

## UNIT-3 (Introduction and Basic Information about Legal System)

### : Sources of law in India:

The main source of law in India is **the Constitution** which gives due recognition to **statutes**, case law and customary law, consistent with their dispensations. The **statutes** are enacted by the Parliament, State Legislatures and Union Territory Legislatures.

### Types of law in India-

There are five **types** of legal system i.e. civil **law**; common **law**; customary **law**; religious **law** and mixed **law**.

In **Indian** Judicial System there are four **types of law**. The Criminal **law** is enforced by the police.

### THE COURT STRUCTURE OF INDIA:

There are three different levels of **courts in India**.

District **Court**-The **courts** that most people interact with are called subordinate or district **courts** or Tehsil level **court**.

High **Court**-Each state has a High **Court** which is the highest **court** of that state.

Supreme **Court** is at the top-level.

The judicial system of India is mainly consisting of **three types** of courts- the Supreme Court, The High Courts and the subordinate courts.

**Courts** decide what really happened and what should be done about it. They decide whether a person committed a crime and what the punishment should be. They also provide a peaceful way to decide private disputes that people can't resolve themselves.

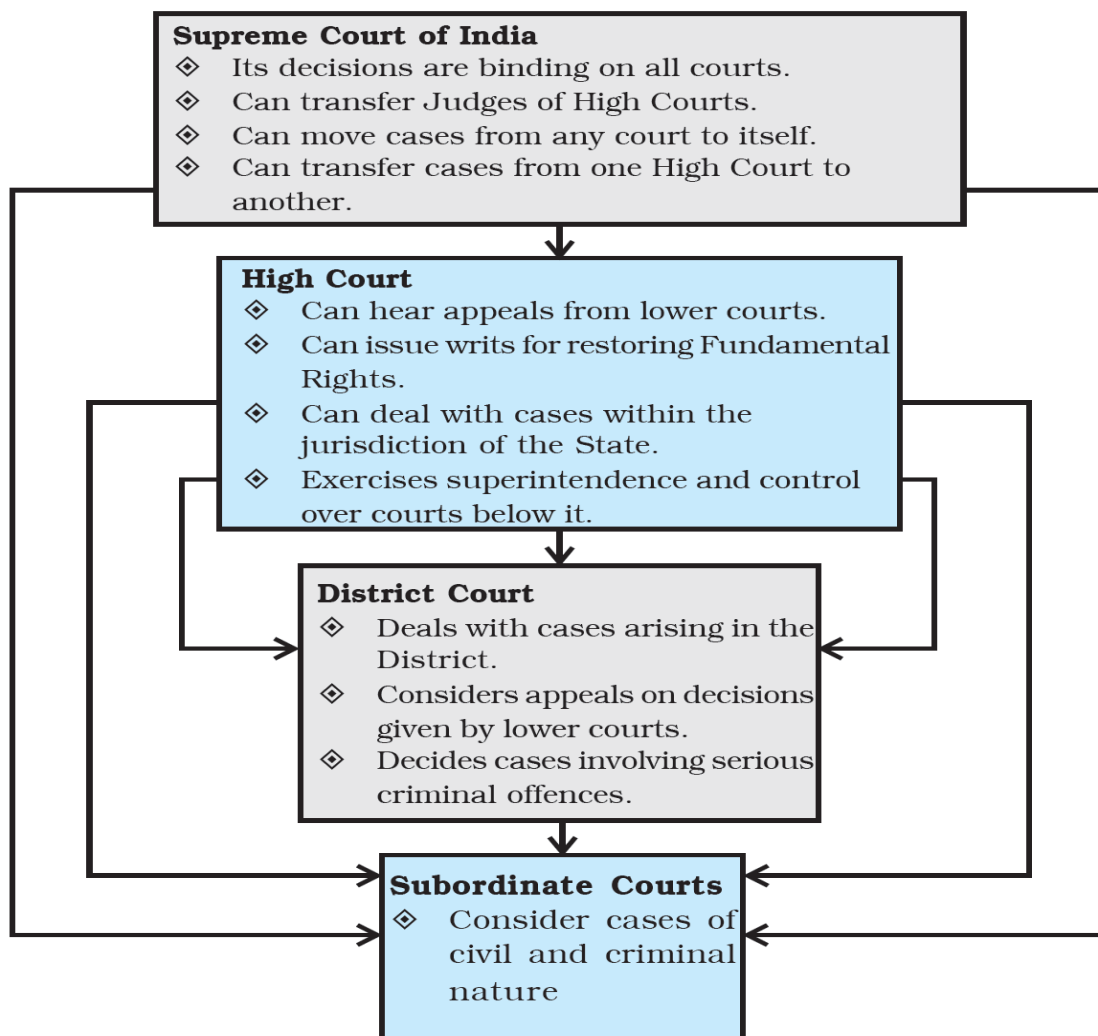
### Function of Court-

- The **Due Process Function**. a. Protect Individual Rights.
- The **Crime Control Function**. a. Punishment & repression of criminal conduct.
- The **Rehabilitation Function**. a. Provide treatment offenders, when appropriate.
- The Bureaucratic Function.

India has a single integrated judicial system. The judiciary in India has a pyramidal structure with the Supreme Court (SC) at the top. High Courts are below the SC, and below them are the district and subordinate courts.

The lower courts function under the direct superintendence of the higher courts.

The diagram below gives the structure and organisation of the judicial system in the country.



Apart from the above structure, there are also **two branches of the legal system**, which are:

1. **Criminal Law:** These deal with the committing of a crime by any citizen/entity. A criminal case starts when the local police file a crime report. The court finally decides on the matter.
2. **Civil Law:** These deal with disputes over the violation of the Fundamental Rights of a citizen.

Supreme Court has three types of jurisdictions.

They are original, appellate and advisory.

The jurisdiction of the Supreme Court are mentioned in Articles 131, 133, 136 and 143 of the Constitution.

