

**SUBJECT: POLITICAL SCIENCE IV**

**TEACHER: MS. DEEPIKA GAHATRAJ**

**MODULE: XIV, HIGH COURT**

**TOPIC: COMPOSITION AND JURISDICTION OF HIGH COURT**

### **HIGH 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 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 . Out of them, three are common high courts. The 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.

The name, year of establishment, territorial jurisdiction and seat (with bench or benches) of all the 24 high courts are mentioned in Table 30.1 at the end of this chapter.

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 of High Courts:**

(i) Every High Court shall consists of a Chief Justice and such other judges as the President of India may from time to time appoint.

(ii) Besides, the President has the power to appoint

(a) Additional Judges for a temporary period not exceeding two years, for the clearance of areas of work in a High Court;

(b)an acting judge, when a permanent judge of a High Court (other than Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice.

But neither an additional nor an acting Judge can hold office beyond the age of 62 years (by 15th Amendment) Act age of retirement raised from 60 to 62

## **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 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:

1. Original jurisdiction.Writ jurisdiction.
2. Appellate jurisdiction.
3. Supervisory jurisdiction.
4. Control over subordinate courts.

5. A court of record.

6. Power of judicial review.

The present jurisdiction and powers of a high court are governed by (a) the constitutional provisions, (b) the Letters Patent, (c) the Acts of Parliament, (d) the Acts of State Legislature, (e) Indian Penal Code, 1860, (f) Criminal Procedure Code, 1973, and (g) Civil Procedure Code, 1908.

### **1. 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:

- (a) Matters of admiralty, will, marriage, divorce, company laws and contempt of court.
- (b) Disputes relating to the election of members of Parliament and state legislatures.
- (c) Regarding revenue matter or an act ordered or done in revenue collection.
- (d) Enforcement of fundamental rights of citizens.
- (e) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
- (f) 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.

### **2. 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 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.

### **3. 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.

**(a) Civil Matters** The civil appellate jurisdiction of a high court is as follows:

- (i) 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.
- (ii) 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).
- (iii) 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.
- (iv) 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.

**(b) Criminal Matters** The criminal appellate jurisdiction of a high court is as follows:

(i) 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.

(ii) 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.

**Reference:**

M.Laxmikanth (2013), Indian Polity, Mc Grow Hill Education, New Delhi