High Court

Introduction

- 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 court and a hierarchy of subordinate courts.
- The high court occupies the top position in the judicial administration of a state.
- The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras.
- In 1866, a fourth high court was established at Allahabad.
- In the course of time, each province in British India came to have its own high court.
- After 1950, a high court existing in a province became the high court for the corresponding state.
- The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory.
- The territorial jurisdiction of a high court is co-terminus with the territory of a state.
- Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory. At present, there are 25 high courts in the country (Last – Andhra Pradesh High Court).
- Out of them, four 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 court from any union territory.

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.
- Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president.
- Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

Judges

- 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.
- In the Second Judges case (1993), the Supreme Court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief justice of India.
- In the Third Judges case4 (1998), the Supreme Court opined that in case of the appointment of high court judges, the chief justice of India should consult a collegium of two senior-most judges of the Supreme Court.
- Thus, the sole opinion of the chief justice of India alone does not constitute the 'consultation' process.
- The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the Collegium System of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC).

- However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void.
- Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the Fourth Judges case4a (2015).
- The Court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

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.
- Moreover, unlike in the case of the Supreme Court, the Constitution makes no provision for appointment of a distinguished jurist as a judge of a high court.

Oath or Affirmation (Article 219)

- 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. In his oath, a judge of a high court swears:
  - To bear true faith and allegiance to the Constitution of India;
  - To uphold the sovereignty and integrity of India;
  - To duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and

- To uphold the Constitution and the laws.

Tenure of Judges

- The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:
  - 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 is 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 of the members of that House present and voting).
- The grounds of removal are two—proved misbehaviour 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
  - The chief justice or a judge of the Supreme Court,
  - A chief justice of a high court, and
  - A distinguished jurist.
- If the committee finds the judge to be guilty of misbehaviour 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.

Salaries and Allowances (Article 221)

- The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament.
- They cannot be varied to their disadvantage after their appointment except during a financial emergency.
- In 2009, the salary of the chief justice was increased from 30,000 to 90,000 per month and that of a judge from 26,000 to 80,000 per month.
- They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc.
- The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

Transfer of Judges (Article 222)

- The President can transfer a judge from one high court to another after consulting the Chief Justice of India.
- On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.
- In 1977, the Supreme Court ruled that the transfer of high court judges could be resorted to only as an exceptional measure and only in public interest and not by way of punishment.
- Again in 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges.
- But, only the judge who is transferred can challenge it.
- 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 collegium of four senior most 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).
- Thus, the sole opinion of the chief justice of India does not constitute the 'consultation' process.

Acting Chief Justice (Article 223)

- The President can appoint a judge of a high court as an acting chief justice of the high court when:
  - The office of chief justice of the high court is vacant; or
  - The chief justice of the high court is temporarily absent; or
  - The chief justice of the high court is unable to perform the duties of his office.

Additional and Acting Judges (Article 224)

- The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:
  - There is a temporary increase in the business of the high court; or
  - There are arrears of work in the high court.

- 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 judge cannot hold office after attaining the age of 62 years.

Retired Judges (Article 224 A)

- 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.
- He can do so only with the previous consent of the President and also of the person to be so appointed.
- Such a judge is entitled to such allowances as the President may determine.
- He will also enjoy all the jurisdiction, powers and privileges of a judge of that high court.
- But, he will not otherwise be deemed to be a judge of that high court.

Independence of High Court

- The independence of a high court is very essential for the effective discharge of the duties assigned to it.
- It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature.
- It should be allowed to do justice without fear or favour.
- The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.
  - **Mode of Appointment**
    - The judges of a high court are appointed by the president (which means the cabinet) in consultation with the members of the judiciary

itself (i.e., chief justice of India and the chief justice of the high court).

- This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

- **Security of Tenure**
  - The judges of a high court are provided with the security of tenure.
  - They can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution.
  - This means that they do not hold their office during the pleasure of the president, though they are appointed by him.
  - This is obvious from the fact that no judge of a high court has been removed (or impeached) so far.
- **Fixed Service Conditions**
  - The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament.
  - But, they cannot be changed to their disadvantage after their appointment except during a financial emergency.
  - Thus, the conditions of service of the judges of a high court remain same during their term of office.
- **Expenses Charged on Consolidated Fund**
  - The salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are charged on the consolidated fund of the state.
  - Thus, they are non-votable by the state legislature (though they can be discussed by it).
  - It should be noted here that the pension of a high court judge is charged on the Consolidated Fund of India and not the state.
- **Conduct of Judges cannot be Discussed**
  - The Constitution prohibits any discussion in Parliament or in a state legislature with respect to the conduct of the judges of a high court

in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

- **Ban on Practice after Retirement**
  - The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts.
  - This ensures that they do not favour any one in the hope of future favour.
- **Power to Punish for its Contempt**
  - A high court can punish any person for its contempt.
  - Thus, its actions and decisions cannot be ciriticised and opposed by anybody.
  - This power is vested in a high court to maintain its authority, dignity and honour.
- **Freedom to Appoint its Staff**
  - The chief justice of a high court can appoint officers and servants of the high court without any interference from the executive.
  - He can also prescribe their conditions of service.
- **Its Jurisdiction cannot be Curtailed**
  - The jurisdiction and powers of a high court in so far as they are specified in the Constitution cannot be curtailed both by the Parliament and the state legislature.
  - But, in other respects, the jurisdiction and powers of a high court can be changed both by the parliament and the state legislature.
- **Separation from Executive**
  - The Constitution directs the state to take steps to separate the judiciary from the executive in public services.
  - This means that the executive authorities should not possess the judicial powers.
  - Consequent upon its implementation, the role of executive authorities in judicial administration came to an end

