



The fifth annual complimentary guide  
to understanding Dispute Resolution  
practices around the world with an  
Asia-Pacific focus

# LexisNexis® Dispute Resolution Law Guide 2019

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LexisNexis®  
Dispute Resolution  
Law Guide 2019

Jurisdiction: India

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Yaman Kumar

### 1. What is the structure of the court system in respect of civil proceedings? What is the role of the judge in civil proceedings?

The Indian Judicial/Court System is one of the oldest legal systems in the world today. The framework of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it. There are various levels of judiciary in India—different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy of importance, in line with the order of courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with District Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.

#### Hierarchy of Courts and Judges in India

- a. The District Court of India are established by the State Government in India for every district or more than one district taking into account the number of cases, and population distribution in the district. These courts are under the administrative control of the High Court of the State to which the district concerned belongs. The District Court is presided over by one District Judge appointed by the State Government. In addition to the district judge there are many Additional District Judges and Assistant District Judges depending upon the workload.
- b. In every state, besides the High Court there are number of judicial Courts to administer justice. These courts function under

the complete control and supervision of the High Court. A state has got exclusive Legislative competence to determine the constituent organization and territorial jurisdiction of all courts subordinate to the High Court. The organization of subordinate courts throughout the country is generally uniform. There are two type of law courts in every district; (i) Civil Courts (ii) Criminal Courts

- c. The court of the District Judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control. The court of the District judge is located at the district headquarters. It has power of trying both civil and criminal cases. Thus, he is designated as both the District and Sessions Judge.
- d. Below the court of the District Judge are the courts of Sub-judge, Additional Sub-Judge and Munsif Courts, which are located in the sub-divisional and district headquarters. Most of the civil cases are filed in the court of the Munsif. A case can be taken in appeal from the court of the Munsif to the court of the sub-Judge or the Additional Sub-Judge. Appeals from the courts of the sub-Judges and Additional sub-Judges shall lie in the District-Court. The Court of the District Judge has both original and appellate jurisdiction. Against the decision of the District judge an appeal shall lie in the High Court.
- e. Civil Court has been further categorized on the basis of Jurisdiction which is discussed as follows:

- i. **Subject Matter Jurisdiction:** It can be defined as the Authority vested in the court to try and hear cases of the particular type and pertaining to a particular subject matter.
- ii. **Territorial Jurisdiction:** The court can decide within the geographical limits of a court's authority and it cannot exercise authority beyond that territorial and geographical limits.
- iii. **Pecuniary Jurisdiction:** Pecuniary Jurisdiction is related to money, whether a court can try cases and suits of monetary value/amount of the case or suit in question.
- iv. **Appellate Jurisdiction:** It refers to the authority of a court to rehear or review a case that has already been decided by a lower court. Appellate jurisdiction is generally vested in higher courts. In India, both the High Courts and the Supreme Court have appellate jurisdiction to hear matters which are brought in the form of appeal before them. They can either overrule the judgment of the lower court or uphold it.

so that the citizens have the right to information and matters of constitutional and national importance can be live-streamed for awareness.

- b. **Court judgments are public records but not court documents.** If a case is heard by a court of India, no one can argue that the opinion should not be published and viewable by all, unless the court itself expressly says it cannot be published or a law says it cannot. The decisions of the Supreme Court are the law of the land, and all citizens can read their decisions. Not just the Supreme Court, courts today are publishing their judgments and orders on the Internet. The Copyright Act s 52(1)(q)(iv) states that publication of court judgments does not constitute an infringement of copyright.

In *R. Rajagopal vs State Of T.N* on 7 October, 1994 where the Supreme Court defined the scope of the right to privacy, it was stated that publication of court records will not constitute any violation of the right to privacy. It held:

“The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicized in press/media’

## 2. Are court hearings open to the public? Are court documents accessible by the public?

- a. **Court hearings are open to the public - India has an open court system till the court proceedings are converted into an ‘in-camera trail’.** Where there is an open court hearing, litigants are entitled to know the progress in their case. The concept of access to justice provides that though a litigant is not in court, they are able to know what is happening in their case inside the court. Barring few exceptions like hearings in a rape case, the courts are open to the public for all hearing and the Supreme Court in order to facilitate this concept has even started to frame appropriate guidelines for allowing live streaming of the proceedings



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Ravi Singhania is India's renowned corporate-M&A, lawyer according to the researches by Chambers & Partners, Legal 500 and Asialaw. He is amongst top legal

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## 3. Do all lawyers have the right to appear in court and conduct proceedings on behalf of their client? If not, how is the legal profession structured?