## What is the role of the Judiciary?

The functions of the judiciary in India are:

1. **Administration of justice:** The chief function of the judiciary is to apply the law to specific cases or in settling disputes. When a dispute is brought before the courts it 'determines the facts' involved through evidence presented by the contestants. The law then proceeds to decide what law is applicable to the case and applies it. If someone is found guilty of violating the law in the course of the trial, the court will impose a penalty on the guilty person.
2. **Creation of judge-case law:** In many cases, the judges are not able to, or find it difficult to select the appropriate law for application. In such cases, the judges decide what the appropriate law is on the basis of their wisdom and common sense. In doing so, judges have built up a great body of 'judge-made law' or 'case law.' As per the doctrine of 'stare decisis', the previous decisions of judges are generally regarded as binding on later judges in similar cases.
3. **Guardian of the Constitution:** The highest court in India, the SC, acts as the guardian of the Constitution. The conflicts of jurisdiction between the central government and the state governments or between the legislature and the executive are decided by the court. Any law or executive order which violates any provision of the constitution is declared unconstitutional or null and void by the judiciary. This is called 'judicial review.' Judicial review has the merit of guaranteeing the fundamental rights of individuals and ensuring a balance between the union and the units in a federal state.
4. **Protector of Fundamental Rights:** The judiciary ensures that people's rights are not trampled upon by the State or any other agency. The superior courts enforce Fundamental Rights by issuing writs.
5. **Supervisory functions:** The higher courts also perform the function of supervising the subordinate courts in India.
6. **Advisory functions:** The SC in India performs an advisory function as well. It can give its advisory opinions on constitutional questions. This is done in the absence of disputes and when the executive so desires.

**7. Administrative functions:** Some functions of the courts are non-judicial or administrative in nature. The courts may grant certain licenses, administer the estates (property) of deceased persons and appoint receivers. They register marriages, appoint guardians of minor children and lunatics.

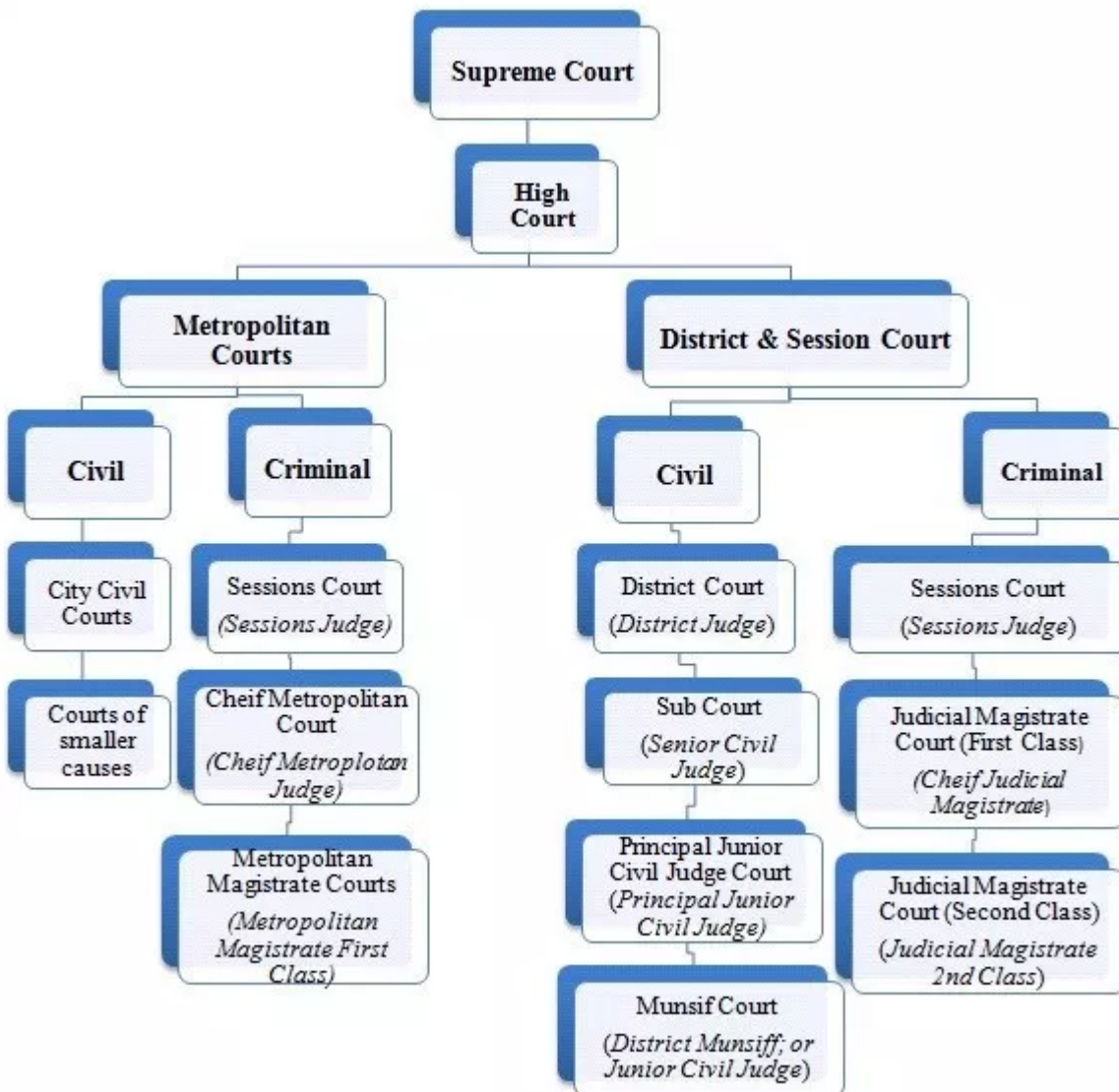
**8. Special role in a federation:** In a federal system like India's, the judiciary also performs the important task of settling disputes between the centre and states. It also acts as an arbiter of disputes between states.

**9. Conducting judicial enquiries:** Judges normally are called to head commissions that enquire into cases of errors or omissions on the part of public servants.

## 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.

- 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.



- The court of the district judges is the highest civil court in a district.
- It has both administrative and judicial powers.
- The court of the District Judge is in the district HQ.
- It can try criminal and civil cases and hence, the judge is called District and Sessions Judge.
- Under the district courts, there are courts of the Sub-Judge, Additional Sub-Judge and Munsif Courts.
- Most civil cases are filed in the Munsif's court.

### Civil courts have four types of jurisdiction:

- **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.

