting up of All-India Judicial Service. It would immediately appear that there would still be subordinate courts manned by subordinate judiciary between the “Gram-Nyayalaya” and the District Judge. The all-India judicial service recommended by the Law Commission in view of the constraints imposed by article 312 could be set up at the level of the District Judge, as the expression is understood in article 236 of the Constitution. The All-India Judicial Service which has been styled in that report as ‘Indian Judicial Service’ would be manned by personnel recruited from three independent sources. One such source is the State Judicial Service. Therefore, with a view to scientific structuring of Indian Judicial Service, it is inevitable that the State Judicial Service must be restructured where the promotion to an all-India service is at a national level, all units coming within the zone of consideration for promotion must be more or evenly placed. The additional compelling reason for examining the method of appointment to subordinate courts/subordinate judiciary is that it is going to provide feed-back for 40% of posts in Indian Judicial Service. The Indian Judicial Service is to be structured on an all-India level. If the feed-back is to come from the States by way of promotions to Indian Judicial Service, it is inevitable that the arena of selection must be brought on a common denominator. Accordingly, apart from the fact that the Government of India in the terms of reference drawn up by it desired that, the Law Commission should examine the method of appointments to subordinate courts/subordinate judiciary as part of a package for judicial reforms which includes setting up of Indian Judicial Service, a close look at the present structure of subordinate judiciary in various States is unavoidable so as to bring it on a common denominator so that it can provide a feed-back for promotion to Indian Judicial Service from amongst, by and large, equals. That is the *raison detre* of the present report.

CHAPTER II

RECRUITMENT TO SUBORDINATE JUDICIARY

2.1. Chapter VI in Part VI of the Constitution deals with subordinate courts. Article 233 provides that appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor

of the State in consultation with the High Court exercising jurisdiction in relation to such States. Sub-article (2) of article 233 provides that a person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than 7 years an advocate or pleader and is recommended by the High Court for appointment. Article 234 provides for recruitment of persons other than district judges to the judicial service. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State(s). Article 235 provides that the control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of a district judge shall be vested in the High Court. A conspectus of these articles would show that the subordinate judiciary would consist of a district judge and persons other than and subordinate to district judge. Recruitment to the cadre of district judge can be made from two sources, *viz.*, promotion from the subordinate judiciary and direct recruitment from the Bar. In the matter of promotion from the subordinate judiciary, power is conferred on the Governor to give promotion in consultation with the High Court exercising jurisdiction in relation to it. In the matter of recruitment from the Bar, the appointment can be made on the recommendation of the High Court. Thus, the High Court has a preponderating voice in the matter of recruitment to the cadre of district judge, whereas power of making appointments vests in the Government.

POWER OF APPOINTMENT

2.2. In the matter of recruitment of persons other than a district judge to the judicial service of the State, the power to make appointments is conferred on the Governor which he exercises in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. Though at one point of time, a doubt was expressed whether the State Public Service Commission and the High Court had to be consulted in the matter of making rules or in the matter of making appointments as envisaged by article 234. The view that has held the field is that the Governor shall make the recruitment rules in consultation with the State Public Service Commission and the High Court exercising jurisdiction over it. In exercise of the power conferred by art. 234, every State has made rules for recruitment of persons other than district judges to the State Judicial Service. These rules broadly lay down the age of entry, academic qualifications, practice at the Bar, if any, *et al.* Except where recruitment is by promotion, the State Public Service Commissions undertake the programme of recruitment on an indent received from the High Court about the existing and possible vacancies in the cadre in the near future. The State Public Service Commission invites applications by issuing advertisements setting out therein the minimum qualifications and other requirements. Some States provide for written examination to be conducted by Public Service Commissions and/or a *viva voce* test. Some other States provide for a *viva voce* test by members of the State Public Service Commission. Some States provide for inviting a sitting Judge of the High Court to be nominated by the Chief Justice for participating in the *viva voce* test as an expert. But while he can record his opinion, he is not entitled to participate in the decision making process or in assigning marks, evaluating the performance of each candidate. The Public Service Commission submits a list of candidates recommended by it as being

eligible for appointment. The State Government makes the appointments from the list. The relevant rules in this behalf vary from State to State. A comprehensive table setting out the broad requirements of rules in each State, as made available to the Law Commission representing a wide spectrum of information, is set out in Annexure II.

AGENCY FOR RECRUITMENT

2.3. Consistent with the constitutional provision, most of the States have, in their respective rules for subordinate judiciary, conferred power on the State Public Service Commission to select and recommend candidates for posts in subordinate judiciary where the recruitment is from the market. As there is a hierarchy in the subordinate judiciary, before one vertically reaches the post of District and Sessions Judge, there are posts in the subordinate judiciary to which recruitment can be made by promotion. Where recruitment is thus by promotion, power is conferred on the High Court alone to make the recommendation even though the power to make appointment vests in the Governor. State of Karnataka has made a bold departure in this behalf. Even in the matter of recruitment from the market to posts in the subordinate judiciary, a committee of five judges of the High Court constituted by the High Court of Karnataka makes arrangements for both written and *viva voce* tests. In accordance with the merit list prepared by this Committee, appointments are made by the Governor. The information from Assam in this behalf is rather sketchy. From whatever is made available to the Law Commission, it appears that recruitment to what is described as Grade III in subordinate judicial service is from two sources. Fifty per cent of posts are filled in by recruitment on the recommendation of the State Public Service Commission by the Governor and the remaining 50% of posts are filled in on the recommendation of the High Court by the Governor. The State Public Service Commission, in order to select candidates, holds a written examination. The High Court, while making its recommendation, holds only a *viva voce* test and the recruitment is from the members of the Bar. The State of Haryana has a different model in this behalf. It has set up a Committee charged with the duty for recommending persons for induction in subordinate judiciary from amongst members of Haryana Civil Service for whom there is a reserved quota of 20% of the total posts. It is styled as a Selection Committee consisting of three High Court Judges, the State Advocate-General and the Legal Remembrancer of the Government of Haryana. The remaining 80% of the posts are filled in on the recommendation of the State Public Service Commission based on the combined result of written and *viva voce* tests. From amongst those States where the State Public Service Commission also holds a *viva voce* test for recruits to the subordinate judicial service, some State Public Service Commissions invite a High Court Judge, sitting or retired, to be nominated by the Chief Justice of the State High Court to act as an expert and while he expresses his opinion, he is not entitled to participate in the decision-making process, nor is entitled to assign marks candidate-wise. In this behalf, it is necessary to invite attention to a very pertinent observation by the Supreme Court of India directly bearing on the question of participation by a sitting Judge of the High Court in the matter of selection of candidates for recruitment to subordinate judicial service. The Supreme Court of India recommended that when selections to judicial service are being made, a sitting Judge of the High Court to be nominated by the Chief Justice of the State should be invited to participate in the interview as an expert and since such a sitting Judge comes as an expert who, by reason of the fact that he is a sitting High Court Judge, knows the quality and character of the candidates appearing for the interview, the advice given by him should ordinarily be accepted unless there are strong and cogent reasons for not accepting such an advice, the same must be recorded in writing by the Chairman and

Members of the Public Service Commission. The Supreme Court gave a direction to the Public Service Commission in every State that the finest talent should be recruited to the judicial service and that can be secured only by having a real expert (Sitting Judge of the High Court) whose advice constitutes a determinative factor in the selective process.¹ Despite this mandatory direction, it is well-known that some State Public Service Commissions do not provide for any participation by a High Court Judge in the matter of selection of candidates for recruitment to State Judicial Service. It is also not unknown that when a Judge is invited, the view expressed by him is ignored without complying with the direction given by the Supreme Court that when the advice given by the expert Judge is departed from, the Chairman and Members of the Public Service Commission constituting the Committee of Selection should give reasons for such departure. It is a matter of serious concern whether in the matter of selection of candidates for recruitment to subordinate judicial service in the State, the time has not come to wholly exclude the Public Service Commission of the State or the Union. The Law Commission, in its next succeeding report, is going to deal with this aspect.

MODE OF RECRUITMENT

2.4. In a majority of States—14 out of 19 States—whose rules for recruitment to Subordinate Judiciary have been analysed by the Law Commission, candidates for recruitment to subordinate judiciary are selected on the combined result of written and *viva voce* tests. The States of Assam and Punjab do not provide for *viva voce* test and the selection is made on the basis of the result of a written tests held by Public Service Commission. At the other end of the spectrum, in Maharashtra and Gujarat, there is no provision for holding a written test and the candidates are selected on the basis of *viva voce* test only. In this connection, it is necessary to highlight the divergence in the approach in the matter of recruitment methods adopted by various States. Some States provide for direct recruitment and recruitment by transfer from other departments of the State Service or by holding tests which are open exclusively to departmental candidates of State Governments. The recruitment by transfer has sinister implications. It has proved nefarious. A gross case of total departure from the Constitutional mode of recruitment that has come to the notice of the Law Commission is of Tamil Nadu where, according to as authentic an information as can be had at present, 260 posts of Munsif Magistrates are manned by persons who have not been recruited to subordinate judiciary but are ad hoc transferees from the other departments. In fact, this total departure from the constitutional mandate and a back-door re-unification of separated executive and judiciary so agitated the minds of the members of the legal profession in Tamil Nadu State that there was a prolonged strike by the members of the Bar for a very long period focussing attention on the failure to make recruitment to subordinate judiciary according to rules. Similarly, in the States of Punjab and Haryana, the rules permit for appointment of members of Civil Service (Executive Branch) by transfer as subordinate judges although such transferees do not possess essential minimum qualifications for recruitment as subordinate judges. This is another gross violation of the norms prescribed for recruitment. In fact, these are the various devices by which attempt is made to re-unite the separated executive and judiciary as mandated by article 50 of the Constitution. The Recruitment Rules of four States provide for emergency recruitment in which departure from specific requirements and essential qualifications can be made with impunity. One fails to understand how in the matter of recruitment to subordinate judicial service, an emergency situation may arise. One can always have a preview of the requirements including the

1. *Ashok Kumar Yadav Vs. State of Haryana*, (1985) 4 SCC 417.

one necessitated by review of strength much in advance and if, in the meantime, the High Court of the State is charged with a duty to make recruitment from the market by varying the procedure which gives equal opportunity to all concerned to compete for the same in view of the over-populated legal profession, the recruitment can easily, conveniently and within a time-frame, be made. The emergency cannot be even contemplated. In fact, it is another dubious device of encroachment in the matter of appointment to judiciary. The States of Tamil Nadu and Kerala have two separate sets of rules for recruitment to civil judicial posts and magisterial posts, though both are under the administrative and judicial control of the High Court. The Law Commission is informed by the High Court of Kerala that steps are in progress for integrating the civil and criminal wings of the judiciary in the State.

