

# LEX FAVIOS

## ADVOCATES & SOLICITORS

JUDICIAL SYSTEM OF INDIA ALONGSIDE THE FDI  
NORMS AND INVESTMENT CLIMATE.



# BRIEF OVERVIEW OF THE LEGAL SYSTEM IN INDIA

India has a hybrid federal legal system having elements of civil law, common law, equitable law, and customary and religious laws.

The main sources of law in India are the following:

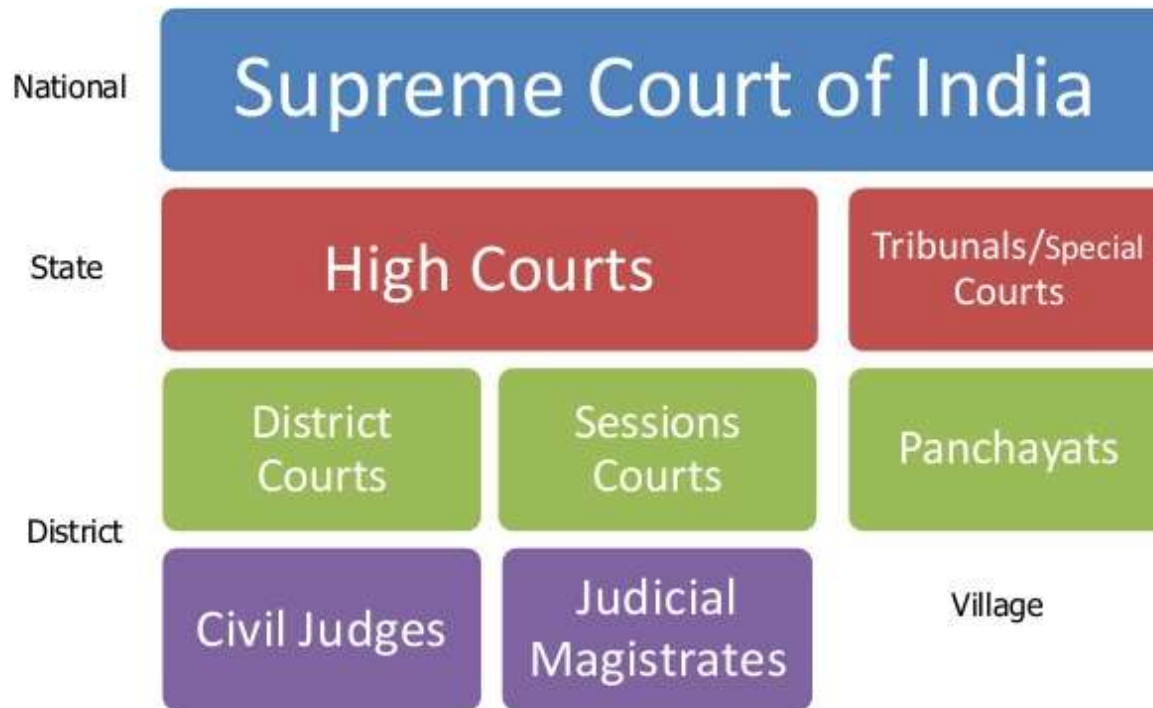
- ▶ **The Constitution of India is the supreme source of law.** It is the longest written constitution of any sovereign country in the world, comprising of over 450 Articles and 12 Schedules.
- ▶ **Judicial decisions of superior courts** like the Supreme Court of India and High Courts with important legal sources have precedential value.
- ▶ **Customary law**, in certain aspects like local customs and conventions (usually religious in nature) that are not against any statute or morality are also applicable.

# INDIAN JUDICIAL SYSTEM

- ▶ The three tiered and single integrated system of Indian Judiciary comprises of the **Supreme Court of India** (New Delhi) at its helm, having Original and Appellate and Writ jurisdiction. It is presided by the Chief Justice of India.
- ▶ **High Courts** as the head of State judicial system having Appellate, Revisional, Supervisory and Writ jurisdiction. There are 24 high courts in each state, although some High Courts have jurisdiction over multiple states and Union Territories.
- ▶ Followed by **District and Session Courts** in every District within every State, comprising of courts of civil (Civil Judges) & criminal (Judicial/ Metropolitan Magistrates) jurisdiction, having Original jurisdiction.