### Acts of Parliament:

A bill is the draft of a legislative proposal, which, when passed by both houses of **Parliament** and assented to by the President, becomes an **act of Parliament**. ... The former are called government bills and the latter, private member's bill. Bills may also be classified as public bills and private bills.

### Difference between Bill and Act:

A **bill** is the draft of a legislative proposal, which when passed by both houses of Parliament and assented to by the President, becomes an **Act of Parliament**. ... A public **bill** is one referring to a matter applying to the public in general, whereas a private **bill** relates to a particular person or corporation or institution.

**A Bill undergoes three readings in each House, i.e., the Lok Sabha and the Rajya Sabha, before it is submitted to the President for assent.**

- **First Reading.** ...
- **Second Reading.** ...
- **Third Reading.**

**Legislation** is **law** made by parliaments. **Legislation** is also known as statute **law**, statutes, or Acts of Parliament. ... If there is a conflict **between legislation** and the common **law**, **legislation** will over-ride the common **law**. However, that conflict must be clear.

## What are the 8 Steps of how a Bill become Law?

### Steps:

- Step 1: The bill is drafted. ...
- Step 2: The bill is introduced. ...
- Step 3: The bill goes to committee. ...
- Step 4: **Subcommittee review** of the bill. ...
- Step 5: Committee **mark up** of the bill. ...
- Step 6: **Voting** by the full chamber on the bill. ...
- Step 7: Referral of the bill to the other chamber. ...
- Step 8: The bill goes to the president.

### Types of Bill:

A **bill** is the draft of a legislative proposal, which becomes a law after receiving the approval of both the houses of the **Parliament** and the assent of the President.

There are four types of **bills**-

1. Ordinary **bill**,
2. Money **bill**.
3. Finance **bill** and
4. **Constitutional** amendment **bills**.

## Common Law or Case law:

### What Is Common Law?

Common law is a body of unwritten laws based on legal precedents established by the courts. Common law influences the decision-making process in unusual cases where the outcome cannot be determined based on existing statutes or written rules of law.

- Common law draws from institutionalized opinions and interpretations from judicial authorities and public juries.
- Common laws sometimes prove the inspiration for new legislation to be enacted.

The **common law system** is a **system** of **law** based on recorded judicial precedents. It came to **India** with the invasion of British East **India** Company. ... After the First War of Independence in 1857, the control of company territories in **India** passed to the British Crown.

## Case Law:

**Case law** is **law** that is based on judicial decisions rather than **law** based on constitutions, statutes, or regulations. ... **Case law**, also used interchangeably with common **law**, refers to the collection of precedents and authority set by previous judicial decisions on a particular issue or topic.

## The Court System in India:

### 1. District Court-

The **District Courts** of India are the local district courts of the State governments. In India for every district or for one or more districts together taking into account the number of cases, population distribution in the district.

These Courts administer justice in India at a district level.

The highest court in each district is that of the District and Sessions Judge.

District and Sessions Judge is the principal court of original civil jurisdiction besides the High Court of the State and which derives its jurisdiction in civil matters primarily from the code of civil procedure.

The district court is also a court of Sessions when it exercises its jurisdiction on criminal matters under the Code of Criminal procedure. The district court is presided over by one District Judge appointed by the state Governor with on the advice of state chief justice.

In addition to the district judge there may be a number of Additional District Judges and Assistant District Judges depending on the workload.

OR

The **District Courts of India** are the local **district courts** of the State governments in **India** for every **district** or for one or more **districts** together taking into account the number of cases, population distribution in the **district**. These **Courts** administer justice in **India** at a **district level**.

Such **courts** conduct Appellate and Original jurisdiction in all matters related to criminal and civil cases. **District Courts** render justice at the **district level**.

There are total **672 District courts** in India.

### 2. District Consumer Forum:

To provide simple, speedy and inexpensive redressal of **consumer** disputes, it envisages a 3-tier quasi-judicial machinery at the National, State and **District** levels. ... **District Consumer Dispute Redressal Forum**, known as **District Forum**, deals with complaints involving costs and compensation less than Rs. Twenty Lakh.



### 3. Tribunals:

#### Tribunals in India-

Tribunal is a **quasi-judicial institution** that is set up to deal with problems such as resolving administrative or tax-related disputes.

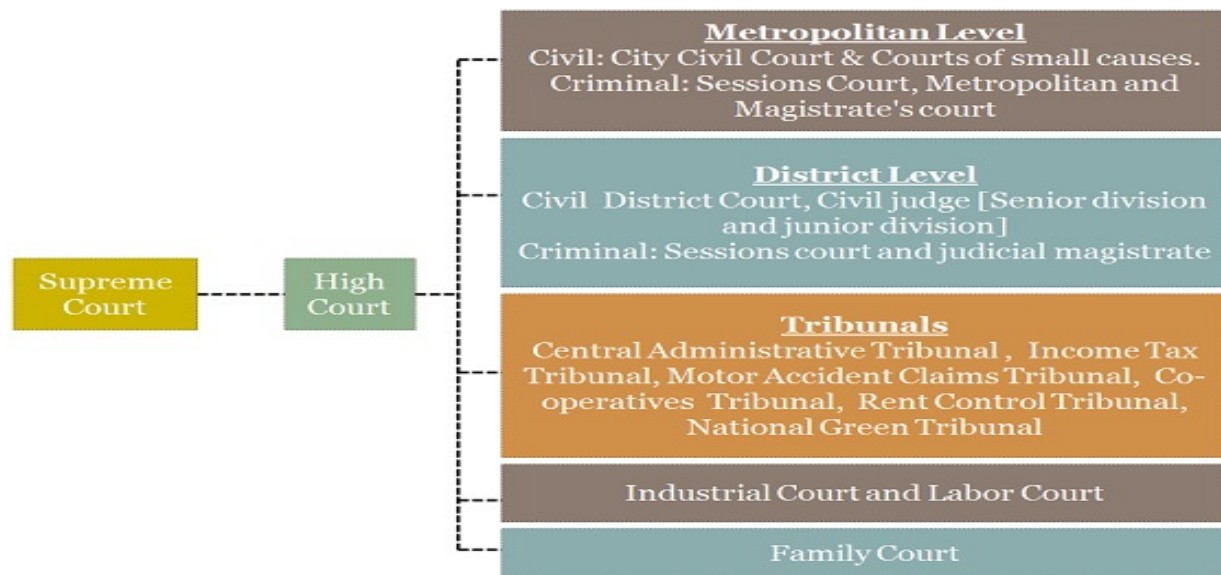
It performs a number of functions like **adjudicating disputes**, **determining rights between contesting parties**, **making an administrative decision**, **reviewing an existing administrative decision** and so forth.