Jurisdiction and Powers of High Court (Article 225)

- 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 Rights of the citizens.
- It is vested with the power to interpret the Constitution.
- Besides, it has supervisory and consultative roles.
- However, the Constitution does not contain detailed provisions with regard to the jurisdiction and powers of a high court.
- It only lays down that the jurisdiction and powers of a high court are to be the same as immediately before the commencement of the Constitution.
- But, there is one addition, that is, the Constitution gives a high court jurisdiction over revenue matters (which it did not enjoy in the pre-constitution era).
- The Constitution also confers (by other provisions) some more additional powers on a high court like writ jurisdiction, power of superintendence, consultative power, etc.
- Moreover, it empowers the Parliament and the state legislature to change the jurisdiction and powers of a high court.
- At present, a high court enjoys the following jurisdiction and powers:
  - Original jurisdiction.
  - Writ jurisdiction.
  - Appellate jurisdiction.
  - Supervisory jurisdiction.
  - Control over subordinate courts.
  - A court of record.
  - Power of judicial review.
- The present jurisdiction and powers of a high court are governed by
  - The constitutional provisions,
  - The Letters Patent,
  - The Acts of Parliament,

- The Acts of State Legislature,
- Indian Penal Code, 1860,
- Criminal Procedure Code, 1973, and
- Civil Procedure Code, 1908.

- **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 admirality, 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.
  - Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
  - The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value. Before 1973, the Calcutta, Bombay and Madras High Courts also had original criminal jurisdiction.
  - This was fully abolished by the Criminal Procedure Code, 1973.
- **Writ Jurisdiction** (**Article 226**) of the 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 'for any other purpose' refers to the enforcement of an ordinary legal right.
  - The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.

- 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).
- 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.
- However, the writ jurisdiction of the high court is wider than that of the Supreme Court.
- This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.
- In the Chandra Kumar case (1997), the Supreme Court ruled that the writ jurisdiction of both the high court and the Supreme Court constitute a part of the basic structure of the Constitution.
- Hence, it cannot be ousted or excluded even by way of an amendment to the Constitution.

- **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.
  - Civil Matters The civil appellate jurisdiction of a high court is as follows:
    - First appeals from the orders and judgements of the district courts, additional district courts and other subordinate courts lie directly to the high court, on both questions of law and fact, if the amount exceeds the stipulated limit.

- Second appeals from the orders and judgements of the district court or other subordinate courts lie to the high court in the cases involving questions of law only (and not questions of fact).
- The Calcutta, Bombay and Madras High Courts have provision for intra court appeals. When a single judge of the high court has decided a case (either under the original or appellate jurisdiction of the high court), an appeal from such a decision lies to the division bench of the same high court.
- Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state high court.
- In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of the high courts.
- Consequently, it is not possible for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals, without first going to the high courts.

- Criminal Matters The criminal appellate jurisdiction of a high court is as follows:
  - Appeals from the judgements of sessions court and additional sessions court lie to the high court if the sentence is one of imprisonment for more than seven years.
  - It should also be noted here that a death sentence (popularly known as capital punishment) awarded by a sessions court or an additional sessions court should be confirmed by the high court before it can be executed, whether there is an appeal by the convicted person or not.
  - In some cases specified in various provisions of the Criminal Procedure Code (1973), the appeals from the judgements of the assistant sessions judge, metropolitan magistrate or other magistrates (judicial) lie to the high court.

Supervisory Jurisdiction (Article 227)

- A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). 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.
- This power of superintendence of a high court is very broad because,
  - It extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not;
  - It covers not only administrative superintendence but also judicial superintendence;
  - It is a revisional jurisdiction; and
  - It can be suo-motu (on its own) and not necessarily on the application of a party.
- However, this power does not vest the high court with any unlimited authority over the subordinate courts and tribunals.
- It is an extraordinary power and hence has to be used most sparingly and only in appropriate cases. Usually, it is limited to,
  - Excess of jurisdiction,
  - Gross violation of natural justice,
  - Error of law,
  - Disregard to the law of superior courts,
  - Perverse findings, and
  - Manifest injustice.

Control 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 other 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 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 (other than district judges).
  - It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution.
  - It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.
  - 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 (Article 215)

- 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.
  - They are recognised as legal precedents and legal references.
  - It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.
  - The expression ‘contempt of court’ has not been defined by the Constitution.

- However, the expression has been defined by the Contempt of Court Act of 1971.
- Under this, contempt of court may be civil or criminal.
- Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court.

- Criminal contempt means the publication of any matter or doing an act which—
  - scandalises or lowers the authority of a court; or
  - prejudices or interferes with the due course of a judicial proceeding; or
  - interferes or obstructs the administration of justice in any other manner.
- However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.
- As a court of record, a high court also has the power to review and correct its own judgement or order or decision, even though no specific power of review is conferred on it by the Constitution.
- The Supreme Court, on the other hand, has been specifically conferred with the power of review by the constitution.

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.
- On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the high court.
- Consequently, they cannot be enforced by the government.
- Though the phrase 'judicial review' has nowhere been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court.

- The constitutional validity of a legislative enactment or an executive order can be challenged in a high court on the following three grounds:
  - It infringes the fundamental rights (Part III),
  - It is outside the competence of the authority which has framed it, and
  - It is repugnant to the constitutional provisions.
- The 42nd Amendment Act of 1976 curtailed the judicial review power of high court.
- It debarred the high courts from considering the constitutional validity of any central law.
- However, the 43rd Amendment Act of 1977 restored the original position.