ELIGIBILITY CRITERIA

2.5. Entry into subordinate judiciary pre-supposes knowledge of law and the practical experience of the working of the Courts. Accordingly, eligibility criteria prescribing minimum requirements for being able to compete for entry into State Judicial Service can be examined under three separate principal requirements:—

- (a) **Academic Qualifications.**—A degree in law obviously must be a necessary requirement by way of academic qualifications. Recruitment Rules of the States generally provide for the same, but there are some grey areas. Where appointment by transfer is permitted, it is not assured that the transferee has a degree in law. In some States, the requirement is stated as practice at the Bar for a certain period. This, however, ensures a degree in law because the Bar Council would not enroll anyone as an advocate unless he holds a degree in law recognised by the Bar Council of India.
- (b) **Age.**—Recruitment Rules of most of the States provide for minimum and maximum age with relaxation in favour of weaker sections of society for recruitment to subordinate judiciary. It varies between 21 years to 45 years. There is also a distinction in the matter of age between direct recruits and recruits by transfer. Some States provide for the age group of 21-38 years for direct recruits while extending the upper age limit to 45 years in the matter of recruits by transfer. Andhra Pradesh Kerala, Rajasthan and Tamil Nadu States do not provide for any minimum age. Variations in the matter of minimum age from State to State is referable to other requirements in the Recruitment Rules providing for practice for a certain period at the Bar. Longer the period of practice prescribed, the higher age follows as a matter of course.
- (c) **Experience.**—As pointed out just herein-before, by and large, the duration of practice varies from one year to five years. However, we are not able to get authentic information from the State of Assam on the question whether the candidates who offer themselves for competitive examination held by the State Public Service Commission would require practice of any particular duration at the Bar as a pre-requisite for appearing at the examination.

LANGUAGE

2.6. Knowledge of local language has assumed considerable importance in recent times, more so in view of section 2 of the Official Language Act and

section 272 of the Code of Criminal Procedure, 1973 and section 137 (2) of the Code of Civil Procedure, 1908. Eleven States have prescribed knowledge of local language as an essential qualification. In the rules of some States, a provision is found requiring proficiency in one more language. At least in one State, power is conferred on the concerned authority to prescribe knowledge of a third language too.

DISQUALIFICATIONS

2.7. Most of the States have prescribed positive disqualifications which would make intending candidates ineligible for entry into subordinate judicial service. It is not necessary to refer to them in detail except saying that very recently the Supreme Court of India has held that past political affiliations by themselves do not disqualify a person from entering the service if he is otherwise qualified.¹

CHAPTER III

Competence/Jurisdiction to deal with the subject—Subordinate Courts

3.1. Can the Law Commission of India set up by the Government of India deal with the question of subordinate courts/subordinate judiciary which are at present handled by the States? Can a Parliamentary legislation be enacted to re-structure subordinate judiciary/subordinate courts even without recourse to articles 247, 249 or article 252 of the Constitution?

3.2. Prior to the Constitution (Forty Second Amendment) Act, 1976, entry 3 in list II-State List, read as under:—

“3. Administration of Justice; constitution and organisation of all courts except the Supreme Court and High Courts; officers and servants of the High Courts; procedure in Rent and Revenue Courts; fees taken in all courts except the Supreme Court.”

By section 57 of the Constitution (Forty-Second Amendment) Act, 1976, this entry was recast by deletion of the words: “Administration of justice; constitution and organisation of all courts except the Supreme Court and the High Courts.” Simultaneously, entry 11A was inserted in list III - Concurrent List which reads as under :-

“11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.”

3.3. The States enjoyed the power to set up subordinate courts and prescribe by rules the conditions of service including eligibility criteria for recruitment to subordinate judiciary. Every State had a statute for setting up subordinate courts with their designations as have broadly been indicated in the earlier portion of this report and the nomenclature of the court coincided with the designation of the various cadres in subordinate judiciary. This power was enjoyed by the States under un-amended entry 3 of the State List. This situation had its genesis in a decision taken in the ‘conference of the Premiers of the provinces in 1946 chaired by the then Home Minister, late Sardar Vallabhai Patel’.² This conference resolved that subordinate judicial service should be organised by the Government of Provinces and it was not considered necessary to organize

1. *State of M.P. Vs. Ramashankar Raghuvanshi and another*, 1983 (2) SCC 145.

2. LCI, 116th Report, para 2.2, p. 6.

the same on an all-India level on the model comparable to administrative services which were to be formed on all-India basis, replacing the then Secretary of State's services. Article 312 conferred power on the Parliament by law to provide for the creation of one or more all-India services if the Council-of-States has so declared by a resolution, supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so. On such a resolution being adopted with the requisite majority and the Parliament consequently enacting a legislation to that effect, a service on an all-India basis common to Union and the States could be set up. The legislation must provide for regulating the recruitment and the conditions of service of persons appointed to any such service. A doubt was felt whether, in view of entry 3 in the State List, the Council of States can adopt a resolution and the Parliament can pass a legislation for setting up of an all-India Judicial Service. There was a body of public opinion that the time has come to re-structure the judicial service on an all-India basis at least from the level of a District Judge. Therefore, while making the necessary amendment in entry 3 of the State List with corresponding entry in the Concurrent List, an amendment was also made by section 45 of the same Amendment Act to insert the words "including an all-India judicial service" in article 312 after the words, "all-India service" and before 'common to the Union and the States'. The cumulative effect of these amendments have unquestioningly conferred power on the Parliament to enact a legislation for setting up an all-India judicial service provided a resolution with the requisite majority is adopted by the Parliament and within the constraints of article 312(3). The Law Commission has already submitted a comprehensive report in this behalf recommending constitution of Indian Judicial Service.¹ Therefore, the desks are now clear for the Parliament to take appropriate action for setting up a judicial service on all-India basis.

3.4. Once it is considered desirable and necessary to set up judicial service at the level of District Judge which was hitherto part of the State Judicial Service, on all-India basis, it became a compelling necessity to provide sources of recruitment to the same. Amongst various sources for recruitment to that service recommended by the Law Commission, one source is subordinate judicial service in the State. Now, if Indian Judicial Service, being judicial service organised on an all-India level, is also to be manned by persons promoted from the subordinate State judicial service, it becomes a compelling necessity to organise State Judicial Service in such a manner as to provide an equal opportunity to everyone in each State to compete for a berth in Indian Judicial Service. It would be impossible to recommend persons from subordinate judicial service for being promoted to Indian Judicial Service if the subordinate judicial service at the State level is not re-organised on a pattern common to all States simultaneously retaining it as a State Service. It would be impossible to ask each State to undertake enactment of a common legislation. Therefore, it is necessary to have a uniform legislation with uniform designations replacing the present ones and common to all States in respect of posts and cadres in subordinate judicial service which should be styled 'State Judicial Service'. This designation in relation to Indian Judicial Service will demarcate the functions and spheres of both the services. For bringing about a common pattern of State Judicial Service, it is inevitable that legislation must be enacted by the Parliament and this is no more difficult or open to question in view of entry

1. LCI, 116th Report.

11A of Concurrent List. It is accordingly recommended that Parliament should enact a legislation dealing broadly with subordinate courts in States, the designation of courts and cadres of services in State Judicial Service and in Union territories which would also provide a common denominator for further promotion of the members of such State Judicial Service to Indian Judicial Service.

3.5. The Law Commission has recommended a legislation for setting up Indian Judicial Service in its report.¹ That very legislation can provide a chapter in respect of subordinate judiciary. Let it be made clear that even when the subordinate judicial service at State level is being set up under a law to be enacted by Parliament, the service would none-the-less remain a State Service and the responsibility to man the same would be of the States and the expenditure on the establishment of State Judicial Service will undoubtedly be borne on the Consolidated Fund of each State. There is no dearth of power in the Parliament to enact such a legislation.

CHAPTER IV

RE-ORGANISATION OF SUBORDINATE JUDICIARY

4.1. In the matter of re-organisation of subordinate judiciary, the Law Commission is not writing on a clean slate. Attempts made in the past to deal with this may be traced back to the report of the Joint Parliamentary Committee dealing with the question as to the necessity for securing the independence of the subordinate judiciary. The relevant observation may be extracted²:—

“This subject is not mentioned in the White Paper, but there are aspects of it which seem to us of such importance that we think it right to state our opinion upon them. The Federal and High Court Judges will be appointed by the Crown and their independence is secure; but appointments to the subordinate Judiciary, must necessarily be made by authorities in India who will also exercise a certain measure of control over the Judges after appointment, specially in the matter of promotion and posting. We have been greatly impressed by the mischiefs which have resulted elsewhere from a system under which promotion from grade to grade in a judicial hierarchy is in the hands of a Minister exposed to pressure from members of a popularly elected Legislature. Nothing is more likely to sap the independence of a magistrate than the knowledge that his career depends upon the favour of a Minister..... It is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges.”

4.2. This approach found its echo in the Government of India Act, 1935, which has more or less been a model for the founding fathers of the Constitution. Section 254 of the Act provided for appointment, posting and promotion of persons to be appointed as district judges. They were to be made by the Governors of the Provinces exercising their individual judgement in consultation with the High Court. Sub-section 2 of section 254 provides for direct recruitment from the Bar to the cadre of district judge. It can be safely stated that article 233 (1) and (2) is in *pari materia* with sections 251 (1) and (2) with only minor and consequential changes. Similarly, section 255 is in *pari materia* with article 234 of the Constitution. Further, article 235 re-enacts section 255 (3) with certain minor variations except that article 235 vests control over district

1. LCI, 116th Report.

2. *Joint Committee on Indian Constitutional Reforms Report*; (1933-34), Vol. I, p. 201, para 337.

courts also in the High Court while section 255 (3) limits the control to posting and promotion and grant of leave in respect of persons belonging to the subordinate civil judicial service holding any post inferior to the post of district judge.