- The term 'Tribunal' is derived from the word 'Tribunes', which means '**Magistrates of the Classical Roman Republic**'.
- A Tribunal, generally, **is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes – is called a tribunal in its title.**

#### Need of Tribunal-

- **To overcome the situation that arose due to the pendency of cases in various Courts**, domestic tribunals and other Tribunals have been established under different Statutes, hereinafter referred to as the Tribunals.
- The Tribunals were set up to **reduce the workload of courts**, to **expedite decisions** and to **provide a forum** which would be managed by lawyers and experts in the areas falling under the jurisdiction of the Tribunal.
- The tribunals perform an important and specialised role in justice mechanism. They hear disputes related to the **environment, armed forces, tax and administrative issues.**

## Constitutional Provisions:



- Tribunals were **not part of the original constitution**, it was incorporated in the Indian Constitution by **42<sup>nd</sup> Amendment Act, 1976**.
  - **Article 323-A** deals with Administrative Tribunals.
  - **Article 323-B** deals with tribunals for other matters.
- Under **Article 323 B**, the Parliament and the state legislatures are authorised to provide for the establishment of tribunals for the adjudication of disputes relating to the following matters:
  - Taxation
  - Foreign exchange, import and export
  - Industrial and labour
  - Land reforms
  - Ceiling on urban property
  - Food stuff

- Rent and tenancy rights
- **Articles 323 A and 323 B differ in the following three aspects:**
  - While **Article 323 A** contemplates the establishment of **tribunals for public service matters only**, **Article 323 B** contemplates the establishment of **tribunals for certain other matters (mentioned above)**.
  - While tribunals under **Article 323 A** can be established only by Parliament, tribunals under **Article 323 B** can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.
  - Under **Article 323 A**, only one tribunal for the Centre and one for each state or two or more may be established. There is no question of the hierarchy of tribunals, **whereas under Article 323 B a hierarchy of tribunals may be created**.
- **Article 262:** The Indian Constitution provides a role for the Central government in adjudicating conflicts surrounding inter-state rivers that arise among the state/regional governments.

## Types of Tribunals in India:

### 1. Administrative Tribunals:

- Administrative Tribunals was set-up by an act of Parliament, **Administrative Tribunals Act, 1985**.
  - It adjudicates disputes and complaints with respect to recruitment and conditions of service of **persons appointed to the public service and posts in connection with the affairs of the Union and the States**.
- **The Administrative Tribunals Act, 1985 provides for three types of tribunals:**
  - The Central Government establishes an administrative tribunal called the **Central Administrative Tribunal (CAT)**.
  - The Central Government may, upon receipt of a request in this behalf from any **State Government**, establish an administrative tribunal for such State employees.
  - Two or more States might ask for a joint tribunal, which is called the **Joint Administrative Tribunal (JAT)**, which exercises powers of the administrative tribunals for such States.

- There are tribunals for settling various **administrative and tax-related disputes**, including **Central Administrative Tribunal (CAT)**,
- **Income Tax Appellate Tribunal (ITAT)**,
- **Customs, Excise and Service Tax Appellate Tribunal (CESTAT)**,
- **National Green Tribunal (NGT)**,
- **Competition Appellate Tribunal (COMPAT)** and
- **Securities Appellate Tribunal (SAT)**.

## 2. Central Administrative Tribunal:

- It has jurisdiction to deal with **service matters** pertaining to the Central Government employees or of any Union Territory, or local or other government under the control of the Government of India, or of a corporation owned or controlled by the Central Government.
  - The **CAT was set-up on 1 November 1985**.
  - It has 17 regular benches, 15 of which operate at the **principal seats of High Courts** and the remaining two at **Jaipur and Lucknow**.
  - The tribunal consists of a **Chairman, Vice-Chairman and Members**.
    - The Members are drawn, **both from judicial as well as administrative streams** so as to give the Tribunal the benefit of expertise both in legal and administrative spheres.
- The appeals against the orders of an **Administrative Tribunal** shall lie before the **Division Bench** of the concerned High Court.

## 3. State Administrative Tribunal:

- Article 323 B empowers the state legislatures to set up tribunals for various matters like levy, assessment, collection and enforcement of any of the tax matters connected with land reforms covered by Article 31A.

## 4. Water Disputes Tribunal:

- The Parliament has enacted **Inter-State River Water Disputes (ISRWD) Act, 1956** have formed various **Water Disputes Tribunal** for adjudication of disputes relating to waters of inter-State rivers.

- **Standalone Tribunal:** The Inter-State River Water Disputes (Amendment) Bill, 2019 is passed by Parliament for amending the existing ISRWD Act, 1956 to constitute a **standalone Tribunal** to remove the water dispute.

## 5. Armed Forces Tribunal (AFT):

- It is a military tribunal in India. It was established under the **Armed Forces Tribunal Act, 2007**.
- It has provided the power for the adjudication or trial by AFT of disputes and complaints with respect to commission, appointments, enrolments and conditions of service in respect of persons subject to the **Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950**.
- Besides the **Principal Bench in New Delhi**, AFT has Regional Benches at Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai and Jaipur.
  - Each Bench comprises of a Judicial Member and an Administrative Member.
- The **Judicial Members** are retired **High Court Judges** and **Administrative Members** are retired **Members** of the **Armed Forces** who have held the rank of **Major General/ equivalent** or above for a period of three years or more.

## 6. National Green Tribunal (NGT):

- The **National Environment Tribunal Act, 1995** and **National Environment Appellate Authority Act, 1997** were found to be inadequate giving rise to demand for an institution to deal with environmental cases more efficiently and effectively.
  - As a result NGT was formed as a special fast-track, quasi-judicial body comprising of judges and environment experts to ensure expeditious disposal of cases.
- The National Green Tribunal was **established in 2010 under the National Green Tribunal Act 2010 as a statutory body**.
  - It was setup for effective and expeditious disposal of cases relating to **environmental protection** and **conservation of forests and other natural resources**.
  - It also ensures **enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property**.
- The Tribunal ensures for disposal of applications or appeals finally **within 6 months** of filing of the same.
  - **New Delhi** is the **Principal Place of Sitting** of the Tribunal and **Bhopal, Pune, Kolkata and Chennai** shall be the other four place of sitting of the Tribunal.