A lawyer can appear in any matter on behalf of its client provided such lawyer has filed a vakalt or memo for the same client before the Court of Law. A vakalt or memo is a privileged document signed by the client authorizing only one lawyer or two-lawyers (in case of a firm) to represent his interest before the Hon'ble Court. Any other lawyer will not appear in any matter where another advocate has filed a vakalt or memo for the same party. In such a case, a lawyer who is not able to present the consent of the advocate who has filed the matter for the same party must apply to the court to be allowed to appear on

behalf of the client. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

## 4. What are the limitation periods for commencing civil claims?

The law relating to Law of Limitation to India is the Limitation Act 1859 and subsequently Limitation Act 1963 which was enacted on 5th of October, 1963 and which came into force from 1st of January, 1964 for the purpose of consolidating and amending the legal principles relating to limitation of suits and other legal proceedings. According to the Limitation Act 1963 s 2(j), ‘period of limitation’ means the period of limitation prescribed for any suit, appeal or application by the Schedule,



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Shambhu Sharan with an experience of almost two decades is leading one of the dispute resolution teams of the firm. Shambhu is known for his in-depth knowledge on the subject of arbitration and is trusted for saving multimillion dollars of clients by his winning arguments in courts.

Clients repose immense faith in his expert advice and hard work as he has been able to render results in their favor. He is considered a go to man in Alternative Dispute Resolution, bank guarantee disputes, writ petitions, Supreme Court matters, recovery suits, dealership disputes, dishonoring of cheques issues- representing both plaintiffs and petitioners, and due diligence of real estate.

He is currently representing and victoriously leading renowned infrastructure companies like Punj Lloyd and IJM Corporation Berhad, Malaysia in their ongoing arbitration and litigation proceedings in various fora for their projects across India. He is also legal counsel to Technopak Advisers Pvt. Ltd. in an International Arbitration between the client and contractor of Bill and Melinda Gates Foundation for a vaccine delivery initiative program.

Shambhu appears before Arbitral Tribunals (domestic and international) and Appellate Tribunals like Competition Appellate Tribunal (COMPAT) and Debt Recovery Tribunal (DRT) besides National Consumer Dispute Redressal Commission. There are several ministries, public sector undertakings, government authorities, banks, domestic as well as foreign companies amongst his clients. Some of his other notable clients are Ricoh India Limited, Ssangyong Engineering and Construction Co. Ltd., Tata McGrawHill Education India Pvt. Ltd., Railtel Corporation, New Holland Fiat India Ltd., Wimberly Allison Tong & Goo (UK) Ltd, Reckitt Benckiser (India) Ltd. He has also authored articles for renowned print media publications like Times of India, and Construction World Magazine besides a number of reputed legal journals.

and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.

The Law of Limitation signifies to prevent from the last date for different legal actions which can take place against an aggrieved person and to advance the suit and seek a remedy before the court. The limitation periods for commencing civil claims in India are categorized as;

- a. The limitation period is reduced from a period of 60 years to 30 years in the case of suit by the mortgagor for the redemption or recovery of possession of the immovable property mortgaged, or in case of a mortgages for the foreclosure or suits by or on the behalf of Central Government or any State Government including the State of Jammu and Kashmir.
- b. Whereas a longer period of 12 years has been prescribed for different kinds of suits relating to immovable property, trusts and endowments, a period of 3 years has been prescribed for the suits relating to accounts, contracts and declarations, suits relating to decrees and instruments and as well as suits relating to movable property.
- c. A period varying from 1 to 3 years has been prescribed for suits relating to torts and miscellaneous matters and for suits for which no period of limitation has been provided elsewhere in the Schedule to the Act.
- d. It is to be taken as the minimum period of seven days of the Act for the appeal against the death sentence passed by the High Court or the Court of Session in the exercise of the original jurisdiction which has been raised to 30 days from the date of sentence given.
- e. The Limitation Act 1963 has a very wide range considerably to include almost all the Court proceedings. The definition of 'application' has been extended to include any petition, original or otherwise. The change in the language of the Limitation Act 1963 ss 2 and 5 includes all the petition and also application under special laws.

- f. The Act has been enlarged with the definition of 'application', 'plaintiff' and 'defendant' as to not only include a person from whom the application. The plaintiff or defendant as the case may be may also be a person whose estate is represented by an executor, administrator or other representatives.
- g. According to the Civil Procedure Code ss 86 and 89, it requires the consent of the Central Government before suing foreign rulers, ambassadors and envoys. The Limitation Act 1963 provides that when the time obtained for obtaining such consent shall be excluded for computing the period of limitation for filing such suits.
- h. The Limitation Act 1963 with its new law signifies that it does not make any racial or class distinction since both Hindu and Muslim Laws are now available under the law of limitation as per the existing statute book. In the matter of Syndicate Bank v. Prabha D. Naik AIR [2001] SC 1968, the Supreme Court has observed that the law of limitation under the Limitation Act 1963 does make any racial or class distinction while making or indulging any law to any particular person.