4.3. The Constitution, keeping in view the intendment of article 50, namely, the obligation of the State to separate the Executive from the Judiciary, enacted provisions contained in Chapter VI, Part VI of the Constitution which have been designed to secure the independence of the subordinate judiciary from the Executive, so that they may be free from any extraneous influence in the discharge of their judicial duties. The control vested in the High Court over the district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to persons belonging to the judicial service of a state has by numerous decisions of the Supreme Court been made all enveloping, insulating the subordinate judiciary from any extraneous outside influence or interference including from executive. The all-pervasiveness of the control has been extensively set out by the Law Commission.¹ This effective control has to be retained and cannot be tinkered with in larger public interest and in the interest of independence of judiciary which has been held to be a cardinal feature of our Constitution.²

4.4. The First Law Commission undertook a review of judicial administration in all its aspects with a view to suggesting ways and means for improving it and making it speedy and less expensive. While dealing with the subordinate judiciary, it recommended setting up of an all-India Judicial Service. In its view, a District and Sessions Judge is the highest authority in the district and is responsible for its judicial administration in all its aspects. Normally, only one in ten persons recruited as Munsif can aspire to reach this selection post.³ In view of the recommendation of the Law Commission, the post of the District Judge including those posts which are comprehended in the expression 'District Judge' as set out in article 236 would stand included in the Indian Judicial Service. Therefore, the State Judicial Service will comprise posts and cadres below the cadre of district judge as understood in article 236. It recommended for such posts, uniform designation and a written test to be conducted by the State Service Commission for recruitment. It does appear unavoidable that with a view to re-organising the State Judicial Service, uniform designations will have to be devised.

4.5. As the situation now stands, certain States as for example Maharashtra, has divided its State Judicial Service into what is designated as Senior Branch and Junior Branch. Some of the States like Rajasthan have sub-divided the State Judicial Service into lower service and higher judicial service. In this behalf, the recommendation of the First Law Commission, even after a lapse of three decades, holds good and it would be proper to adopt it. The State Judicial Service should be styled as State Judicial Service Class I and Class II. After uniform designations are devised, it would be necessary to determine holders of which particular post would be comprehended in Class II and which in Class I. Suffice it to say that the views of the First Law Commission that the district judge should belong to the State Judicial Service Class I would no more be valid in view of the recommendation for formation of

1. LCI, 116th Report, p. 26 sub-heading (c).

2. *Shamsher Singh Vs. State of Punjab*, (1974) 2 SCC 831.

3. LCI, 14th Report, Vol. I, Chapter 9, para. 66, p. 187.

Indian Judicial Service.¹ Any other approach would introduce an inconsistency between the two reports which must at any cost be avoided. Therefore, it is recommended that the State Judicial Service below the rank of a district judge should be organized into State Judicial Service Class I and Class II.

4.6. The recommendation of the First Law Commission 'that looking to the uniform functions performed by the judicial officers though variously designated, it would be advisable to aim at uniformity of designations' holds good. The historical background of various designations have lost not only the validity but even the relevance. It is necessary even with a view to infuse a sense of dignity in the holders of posts in lower ranks to provide such designations as would avoid the word 'subordinate' or the designation 'Munsif'.

4.7. The expression 'Munsif' has historical overtones. It is in a way of Indian origin though it is shown to be of Persian vocabulary. It was spelt as 'Moonsiff' and its connotation was 'equitable, just, a decider of what is just, an arbitrator, a Judge'. Under the British regime, the term was applied to a native civil judge of the first or the lowest rank.² It appears that another designation was coined during the regime of Shershah. For administration of justice, Shershah divided his empire into administrative units called Sarkars, which again was sub-divided into Paraganas. He divided administration of justice into two branches, civil and criminal. Shiqdar was invested with power to dispense with criminal cases and Munsif was invested with powers to try civil cases. Shiqdar-i-Shiqdaran was responsible for the administration of criminal justice in each Sarkar. Similarly, on the civil side, Munsif-i-Munsifan of the administration was in charge of civil justice in each Sarkar. The novel feature of the administration was that Munsif-i-Munsifan was a circuit judge and had to go round in course of administration of justice. This probably provides the genesis of the present day cry for taking justice to the door-step of the people. The recruitment of Munsif was not confined to Ulemas or Faqish (Lego: Theologians).³ It appears at some point of time in the development of the institution of Munsif, the holder of the office was not a full-time regular, salaried employee. The whole cadre consisted of honorary judges and received no remuneration for discharging their judicial functions. In later years, upon an apprehension that the system of honorary judges is susceptible to corruption or is niggardly or negligent in performance of duty in the absence of regular compensation, the salaried system came into vogue. The institution of Munsif made access to justice easy and within reach because, in the absence of it, people may have to travel upto the Headquarters of the district and the journey in those days was slow, tardy and inconvenient. It also helped in relieving congestion at the Sarkar level as small and petty disputes were disposed of by the Munsifs.⁴

Then came the designations Sadar Diwani Adalat and Sadar Fouzdari Adalat. However, the designation of Munsif continues to be accepted in some States till today.

4.8. The word 'subordinate' in the judicial hierarchy sounds incongruous. To be precise, when any matter is before a court of competent jurisdiction even at the grass-root level, it handles the matter un-influenced by any extraneous or irrelevant consideration and wholly free from any outside pressure including pressure from upper layers of service. To illustrate, even the district judge, though an administrative superior of a civil judge (Junior Division) cannot interfere when the proceedings are before the Civil Judge except when he hears any appeal or revision. If he interferes when the court of Civil Judge

1. LCI, 116th Report.

2. William H. Morley, *The Administration of Justice in British India*, Reprint 1976--p. 354.

3. Waheed Husain, *Administration of Justice during Muslim Rule in India*.

4. M. P. Jain, *Outlines of Indian legal History*, p. 219-21.

is seized of the matter, a charge of contempt may as well be made against him. In the Administrative hierarchy, a superior officer can give direction to the inferior officer even with regard, to matters which are being dealt with by him. This is the basic difference between a hierarchy of officers in the Executive and the hierarchy of officers in the judiciary. Therefore, the word, 'subordinate' which implies a sort of subordination of one to the other which may inhere or give rise to an inference of something akin to command obedience relationship has to be avoided, as far as possible. Undoubtedly, we are conscious of the fact that even the Constitution uses the expression 'subordinate courts'. The court structure being pyramidal and hierarchical in character may tolerably be described in relation to a superior as subordinate court. But, as far as the designation of judicial officer is concerned, every attempt must be made to avoid that word. Therefore, it would be proper to devise a uniform designation for the entry cadre.

4.9. A tabulation of the structure of courts at the State level extensively set out herein-before would show that the entry cadre has more or less been designated as 'Munsif/District Munsif' on the civil side and 'Magistrate or Magistrate First Class on the criminal side'. By and large, in smaller towns and courts with inadequate or lower institutions, the Presiding Judge is both a 'Munsif' for civil matters and a 'Magistrate' for dealing with criminal matters. Gujarat and Maharashtra have changed the designations of the entry cadre to Civil Judge (Junior Division) on the civil side and 'Judicial Magistrate First Class' on the criminal side. The entry cadre, howsoever designated, is manned by fresh recruits from the market except where someone is posted by transfer. Accordingly, keeping in view the lack of experience in the matter of decision making process and allied subjects, it is considered advisable to give them jurisdiction over less controversial, small and petty matters measured by the yardstick of pecuniary jurisdiction on the civil side and the gravity of offence on the criminal side. Ordinarily, this jurisdiction on the civil side extends up to the value of the subject matter being Rs. 20,000/- and offences punishable with a sentence of three years and fine on the criminal side.

4.10. The next cadre which also provides a promotional avenue to the members of the entry cadre is variously designated as Civil Judge (Senior Division) in Maharashtra and Gujarat and subordinate judge or senior sub-judge in almost all other States. At this level, the holder of the post is dealing with civil matters without any ceiling on pecuniary jurisdiction. In other words, the holder of the post has unlimited jurisdiction in the matter of pecuniary valuation of the subject matter in dispute. This post is sometimes combined with the post of Chief Judicial Magistrate who has powers higher than the judicial Magistrate First Class in that he can try cases punishable with imprisonment for seven years and fine. When the holders of this post are posted in metropolitan areas, they are designated as Metropolitan Magistrates and when they are posted in small causes court, they are called Judges of the Small Causes Court. It is not necessary in this report to deal with the functional designations which are comprehended in the expression District Judges, such as Judge, City Civil Court, Chief Metropolitan Magistrate, Chief Judge, Small Causes Court, etc. In fact, the designations must be more or less functional in the sense that the designation would indicate the functions of the holders of the post. Again, some designations are already provided by the two procedural Statutes, viz., the Code of Civil Procedure and the Code of Criminal Procedure. With a view, therefore, to re-organise the State Judicial Service with uniform designations, it is suggested that the law providing for re-organisation of State Judicial Service should include and incorporate the following designations:

On the civil side, the entry cadre must be designated as Civil Judge (Junior Division) with pecuniary jurisdiction up to the ceiling of Rs. 25,000/-. The holder of a similar post on the criminal side must have the designation of Judicial Magistrate First Class as envisaged by section 6 of the Code of Criminal Procedure. The members of this cadre when posted in district towns or areas where institutions both on the civil side and criminal side are fairly heavy, they may be designated as Civil Judge (Junior Division) exclusively and Judicial Magistrate First Class exclusively though the holders of these posts must belong to a common cadre and must be placed in State Judicial Service Class II.

4.11. The next promotional stage must cater to the needs of courts with unlimited pecuniary jurisdiction as well as jurisdiction to entertain suits against Government of Union or the State. The holders of these posts must be designated as Civil Judge (J.D.) having no ceiling on their pecuniary jurisdiction. This cadre must also include the cadre of Chief Judicial Magistrate. The holders of the post can, depending upon the institution, have both the designation or where the institution does not permit one person to handle inflow of work on both sides, he can be exclusively posted as Civil Judge, Senior Division, or Chief Judicial Magistrate, as the case may be. The designation 'Chief Judicial Magistrate' is adopted from section 12 of the Code of Criminal Procedure.

4.12. In some States, there are officers designated as subordinate judges or civil judges of the rank higher than that of the Munsif. All these, of course, may be re-designated as herein indicated and the holders of these posts may be admitted to the common cadre.