## 7. Income Tax Appellate Tribunal

- **Section 252 of the Income Tax Act, 1961** provides that the Central Government shall constitute an **Appellate Tribunal** consisting of many Judicial Members and Accountant members.

## Characteristics of Administrative Tribunals:

- Administrative Tribunal is a creation of a statute.
- An Administrative Tribunal is **vested in the judicial power of the State** and thereby performs **quasi-judicial functions**.
- Administrative Tribunal is bound to act judicially and follow the principles of **natural justice**.
- It is required to act openly, and impartially.
- An Administrative Tribunal is **not bound** by the strict rules of **procedure and evidence prescribed by the civil procedure court**.

## Merging of Tribunals:

- **The Finance Act of 2017 merged eight tribunals according to functional similarity.**  
The list of the tribunals that have been merged are given below:
  - The Employees Provident Fund Appellate Tribunal with The Industrial Tribunal.
  - The Copyright Board with The Intellectual Property Appellate Board .
  - The Railways Rates Tribunal with The Railways Claims Tribunal.
  - The Appellate Tribunal for Foreign Exchange with The Appellate Tribunal Act, 1976.
  - The National Highways Tribunal with The Airport Appellate Tribunal.
  - The Cyber Appellate Tribunal and The Airports Economic Regulatory Authority Appellate Tribunal with The Settlement and Appellate Tribunal (TDSAT) .
  - The Competition Appellate Tribunal with the National Company Law Appellate Tribunal.

## Difference between Tribunal and Court:

- Administrative Tribunals and Ordinary Courts both deal with the disputes between the parties which affects the rights of the subjects.

- Administrative Tribunal is not a court. Some notable differences between a court and Administrative Tribunal are as follows -

No.	Court of Law	Tribunal
1.	A court of law is a part of the <b>traditional judicial system</b> whereby judicial powers are derived from the state.	An Administrative Tribunal is an <b>agency created by the statute</b> and invested with judicial power.
2.	The Civil Courts have judicial power to try all <b>suits of a civil nature</b> .	Tribunal is also known as the Quasi-judicial body. Tribunals have the power to try cases of <b>special matter which are conferred on them by statutes</b>
3.	Judges of the ordinary courts of law are independent of the executive in respect of their tenure, terms and conditions of service etc. <b>Judiciary is independent of Executive</b>	Tenure, terms and conditions of the services of the members of <b>Administrative Tribunal are entirely in the hands of Executive (government)</b> .
4.	The presiding officer of the <b>court of law is trained in law</b> .	The president or a member of the Tribunal may not be trained as well in law. He may be an <b>expert in the field of Administrative matters</b> .
5.	A judge of a court of law <b>must be impartial</b> who is not interested in the matter directly or indirectly.	An Administrative Tribunal <b>may be a party to the dispute</b> to be decided by it.
6.	A court of law is bound by all the <b>rules of evidence and procedure</b> .	An Administrative Tribunal is not bound by rules but bound by the <b>principles of nature of Justice</b> .
7.	Court must decide all questions <b>objectively</b> on the basis of evidence and materials	Administrative Tribunal may decide questions by taking into account departmental policy, the

	on record.	decision of Administrative Tribunal may be <b>subjective rather than objective</b> .

#### 4. High Court in India:

- The High Court of a State is the highest court of the State and all other courts of the State work under it.
- Normally there is one High Court in every State but there can be only one High Court for two or more States as well ([Article 231](#)), [according to the constitution](#).
- There are [25 High Courts in India](#).
- The Calcutta High Court, established in 1862, is the [oldest High Court in India](#). [The Bombay and Madras High Courts were also established in the same year](#).
- The [newest High Courts are the Telangana Court and Andhra Pradesh High Court, both established in the year 2019](#).
- In every High Court, there is a Chief Justice and many other judges whose number is defined by the President of India.
- The Bombay, Madras and Calcutta High Courts are the [three Chartered High Courts in India](#)
- The Madras Law Journal, published from the Madras High Court, was the first journal in India dedicated to reporting judgements of a Court (1891).



## Total High Courts in India:

The total number of high courts in India is **25**. The list High Courts for all states and union territories with established year is given below:

List of High Courts in India			
Name	Year	Territorial Jurisdiction	Seat
Kolkata	1862	West Bengal, Andman & Nicobar Islands	Kolkata ( Bench of port Blair)
Bombay	1862	Maharastra, Dadar, & Nagar Haveli. Goa, Daman Diu	Mumbai (Bench at Panaji, Aurangabad and Nagpur)
Chennai	1862	Tamil Nadu & Pondicherry	Chennai (Bench at Madurai)
Allahabad	1866	Utter Pradesh	Allahabad (Bench at Lucknow)
Karnataka	1884	Karnataka	Bengaluru (Bench at Dharwad and Gulbarga)
Patna	1916	Bihar	Patna
Jammu & Kashmir	1928	Jammu & Kashmir	Sri Nagar & Jammu
Punjab & Haryana	1947	Punjab, Haryana , Chandigarh	Chandigarh
Guwahati	1948	Assam, Nagaland, Mizoram and	Guwahati (Bench at Kohima, Aizawl)

		Arunachal Pradesh	and Itanagar
Orissa	1948	Orissa	Cuttack
Rajasthan	1949	Rajasthan	Jodhpur ( Bench – Jaipur)
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Bench –Indore , Gwalior)
Kerala	1958	Kerala & Lakshadweep	Ernakulam
Gujarat	1960	Gujarat	Ahmedabad
Delhi	1966	Delhi	Delhi
Himachal Pradesh	1966	Himachal Pradesh	Shimla
Sikkim	1975	Sikkim	Gangtok
Chhattisgarh	2000	Chhattisgarh	Bilaspur
Uttarakhand	2000	Uttarakhand	Nainital
Jharkhand	2000	Jharkhand	Ranchi
Tripura	2013	Tripura	Agartala
Manipur	2013	Manipur	Imphal
Meghalaya	2013	Meghalaya	Shillong

Andhra Pradesh	2019	Andhra Pradesh	Amravati
Telangana	2019	Telangana	Hyderabad

### Appointment of the Judges-

- The Chief Justice of a High Court is appointed by [the President with the consultation of the Chief Justice of the Supreme Court and the Governor of the State.](#)
- The other judges are appointed by the will of President, Governor and the Chief Justice of High Court.