**5. Are there any pre-action procedures with which the parties must comply before commencing proceedings?**

As soon as a dispute is imminent, parties need to consider a number of factors which can be regarded as pre-action procedures;

- a. One is to issue a forewarning to the other side by issuing a Legal Notice which specifies the cause of action, the quantum of loss if any and intimation to the other party of the alleged wrong-doing. The said Legal Notice which is usually issued through a Lawyer should carry a diligent time-line such that the other party can peruse the same and take corrective measures if any within the said period. The Notice shall also state that

- in case of no rebuttal from the other party, a suit shall be instituted in the Court of law.
- b. The other factor is to consider if at all, there is a reasonable cause of action because the court will strike out a claim which fails to disclose a reasonable cause of action.
- c. The party instituting civil proceedings shall also consider who the proper defendant is and whether it is worth pursuing the defendant at all by checking their financial means. If the defendant does have assets, it may be relevant if these are located out of the jurisdiction and if so, how easy it will be to enforce judgment against these assets.
- d. The party instituting civil proceedings may need to consider whether any emergency procedures are required before the claim is commenced, for example to restrain a party from moving assets out of the jurisdiction, or whether other pre-action procedures are necessary, such as making an application for pre-action discovery.
- e. The party instituting civil proceedings will also need to establish whether or not the claim is subject to any limitation period.
- f. The party instituting civil proceedings shall need to assess the claim amount in case of a recovery suit and accordingly enquire about the amount of the Court fee which shall be required to institute such suit in the Court of law.
- g. If the dispute emerges out of a contract between the parties, then the party instituting the civil proceedings needs to check and affirm if any specific pre-action procedure is envisaged in such contract. Usually contracts may envisage mediation or conciliation procedures which are mandatory in nature and compliance of which is necessary for any party before they start to institute such civil proceedings.

**6. What is the typical civil procedure and timetable for the steps necessary to bring the matter to trial?**

The typical procedure for trial of a civil case and its different stages is governed as per the provisions of the Code of Civil Procedure 1908 (“CPC”) and the Rules of the respective Courts.

A Civil Suit is instituted by filing of a plaint before the Civil Court of competent jurisdiction. At the outset, it is important to ascertain the cause of action, the parties against which the cause of action has arisen and the Court which is competent to hear the matter i.e. the Court where the suit will be instituted.

Typical stages of a Civil Suit as per the provisions of CPC are as under:

- a. Institution of suit: As per the CPC s 26(1), a civil suit is instituted by the presentation of a plaint accompanied with an affidavit in support of the facts pleaded therein. The particulars to be contained in a plaint have to be as provided under Order 7 of CPC which states that a plaint shall contain the following:
  - i. Name of the Court in which the suit is to be filed;
  - ii. Name, description and place of residence of the Plaintiff;
  - iii. Name, description and place of residence of the Defendant so far it can be ascertained;
  - iv. Where the Plaintiff or Defendant is a minor or person of unsound mind statement to that effect;
  - v. Facts constituting the cause of action and when it arose;
  - vi. Fact showing that the Court has jurisdiction;
  - vii. Relief which the Plaintiff claims;
  - viii. Where Plaintiff has allowed a set off or relinquishes a portion of his claim, the amount so allowed for relinquishment; and

- ix. Statement of the value of the subject matter of the suit for purpose of jurisdiction and Court fees.

The plaint has to be filed with all relevant evidences and documents in support of the claim. It is also important to ensure that the plaint is filed within the statutory period of limitation as applicable, failing which an application seeking an extension of time shall be required to be filed along with the plaint.

- b. First hearing/ Admission of case: After filing of the plaint, the case shall be listed for first hearing before the Court. The Plaintiff will typically be required to provide an overview of the case and satisfy the Court that a cause of action exists against the Defendant. If the Court is satisfied, it admits the case and issues summon/ notice under s 27 read with Order V of the CPC to the Defendant to appear and answer the claim. It is important to note that if the Plaintiff fails to appear on the first date of hearing, then the Court may dismiss the suit in default.
- c. Service of Summons: Once the summons has been issued by the Court, it will be served by the Court on the address of the Defendant provided by the Plaintiff. It is incumbent upon the Plaintiff to ensure that the address provided to the Court is correct so that the summons is duly served upon the Defendant. The Plaintiff may also seek permission from the Court under Ord. V R 9A to effect service of the summons upon the Defendant on its own to further ensure that the Defendant is duly served.

In case the address of the Defendant is not traceable, and the Court and the Plaintiff are unable to effect service of summons upon the Defendant after using all reasonable diligence, the Plaintiff may apply to the Court seeking permission to effect service by way of a publication as per Ord. V R 17 and R 20 of the CPC. The service of summon/ notice upon the Defendant is presumed to

effectuated by way of such publication and in case the Defendant still does not enter appearance in the case, the suit is proceeded ex-parte.