4.13. There are two Statutes in operation providing for setting up of courts for dealing with small pecuniary disputes in big commercial towns prescribing a procedure of a summary nature. They are the Provincial Small Causes Courts and the Presidency Town Small Causes Courts. Judges of the Provincial Small Causes Court may have their functional designation as Small Causes Court Judge, but they must belong to the same cadre to which a Civil Judge (Senior Division) belongs. Similarly, the Judges of the Presidency Small Causes Courts must be put on par with Metropolitan Magistrates and even though they will retain their functional designations as prescribed by the various Statutes, they will form one cadre. Every cadre in the State Judicial Service except the grass-root cadre of Civil Judge (Junior Division)/Judicial Magistrate First Class will belong to the State Judicial Service Class I.

CHAPTER V

VIEWS AND COMMENTS

5.1. The real debate focussed on the question about the role of Public Service Commissions in the matter of selection of Personnel for subordinate judiciary. Intervention of any agency other than the judiciary in the matter of selection of personnel for recruitment to judiciary at any level has not only been frowned upon and disapproved, but has been held to be a threat to the independence of the judiciary. Even though therefore positive role was assigned to the State Public Service Commissions in the matter of selection of personnel for entry at grassroot level in subordinate judiciary, our experience has been that in practice, it has been found to be undesirable. This view is not recently formed with reference to recent occurrences in this behalf. Way back in 1958, the first Law Commission examined the question of reforms in subordinate judiciary. Examining the role of Public Service Commission in

the matter of selection of personnel for manning posts in subordinate judiciary, it reached a none too flattering conclusion in respect of the role of the State Public Service Commission in this behalf. Let it be extracted:

"Having regard to the important part played by the Public Service Commissions in the selection of the subordinate judiciary, we took care to examine, as far as possible, the Chairman and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence from the points of view of either efficiency or of impartiality. There appears to be little doubt that in some of the States, appointments to these Commissions are made not on considerations of merit but on grounds of party and political affiliations. The evidence given by members of the Public Service Commissions in some of the States thus create the feeling that they do not deserve to be in responsible posts they occupy. In some of the southern States, the impartiality of the Commissions in making selections to the judicial service was seriously questioned."

5.2. The situation, as has been the general trend in all Public Services, must have further deteriorated. However, this must not be left to a mere inference. The High Courts of Orissa, Jammu and Kashmir and Andhra Pradesh have expressed a firm opinion that recruitment to subordinate judiciary should be taken out from the purview of the State Public Service Commission and instead, it must be entrusted to the High Courts which would work out the *modus vivendi* for selecting proper personnel. Of course, some judges in some High Courts have opined in favour of retention of the Public Service Commission in the matter of selection. A few of the Judges of the High Courts indicated a preference in favour of an independent body to be styled as 'Judicial Services Commission' to undertake this task.

5.3. Whether minimum practice at the Bar should be a pre-requisite for entry into judicial service even at the lowest level has become a subject matter of lively debate and strong opinions are expressed one way or the other. This again is not of recent origin. Even about three decades back, the Law Commission took note of a view expressed by the then Chairman of the Bihar Public Service Commission that during the 3-5 years of practice at the mofussil Bar, the young man deteriorates more or less completely. The Law Commission also took note of the opinion of the Civil Justice Committee in this behalf. It reads as under:—

"The rule in force in certain Provinces requiring the candidates to have practice at the Bar for a period of three years or more, furnishes no guarantee that the candidates have acquired any really useful experience."²

Even then, some Judges who responded to the queries of the Commission have expressed preference for retention of minimum practice at the Bar as a pre-requisite for entry into judicial service. It is time to dis-abuse our mind on this point because the Law Commission has reached an affirmative conclusion that this minimum practice at the Bar hardly qualifies the person to be a better judge. The Law Commission has given cogent reasons for reaching this conclusion and the same need not be repeated here.³

1. LCI, 14th Report, Vol. I, Chapter 9, Para 27, p. 171.

2. *Id.*, Para 11, p. 165.

3. LCI, 117th Report,

5.4. By and large, there was otherwise near unanimity in the matter of standardising subordinate judiciary at State level. Uniform standards for entry into judicial service at the State level would be conducive to making State Judicial Service a reliable forum for recruitment to Indian Judicial Service, and it is an incongruity that while the Code of Civil Procedure and the Code of Criminal Procedure uniformly apply throughout the length and breadth of the country, those Civil Judges and Judicial Magistrates implementing the laws common to all States would differ in nomenclatures, status, designations, emoluments and other conditions of service. This is hardly conducive to a national standard, national integration and a national service.

CHAPTER VI

CONCLUSIONS

6. In exercise of power conferred by Entry 11A in the Concurrent List of the Seventh Schedule of the Constitution of India, Parliament is competent to legislate for bringing uniform standards in the matter of recruitment to subordinate judiciary. A comprehensive legislation in this behalf will have to be enacted replacing the State legislations. This comprehensive legislation must aim at the following:—

- (a) Uniform designations to various cadres of posts below the District and Sessions Judge. As pointed out earlier, they should be, at the entry level, Civil Judge (Junior Division) and Judicial Magistrate First Class. At the next higher level, the designation must be Civil Judge (Senior Division) and Chief Judicial Magistrate. When posted in metropolitan towns, the designation must be Metropolitan Magistrate. Where Small Causes Court is set up, the Judge should be styled as Judge of the Small Causes Court. All other designations may be rescinded by a provision in the Statute herein indicated except those which are set out in inclusive definition of 'district judge' in article 236 of the Constitution.

The legislation to be enacted in this behalf must provide for a minimum qualification for entry into service which must not be less than a degree in law, and though not necessary, if considered advisable, minimum practice at the Bar not exceeding three years;

- (b) The service at the State level is to be styled as State Judicial Service. It shall be divided into two classes, viz., State Judicial Service Class I and State Judicial Service Class II. The cadre of Civil Judge (Junior Division) and Judicial Magistrate First Class shall be placed in State Judicial Service Class II and shall be manned by recruitment from the open market to the extent of 100% of posts. There shall be no direct recruitment to State Judicial Service Class I and the posts in that class will provide promotional avenues to members of State Judicial Service Class II;
- (c) The entrants to service must be given training as per the recommendations of the Law Commission in its 117th Report;
- (d) The law to be enacted in this behalf must provide for uniform conditions of service relating to pay, pension, promotional avenues, eligibility criteria for promotion, minimum age for entry in service, etc.;

- (e) The agency for recruitment to the service would be National Judicial Service Commission in respect of which the next detailed report is being submitted. It is, therefore, not considered appropriate to add to the length of this Report;
- (f) The National Judicial Service Commission will also arrange for written and *viva voce* tests upon combined result of which entry into the State Judicial Service branch Class II may be given. While the academy recommended by the Law Commission will prescribe detailed curricula for the examination, keeping in view the requirements of the grassroot judiciary, the subjects can be broadly indicated as:—
- (i) General knowledge;
 - (ii) Procedural laws; Civil Procedure Code and Criminal Procedure Code, and Evidence Act;
 - (iii) Expectations of the society from the judiciary;
 - (iv) A simple *viva voce* test not exceeding 50 marks must be prescribed;
 - (v) Art of writing judgment;
- (g) The usual reservations should be made in favour of Scheduled Castes/Scheduled Tribes and socially and educationally backward classes;
- (h) Training in local language should be imparted where the candidate's mother tongue is other than the language spoken in the area where he is posted;
- (i) The role of Public Service Commission in the matter of selection of personnel for judicial posts must be wholly excluded.

(D. A. DESAI)
Chairman

(S. C. GHOSE)
Member

(SMT. V. S. RAMA DEVI)
Member-Secretary.

NEW DELHI

Dated the 26th December, 1986.

ANNEXURE I

ANDHRA PRADESH

SUPREME COURT

High Court

District and Sessions Judge—1st Grade

District and Sessions Judge—2nd Grade

District & Sessions Judge (2nd Grade)

Chief Judge, City Civil Court.

Chief Judge, Small Causes Court.

Chief City Magistrate.

Additional Distt. & Sessions Judge.

Additional Chief Judge, City Civil Court.

Subordinate Judge

District Munsifs

Munsif Magistrate.

City Magistrate.

Assistant Judge, City Civil Court.

Railway Magistrate.

Municipal Magistrate.

Magistrate Juvenile Court.

BIHAR

SUPREME COURT

High Court

District and Sessions Judge

Additional District and Sessions Judge

Subordinate Judge

Munsif

DELHI

SUPREME COURT

High Court

District and Sessions Judge

Additional District and Sessions Judge

Senior Subordinate Judge	Judge, Small Causes Court.	Chief Metropolitan Magistrate.
Additional Senior Subordinate Judge.		Additional Chief Metropolitan Magistrate.
Subordinate Judge.		Metropolitan Magistrate.