### Qualifications for the Judges-

- He should be a citizen of India.
- He should have been an advocate in one or more High Courts in India or a judge for at least 10 years in subordinate courts in India.

### Tenure-

- Originally the age of the retirement of the judges of the High Courts was fixed at 60 but it was raised to [62 in 1963 according to the 15th amendment of the Constitution.](#)

### Removal of the Judges-

- A judge may leave his office by resigning. He will send his letter of resignation to the President.
- His office would be considered to have been vacated if he is appointed as a judge of the Supreme Court or is transferred to some other High Court.
- A judge of a High Court may also be removed like a judge of the Supreme Court. A judge of High Court may be removed by the President if the Parliament passes a motion against him by an absolute majority and 2/3rd majority of the members present and voting, both the Houses sitting separately.

### Salary of High Court Judge-

- The pay of the Chief Justice of a High Court is rupees 280,000/- per month and that of the other judges is rupees 250,000/- per month.

## **Powers and Functions of High Court:**

### **High Court has the following jurisdiction and powers:**

**1) Power to issue certain writs:-**Every High Court has the power to issue writs of habeus corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of fundamental Rights or for other purpose.

**2) Power of Superintendence:** Every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

**3) Power to transfer case:** If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

- either dispose of the case itself; or
- determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgement on such question, and the said court shall on receipt there of proceed to dispose of the case in conformity with such judgement.

**4) Consultation in the appointment and posting etc. of District Judges:** The High Court is consulted by the Governor in the appointment, posting and promotion of District Judges. It is also consulted in the appointment of other members of the State Judicial Service.

**5) Control over subordinate courts:** The control over district court 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 district judge is vested in the High Court.

**6) Other original and appellate powers:** Hight Court has original and appellate jurisdiction in civil and criminal matters as conferred by the Codes of Civil and Criminal procedure and the Letters of Patent.

## Arbitration:

### What is it?

**Arbitration** is a procedure in which a dispute is submitted, by agreement of the parties, to one or more **arbitrators** who make a binding decision on the dispute. In choosing **arbitration**, the parties opt for a private dispute resolution procedure instead of going to court.

### OR

**Arbitration** is a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments.

When **arbitration** is binding, the decision is final, can be enforced by a court, and can only be appealed on very narrow grounds.

### Use-

**Cost- Arbitration** is the most formal alternative to litigation. In this process, the disputing parties present their case to a neutral third party, who renders a decision. **Arbitration** is widely **used to** resolve disputes in both the private and public sector.

### Is arbitration is better than court:

**Arbitration** often is less costly **than court** litigation, primarily due to the compressed schedule for the completion of discovery and **trial**.

The judge is assigned by the **court** without input from the parties. Thus, **arbitration** affords the parties the ability to select the decider, whereas **court** litigation does not.

## Historical Background of Arbitration

1. Once human beings started to live and trade together as a community, various forms of adjudications begin to emerge.
2. Why the concept of Arbitration emerged as an alternative dispute resolution?
3. For answering this question one has to look back at the history of arbitration.

### In India

The earliest evolution of arbitration in India can be traced back to **Brihadaranyaka Upanishad** under the Hindu Law. It provided for various types of arbitral bodies which consisted of three primary bodies namely:

1. The local courts
2. The people engaged in the same business or profession
3. Panchayats.

- The members of the Panchayats known as **Panchas**, were that times arbitrators, which used to deal with the disputes under a system.
- However thereafter the first legislative council for British India was formed and India got its first enactment on Arbitration known as the Indian Arbitration Act, 1899 but the Act was applicable to only presidency towns i.e., Calcutta, Bombay, and Madras. This Act was fundamentally based on the British Arbitration Act, 1889.
- Thereafter came the Arbitration Act, 1940 which applied to the whole of India including Pakistan and Baluchistan. However, post independence the same was modified via ordinance.
- Due to various shortcomings in the 1940 Act like lack of provisions prohibiting an arbitrator from resigning any time during an arbitration proceeding, the rules providing for filing awards differed from one High Court to another, the act was replaced by the Arbitration and Conciliation Act, 1996 that ratified the problems in 1940 Act.

## What is Arbitration?

Arbitration is a form of Alternative Dispute Resolution (ADR)

- The concept of arbitration means resolution of disputes between the parties at the earliest point of time without getting into the procedural technicalities associated with the functioning of a civil court.
- The dictionary meaning of Arbitration is hearing and determining a dispute between the parties by a person or persons chosen by the parties.
- In an English judgement named **Collins v. Collins**, 1858 28 LJ Ch 184: 53 ER 916 the court gave a wide definition to the concept of Arbitration which reads as follows:  
An arbitration is a reference to the decisions of one or more persons either with or without an umpire, a particular matter in difference between the parties. It was further observed by the court that proceedings are structured for dispute resolution wherein executives of the parties to the dispute meets in presence of a neutral advisor and on hearing both the sides and considering the facts and merits of the dispute, an attempt is made for voluntary settlement.

## Kinds of Arbitration

In arbitration a dispute is submitted to the **arbitral tribunal** and not to a regular civil court or otherwise. The arbitral tribunal must give a decision on the dispute and this decision is thus binding on the parties in the dispute since they have no grounds to appeal.

When contrasted with the traditional approach of a judicial proceeding which ordinarily happens in a Court; and has to go through a lengthy process, and which usually leaves one party or both parties exhausted financially. An arbitration proceeding is not formal and does not involve judicial proceeding which can save a lot of time for the parties.

## A few types of Arbitrations in India on the basis of Jurisdiction

### Domestic Arbitration

Domestic arbitration is that type of arbitration, which happens in India, **wherein both parties must be Indians and the conflict has to be decided in accordance with the substantive law of India**. The term domestic arbitration has not been defined in the Arbitration and Conciliation Act of 1996.