- d. Appearance of Parties: On the day specified by the Court in the summons, the Defendant is required to enter its appearance and file its reply to the plaint and in circumstances where the reply is not filed, request the Court to grant it more time to file the reply. In case if the summons/ notices have been duly served upon the Defendant and the Defendant still fails to enter appearance, the Court may either grant another opportunity to the Defendant to enter appearance and re-issue summons or proceed ex-parte against the Defendant noting that it has failed to appear despite reasonable opportunity and thus, closing its right to defend.
- e. Filing of Reply by the Defendant: - After service of summons to the Defendant, as per Ord. VIII R 1 of the CPC, the Defendant is required to file its reply (termed as Written Statement) within 30 days from the date of service of the summons on him. However, the Defendant may seek extension of time for filing of its reply and such extension may be granted by the Court at its discretion.
- f. Production of Documents: - After filing of the written statement by the Defendant, the next stage of the suit is production of documents. At this stage both parties are required to file the documents in Court which are in their possession or power. If the parties rely on some documents which are not in their possession, they have to apply to the Court for issue of summons to the authority or the persons in whose possession those documents are.
- g. Examination of parties by the Court (Order X): At the first hearing of the suit after filing of the written statement by the Defendant, the Court shall ascertain from each party whether it admits or denies such allegations of fact as are made in the plaint or the

written statement. Such admissions and denials shall be recorded. After such recording, the Court shall direct the parties to the suit to opt for one of the following modes of settlement outside the Court;

- i. Arbitration
  - ii. Conciliation
  - iii. Judicial settlement including settlement through Lok Adalat; or
  - iv. Mediation.
- h. Discovery and Inspection (Order XI): The purpose of discovery and inspection of document and facts is to enable the parties to ascertain the facts to be proved. With the leave of the Court the Plaintiff or Defendant may deliver interrogatories in writing for examination of opposing parties which are required to be answered and which are related to the matter.
- i. Admission and denial of documents (Order XII): Either party may by giving notice, call upon the other party to admit within seven days from the date of service of the notice, all documents saving just exceptions and each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court. The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:

- i. correctness of contents of a document;
- ii. existence of a document;
- iii. execution of a document;
- iv. issuance or receipt of a document;
- v. custody of a document.

An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement. In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria,

costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party. The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

- j. Framing of Issues (Order XIV): The next stage is framing issues. Based on the questions of law arising and the admission-denial of the facts, the issues are framed by the Court in accordance with the provisions of the CPC Ord. XIV R 1 as under:
- i. Rule 1 sub rule (1) states, "Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other."
  - ii. Sub rule (2) states, "Material propositions are those propositions of law or fact which a Plaintiff must allege in order to show a right to sue or a Defendant must allege in order to constitute his defence,"
  - iii. Sub rule (3) States "Each material proposition affirmed by one party denied by other shall form subject of distinct issues."
    - Issues of fact
    - Issues of law.

The suit moves for trial after framing of issues.

- k. Summoning and Attendance of Witnesses (Order XVI): On the date appointed by the Court and not later than 15 days after the date on which issues are settled parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents.
- l. Hearing of suit and examination of Witnesses (Order XVIII): The Plaintiff is entitled to have the first right to begin unless the Defendant admits the facts alleged by the Plaintiff and contends that either in point of law or on some additional facts alleged by

the Defendant, the Plaintiff is not entitled to any part of relief. In such case Defendant has the right to begin.

The Plaintiff has to state his case and submit the evidence filed and marked before the Court. If any evidence was not marked earlier then the same shall not be considered by the Court. The Plaintiff shall carry out examination in chief of its witnesses followed by cross-examination of the witnesses by the Defendant.

The same procedure is followed for the Defendant's witnesses.

- m. Arguments: After completion of evidence, final arguments are submitted by both the parties.
- n. Judgment (Order XX): Judgment is defined as the statement given by the judge on the grounds of which a decree is passed. The Court after the case has been heard shall pronounce judgment in open Court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgment is to be pronounced the Judge shall fix a day in advance for that purpose.

#### 7. Are parties required to disclose relevant documents to other parties and the court?

Yes, parties to the suit are required to voluntarily disclose all relevant documents relied upon to the Court and the other parties along with their pleadings. In case the Court or any of the other parties object that any relevant document has not been disclosed by the other party, it may move an application before to Court for discovery and inspection of said documents under the CPC 1908, s 30 read with Ord. XI.

- a. Under the CPC 1908, s 30, the Court may at any time either on its own motion or on the application of any party make such order as may be necessary or reasonable in all matters relating production of documents, and it may also issue summons to persons

whose attendance is required to produce documents.

- b. Under Order VII R. 14, where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce and file a copy of the documents in Court when the plaint is presented by him.

A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

- c. Under Order VIII R 1A, where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce and file the documents in Court when the written statement is presented by him.

