

International Journal of Legal Information

the Official Journal of the International Association of Law Libraries

Volume 36

Issue 2 Summer 2008 - *Global Challenges & the
Indian Legal System*

Article 8

3-2-2009

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B. N. Srikrishna

Chairman of the Sixth Pay Commission of the Government of India

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Recommended Citation

Srikrishna, B. N. (2008) "The Indian Legal System," *International Journal of Legal Information*: Vol. 36: Iss. 2, Article 8.
Available at: <http://scholarship.law.cornell.edu/ijli/vol36/iss2/8>

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The Indian Legal System

B.N. SRIKRISHNA*

The legal system in India follows the common law model prevalent in the countries which were at one time under British Rule or were part of the British Commonwealth. The jurisprudence followed in India is almost the same as the one prevalent in England, though it has been cross-fertilized by typical Indian values.

The Constitution of India has set up three branches of the State:

1. the executive,
2. the judiciary, and
3. the legislature.

These are demarcated by their respective areas of jurisdiction. The judiciary is invested with the power to ensure that all organs of the Constitution act within their respective constitutional limits. It is also the sole interpreter of the constitution and the sole arbiter in all constitutional disputes.

India follows the adversary system of legal procedure. This means that the judge acts as a neutral arbiter upholding the balance between the contending rivals without actively taking part in the forensic debate in the court.

The legal hierarchy places the Supreme Court at the Apex. It adjudicates constitutional issues and also acts as the final court of appeal in certain civil and criminal matters. The Supreme Court also exercises extraordinary Constitutional powers to issue high prerogative writs in cases adjudicating infringements of the fundamental rights guaranteed by the Constitution.

* Mr. Srikrishna is a former justice of the Supreme Court of India. He holds an LL.B and LL.M from the Government Law College and the University of Mumbai respectively. In his early career, he specialized in the field of labor and industrial law where he gained distinction. He was appointed as a judge of the Bombay High Court in 1990, and was later appointed as Chief Justice of High Court of Kerala in 2001. He was elevated to the Supreme Court in 2002, and retired in 2006. Mr. Srikrishna currently serves as Chairman of the Sixth Pay Commission of the Government of India.

The Supreme Court also exercises the extraordinary Constitutional power under Article 136 of hearing appeals in civil and criminal cases by Special Leave. Although, the judgment of the State High Court is conclusive in almost all matters, it would be subject to an appeal before the Supreme Court either by Leave granted by the High Court under Articles 132 and 133 or by Special Leave granted by the Supreme Court under Article 136 of the Constitution. The Supreme Court also exercises original jurisdiction in disputes between States or in disputes between one or more States and the Union of India.

Each State has its own High Court which is the final court of appeal in that jurisdiction. The High Court, apart from being the final court of appeal in civil and criminal matters, also exercises extraordinary constitutional jurisdiction under Articles 226 and 227. Under Article 226, it is empowered to issue high prerogative writs in cases of breach of fundamental rights and also in other cases where any State organ acts in an illegal manner or without jurisdiction and causes injustice to person that is irreparable by the normal mode of litigation. Since the power is an extraordinary one, it is discretionary on the part of the High Court to exercise it. Under Art.227 of the Constitution, the High Court is charged with the duty of ensuring that the Courts and Tribunals subordinate to it act within their jurisdictional limits. The High Court is also in charge of the administration of justice in the State. The power to appoint and/or to dismiss subordinate Judges is to be exercised by the State in consultation with and as recommended by the High Court while their promotion postings and other connected matters are exclusively within the High Court's domain.

Below the High Court, there is a District Judge in each District who is in charge of the administration of justice in his District. He would act as the Court of Appeal in most matters and also as the court of original jurisdiction in some matters with large pecuniary stakes. The District Judge serves in an appellate court in respect of civil and criminal appeals arising in the District and also exercises power of a court of sessions dealing with criminal trials of serious offences. Below the District Judge, there would be Judges at lower levels of the rank of Junior or Senior Civil Judges, and Magistrates administering criminal jurisdiction.

Although, the model of legal administration in India is closely akin to the Common Law model, the Indian courts must keep the Constitutional values in mind while administering justice. The signature theme of the constitution, as pointed out by the Indian Supreme Court, is social justice, and that is uppermost in the minds of the courts administering justice.

Apart from the hierarchy of regular courts, the Constitution also makes provisions for special Tribunals to aid in the administration of justice. Articles 323A and 323B empower the Government to set up special tribunals to deal with causes in special areas. Thus we have Tax Tribunals, Administrative Tribunals, Land Tribunals, and so on. These courts exercise large powers in their respective areas. There are also special forums like the Consumer courts, Electricity Regulatory Commission, Telecom Disputes Tribunal, each with an elaborate setup and an Appellate forum.

Judicial Independence is one of the basic features of the Indian Constitution and the courts jealously guard it. No incursion into the judicial arena by the executive or legislative, except as authorized by the Constitution, would ever be tolerated by the courts. Even the appointment of Judges to the High Courts and Supreme Courts has been taken over by the Judges by a creative interpretation of the Constitutional provisions.

The Doctrine of Judicial Review of legislative and executive acts is another immutable value of the Indian legal system. It goes hand in hand with the doctrine of Independence of the Judiciary.