GUJARAT

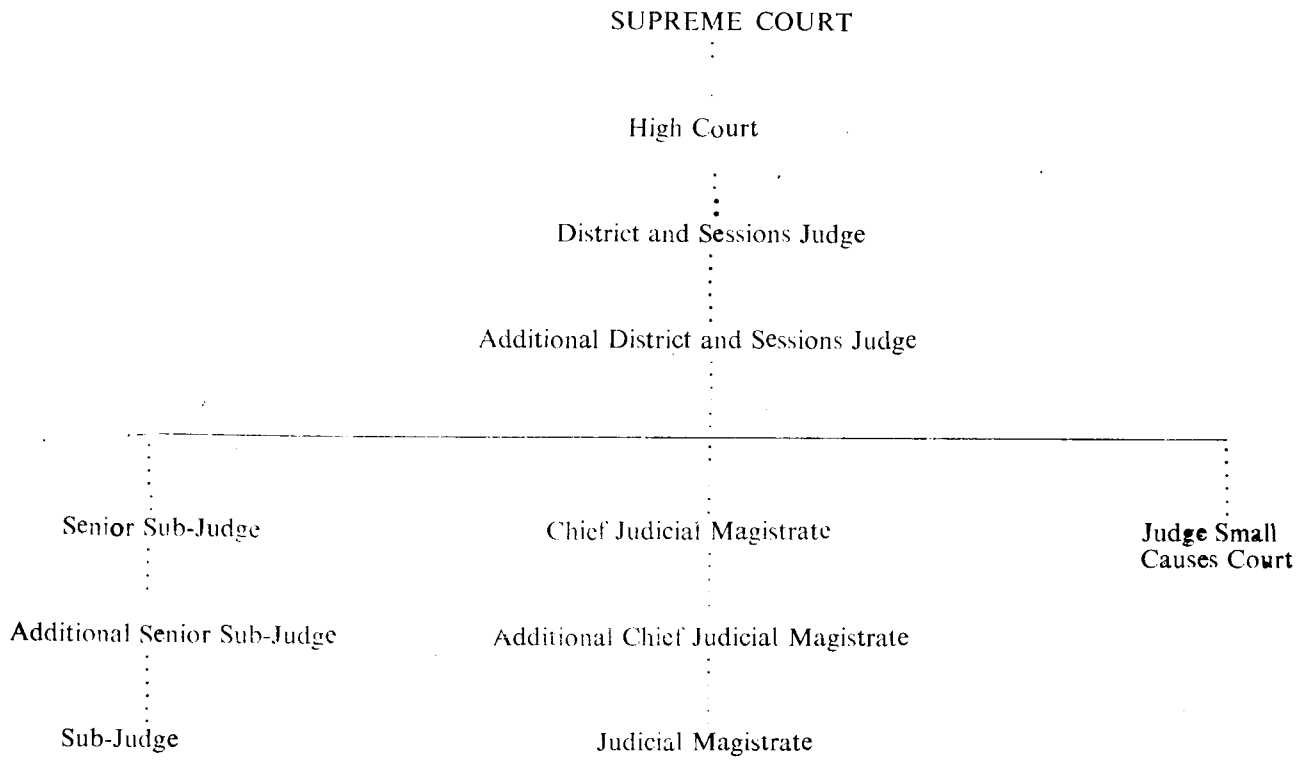
SUPREME COURT

High Court

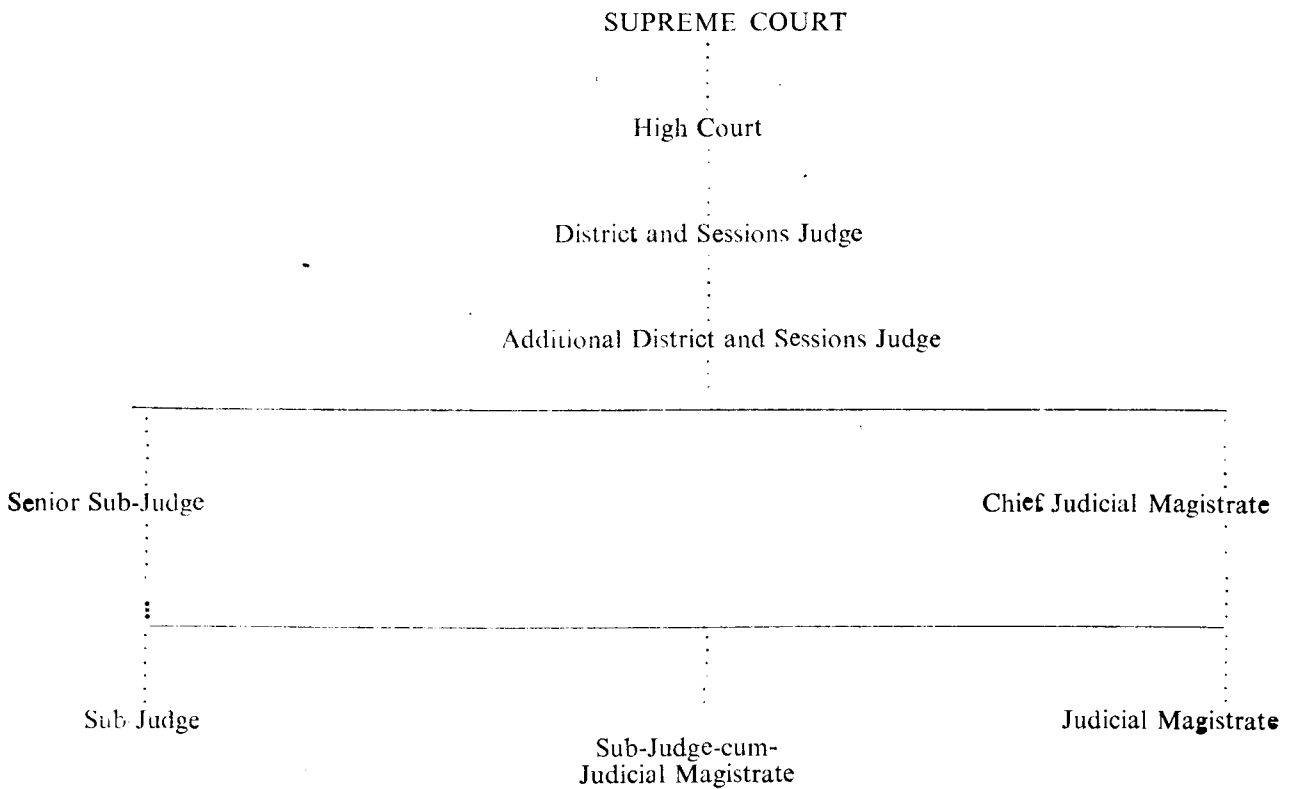
District and Sessions Judge

Senior Branch			Junior Branch	
Principal Judge City Civil Court Ahmedabad.	Chief Metropolitan Magistrate.	Chief Judge, Small Causes Court, Ahmedabad.	Assistant Judge	District Judge
	Additional Chief Metro- politan Magistrate			
	Metropolitan Magistrate.	Judge, Small Causes Court, Ahmedabad.	Civil Judges, Senior Divi- sion.	Chief Judicial Magistrate
			Civil Judge, Junior Divi- sion.	Judicial Magistrate.