A document which ought to be produced in Court by the defendant under this Rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

- d. After the plaint has been presented by the Plaintiff and the written statement by the Defendant in Court, if it appears to the plaintiff or the defendant that all material facts constituting the case of opposite party and all documents in his possession have not been disclosed, it may move an application before the Court seeking directions against the other party to disclose such documents. This is known as discovery of documents.

- e. The process of the discovery of documents operates generally in three successive stages, namely:

- i. The disclosure in writing by one party to the other of all the documents which he has or has had in his possession, custody or power relating to matters in question in the proceedings;
  - ii. The inspection of the documents disclosed, other than those for which privilege from or other objection to production is properly claimed or raised: and
  - iii. The production of the documents disclosed either for inspection by the opposite party or to the court.
- f. A party may seek the assistance of the Court for causing production of the document by his adversary or he may independently issue a notice to his adversary requiring production of documents under Order XI r16 CPC. The Hon'ble Apex Court in the case of *Sasanagouda v. S.B. Amarkhed AIR 1992 SC 1163* held that the Court is very well empowered to direct any of the parties to produce all such documents which are material to the issue at hand. The Hon'ble Court in para 7 of the judgment held as under:
- g. Further, provisions regarding inspection of documents are divided in two categories by virtue of rr15 to 19 of order XI.
    - i. First one (is it referring to rule 15?) deal with documents referred to in pleadings or affidavits of parties, and
    - ii. Second one (is it referring to rule 19?) deals with other documents in possession or power of the party but not referred to in the pleadings of the parties.

A party is entitled for inspection in regard to documents of first class only. Since privileged documents are protected from production such as public records, confidential communications and documents having exclusive evidence of parties' title. etc.

- h. The order of discovery is binding in nature and therefore non-compliance thereto would lead to penalties mentioned in Order XI Rule 21.

#### 8. Are there rules regarding privileged documents or any other rules which allow parties to not disclose certain documents?

- a. The term "Privileged Document" has not been defined in CPC however, as per the general understanding, Privileged Documents are those which need not be disclosed to the other party, neither before nor after the commencement of the trial containing such confidential information having protection under law.
- b. The Hon'ble Andhra Pradesh High Court in its judgment *Rajesh Bhatia & Ors. v. G. Parimala & Anr. 2006 (3) ALD 415* has specified provided an indicative list of grounds based on which protection can be claimed over documents considered as Privileged Documents:
  - i. legal professional privilege;
  - ii. that production is contrary to public policy;



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Madhu Sweta has over a decade of experience as a Dispute Resolution Partner and is managing S & P litigation practice for individual and corporate clients. She has successfully counseled clients and argued cases before various forums, commissions and Courts including Supreme Court of India, High Courts and appellate tribunals. Alternative Dispute Resolution before national forums

has been one of her area of expertise. She has been entrusted with arbitrations and commercial litigations on a pan India basis. With her rich legal background, Madhu has specialized in dealing with disputes in Contracts with Government Authorities, Consulting agreements, Construction projects, Energy and Power. She also has been actively advising clients in various complex cases.

In her successful track record, she has counseled Ministries, Banks, Government Authorities including PSUs, Indian and foreign companies. Her prominent clients includes Simplot India LLC, Sig Sauer Inc., Sanmina Corporation, RCI India Pvt. Ltd, IJM (India) Infrastructure Ltd, Sri Maruti Wind Park Developers, Ingram Micro India Ltd, IDBI Bank etc. Her reputable clients also includes National Highways Authority of India, Bureau of Energy Efficiency (BEE) and Security Printing and Minting Corporation of India Limited (SPMCIL) etc.

Madhu frequently speaks in seminars, conferences and her articles have also got published in national and international journals.

- iii. that the documents in question may tend to criminate the party or his or her spouse;
  - iv. that the production is contrary to some statutory provision which imposes secrecy;
  - v. that production is contrary to some express or implied agreement between the parties; and
  - vi. that production would, in the circumstances of the particular case, be oppressive.
- c. A party who is directed by court to make discovery of documents and who wants to claim privilege over any of the documents has to file an affidavit under Ord. XI R 13 specifying which documents does the party object to produce i.e. the documents on which privilege is sought to be claimed and provide supporting reasons.
  - d. Where privilege is claimed for any document and the other part questions the claim of privilege, the Court shall have the right to inspect the document for the purpose of deciding the validity of the claim of privilege.

**9. Do parties exchange written evidence prior to trial or is evidence given orally? Do opponents have the right to cross-examine a witness?**

- a. The parties to the suit exchange written evidence of their witnesses prior to the commencement of trial. The parties to the suit have to provide a list of witnesses they intend to testify to the Court under the CPC 1908, Ord. XVI r 1. The said list of witnesses, if any has to be filed in the Court by the respective parties before the commencement of the hearing of evidence. It is important to note that no party shall be entitled to produce any witness not named in the list of witnesses provided to the Court, without taking permission of the Court in writing and stating the reasons therefor.  
The evidence of the witness is recorded by way of an affidavit and the party conducts examination in chief of its witness. It is mandatory to supply a copy of examination-in-chief to the other party as specified under the CPC Order XVIII, R 4(1).
- b. After completion of the examination in chief, the opposite party has the right to cross-examine the witness as per the CPC Order XVIII R 4(2). The cross-examination is recorded by the Court or the Commissioner, as the case may be. The party has a right to undertake re-examination after the completion of cross-examination by the other party.

