

## High Courts in India

As per the Constitution of India, Articles 214-231 deals with the provisions of the High Courts in India. At present, we have 24 high courts in the country, which includes 3 common high courts. Article 217 deals with the appointment of judges. However, there is also a procedure for removal of Judges of the High Court.

According to the Indian Constitution, Articles 214-231 deals with the provisions of High Courts in India. It provides for separate high courts for separate states but according to 7th constitutional amendment act the same high court can be the court for more than one state. At present, we have 25 High Courts in the country.

### Constitution and composition of High courts

Every high court consists of a Chief Justice and a number of judges, who are determined by the President from time to time. Article 217 deals with the appointment of judges and states that every judge of high court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the state.

### Jurisdiction and powers of High Court

The powers and jurisdiction of High Court can be classified under following heads:

1) Original Jurisdiction- it means that applicant can directly go to High Court and not by means of appeals. This power is used in the following matters –

- Disputes arising out of relating to members of Parliament and state legislative assembly
- Relating to marriage, law, admiralty divorce, contempt of court etc
- Enforcement of fundamental rights (Supreme Court also has this power)
- Cases transferred from other court to itself which involves a question of law.

2) Writ Jurisdiction- Article 226 states that High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases, any government, within those territories directions, orders, or writs.

### 3) Appellate Jurisdiction-

It is said that the high court is the primary court of appeal i.e. it has power to hear the appeals against the judgment of the subordinate courts within its territories. This power can be classified in to 2 categories-Civil jurisdiction and Criminal jurisdiction

In civil cases its jurisdiction includes to the orders and judgments of the district courts, additional district courts and other subordinate courts.

In criminal cases its jurisdiction includes judgments relating to sessions courts and additional sessions court. These cases should be involving imprisonment for more than 7 years, confirmation of any death sentence awarded by session court before execution

#### **4) Power of Superintendence –**

The High Court has this power over all courts and tribunals except those dealing with the armed forces functioning in the state. Hence in the exercise of this power it may –

- Call for return from such courts
- May issue general rules and prescribe forms for regulating the practice and proceedings of such courts
- Prescribe the form in which books and accounts are being kept by the officers of any court
- Settle fees payable to the sheriff clerks, officers and legal practitioners

The constitution does not place any restriction on this power of superintendence over the subordinate courts, it is not only by means of appeal by the person, it can be suo motto. It is of the nature of revision as it verifies the earlier judgments. In this regard it is considered as a special function as the Supreme Court has no similar power vis a vis the High Court.

#### **5) Control over Subordinate Courts –**

This is an extension of the above supervisory and appellate jurisdiction. It states that the High Court can withdraw a case pending before any subordinate court, if it involves the substantial question of law. The case can be disposed of itself or solve the question of law and return back to the same court. In the second case the opinion tendered by High court would be binding on the subordinate court. It also deals with matters pertaining to posting promotion, grant of leave, transfer and discipline of the members there in. In this regard it appoints officers and servants to be made by Chief Justice or such other judge of High Court as the Chief Justice may direct.

**6) Court of Record –** It involves recording of judgments, proceedings and acts of high courts to be recorded for the perpetual memory. These records cannot be further questioned in any court. Based on this record it has power to punish for the contempt of court either with simple imprisonment or with fine or both.

**7) Judicial Review –** This power of High Court includes the power to examine the constitutionality of legislative and executive orders of both central and state government. It is to be noted that the word judicial review is nowhere mentioned in our constitution but the Article 13 and 226 explicitly provide High Court with this power.

#### **8) Extension of jurisdiction of High Court to Union Territories –**

Parliament by law may extend the jurisdiction of a High Court to or exclude the jurisdiction of a high court from any union territory.

#### **Procedure for Removal of Judges:**

The judge's enquiry act governs the removal or impeachment of judges of High Court. Hence the grounds for removal are

- Proved misbehaviour
- Incapacity

He is removed by the President as per the removal order passed by each house of the parliament by a special majority i.e. a majority of the total membership of the house and a majority of not less than two thirds of members present and voting. A detailed procedure followed is as follows:

1. The initial removal motion to be signed by 100 members in Lok Sabha or by 50 members of Rajya Sabha and be presented to the speaker/ chairman of the house.
2. The speaker has the option of either accepting or rejecting the motion
3. If it is accepted a committee would be constituted to investigate the matter
4. The committee so constituted consists of chief justice or judge of Supreme Court, chief justice of high court and a distinguished jurist.
5. If the committee ascertains the guilty of the judge then the houses take up the issue.
6. If the motion is passed in each house of the parliament by a special majority then the it is later presented to the President for his assent.
7. The President then passes order for removal of judge. The judge is considered removed from that day. (In fact no judge has been removed till now)

**Transfer of a judge from one high court to another (Article 222)** – according to it the President may after consultation with the chief justice of India transfer a judge from one High Court to any High Court. Also when a judge has been or is so transferred he shall during the period he serves, after the commencement of the constitution act as a judge of the other high court, so shall be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and until so determined such compensatory allowance as the President may by order fix.

Later on in 1977 in K Ashok Reddy case ruled that there requires judicial review in case of arbitrary transfer of judges. Hence as to locus standi only the judge who is transferred can challenge it.

**Appointment of acting Chief Justice (Article 223)** - when the office of Chief Justice of a High Court is vacant or when any such Chief Justice by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the court as the President may appoint for the purposes.

However, appointments of persons other than district judges to the judicial service of a state shall be made by the Governor of the state in accordance with rules made by him after consultation with the state public service commission and with the high court exercising jurisdiction in relation to such state.

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