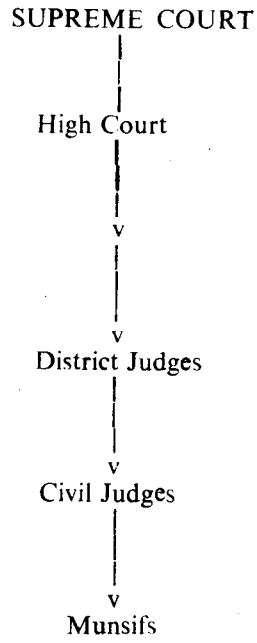
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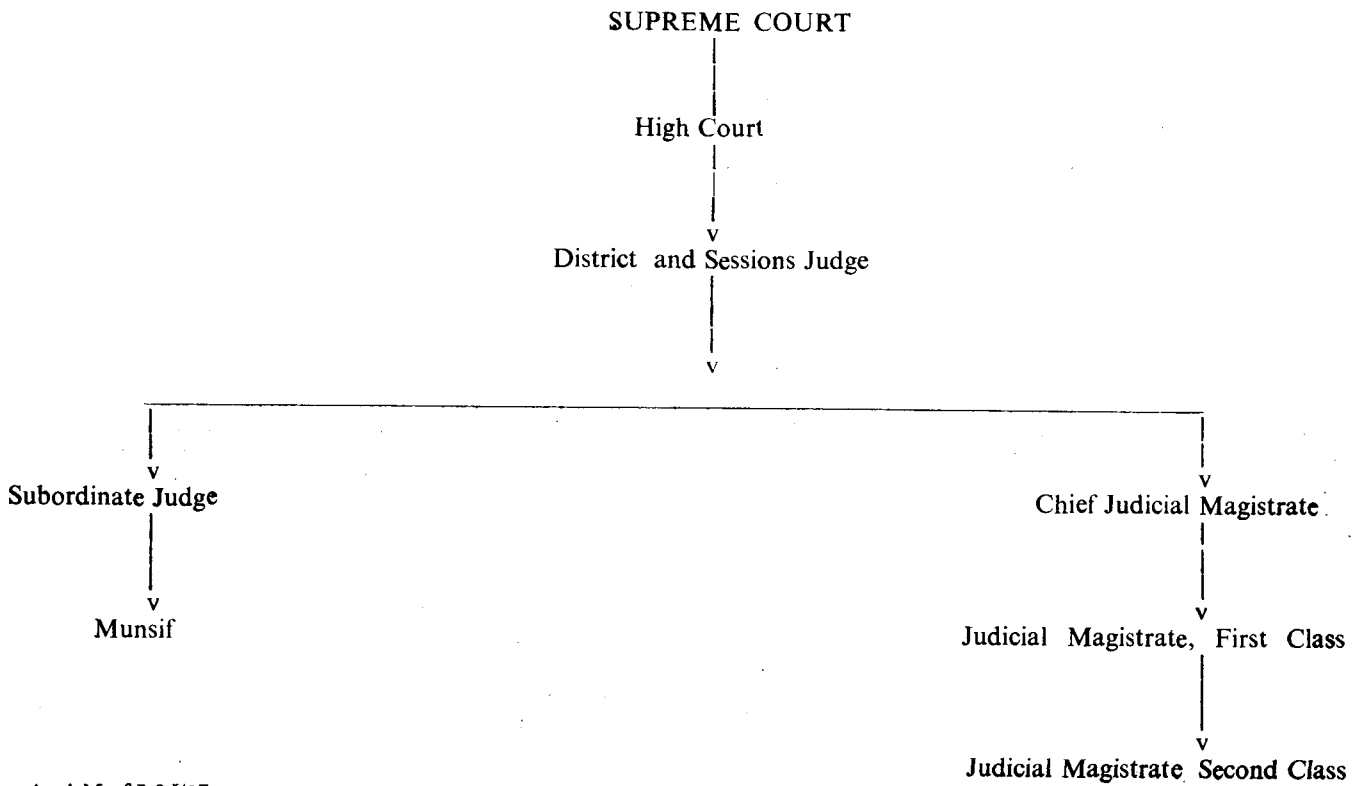
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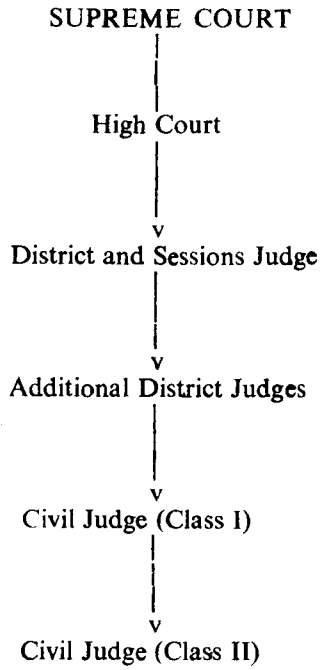
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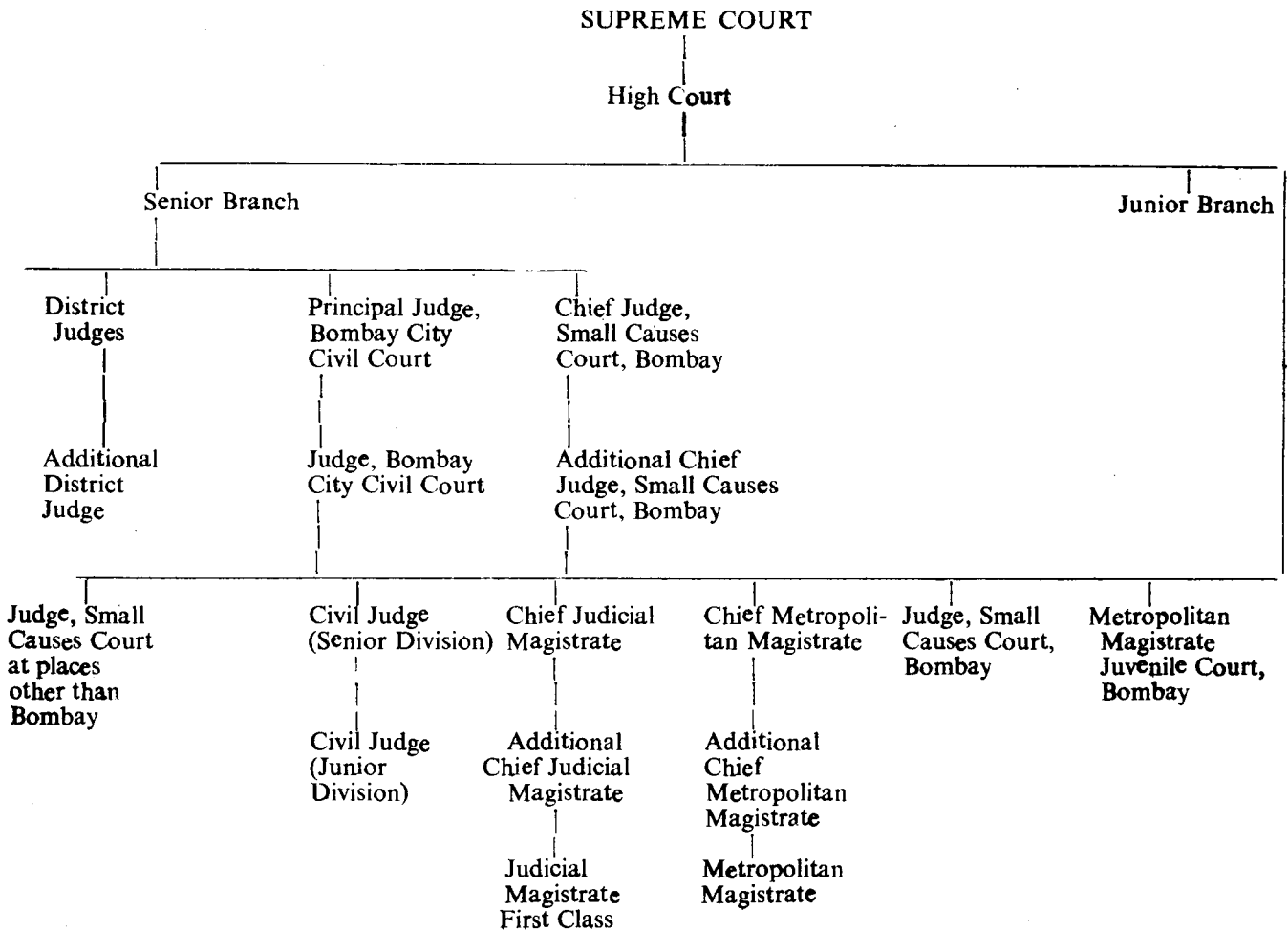
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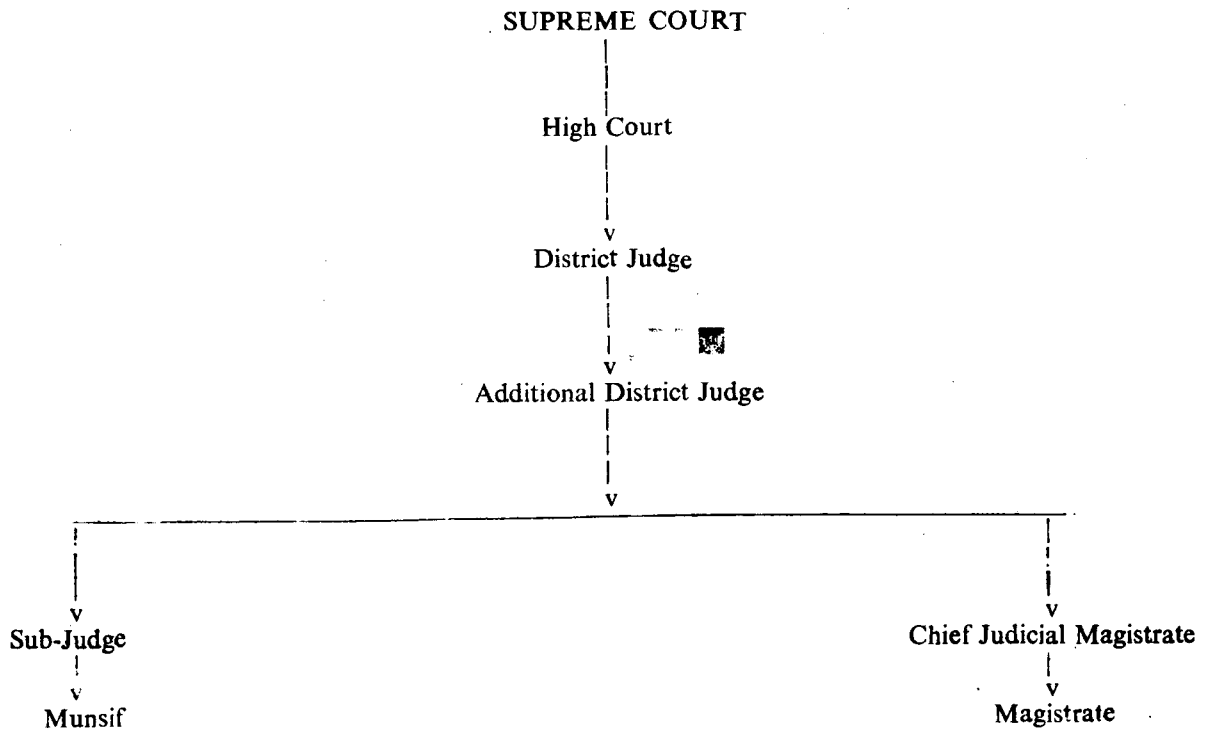
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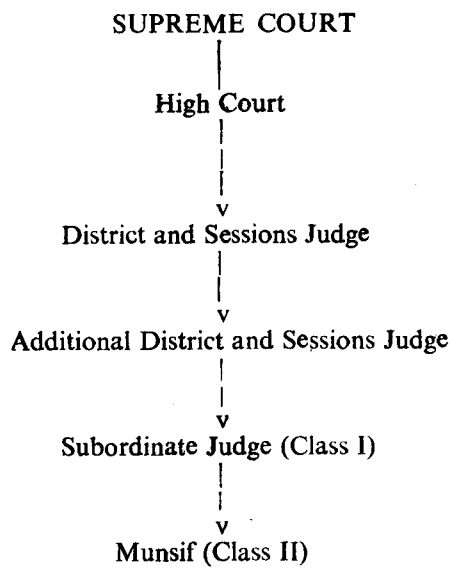