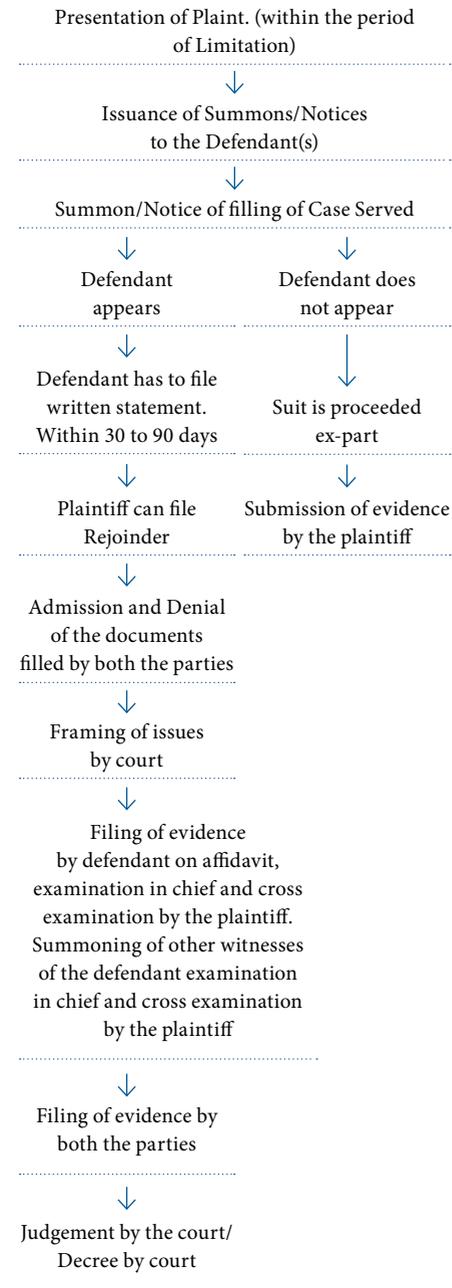
**10. What are the rules that govern the appointment of experts? Is there a code of conduct for experts?**

- a. Indian Evidence Act 1872 under s 45 defines experts as “When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity handwriting or finger impressions, the opinions upon these points of persons especially skilled in such foreign law, science or art or in

questions as to identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.”

- b. Section 45 of the Evidence Act 1872 makes the opinions of experts admissible. If the subject matter of the suit requires, any party may call a person as an expert witness on showing that the person has made a special study of the subject or has acquired a special experience therein. Refer *State of H.P. v Jai Lal & Ors., (1999) 7 SCC 280*. The appointment of expert may be *suo moto* by way of an order of the Court or if the expert witness is desired to testify by any party, then the expert is named by the said as a witness in its list of witnesses. The expert is then subject to examination in chief and cross examination in the same manner as per the procedure provided under CPC.
- c. The Court considers the reliability of the expert witness based on his education, training, experience, memberships, affiliations, publications etc.
- d. However, the opinion of an expert is not binding on the Court. As held in *Titli v. Jones, AIR 1934 All 237*, the function of the expert is to put before the Court his opinion based on all the materials so that the Court, although not an expert, may form its own judgment by its own observation of those materials.
- e. Like other witnesses, the expert witness is also subject to examination and cross examination in the Court. The Apex Court in the case of *State of Maharashtra v. Damu s/o Gopinath Shinde & Ors., AIR 2000 SC 1691* held that without examining the expert as a witness in Court, no reliance can be placed on an opinion alone.
- f. There is no specific code of conduct for expert witnesses however, for the opinion to be credible and to increase the evidentiary value of the opinion, the expert should provide all relevant data based on which the opinion has been made.

Flowchart representing typical steps of Civil Suit



**11. What interim remedies are available before trial?**

As regards arbitration, a party can invoke jurisdiction of a court for an interim remedy under section 9 of the Arbitration and Conciliation Act 1996. Section 9 prescribes that a party to an arbitration agreement can invoke jurisdiction of a court prior to an arbitration proceeding and can seek an interim relief mentioned thereunder. However, it is also stipulated that a party cannot enjoy the interim relief for an infinite period and the arbitration in such a case should be invoked within 3 months from the date of order granting any interim relief. As regards the matter when there is no arbitration agreement and the dispute is to be adjudicated by a civil court, for availing any interim remedy, a party has to first file a plaint/petition before the court and only thereafter the interim relief which is deemed appropriate by the court is granted. Order 39 of Code of Civil Procedure, 1908 envisages granting of interim injunction in such cases.

