

Chapter IV - High Courts of the Region or State

The primary responsibility of the Judiciary, including the High Court, is to uphold the Constitution and laws impartially and without bias towards any political or economic beliefs. The High Court serves as the highest court of appeal in the state, and is responsible for protecting the fundamental rights of citizens.

Additionally, the High Court possesses a wide range of powers, such as writ jurisdiction and the power of superintendence, as well as the ability to advise other branches of government. Furthermore, the Constitution grants the authority to the Parliament and state legislatures to alter the jurisdiction and powers of the High Court.

5.1 High Court

The High Court, often referred to as a superior court at the state level, is a significant judicial institution within a state. The Indian Constitution, specifically Article 214-231, outlines the provisions for High Courts in India. The appointment of judges in the High Court is carried out by the President of India, in consultation with the Chief Justice of India and the Governor of the state. The High Court is led by a Chief Justice. The number of judges in the High Court is determined by either the average number of main cases handled in the last five years or the average rate of disposal of main cases per judge per year in that High Court, whichever is higher.

5.2 Powers of High Court

The powers of high court can be classified into two, as a court of record or administrative power. The following are powers based on the classification:

5.2.1 As a Court of record:

- Being a court of record, meaning that its records have legal significance and can be used as evidence.
- The records of the High Court's judgments can be used by subordinate courts in making decisions.
- The power to punish individuals or institutions for contempt of court.

5.2.2 Administrative Powers:

- Supervising and controlling all subordinate courts.
- The ability to request information and proceedings from subordinate courts.
- Issuing rules regarding the operation of subordinate courts.
- Authority to transfer cases from one court to another and even hear the case itself.
- The power to examine records and other documents related to subordinate courts.
- The ability to appoint administrative staff and determine their salaries, allowances and working conditions.

5.3 Power of Judicial review:

The Indian Constitution's Article 13 provides for the principle of judicial review, particularly as it relates to fundamental rights outlined in Part III. A High Court alone can certify the cases fit for appeal before the Court. The following are some of some examples of such cases:

- The power of judicial review allows a High Court to evaluate the constitutionality of laws and executive actions of both the central and state governments.
- If a law or executive action is found to be in violation of the Constitution, the High Court can declare it illegal, unconstitutional and invalid, and it cannot be enforced by the government.
- The constitutional validity of a law or executive action can be challenged in a High Court on the following grounds:
- It violates any of the fundamental rights.
- It exceeds the authority of the body or individual that created it or it is incompatible with other constitutional provisions.

5.4 Jurisdiction of High Court

Jurisdiction refers to the legal authority and power of a court to hear and decide cases. The jurisdiction of a High Court in India typically includes the following:

5.4.1 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:

- 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.
- 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.

5.4.2 Writ Jurisdiction:

A writ is a legal remedy that allows individuals to quickly seek justice and protect their rights from infringement by government authorities. The Indian Constitution empowers the Supreme Court to issue writs, such as habeas corpus, mandamus, certiorari, prohibition, and quo warranto, to protect fundamental rights (Article 32{2}). High Courts also have the power to issue writs under Article 226. This article grants High Courts the authority to issue writs, including habeas corpus, mandamus, certiorari, prohibition, and quo warranto, for the enforcement of citizens' fundamental rights and for any other related purpose.

The five well-known writs are:

- **Habeas Corpus:-**

It literally means 'to have a body of'. This writ is used to release a person who has been unlawfully detained or imprisoned.

- **Mandamus:-**

It is a command to act lawfully and to desist from perpetrating an unlawful act. It is issued by the Court to direct a public authority to perform the legal duties which it has not or refused to perform.

- **Certiorari:-**

It means to 'certify' or 'to inform'. It is a curative writ. When the Court is of the opinion that a lower court or tribunal has passed an order which is beyond its powers or committed an error of law, then through the writ of certiorari, it may transfer the case to itself or quash the order passed by the lower court or tribunal.

- **Prohibition:-**

This writ is issued by a Court to prohibit lower courts, tribunals and other quasi-judicial authorities from doing something beyond their authority. It is issued to direct inactivity and thus differs from mandamus which directs activity.

- **Quo warrant:-**

It is a question asking 'by what warrant'. Through this writ, the Court calls upon a person holding a public office to show under what authority he holds that office.

5.4.3 Appellate Jurisdiction:

Appellate jurisdiction refers to the legal authority and power of a court to hear and decide appeals from lower courts or tribunals. When a party is not satisfied with the decision of a lower court or tribunal, they can file an appeal to a higher court with appellate jurisdiction.

In the Indian Judiciary system, the High Courts have appellate jurisdiction over the lower courts and tribunals within its territorial jurisdiction. This means that the High Court has the power to hear and decide appeals from decisions made by the lower courts and tribunals, such as district courts and sessions courts, and to overturn or uphold the decision of the lower court or tribunal.

The Appellate Jurisdiction of the High Court can be exercised in both civil and criminal matters, for e.g. the High Court can hear appeals from the decision of the District Court in a civil case or appeals from the decision of the Sessions Court in a criminal case.

It's important to note that the appellate jurisdiction is not limited to the cases where there is a dispute on facts, but also includes cases where there is a dispute on the interpretation of laws and constitution.

5.4.4 Supervisory Jurisdiction:

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.