## International Arbitration

When arbitration happens within India or outside India containing elements which are foreign in origin in relation to the parties or the subject of the dispute, it is called as International Arbitration.

The law applicable can be Indian or foreign depending upon the facts and circumstances of the case and the contract in this regard between the respective parties. To fulfill the definition of International Arbitration it is sufficient if any one of the parties to the dispute is domiciled outside India or if the subject matter of dispute is abroad.

## International Commercial Arbitration

i. International Commercial Arbitration is defined as the substitution of many burning questions for a smouldering one. Nani Palkhiwala has stated that **International Commercial Arbitration** is a 1987 Honda car, which will take you to the same destination with far greater speed, higher efficiency and dramatically less fuel consumption

[ii] International Arbitration is considered to be **commercial** if it related to disputes arising out of a legal relationships irrespective of their contractual nature and are considered as commercial under the law in force in India and where at least one of the parties is-

1. A national of, or habitual resident in, any country other than India or
2. A body corporate which has to be incorporated in any foreign country, or
3. An association or a body of individuals whose core management and control in a country which is not India or
4. The government of a country other than India. In International Commercial Arbitration the arbitral tribunal is bound to decide the conflict according to the rules of law chosen by the parties as applicable to the substance of the dispute; any designation by the parties of the law or legal system of a given country can be interpreted, unless it has been expressed otherwise, one which directly refers to the substantive law of that country and does not refer to its conflict of laws rules.

## Types of arbitrations that are primarily recognized in India on the basis of procedure and rules:

1. Institutional arbitration
2. Ad hoc arbitration
3. Fast track arbitration

## Institutional arbitration

When an arbitral Institution conducts arbitration, it is called Institutional Arbitration. The parties have the choice of specifying, in the arbitration agreement, to refer the differences to be determined in accordance with the rules of an elected arbitral Institution. One or more arbitrators can be appointed from a pre-selected panel by the governing body of the institution or the disputants themselves can

select their panel but it has to be restricted to the limited panel. parties, that agreement shall include any arbitration rules referred to in that agreement.

## Ad-hoc arbitration

If the parties agree among themselves and arrange for arbitration, it is called Ad hoc Arbitration without having an institutional proceeding. It can either be domestic, international or foreign arbitration

## Fast track arbitration

Even the other processes of arbitration can be lengthy and tedious and thus this process of arbitration works like a remedy to the issue of time. Fast track arbitration is a method, which is time dependent in the provision of the arbitration and conciliation act. Its procedure is established in a way that it has abandoned all the methods, which consume time, and uphold the simplicity which is the originally the prime purpose of such arbitration.

## Principle Characteristics of Arbitration

- Arbitration is consensual:

An arbitral proceeding can only take place if both the parties to the disputes have agreed to it. Generally, parties insert an arbitration clause in the contract for future disputes arising from non- performance of contractual obligations. An already existing dispute can also be referred to arbitration if both the parties to the dispute agree to it (submission agreement).

- Parties choose the Arbitrators:

Under the Indian Arbitration Act parties are allowed to select their arbitrator and they can also select a sole arbitrator together who will act as an umpire. However, the parties should always choose an arbitrator in an odd number.

- Arbitration is neutral:

Apart from selecting neutral persons as arbitrators, the parties can choose other important elements of proceeding such as the law applicable, language in which the proceedings should be conducted, the venue for arbitration proceedings. All these things ensure that no party enjoys a home court advantage.

- Decision of the Arbitral Tribunal is final and easy to enforce.

## Advantages of Arbitration in India



1. Expertise in Technical matters: An arbitrator can easily deal with technical matters which is scientific in nature because generally arbitrators are appointed based on their expertise and skill in a particular field. Thus the disputes are resolved more effectively and efficiently.
2. The arbitral process is cost effective and less time consuming than the traditional way of dispute resolution in the court of law.
3. There is the convenience of the parties as they are able to decide on the language, venue and time of the proceedings.
4. Privacy and confidentiality of the parties are maintained as there is no unnecessary publicity of the dispute.
5. Arbitral proceeding is more flexible than the court proceeding as under the arbitral proceeding one does not have to follow the strict and rigid rules and regulation as that of the court. This is due to the reason that parties set the rules and regulations of the proceedings.

## Contract law:

**What is Contract law-** A **contract** is an agreement that is enforceable by **law**. A promise or a number of promises that are not contradicting and are accepted by the parties involved is an agreement. A **contract** is only legally enforceable. ... It may or may not be enforceable by the **law**. A **contract** has to create some **legal** obligation.

**Contract law** governs the legality of agreements made between two or more parties when there is an exchange of some sort intended to take place. In nearly all business transactions, contracts are made. ... **Examples** of such agreements in business include bills of sale, purchase orders, and employment agreements.

### **The 5 Elements That Constitute a Binding Contract**

- **Offer.**
- **Acceptance.**
- **Consideration.**
- Mutuality of Obligation.
- Competency and **Capacity.**

## **Function of Contract law:**

The primary purpose of **contract law**, he contends, is to enforce the agreement of the parties. For there to be a **contract**, substantial agreement must exist and the parties must have freely intended to be legally bound. In interpreting contracts, courts are primarily trying to carry out the intent of the parties.

**Note-**An **agreement** exists where there is a mutual understanding regarding rights and responsibilities among parties to a business arrangement. A **contract** is an **agreement between** respective parties that creates legally binding obligations.

### Situations Where a Written Contract is Necessary-

Certain contracts must be in writing to be enforceable, in addition to complying with the above legal requirements. Circumstances where a written document is necessary include:

- An agreement to accept the debt of another person;
- Contracts for the sale of real estate, whether related to improved or unimproved land;
- Leases for real estate that exceed one year;
- Agreements guaranteeing the results of a medical or surgical procedure;
- Subscriptions for newspaper or periodical service;
- Satisfaction of a debt for less than the total amount due; and,
- Other contracts as designated by law.

## Tort law in India:

**Tort law in India** is a relatively new common **law** development supplemented by codifying statutes including statutes governing damages. ... **Tort** is breach of some duty independent of contract which has caused damage to the plaintiff giving rise to civil cause of action and for which remedy is available.

### Is tort law applicable in India?

Introduction:- **Law of tort** is comparatively common **law** development in **India**. It is supplemented by systematising (codification) statutes including statutes having authority to grant damages and compensation. Where there **is tort**, there is remedy.

