

Introduction

The first High Court was the Calcutta. The Bombay and Madras High Court was established in the year of 1862. There are 25 High Courts in the country. Most recent is the High Court built in Amaravati. Out of them, only three High Courts have jurisdiction over more than one state. Delhi is the only Union Territory which has a separate High Court (since 1966). The Union Territories of Jammu and Kashmir and Ladakh have a common High Court. 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 Court from any union territory.

Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the High Courts.

Composition (Article 216)

The head of the High Court is the Chief Justice of the High Court. There is one Chief Justice. Every High Court of a state or states consists of a Chief Justice appointed by the President with the consultation of the Chief Justice of India and the Governor of that State.

Along with the Chief Justice, other judges are appointed by the President as per the requirement of work. There is no specific limit prescribed for the appointment of judges in a High Court. It may vary from time to time.

Tenure of High Court Judges

- ❑ A judge of the High Court holds the office until the age of 62 years.
- ❑ A High Court judge gives his resignation to the President in writing.
- ❑ If the President desires so and on the recommendation of Parliament, he may remove any High Court judge.
- ❑ A High Court judge is said to vacate his office when

he is transferred to another High Court or is elevated to the Supreme Court.

Appointment of Judges

Article 217 talks about the appointment, qualification and conditions of the office of a Judge of a High Court.

- ❑ The judges and the Chief Justice of the High Courts are appointed officially by the President.
- ❑ The Chief Justice is appointed by the President in consultation with Chief Justice of India and Governor of the state which the High Court's jurisdiction falls under.
- ❑ For the appointment of other judges of the High Court, they are appointed by the President on the advice of the Chief Justice of India, the Governor of that state and the Chief Justice of the High Court.

Qualifications to become a High Court Judge

A person who is to be appointed as a judge of a High Court must possess the following qualifications:

- ❑ He must be a citizen of India.
- ❑ He should have ten years of experience as a judge or
- ❑ He should be a practising advocate for a period of ten years in the High Court.

No age limit is prescribed for the appointment of judges of the High Court.

But unlike the Supreme Court, any eminent jurist is not eligible for becoming a High Court judge.

Oath of Office (Article 219)

- ❑ The Chief Justice of the High Courts and judges of the High Court take an oath before the Governor of state or some person appointed by him.
- ❑ While their appointment and removal are done by the President, they take an oath in front of the Governor.

Transfer of Judges (Article 222)

- ❑ The President can transfer a High Court judge after consultation with the Chief Justice of India.
- ❑ In 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges.

- ❑ In third judges' cases, it was opined that the Chief Justice of India should consult an addition of collegium of four senior-most judges of the Supreme Court, Chief Justice of the two High Courts involved in the process before taking any final decision.

Removal of High Court Judges (Article 218)

Article 218 talks about the removal of High Court judges. The removal of the judge of a High Court can be based on two grounds:

- Misbehaviour
- Incapacity to hold office.

The procedure for impeaching a High Court judge is quite similar to that of a Supreme Court judge.

Process of Removal of Judges

The Constitution provides that a judge can be removed only by an order of the President, based on a motion passed by both Houses of Parliament. The procedure for removal of judges is elaborated in the Judges Inquiry Act, 1968. The Act sets out the following steps for removal from office:

- ❑ Under the Act, an impeachment motion may originate in either House of Parliament. To initiate proceedings:
 - at least 100 members of Lok Sabha may give a signed notice to the Speaker; or
 - at least 50 members of Rajya Sabha may give a signed notice to the Chairman.
- ❑ The Speaker or Chairman may consult individuals and examine relevant material related to the notice. Based on this, he or she may decide to either admit the motion or refuse the motion.
- ❑ If the motion is admitted, the Speaker or Chairman (who receives it) will constitute a three-member committee to investigate the complaint. It will comprise:
 - a Supreme Court judge;
 - Chief Justice of a High Court; and
 - a distinguished jurist.
- ❑ The Committee will frame charges based on which the investigation will be conducted. A copy of the charges will be forwarded to the judge who can present a written defence.
- ❑ After concluding its investigation, the Committee

will submit its report to the Speaker or Chairman, who will then lay the report before the relevant House of Parliament. If the report records a finding of misbehaviour or incapacity, the motion for removal will be taken up for consideration and debated.

- ❑ The motion for removal is required to be adopted by each House of Parliament by:
 - a majority of the total membership of that House; and
 - a majority of at least two-thirds of the members of that House present and voting.
- ❑ If the motion is adopted by this majority, the motion will be sent to the other House for adoption.
- ❑ Once the motion is adopted in both Houses, it is sent to the President, who will issue an order for the removal of the judge.