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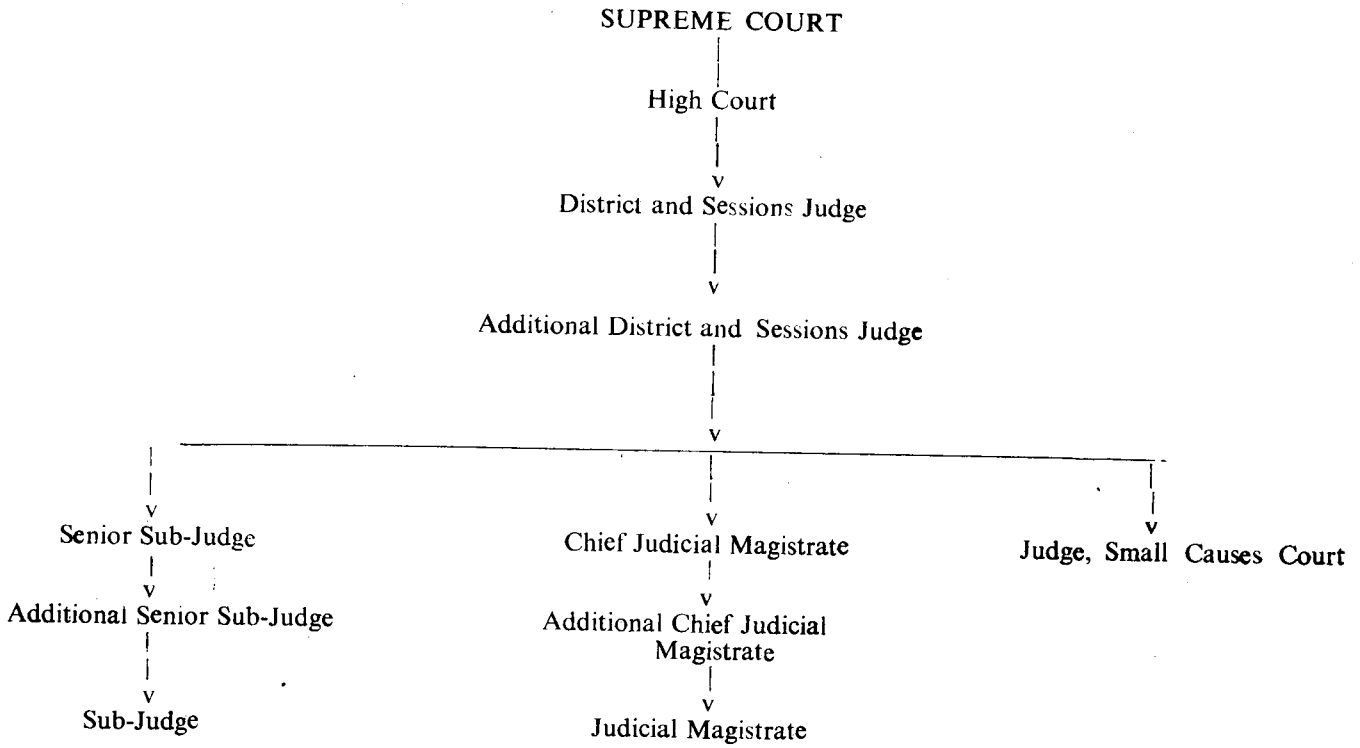
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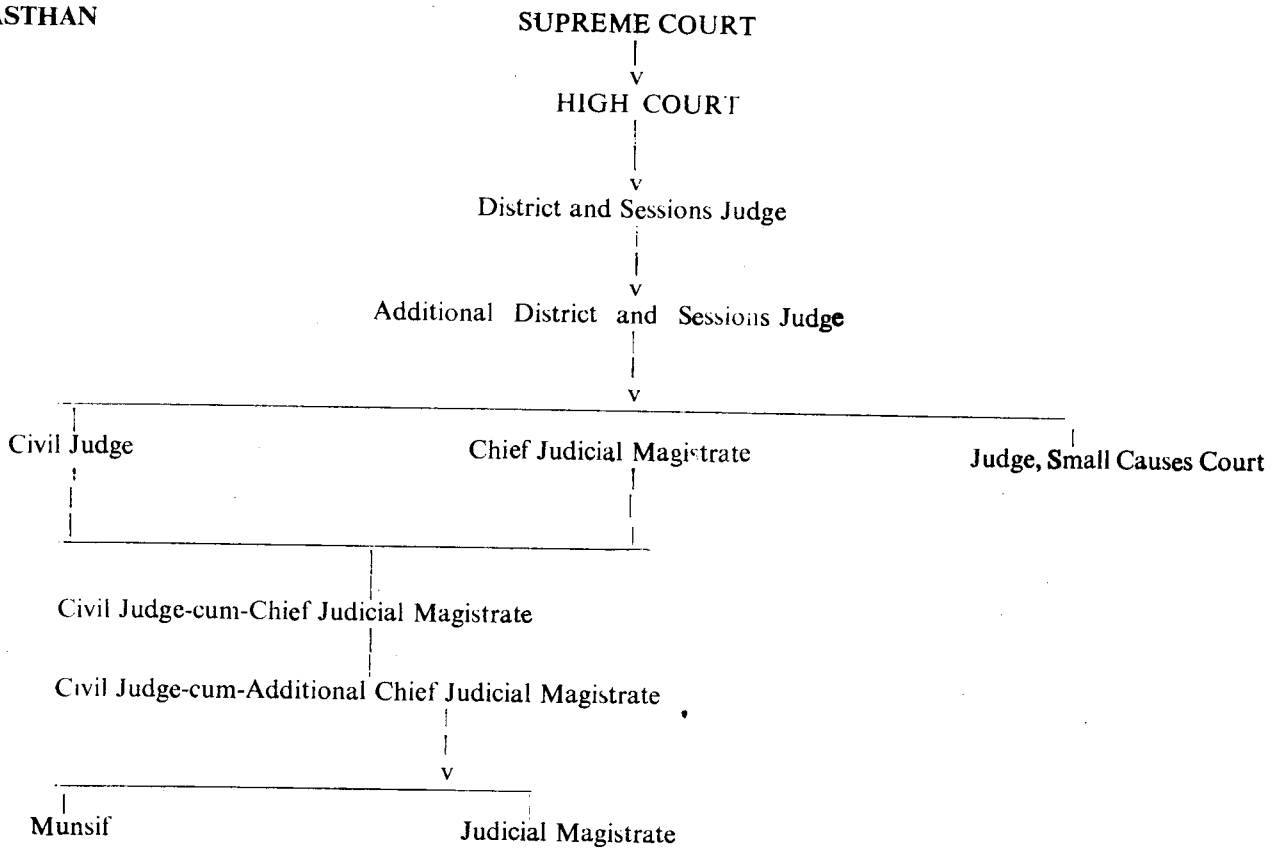
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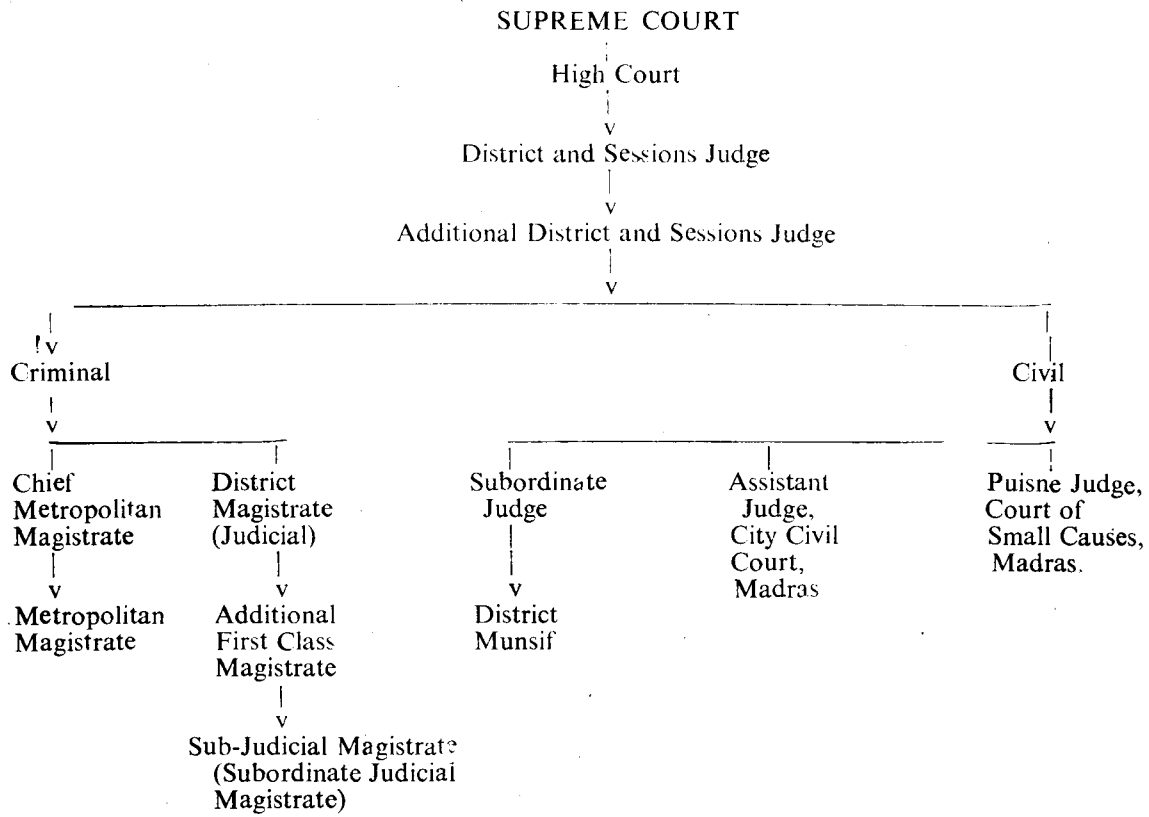
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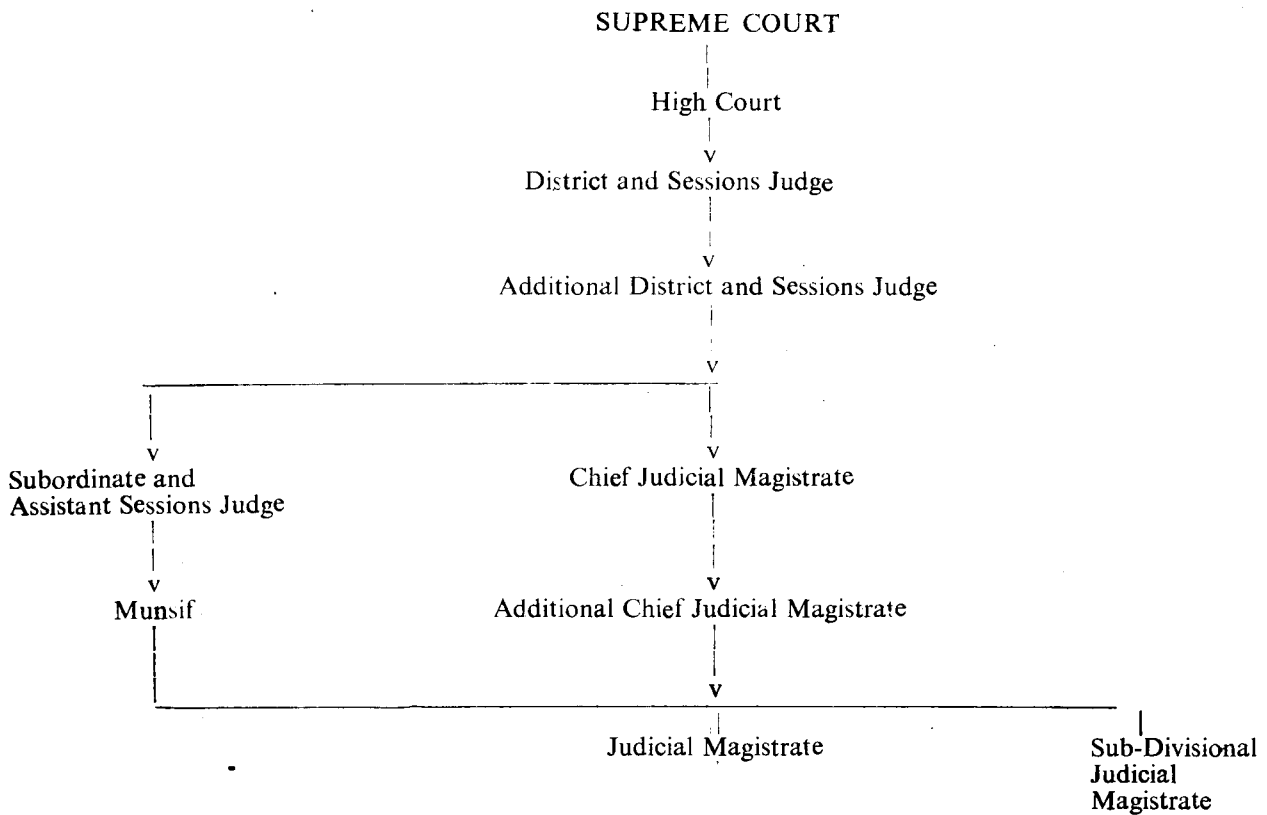
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TAMIL NADU