Which law in India governs Tort?

The **law of torts** in **India** is mainly the English **law of torts** which itself is based on the principles of the common **law** of England. This was made suitable to the **Indian** conditions appealing to the principles of justice, equity and good conscience and as amended by the Acts of the legislature.

What are the three types of Torts in India?

There are three main types:

1. **Intentional torts**,
2. **Negligence**, and
3. **Strict liability**.

Negligence is the **most common** of **tort** cases. At its core negligence occurs when a tortfeasor, the person responsible for committing a wrong, is careless and therefore responsible for the harm this carelessness caused to another.

## Difference between Tort and Crime:

Crime	Tort
A Crime is wrongdoing which hampers the social order of the society we live in.	A Tort is wrongdoing which hampers the individual or his property.

Crime happens mostly intentionally. It is a deliberate act which people do to get some unlawful benefits.	It happens mostly due to negligence. Tort is hardly intentional. But it is still damaging to the individual.
Crime impacts the well-being of society in general. The legal bodies try to give proportional punishment to law offenders in order to maintain peace in society.	Tort impacts the well-being of the individual. The aggrieved party seeks compensation for the damages.
Crimes are presented in the Criminal Court.	Torts are presented in the Civil Court.
Compensation for crimes is already mentioned in the book of law. Whenever the court has to decide the amount of compensation, they simply refer to the law book. In certain cases, judges use their personal judgments too.	Compensation for torts is given on the basis of the damages to the aggrieved party.

**Torts** are made up of **four** individual **elements**, all of which must be in place for a **tort** to exist.  
**The Four Elements**

- The presence of a duty. ...
- The breach of a duty. ...
- An injury. ...
- The injury resulted from the breach.

Example:

Common **torts** include: assault, battery, damage to personal property, conversion of personal property, and intentional infliction of emotional distress. Injury to people may include emotional harm as well as physical harm.

### Remedies of Tort:

The main **remedy** against **tortious** loss is compensation in damages or money. In a limited range of cases, **tort** law will tolerate self-help, such as reasonable force to expel a trespasser. This is a defense against the **tort** of battery.

## **Law at workplace:**

The below are some important labour laws in India. These laws have many provisions to safe the interests of workers of organised and unorganised sectors in India. Labour comes under the concurrent list of the Indian Constitution.

Indian labour laws are made to define clear cut relations between employees and employers. Indian labour laws are made to safeguard the interests of the workers.

In the outbreak of the COVID-19, many states have relaxed the labour laws in the favour of the employers/investors so that foreign investment can be attracted in their states. This relaxation may cause violation of labour laws in India.

Some important labour laws and their provisions.

### **List of major Labour law Acts in India-**

- 1. Worker's Compensation Act, 1923**
- 2. The Trade Unions Act, 1926**
- 3. Payment of Wages Act, 1936**
- 4. Industrial Employment (Standing Orders) Act, 1946**
- 5. Indian Industrial Disputes Act, 1947**
- 6. Minimum Wages Act, 1948**
- 7. Factories Act, 1948**
- 8. Maternity Benefits Act, 1961**
- 9. Payment of Bonus Act, 1965'**
- 10. MRTU and PULP Act, 1971**
- 11. The Payments of Gratuity Act, 1972**
- 12. Labour Law Compliance Rules**
- 13. Employees Provident Fund**

14. Employees' State Insurance

15. Collective Bargaining

16. Unorganised Workers' Social Security Act, 2009

17. Sexual Harassment of Women at Workplace Act, 2013

## Some important labour laws in India-

### 1. The Trade Unions Act, 1926:-

Trade unions are a very strong medium to safe the rights of the employees. These unions have the power to compel higher management to accept their reasonable demands.

**Article 19(1)(c) of the Indian Constitution gives everyone the right "to form associations or unions".** The Trade Unions Act 1926, amended in 2001 and contains rules on governance and general rights of trade unions.

### 2. The Payment of Wages Act 1936:-

This act ensures that workers must get wages/salaries on time and without any unauthorised deductions. **Section 6 of the Wages Act 1936 says that workers must be paid in money rather than in kind.**

### 3. Industrial Disputes Act 1947:-

This act has the provisions regarding the fair dismissal of permanent employees.

As per this law, **a worker who has been employed for more than a year can only be dismissed if permission is sought from and granted by the appropriate government office/concerned authority.**

*A worker must be given valid reasons before dismissal.* An employee of permanent job nature can only be terminated for proven misconduct or for habitual absence from the office.

### 4. Minimum Wages Act, 1948

This act ensures minimum wage/salary to workers of different economic sectors. State and Central governments have the power to decide wages according to the kind of work and location.

This wage may range between as much as Rs 143 to 1120/ day. This minimum wage can be different in states to states.

The average per day wage rate for unskilled work under the MGNREGA is set to rise by 11% from Rs. 182 to Rs. 202 for 2020-21.

A MGNREGA worker gets Rs 258/day in Dadra and Nagar Haveli while Rs 238 in Maharashtra and Rs 204 in West Bengal.

#### **5. Maternity Benefits Act, 1961:-**

This Act entitles maternity leave for pregnant women employees' i.e. full payment despite absence from work. As per this act, **female workers are entitled to a maximum of 12 weeks (84 days) of maternity leave.** All the organised and un-organised offices that have more than 10 employees shall implement this act.

So this law protects the job of the female workers during pregnancy and post-delivery. This act has been amended in 2017.

#### **6. Sexual Harassment of Women employees at Workplace Act, 2013:-**

This act prohibits any kind of sexual Harassment of the women workers at the workplace. This Act came into force from 9 December 2013.

#### **What comes under sexual Harassment:-**

- a) Showing pornography.
- b) A demand or request for sexual favours.
- c) Sexually coloured remarks.
- d) Physical contact and advances.
- e) Any other unwelcome physical verbal or non-verbal behaviour of sexual nature.
- f) Lewd comment.

This act must be implemented by all public or private and organised or unorganised sectors that **have more than 10 employees.** This act covers all women, irrespective of her age or employment status. Most Indian employers did not implement this law.

So these were some important labour laws in India which are made to protect the employment and ensure good working conditions, fixed working hours, fair payment, bonus and maternity leaves etc.