**12. What are the principal methods of enforcement of judgment?**

As per the provisions of Code of Civil Procedure 1908, after the case has been heard, the Courts pronounce a judgment and, on such judgment, a decree follows. Order XXI of the Code deals with execution of judgment/decrees. A decree may be executed by either the court who passed such decree or by the Court to whom it is sent for execution. The holder of a decree who desires to execute it, shall apply to the court by way of an application as per the form and format given in Schedule I to Order XXI. As regards enforcement of an arbitral award, the party has to invoke the Arbitration and Conciliation Act 1996 s 36 read with Order XXI of Code of Civil Procedure 1908.

**13. Are successful parties generally awarded their costs? How are costs calculated?**

The Code of Civil Procedure 1908, s 35 governs the aspect of costs incurred by a party in legal proceedings. Section 35 prescribes that the court has the discretion to determine whether cost are payable by one party to another, the quantum of costs and when they are to be paid. Whereas s 35A provides for compensatory costs in respect of false or vexatious claims or defences, s 35B prescribes costs for causing delay. However, the provision being discretionary in nature, by and large the courts adopt a reasonable approach while dealing with the aspect of costs. Mostly costs, if any granted to a party, are not on actuals and only the reasonable costs corresponding to the subject matter of the dispute are granted by the court.

**14. What are the avenues of appeal for a final judgment? On what grounds can a party appeal?**

The Code of Civil Procedure 1908, s 96 read with Ord. XLI provides for appeal from original decree and s 100 read with Ord. XLII provides for appeal from appellate decree. An appeal from original decree shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court on no ground except on a question of law. An appeal against appellate decree shall lie to the High Court from every decree passed in an appeal by any court subordinate to the High Court if the High Court is satisfied that the second appeal raises a substantial question of law. A party also has the remedy of filing a special leave to appeal to the Apex Court under the Constitution of India 1949, Art. 136.

The grounds on which a party can assail the decision of the court before the appellate court are as following:

- a. if the judgment is contrary to facts;

- b. if the judgment is not coherent with the settled legal position;
- c. if the judgment is in teeth of a contractual provision;
- d. if the judgment is not in conformity with the true and correct interpretation of a contractual or legal provision;
- e. if the judgment is based on no evidence;
- f. if the judgment is passed in violation of principles of natural justice such as not granting a hearing opportunity to a party

**15. Are contingency or conditional fee arrangements permitted between lawyers and clients? Is third-party funding permitted?**

No. The Bar Council of India prohibits advocates from charging fees to their clients contingent on the results of litigation or pay a percentage or share of the claims awarded by the Court. The Bar Council of India Rules r 20 of Section II of Chapter II of Part VI, stipulates that an advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

**16. May Litigants bring class actions? If so, what rules apply to class actions?**

The aspect of class actions or commonly known as representative suits are dealt with under of Code of Civil Procedure 1908, Ord. 1 r 8. Ord. I r 8 of the Code provides that when there are number of persons similarly interested in a suit, one or more of them can with the permission of the court or upon a direction from the court, sue or be sued on behalf of themselves or may defend such suit on behalf of or for the benefit of all persons so interested.

Other statutes that accommodate class actions include-

Companies Act 2013 more particularly ss 245 and 37, Competition Act 2002, s 53(4), Consumer Protection Act 1986 s (12)(1)(c) and even



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Yaman has been associated with the firm for more than a decade now. He has an extensive experience in handling Domestic and International Arbitrations. He has closely worked on arbitrations involving disputes arising out of Highway Construction Agreements, Concession Agreements, Consultancy Service Agreements, Dealership Agreements, Lease Agreements, and Agreements for

supplying and laying Optic Fiber Cables etc. also he has wide experience of handling varied litigation matters under different branches of law viz., Civil law, Criminal law, Consumer Protection law, IPR, Tenancy laws, Negotiable Instruments Act, etc.

He has represented clients before various fora for, Writ Petitions, Special Leave Petitions, Disputes related to Bank Guarantees, Recovery Suits, Petitions challenging the arbitration award, enforcement of foreign award, Execution Petitions, Revision Petition before NCDR, Complaints under Section 138 of Negotiable Instruments Act, 1881 etc.

His clients include prominent names in their respective fields, to name a few National Highway Authority of India, IJM Corporation Berhad, IJM (India) Infrastructure Ltd., WSP Consultants India Pvt. Ltd., McGraw Hill Education India Pvt. Ltd., Rewa Tollway Pvt. Ltd., Wimberley Allison Tong & Goo (UK) Ltd., ULMA Manutencion S Coop, Railtel Corporation of India Ltd. etc.

the Industrial Disputes Act 1947 makes room for collective bargaining by workers (Employees) represented by a Union.