In summary, the High Court is a superior court in a state that is responsible for upholding the Constitution and laws, protecting the fundamental rights of citizens, and reviewing the constitutionality of legislative enactments and executive orders. The Indian Constitution grants the High Court the power to issue writs, such as habeas corpus, mandamus, certiorari, prohibition, and quo warranto, for the enforcement of fundamental rights and other purposes. There are currently 25 High Courts in India, serving various states and union territories, with some High Courts having additional charges. The Calcutta High Court is the oldest and the Telengana and Andhra Pradesh High Courts are the newest. The Allahabad High Court is the biggest.

https://en.wikipedia.org/wiki/High_courts_of_India

<https://www.lawinsider.in/columns/a-complete-overview-of-high-courts-in-india>

Chapter V - Courts

The Indian judicial system is based on the common law system, which is inherited from the British colonial legacy. The court system of India comprises the Supreme Court of India, the High Courts, and subordinate courts at district, municipal, and village levels. The Indian judiciary is divided into several levels to decentralize and address matters at the grassroots levels. In this article, we will discuss the hierarchy of courts, civil courts, criminal courts, and the judicial authority of the Supreme Court in India.

6.1 Hierarchy of courts

The Indian judiciary is divided into several levels in order to decentralize and address matters at the grass roots levels. The basic structure is as follows:

1. **Supreme Court:** It is the Apex court of the country and was constituted on 28th January 1950. It is the highest court of appeal and enjoys both original suits and appeals of High Court judgments. The Supreme Court is comprised of the Chief Justice of India and 25 other judges. Articles 124-147 of the Constitution of India lay down the authority of the Supreme Court.
2. **High Courts:** High Courts are the highest judicial body at the State level. Article 214 lays down the authority of High Courts. There are 25 High Courts in India. High Courts exercise civil or criminal jurisdiction only if the subordinate courts in the State are not competent to try the matters. High Courts may even take appeals from lower courts. High Court judges are appointed by the President of India upon consultation with the Chief Justice of India, the Chief Justice of the High Court and the Governor of the State.
3. **District Courts:** District Courts are established by the State Governments of India for every district or group of districts based on the caseload and population density. District Courts are under the direct administration of High Courts and are bound by High Court judgments. Every district generally has two kinds of courts: a. Civil Courts b. Criminal Courts District Courts are presided over by District Judges. Additional District Judges and Assistant District Judges may be appointed based on the caseload. Appeals against District Court judgments lie in the High Court.
4. **Lok Adalats/Village Courts:** these are subordinate courts at the village level which provide a system for alternate dispute resolution in villages.
5. **Tribunals:** the Constitution provides the government with the power to set up special Tribunals for the administration of specific matters such as tax cases, land cases, consumer cases etc.

6.2 Civil Courts

Civil courts provide remedies for civil wrongs committed by individuals against other individuals and entities. Civil matters range from property disputes to breaches of contract to divorce cases. Civil courts follow the principle of *ubi jus ibi remedium* (for every wrong the law provides remedy). Unless expressly or impliedly barred by any other law in force, civil courts have the jurisdiction to try all suits of civil nature. The Code of Civil Procedure (CPC) 1908 governs the procedures to be followed by civil courts in administering civil cases in India. As a matter of fact, every suit must be instituted before the court of lowest jurisdiction (the Munsif court). Upon institution, it is decided whether the respective court has competence to try the case. The Civil Court hierarchy in districts is as follows:

1. **District Court:** The court of district judges is the highest civil court in a district. It exercises both judicial and administrative functions. The District Judge combines the powers of trying both civil and criminal cases. Hence, they are designated the District and Sessions Judge.
2. **Sub-judge Court:** if the value of the subject-matter of the suit is worth more than Rs. 1 lakh, the Sub-judge and Additional Sub-judge courts may try the suit.
3. **Additional Sub-judge Court:** this is created based on the case-load.
4. **Munsif Court:** if the value of the subject-matter of the suit is worth Rs. 1 lakh or below, the Munsif court is competent to try the suit.

6.3 Criminal Courts

The power of the various criminal courts is mentioned under the **Code of Criminal Procedure (CrPC)**.

According to Section 26 of the CrPC, any offence mentioned under the Indian Penal Code may be tried by:

1. High Courts
2. Courts of Session
3. Any other Court as specified in the First Schedule of the Code of Criminal Procedure.

6.4 Binding value of Judicial Precedents

In India, as a common law country, the decisions of higher courts such as the Supreme Court and High Courts are binding on subordinate and lower courts. This means that subordinate courts are required to follow and consider these decisions as law. Precedent is an important source of law in India. The binding value of different courts in the court hierarchy can be summarized as follows:

1. The decisions of the Supreme Court are binding on all courts in India and the Supreme Court is not bound by the decisions of High Courts, lower courts or other judicial authorities.
2. The decisions of a High Court are binding on all inferior courts within its jurisdiction, as long as they don't conflict with Supreme Court decisions. However, for courts outside its jurisdiction, the decisions of a High Court hold only persuasive value. In case the decisions of a High Court conflict with those of a similar bench, the matter is referred to a higher bench.
3. Lower courts are bound by the decisions of higher courts in their own states, while decisions by High Courts of other states hold only persuasive value.

6.5 Public Interest Litigation (PIL)

Public Interest Litigation (PIL) is a powerful tool in India for advancing social justice, particularly for marginalized and disadvantaged communities. This type of litigation, borrowed from American Social Action Litigation, allows any citizen of India to bring an action in court to address a wrong or violation of Fundamental Rights, regardless of whether they have a direct connection or have suffered specific harm. PILs have been used to address animal welfare issues, such as in the landmark cases of *People for Ethical Treatment of Animals v. Union of India*, which dealt with the protection of animals from exploitation and mistreatment in film-making, and *Animal Welfare Board of India v. A. Nagaraja & Ors*, which sought to prohibit the traditional bull-fighting practice of Jallikattu.

<https://www.animallaw.info/article/introduction-indian-judicial-system>

<https://www.lloydlawcollege.edu.in/blog/type-of-courts-india.html>

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