Comparison between the Supreme Court and the High Court	
Supreme Court	High Court
The Supreme Court is the apex court of Justice.	The High Court is the highest court of authority in the state its jurisdiction falls under.
Headed by Chief Justice of India	Headed by Chief Justice of the High Court.
Supreme Court has supreme power over all the courts in India.	The High Court has supreme power over only the tribunal and other subordinate courts in its state.
The Chief Justice of India is appointed by the President and the other judges of the Supreme Court are appointed by the President on the recommendation of the Chief Justice of India.	The Chief Justice of India is appointed by the President on the recommendation of Chief Justice of India and Governor of the state. The judges of the High Court are appointed by the President of India after consulting the Chief Justice of India, the governor of that state and the Chief Justice of the High Court.
The judges of the Supreme Court retire at 65.	The judges of the High Court retire at 62.
The Supreme Court is the highest court of appeal and there is no other court above it.	The judgement of the High Court can plead to the Supreme Court.
There is one Supreme Court in India.	There is a total of 25 High Courts in India.

Other temporary judges:

Acting Chief Justice (Article 223)

- ❑ The President can appoint a High Court judge as acting chief justice in case the vacancy of office of

Chief Justice or Chief Justice is temporarily absent or unable to perform his duties.

- ❑ President can appoint additional judges for a period of two years if additional work load is seen or to clear arrears. The appointees should be duly qualified.
- ❑ For Acting judges, the President can appoint duly qualified people till the judge is temporarily absent or unable to perform his duty.

Additional Judges [Article 224(1)]

- ❑ If by reason of any temporary increase in the business of High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.
- ❑ Can hold office till the age of 62 years.

Acting Judge [Article 224 (2)]

- ❑ An Acting judge can be appointed when any Judge, other than the Chief Justice, is unable to perform his duties due to absence or otherwise, or when a permanent Judge of the High Court is appointed as its acting Chief Justice.
- ❑ An Acting judge holds office until the permanent Judge resumes his duties but cannot hold office beyond the age of 62 years.

Retired judges (Article 224 (A))

- ❑ The Chief Justice of a High Court, can request a retired High Court Judge to sit and act as a Judge of the High Court for a temporary period.
- ❑ He can take this step after getting consent from the President of India and also of the person to be so appointed.
- ❑ The appointed person in this case will receive such salary and allowances as determined by the President of India.

Autonomy of High Courts

The autonomy of the High Courts can be summarised by the points given below:

- ❑ ***Appointment of Judges and other staffs:*** The appointment of judges, other officials and staffs of the High Court's lies within the judiciary itself and

is not connected to the legislature or the executive.

- ❑ ***Tenure of the Judges:*** High Court judges enjoy the security of tenure till the age of retirement, which is 62 years. A High Court cannot be removed except by an address of the President.
- ❑ ***Salaries and allowances:*** The High Court judges enjoy good salaries, perks and allowances and these cannot be changed to their disadvantage except in case of a financial emergency. The expenses of the High Court are charged on the Consolidated Fund of the State, which is not subject to vote in the State Legislature.
- ❑ ***Powers:*** The Parliament and the State Legislature cannot cut the powers and jurisdiction of the High Court as guaranteed by the Constitution.
- ❑ ***Conduct of judges:*** Unless a motion of impeachment has been moved, the conduct of the High Court judges cannot be discussed in the Parliament.
- ❑ ***Retirement:*** After retirement, High Court judges cannot hold an office of emolument under the Government of India or that of a State. There is an exception to this clause, however, when, with the consent of the Chief Justice of India, retired judges can be nominated to a temporary office, and in the situation of emergencies.

Jurisdiction and Powers of High Court

A High Court is the highest appellate authority in a state. It enjoys many powers like:

Original Jurisdiction

- ❑ It means the High Court has the power to hear a case in the first instance as an original court, not by way of appeal.
 - ❑ High Courts are empowered to issue writs in order to enforce fundamental rights.
 - ❑ Matters of admiralty, will, marriage, divorce, company laws and contempt of Court.
 - ❑ Disputes relating to the selection of members of parliament and state legislatures.
 - ❑ Regarding revenue matter or an act ordered or done in revenue collection.
 - ❑ Cases ordered to be transferred from a subordinate court involving the interpretation of the constitution to its own file.
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- ❑ Election petitions can be heard by the High Courts.
- ❑ The High Courts of Calcutta, Bombay and Madras have original jurisdiction in criminal and civil cases arising within these cities.
- ❑ An exclusive right enjoyed by these High Courts is that they are entitled to hear civil cases which involve property worth over Rs.20000.