TRIPURA



ANNEXURE II

Sl. No.	STATE	Categories of Sub-Judges	Agency for Recruitment	Representation of other bodies and their powers	Appointing authority	ELIGIBILITY	
						Educational Qualification	Age
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	1. Subordinate Judges. 2. District Munsifs	Public Service Commission	A Judge of the High Court but no power to award marks	Governor	— Transfer — (i) Law Degree. (ii) Passed the Exam. in Law of Practice and Procedure	Direct recruitment —below 32 years. Transfer— below 45 years.
2.	Assam (Only extracts of the Rules made available to the Law Commission)	Grade I, II & III Grade III	Public Service Commission High Court	—	Governor		
3.	Bihar	I-Subordinate Judges. II-Munsifs	Public Service Commission	An Officer of the High Court to advise	Governor	Graduate degree in Law	22-31 years
4.	Maharashtra	Class I consists of six categories	High Court/ Public Service Commission		Governor/ High Court		21-45 years— varies with different categories

ANNEXURE II

ELIGIBILITY Experience		Quota for Recruitment	Method			Language Requirement	Emergency Recruitment	Disqualification	Sr. No.	State
Bar	Other		Written exam	Viva voce	Both					
9		10	11			12	13	14	1	2
Actual practice for atleast three years.	—	Direct recruitment— —first four Transfer-every fifth			yes	—	—	Bigamy	1.	Andhra Pradesh
		Direct recruitment— 50% and selection from the Members of the Bar 50%.	yes						2.	Assam
One year					yes	Hindi		Bigamy but relaxable.	3.	Bihar
Yes		Varies		yes		Marathi	Retired Judges may be appointed.	—	4.	Maharashtra

Sl. No.	State	Categories of Sub-Judges.	Agency for recruitment	Representation of other bodies and their powers	Appointing authority	ELIGIBILITY	
						Educational Qualifications	Age
1	2	3	4	5	6	7	8
5.	Delhi	Grade I and Grade II	High Court	(i) Chief Justice or a Judge of the High Court deputed by the Chief Justice. (ii) Two Judges of the High Court nominated by the Chief Justice. (iii) Chief Secretary, Delhi Administration. (iv) A Secretary of the Delhi Administration nominated by the Administrator.	Administrator	Practising advocated or qualified to be registered as on advocate.	Not more than 32 years.
6.	Gujarat	Junior Branch Class I and Class II	Public Service Commission	High Court	Governor	LL.B. (Special) A degree or qualified to be enrolled as an Advocate.	(i) 21-35 years. (ii) Upto 45 years for certain State Govt. Officials.
7.	Haryana	Sub-Judge	Public Service Commission	—	Governor	Law Degree for direct recruits	23-30 years. (relaxable upto 35 years for pleaders who have practised for more than two years). Relaxable upto 37 years for certain categories.

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ELIGIBILITY Experience		Quota for Recruitment	Method			Language Requirement	Emergency Recruitment	Disqualification	Sl. No.	State
Bar	Other		written exam.	Viva-voce	Both					
9		10	11			12	13	14	1	2
		100% Direct recruitment			yes	Hindi and English	—	Bigamy but relaxable.	5.	Delhi
Three years and five years		100% direct recruitment			yes	English, Hindi and Gujarati.			6.	Gujarat
Four years		(i) Direct recruitment (ii) H.C.S. (Executive Branch) (iii) H.C.S. (Executive Branch) with Law Degree Provided that the quota for category (iii) shall not exceed 20% of direct recruits.			yes	Hindi		Bigamy but relaxable.	7.	Haryana

Sl. No.	State	Categories of Sub-Judges	Agency for Recruitment	Representation of other bodies and their powers	Appointing Authority	ELIGIBILITY	
						Educational Qualifications	Age
1	2	3	4	5	6	7	8
8.	Himachal Pradesh	Grade I and Grade II	Public Service Commission	High Court	Governor	Degree in Law	21-30 years relaxable upto 40 years for certain categories
9.	Karnataka	I-Civil Judge II-Munsif	A committee of five Judges of the High Court constituted by the High Court of Karnataka	---	---	Degree in Law	25-38 years
10.	Kerala	Civil :- I-Subordinate Judge II-Munsif	Public Service Commission	---	Governor	Degree in Law	Below 35 years
		Criminal :- 4 Categories of Magistrates	Public Service Commission	---	Governor	Degree in Law	Below 32 years
11.	Madhya Pradesh (Recruitment Rules yet to be finalised but the practice in the State is indicated)	Civil Judge Grade I and Grade II	Public Service Commission	---	Governor	Degree in Law	20-30 years

ELIGIBILITY Experience		Quota for Recruitment	Method			Language Requirement	Emergency Recruitment	Disqualifica- tions	Sr. No.	State
Bar	other		written Exam.	Viva- voce	Both					
9		10			11	12	13	14	1	2
		100% direct recruitment			yes	Hindi	Governor may appoint from H.A.S. Officers of graduate in Law	Bigamy but relaxable.	8.	Himachal Pradesh
4 years.		—			yes	Kannada and English	—	—	9.	Karnataka
5 years		Every first and third direct recruitment and every second by transfer.			yes		yes, provided that the incumb- ent fulfils the qualifications.		10.	Kerala
3 years		Alternatively by direct recruitment and transfer from certain officers of the State Govt.			yes		-do-			
—		100% direct recruitment			yes	—	—	—	11.	Madhya Pradesh (Recruitment Rules yet to be finalised but the practice in the State is indicat- ed)

Sr. No.	State	Categories of Sub-Judges	Agency for Recruitment	Representation of Other bodies and their powers	Appointing Authority	ELIGIBILITY	
						Educational Qualifications	Age
1	2	3	4	5	6	7	8
12.	Manipur	Grade II-Sub-Judge/ Chief Judicial Magistrate Grade III—Munsif/ Magistrate	Public Service Commission/ High Court	—	Governor	Degree in Law	22-32 years for direct recruits 25-35 for the Members from the Bar.
13.	Meghalaya (Recruitment Rules not finalised. But recruitments are made through State Public Service Commission and appointments are made by the State Govt. with the prior approval of Guwahati High Court.						
14.	Orissa	Class I-Sub-Judge Class II-Munsif	Public Service Commission	High Court	Governor	Degree in Law	21-28 years for probationers and 32 years for temporary recruits. Relaxable for certain categories of candidates.

ELIGIBILITY Experience		Quota for Recruitment	Method			Language Requirement	Emergency Recruitment	Disqualifications.	Sr. No.	State
Bar	Other		written Exam.	Viva-voce	Both					
9		10	11			12	13	14	1	2
Three years for the Members of the Bar	—	2/3 by direct recruitment and 1/3 by selection from the Bar.			yes	English	—	—	12.	Manipur
									13.	Meghalaya (Recruitment Rules not finalised. But recruitment are made through State Public Service Commission and appointments are made by the State Govt. with the prior approval of Guwahati High Court.
—	—	100% by direct recruitment			yes	Oriya	Emergency Recruitment Rules. 1979. — Law degree. age 28-40 years. Oriya Language. 5 years' practice at Bar. Selection by interview by the Public Service Commission with a nominee of the High Court.		14.	Orissa

Sr. No.	State	Categories of Sub-Judges	Agency for Recruitment	Representation of other bodies and their powers	Appointing Authority	ELIGIBILITY	
						Educational Qualifications	Age
1	2	3	4	5	6	7	8
15.	Punjab	Sub-Judge	Public Service Commission	High Court may suggest subjects of examination	Governor (State Govt. may appoint officers from Punjab Civil Services (Executive Branch) and certain other Officers to act as Sub-Judges although they may not hold law degrees.	Degree in Law normally	23-27 years.
16.	Rajasthan	Munsif	Public Service Commission	Judge of the High Court as an expert at the viva-voce test	Governor	Degree in Law	Below 35 years.
17.	Tamil Nadu	Judicial Services :— Category I- Sub-Judges Category II- District Munsif Magisterial Services: Category I -Addl. First Class Magistrate Category II- Subordinate Magistrates.	Public Service Commission Public Service Commission		Governor Governor	For direct recruits B.A./B.Sc./ B.Com.— Honours Degree. For transferees B.A./B.Sc./ B.Com.—Ho- nours' Degree and B.L. or L.L.B For transferees— Graduate degree and a degree in Law.	Below 32 years for direct recruits. Below 45 years. For transferees— Below 35 years. For direct recruits— Below 30 years.

ELIGIBILITY		Quota for Recruitment	Method			Language Requirement	Emergency Requirement	Disqualifications	Sr. No.	State
Experience			written Exam.	Viva-voce	Both					
Bar	Other									
9		10		11		12	13	14	1	2
			yes			Punjabi (Gurumukhi)		Bigamy but relaxable.	15.	Punjab
		100% by direct recruitment.			yes	Hindi		Prior conviction not a bar provided a certificate from a Superintendent of Police or After care-Home I.G.Prisons is furnished.	16.	Rajasthan
Three years' actual practice		Out of every 20 posts, 11 by direct recruitment and every 9 by transfer from certain categories of Officers of the State Govt.				Tamil	Yes subject to the possession of necessary qualifications.	Bigamy	17.	Tamil Nadu.
2 years	5 years		—	—	—	Tamil	Temporary appointments.	Bigamy		
2 years										

Sr. No.	State	Categories of Sub-Judges	Agency for Recruitment	Representation of other bodies and their powers	Appointing Authority	ELIGIBILITY	
						Educational Qualifications	Age
1	2	3	4	5	6	7	8
18.	Tripura	Grade III- consists of 5 categories	Public Service Commission/ High Court		Governor	Degree in Law	For direct recruits 22-35 and for the Members of the Bar 25-40.
19.	West Bengal		Public Service Commission/ High Court		Governor	Degree in Law	For direct recruits 21-32 and for Members of the Bar 27-32.

ELIGIBILITY		Quota for Recruitment	Method			Language Recruitment	Emergency Recruitment	Disqualifications	Sr. No.	States
Experience Bar	Other		written Exam	Viva Voce	Both					
9		10	11			12	13	14	1	2
3 years for the Members of the Bar		50% by direct recruitment and 50% by selection from the Bar.			yes	Bengali		Bigamy	18.	Tripura
3 years for the Members of the Bar		50% by competitive examination and 50% by selection from the Bar.			Both	Bengali and English			9.	West Bengal