# INDIAN JUDICIAL SYSTEM

## Hierarchy of Courts...



# The Supreme Court

- It came into being on 28th of January, 1950.
- Functions through 30 Judges, headed by the Chief Justice of India.
- **Final interpreter of the Constitution and other laws of the country.**

# Supreme Court's Jurisdiction

## 1. Original Jurisdiction

- Disputes between states/centre inter-se
- Writ Jurisdiction (on violation of Fundamental Rights)
- Public Interest Litigation.

## 2. Appellate Jurisdiction.

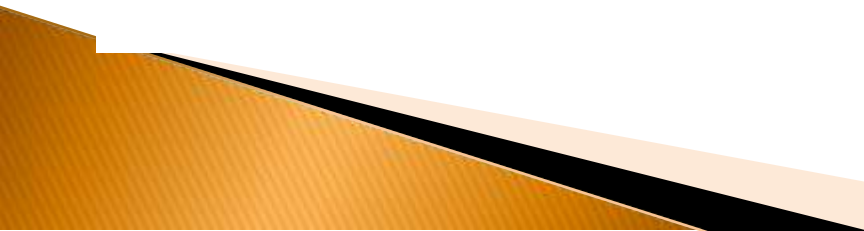
- \* Regular Appeals from High Court decisions.
- \* Special Leave Petitions.

3. **Power to review** its own judgment – power to review the judgment passed in a review (curative )

4. **Advisory Jurisdiction** on Presidential reference.



## The High Courts

- Functions with the Chief Justice at the head and other Judges of the High Court.
  - It exercises jurisdiction over the entire state for which it is constituted.
  - Superintendence over all the courts and tribunals throughout the state.
  - There are common high courts for two or more states.
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# High Court's Jurisdiction

## 1. Original Jurisdiction

- Company matters.
- Civil cases of particular monetary amount.
- Writ Jurisdiction.
- Public Interest Litigation.

## 2. Appellate Jurisdiction.

\* Regular Appeals in civil and criminal matters from the decisions of the District Courts.

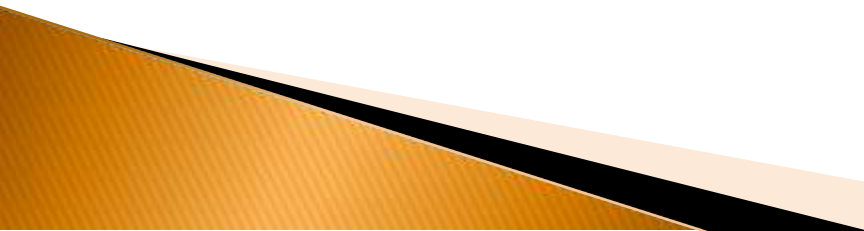
## 3. Confirmational Jurisdiction.