**17. What are the procedures for the recognition and enforcement of foreign judgment?**

The recognition and enforcement of a foreign judgment is governed by the provisions of Code of Civil Procedure 1908. A foreign judgment is defined under s 2 (6) to mean the judgment of a foreign court. Section 2(5) stipulates that a foreign court means a court situated outside

India and not established or continued by the authority of the Central Government.

A foreign decree is defined in the CPC 1908, Explanation II to section 44A as, "Decree" with reference to a superior court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitral award, even if such an award is enforceable as a decree or judgment.

### Foreign judgment or decree to be conclusive

A foreign judgment or decree should be conclusive as to any matter adjudicated by it. The test for conclusiveness of a foreign judgment or decree is laid down in the CPC s 13 which states that a foreign judgment shall be conclusive unless:

- It has not been pronounced by a court of competent jurisdiction;
- It has not been given on the merits of the case;
- It appears, on the face of the proceedings, to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;
- The proceedings in which the judgment was obtained are opposed to natural justice;
- It has been obtained by fraud;
- It sustains a claim founded on a breach of any law in force in India.

Thus, before enforcing a foreign judgment or decree, the courts have to ensure that the foreign judgment or decree passes the seven tests above. If the foreign judgment or decree fails any of these tests, it will not be regarded as conclusive and hence not enforceable in India.

### Mode of enforcement of a foreign judgment or decree

There are two ways in which a foreign judgment or decree can be enforced in India depending on whether the judgment or decree has been given by a court in a reciprocating territory or not.

- a. Foreign decree of a reciprocating territory be executed as an Indian decree

By virtue of the Code of Civil Procedure 1908, s 44A, a decree of any superior court of a reciprocating territory shall be executed in India as a decree passed by the Indian district court.

A reciprocating territory is defined in Explanation I to section 44A to be any country

or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section, and “superior courts”, with reference to any such territory, means such courts as may be specified in the said notification.

A judgment from a court of a reciprocating territory can be directly enforced in India by filing an execution application. Section 44A (1) of the Code states that where a certified copy of a decree of any superior court of a reciprocating territory has been filed in a district court, the decree may be executed in India as if it had been passed by the district court (meaning that the entire scheme of execution of decrees as laid down in the CPC Ord. 21 will be applicable).

While filing the execution application, the original certified copy of the decree along with a certificate from the superior court stating the extent to which the decree has been satisfied or adjusted has to be annexed to the application.

- b. Filing a suit in case of decrees from non-reciprocating territories

Where a judgment or decree is not of a superior court of a reciprocating territory, a suit has to be filed in a court of competent jurisdiction in India on that foreign judgment or on the original cause of action or both.

A suit on a foreign judgment/decree must be filed within a period of three years from the date of the judgment/decree

### 18. What are the main forms of alternate dispute resolution? Which are the main alternative dispute resolution organisations in your jurisdiction?

As far as process of arbitration in India is concerned, there are two types- institutional and ad-hoc. Some of the institutes conducting institutional arbitration are as follows:

- a. Indian Council of Arbitration;
- b. Delhi International Arbitration Centre;

- c. Mumbai Centre for International Arbitration
- d. London Court of International Arbitration
- e. FICCI

Other form of dispute resolution prevalent in India is Lok Adalat. Lok Adalat is an informal court convened to dispose of the matters through amicable settlement

The thirds widely practiced dispute resolution process is the mediation. In mediation, either of the parties can mutually appoint a mediator or the court can refer the parties to mediation. One such centre conducting mediation proceedings is run by Delhi High Court by the name of “Samadhan”.

### 19. Are there any proposals for reform to the laws and regulations governing dispute resolution currently being considered?

After the amendment of the Arbitration and Conciliation Act 1996 in 2015, the Saikrishna Committee Report recommended further amendments on the back of the 2015 amendments. Consequently, the Arbitration and Conciliation (Amendment) Bill 2018 has been passed by Lok Sabha. One of the outstanding feature of Arbitration and Conciliation (Amendment) Bill, 2018 is the establishment of an independent body namely the Arbitration Council of India.

### 20. Are there any features regarding dispute resolution in your jurisdiction or in Asia that you wish to highlight?

In India, disputes are resolved by litigation where Courts adjudicate upon issues from the very inception of the disputes. The Supreme Court is the Apex Court and the Highest Judicial body in the country. The High Courts in their respective States act as the highest adjudicatory institutes at the State level, followed by District Courts at lower levels. Modes of Alternate Dispute Resolution, with minimal Court intervention, recognized by law, include Arbitration, Mediation, Conciliation and Judicial Settlement by Lok Adalats.

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# Dispute Resolution Law Guide 2019

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**The fifth annual complimentary guide to  
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The LexisNexis® Dispute Resolution Law Guide 2019 provides you with a detailed review and analysis of the current legislation and regulations that govern dispute resolution practices around the world with a focus on the Asia-Pacific region.

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