Writ Jurisdiction

- ❑ Article 226 of Constitution empowers a High Court to issue writs including Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo-Warranto for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase “any other purpose” refers to the enforcement of an ordinary legal right.
- ❑ A writ is a discretionary remedy and the High Court can refuse it on the Ground of acquiescence, delay, available alternate remedy and no benefit to the party.
- ❑ The scope of issuing a writ under Article 226 to the High Court is wider than that of the Supreme Court. High Courts in India have the power to issue writs for the enforcement of fundamental rights as well as legal rights. Whereas the Supreme Court issues only on enforcement of fundamental rights.
- ❑ The writ jurisdiction of the High Court is not an exclusive but concurrent with the writ jurisdiction of the Supreme Court. It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the High Court or the Supreme Court directly.

Appellate Jurisdiction

- ❑ The High Court is the topmost court in terms of hierarchy in a state. It is subordinate to the Supreme Court but controls all subordinate courts.
- ❑ The High Court of a state has appellate jurisdiction in following matters – civil, criminal and constitutional.
- ❑ In civil matters, an appeal can be made directly from the subordinate or lower courts if the case involves a value higher than Rs. 5000. It may be filed for an appeal on both question of law and question of fact. The second appeal lies only when there is a question of law in the judgement or order passed by

the subordinate courts.

- ❑ ***In criminal matters:*** it extends to cases decided by Sessions and Additional Sessions Judges.
 - If the sessions judge has awarded imprisonment for 7 years or more.
 - If the sessions judge has awarded capital punishment.
- ❑ The jurisdiction of the High Court extends to all cases under the State or federal laws.
- ❑ In constitutional matters, an appeal can be made if the High Court certifies that a case involves a substantial question of law.

Supervisory Jurisdiction

- ❑ According to Article 227 of the Constitution, the High Court works as a supervisory body in a state. It has to supervise all the courts and tribunals in a state that come under its territorial jurisdiction.
- ❑ The power of the High Court is not unlimited to have unnecessary control over subordinate courts. But this power must be used by the High Court in rare cases and sparingly.
- ❑ A High Court has the power of superintendence over all Courts and Tribunals functioning in its territorial jurisdiction. Thus, it may:
 - Call for returns from them;
 - Make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;
 - Prescribe forms in which books, entries and accounts are to be kept by them; and
 - Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

Court of Record

- ❑ The High Court is a court of record under Article 215 of the Constitution. All the judgements and orders which the concerned High Court pass shall be kept as the court of record for future references. These judgments act as precedents for the lower and subordinate courts.
- ❑ The High Court has the power to punish for the contempt of court:
 - If any person disregards or disobeys the High Court’s judgment, or

- Attempts to scandalise the authority of the court, or
- In any manner, tries to obstruct the proceedings of the court.

Judicial Review

- ❑ Judicial review means examining the correctness of the legislative acts of the legislature and executive orders of both the central government and state government.
- ❑ If the High Court's find it to be against the spirit of the Constitution or violative of fundamental rights or made by an authority incompetent to make it, then it is declared void.
- ❑ The 42nd Amendment of 1976 curtailed the power of judicial review of the High Court. But then 43rd Amendment 1977 restored the position of High Court for judicial review.

Administrative Powers

- ❑ It superintends and controls all the subordinate courts in its territorial jurisdiction.
- ❑ It can ask for details of proceedings from subordinate courts.
- ❑ It issues rules regarding the working of the subordinate courts.
- ❑ It can transfer any case from one court to another and can also transfer the case to itself and decide the same.

- ❑ It can enquire into the records or other connected documents of any subordinate court.
- ❑ It can appoint its administration staff and determine their salaries and allowances, and conditions of service.

Control over Subordinate Courts:

- ❑ Article 235 of Constitution of India talks about control of High Court over subordinate courts.
 - ❑ In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate Courts as mentioned above, a High Court has an administrative control and powers over them. These include the following:
 - It is consulted by the Governor in the matters of appointment, posting and promotion of district Judges and in the appointment of persons to the judicial service of the state.
 - 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 subordinate Court if it involves substantial question of law that require the interpretation of the constitution.
 - Its law is binding on all subordinate Courts functioning with its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all Courts in India.
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