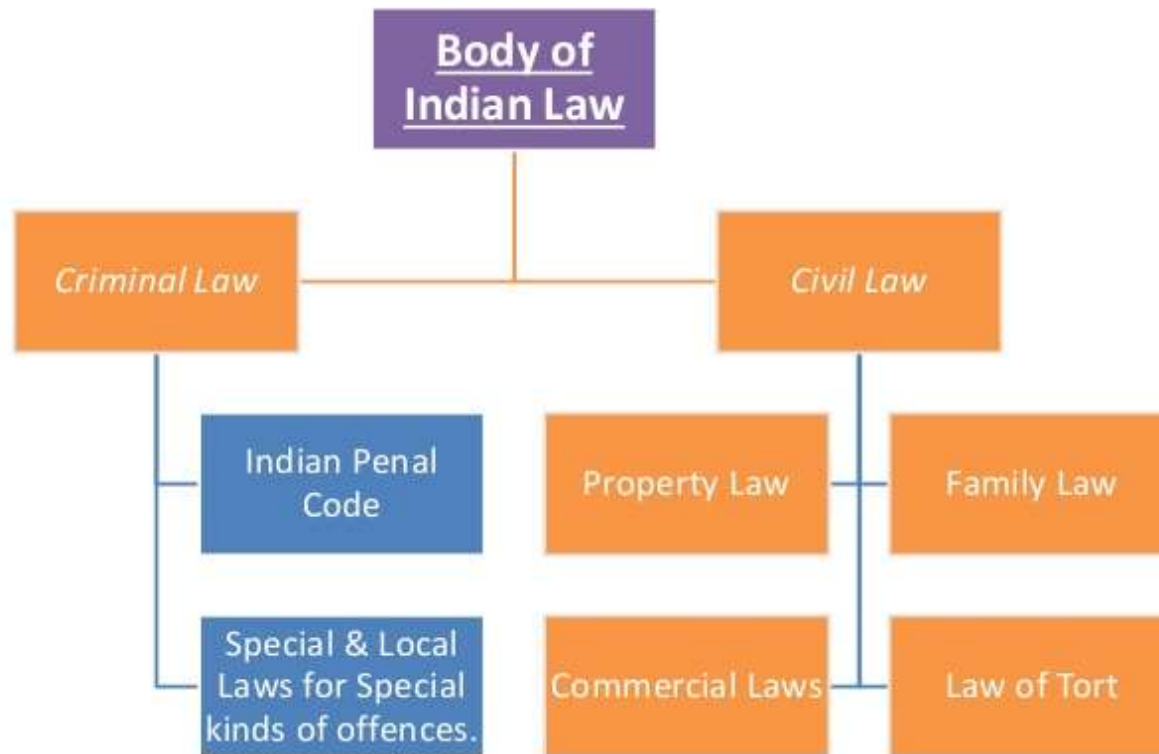
## The Subordinate Courts @ District Judiciary

- Court of first & last instance for most.
- The court of fact. They dispense Justice at the door step.
- Bound by the decisions of Supreme Court & High Courts.
- Civil Judges/District Judges for Civil Cases upto a specific pecuniary limit.
- Judicial Magistrates/Sessions Judges for Criminal trials.

# QUASI LEGAL AUTHORITIES

- ▶ Apart from the courts, the Indian judicial system comprises tribunals, commissions and quasi-judicial authorities that derive their authority from specific statutes.
  - ▶ central Administrative Tribunal, which adjudicates disputes that relate to the recruitment and conditions of service of public servants.
  - ▶ National and State Human Rights Commissions (NHRC) for the protection of human rights.
  - ▶ National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) adjudicate issues relating to company law, insolvency and bankruptcy matters.
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# LAWS OF INDIA



# The latest in Indian Law !

- **Improvised Court/Case & Docket Management.**
- **Alternative dispute resolution**
  - Arbitration – mediation – conciliation
- **Plea Bargaining**
- **Legal Aid**
- **Increased insistence on reformation & Rehabilitation in sentencing.**
- **Computerisation of Courts**
- **E Courts**
- **E Court Fee & Stamping .**

# OVERVIEW OF THE LEGAL PROFESSION IN INDIA

- ▶ The bar council of India provides for provisional enrolment in state bar council(s) which allow advocates to practice law in those states until they sit for the All India Bar Examination (AIBE).
- ▶ The Cap to give the AIBE has been reduced to 3 years which permits Advocates to practice all over India. failing to clear the exam will cause the Advocate to lose the licence to Practise all over the Country.
- ▶ Apart from the Bar Council of India and the State Bar Councils, almost every Court in the country has Bar Associations of advocates
  - That looks after the welfare of advocates,
  - Represent their interests
  - Conduct numerous social and cultural activities of the bar, or even for different sections of the bar.



# KEY ROLE OF FDI

- The investment Climate in India has improved considerably since the opening of the economy in 1991 that brought in Globalisation, Liberalisation and Privatisation which opened the investment markets of India.
- This is largely attributed to ease in in the FDI norms across various sectors of the economy making India, a part of the top 100 club on Ease of Doing Business(EoDB).
- India received the record FDI of 64.37 Bn in 2018-2019.

