

## 16. HIGH COURT AND SUPORDINATE COURT

In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts. The judiciary in a state consists of a high courts and a hierarchy of subordinate courts.

At present, there are 21 high courts in the country. Out of them, three are common high courts. Delhi is the only union territory that has a high court of its own (since 1966). The other union territories fall under the jurisdiction of different state high courts. The Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high courts from any union territory.

Articles, 214 to 231 in Part VI of the Constitution deal with the organization, independence, jurisdiction, power, procedures and so on of the high courts.

### Organisation of High Court

Every high Court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint.

### Appointment of Judges

The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

### Qualifications of Judges

A person to be appointed as a judge of a high court, should have the following qualifications ;

- He should be a citizen of India.
- He should have held a judicial office in the territory of India for ten years; or
- He should have been an advocate of a high court (or high courts in succession) for ten years.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court.

### Oath or Affirmation

A person appointed as a judge of a high court,

before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose.

### Tenure of Judges

The Constitution has not fixed the tenure of a judge of a high court.

- He holds office until he attains the age of 62 years. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president in final.
- He can resign his office by writing to the president.
- He can be removed from his office by the President on the recommendation of the Parliament.
- He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

### Removal of Judges

A judge of a high court can be removed from his office by an order of the President. The President can issue the removal order only after an address by the Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and majority of not less than two-thirds or the members of that House present and voting). The grounds of removal are two – proved misbehavior or incapacity. Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment :

- A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
- The Speaker/Chairman may admit the motion or refuse to admit it.
- If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.



- The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
- If the committee finds the judge to be guilty of misbehavior or suffering from an incapacity, the House can take up the consideration of the motion.
- After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
- Finally, the president passes an order removing the judge.

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court.

It is interesting to know that no judge of a High Court has been impeached so far.

#### **Transfer of Judges**

The President can transfer a judge from one high court to another after consulting the Chief Justice of India.

In the *Third Judges* case (1998), the Supreme Court opined that in case of the transfer of high court judges, the Chief Justice of India should consult, in addition to the collegiums of four seniormost judges of the Supreme Court, the chief justice of the two high courts (one from which the judge is being transferred and the other receiving him.)

#### **Acting Chief Justice**

The President can appoint a judge of a high courts as an acting chief justice of the high court when:

- the chief justice of the high court is unable to perform the duties of his office.
- the office of chief justice of the high court is vacant; or
- the chief justice of the high court is temporarily absent; or

#### **Additional and Acting Judges**

The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years.

The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is :

- unable to perform the duties of his office due to absence or any other reason; or

- appointed to act temporarily as chief justice of that high court.

An acting judge holds office until the permanent judge resumes his office. However, both the additional or acting judges cannot hold office after attaining the age of 62 years.

#### **Retired Judges**

At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period.

#### **Jurisdiction and powers of High Court**

Like the Supreme Court, the high court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state. It is the protector of the Fundamental Right of the citizens.

#### **Original Jurisdiction**

It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following :

- Matters of admiralty, will, marriage, divorce, company laws and contempt of court.
- Disputes relating to the election of members of Parliament and state legislatures.
- Regarding revenue matter or an act ordered or done in revenue collection.
- Enforcement of fundamental rights of citizens.

#### **Writ Jurisdiction**

Article 226 of the constitution empowers a high court to issue writs including *habeas corpus*, *mandamus*, *certiorari*, prohibition and *quo-warrento* for the enforcement of the fundamental rights of the citizens and for any other purpose.

The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32).

#### **Appellate Jurisdiction**

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

#### **Supervisory jurisdiction**

A high court has the power of superintendence



Add. 41-42A, Ashok Park Main, New Rohtak Road, New Delhi-110035

**+91-9350679141**

over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus This power of superintendence of a high court is very broad because, (i) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not; (ii) it covers not only administrative superintendence but also judicial superintendence; (iii) it is revisional jurisdiction; and (iv) it can be *suo-motu* (on its own) and not necessarily on the application of a party.

#### **Control over Subordinate Courts**

- It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
- It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state.
- It can withdraw a case pending in a sub-ordinate court if it involves a substantial question of law that require the interpretation of the Constitution.
- Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

#### **A Court of Record**

As a court of record, a high court has two powers:

- The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court.
- It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

#### **Power of Judicial Review**

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.

Though the phrase 'judicial review' has no where been used in the Constitution, the provisions of Articles

13 and 226 explicitly confer the power of judicial review on a high court.

### **SUBORDINATE COURTS**

The state judiciary consists of a high court and a hierarchy of sub-ordinate courts, also known as lower courts. The subordinate courts are so called because of their subordination to the state high court.

#### **Constitutional Provisions**

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive.

#### **Appointment of District Judges**

The appointments, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

A person to be appointed as district judge should have the following qualifications :

- He should not already be in the service of the Central or the state government.
- He should have been an advocate or a pleader for seven years.
- He should be recommended by the high court for appointment.

#### **Appointment of other judges**

Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court.

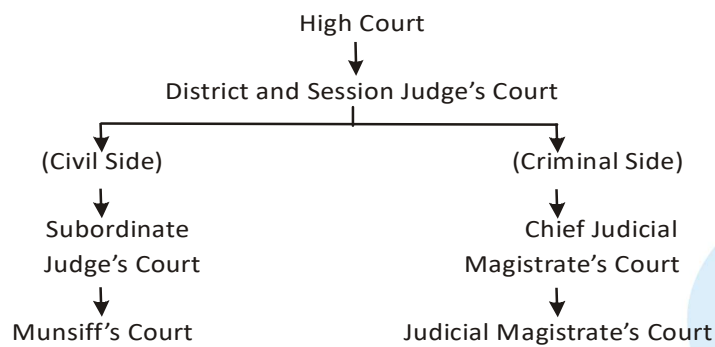
#### **Control over Subordinate Courts**

The control over district courts and other subordinate courts including the posting, promotion and leave of 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.

### **STRUCTURE AND JURISDICTION**

The organizational structure, jurisdiction and nomenclature of the subordinate judiciary are laid down by the states. Hence, they differ slightly from state to state. Broadly speaking, there are three tiers of civil and criminal courts below the High Court. This is shown below :





The district judge is the highest judicial authority in the district. He possesses original and appellate jurisdiction in both civil as well as criminal matters. In other words, the district judge is also the sessions judge. When he deals with civil cases, he is known as the district judge and when he hears the criminal cases, he is called as the sessions judge.

He also has supervisory powers over all the subordinate courts in the district.

The sessions judge has the power to impose any sentence including life imprisonment and capital

punishment (death sentence). However, a capital punishment passed by him is subject to confirmation by the High court, whether there is an appeal or not.

At the lowest level, on the civil side, is the Court of Munsiff and on the criminal side, is the Court of Judicial Magistrate.

In some states, Panchayat courts try petty civil and criminal cases. They are variously known as Nyayu Panchayat, Gram Kutchery, Adalati Panchayat, Panchayat Adalat and so on.