# PERMISSIBLE ROUTES FOR FDI'S IN INDIA

There are 3 categories of permissible routes for bringing in Foreign Investment in India. They are as follows:

- **Category 1-100% FDI permitted through Automatic Route:** under automatic route the non-resident investor or Indian Company does not require any approval from Govt. for the Investment. For Ex: asset reconstruction companies, automobiles, cash& carry wholesale trading (including sourcing from MSEs), chemicals, coal and ignite.
- **Category 2- 100% FDI permitted through Government route:** prior to investments, approval from govt. is required, few examples: core investment company, food products retail trading, print media, satellites (establishment and operation

# PERMISSIBLE ROUTES FOR FDI'S IN INDIA

➤ **Category 3- up to 100% FDI permitted under Automatic & Government**

**Route:** few examples: Banking (private sector)-up to 49%(auto) + above 49%(govt) , defence- up to 74%(auto) + above 74%(govt), healthcare(brownfield) up to 74%(auto)+above 74%(govt) , telecom services- up to 49%(auto) + above 49%(govt).

# INDUSTRIES STRICTLY PROHIBITED FOR FDI

There are certain sectors and or/ industries which have been reserved and will not fall under the FDI Scheme of India. they are as follows :

- Atomic energy creation
- Gambling or betting business
- Chit funds
- Nidhi company
- Housing & real estate (exception of townships, commercial projects)

# RECENT AMENDMENTS BY GOVERNMENT TO FACILITATE EASY INCOME OF FDI

- The “foreign investment in India- reporting in single master form” provides for all extant reporting structures of various types of Foreign investments in India are now provided under Single Master Form (SMF).

## **Amendments brought forward in 2019:**


- **Single brand retail trading (SBRT):** govt. has relaxed conditions to attract more FDI for SBRT activities in India regardless of 100% permittance under automatic route.
- **Coal mining & sale:** existing FDI policy allowed 100% FDI under automatic route for coal and ignite mining for captive consumption power projects as well as iron & steel and cement units.



# RECENT AMENDMENTS BY GOVERNMENT TO FACILITATE EASY INCOME OF FDI

- **E-commerce:** The govt. has now decided to allow retail trading through online trade prior to opening physical stores. Subject to condition that SBRT entities open brick and mortar stores within 2 years from start of online retail.
- **Contract manufacturing:** manufacturing is already permitted 100% approval for FDI, but the Govt. has provided clarity by allowing 100% FDI automatic route in “contract manufacturing” in India.
- **Defence Sector:** FDI in Defence sector in automatic route has been increased from 49% to 74%.

# CORELEVANCE OF ARBITRATION AND FDI

- In accordance to the Amended Arbitration and Conciliation Act of 2019, the time restriction for International Commercial Arbitrations have been duly removed.
  - The extension period for completion of Arbitral Proceedings has increased by incorporating a 12-monh time frame post completion of the pleadings.
  - The total cap for limitation regarding the Arbitral Award is now 2 years.
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# EASE OF FDI FOR START-UPS

- The Govt. of India has further liberalised the FDI norms which has uncomplicated the process for start-ups, SMEs and MSMEs.
- Investors from across the globe like google are funding start-ups in India and believe in the start-up market that it has to offer.
- The introduction of Standard operating Procedures (SOPs) for FDI proposals, allowing start ups to issue convertible notes to foreign investors, permitting 100% FDI automatic route for trading will benefit the MSMEs in India.
- Start-ups can get company identification number(CIN) ,PAN, GSTIN, ESIC in one application at MCA portal for convenience and fast track application process.

# STATISTICAL DATA OF FDI GROWTH IN INDIA & NEW ENTERIES IN THE MARKET.

- FDI equity inflows rose 28% in the first quarter of 2019-20 to \$16.3 billion from \$12.7 billion in the year-ago period in India.
- Among various sectors, telecommunications garnered the maximum FDI at \$4.2 billion followed by services sector at \$2.8 billion.
- The national capital region (Delhi, part of Uttar Pradesh and Haryana) attracted FDI of \$5.04 billion, the highest among the states.
- Qualcomm, word leader in 3G and next-generation mobile technologies, is the latest player in the market having invested upto \$150million in strategic investments in the Country.
- Amazon India announced investment of US\$ 1 billion for digitising small and medium businesses.

# CONTACT

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**THANK YOU**