

Course Name- B.A.L.L.B. IVth Sem.

Subject- History

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Topic Court System under the Indian
Constitution

Court System under the Indian Constitution

The Supreme Court of India

After the independence of India, the constitution of India which came into force on January 26, 1950 provided for the establishment of a Supreme Court at New Delhi in place of the Federal Court. It is the highest Court of the country and consists of a Chief Justice and a maximum of 31 other judges as provided in article 124 of the Constitution. The appointment of Judges of the Supreme Court are made by the President on the recommendation of the *collegium* — a closed group of the Chief Justice of India, the four most senior Judges of the Court and the senior-most Judge hailing from the High Court of a prospective appointee.

To be eligible for Judge for the Supreme Court a person must be a Judge of one High Court or more (continuously), for at least five years, or an advocate there, for at least ten years..

A Judge of the Supreme Court including the Chief Justice shall hold office until he attains the age of 65 years. He may resign his office earlier or may be removed on the ground of misconduct or incapacity by the President through a vote of special majority of the members of the Parliament by initiating *impeachment* as provided under article 124 of the Constitution of. A retired Judge of the Supreme Court or High Court can also requested by the Chief Justice to sit and act as a judge of the supreme Court temporarily with the prior consent of the President of India.

Jurisdiction of the Supreme Court

The Supreme Court of India plays a very important role as the guardian of the constitution and the protector and guarantor of fundamental rights of the citizens.

Court of record

Article 129 makes the Supreme Court a 'Court of Record' and confers all the powers of such a court including the power to punish its contempt. A Court of record is a Court whose records are admitted to be evidentiary value and they are not to be questioned when they are produced before the Court.

The Supreme Court exercises original, appellate and advisory jurisdiction

Original jurisdiction (Article 131) - The original jurisdiction of the Supreme Court extends to disputes between-

- a. The Government of India and one or more States
- b. Between the Government of India and any state or States on one side and one or more States on the other
- c. Between two or more States, is it involves any question of law or fact on which the disputed legal right depends.

The Supreme Court also has power to issue directions, orders or writs including the writ in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quowarranto* and *certiorari* for the enforcement of fundamental rights under article 32 of the Constitution.

Appellate Jurisdiction (Article 132- 134)

An appeal shall lie to the supreme Court where the High Court has given a certificate shall in any judgement, decree or final order passed by it in civil, criminal or other proceeding ,that the case involves a substantial question of law as to interpretation of the Constitution. In case of the refusal of a certificate by the High Court, the Supreme Court has power to grant special leave if it is satisfied that the case really involves a substantial question of law as to interpretation of the constitution.

The jurisdiction of the Supreme Court regarding appeal from High Court in Civil and criminal cases is contained in Article 133 and 134 of the Constitution.

Advisory jurisdiction (Article 143)

The advisory jurisdiction of the Supreme Court extends to the matter which the president can refer to it for its opinion. The Supreme Court may, after such hearing as it thinks fit, give its secret advice to the President. The use of the word 'may' in article 143 indicates that the Supreme Court is not bound to give its advice to the President when asked for. In other words, it may decline to give the advice if it deems fit to do so.

The Supreme Court has the power to review its own judgement on the ground of mistake or error or by the discovery of new important matter of evidence. The law declared by the Supreme Court shall be binding on all Courts within the territory of India.

High Court under Indian Constitution

The Constitution does not make any detailed provisions regarding the general jurisdiction of the High Courts. Under Article 225, the jurisdiction of the High Courts, the law administered by them, the respective powers of their Judges in relation to the administration of justice by the Court and their rule making power, all are to be the same as were enjoyed by them immediately before the commencement of the Constitution.

The Constitution provides for a High Court in every State which works under the Supreme Court of India. But in some cases, one High Court serves more than one State. For example, Punjab and Haryana have a common High Court. Similarly there is one High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.

Composition:

The High Court consists of a Chief Justice and other judges. There is no fixed number regarding the judges of the High Courts. The President may also appoint a qualified person as an additional judge in a High Court for two years.

Appointment:

The judges of the High Court are appointed by the President of India. The President appoints the Chief Justice of a High Court after consultation with the Chief Justice of India and the Governor of the state.

Qualifications: To be a judge of a High Court one must be :

- A citizen of India,
- He must have held for, at least ten years a judicial office in the territory of India or;

- He must have been for, at least, ten years an advocate of a High Court.

Tenure:

A judge of a High Court retires at the age of 62 years. He may also resign from his office at any time.

Removal:

Every Judge, permanent, additional or acting, may vacate his office earlier in any of the following ways; (i) by resignation in writing addressed to the President; (ii) by being appointed a Judge of the Supreme Court or being transferred to any other High Court, by the President; (iii) by removal by the President on an address of both Houses of Parliament (supported by the vote of 2/3 of the members present) on the ground of proved misbehaviour or incapacity,.

Powers and Functions:

The High Courts have been given three types of powers or jurisdictions, such as, original, appellate and administrative.

Original Jurisdiction

-Under the original jurisdiction, a High Court has the power to issue directions or orders including writs to any person, authority and any government within its jurisdiction against the violation of the Fundamental Rights of the citizens. It has limited original jurisdiction in cases relating to admiralty, will, divorce, marriage, company laws and contempt of Court.

Appellate Jurisdiction –

Under this jurisdiction, a High Court has the power to hear appeals about civil and criminal cases against the decisions of the lower Courts.

Administrative Jurisdiction –

Under the jurisdiction, a High Court has the authority to supervise the workings of all subordinate Courts. It can issue general rules to regulate their proceedings. The judges of the subordinate Courts are appointed, promoted and transferred in consultation with the High Court of the state.

Other Jurisdiction –

- (a) The judgments of the High Courts are regarded and considered authoritative and serve as case law.
- (b) A High Court can start contempt proceedings against anyone who is found to indulge in contempt of the court.
- (c) Every High Court can admit Public Interest Litigation like that of the Supreme Court of India

Subordinate Court

Below the High Court of the state, there exists a network of subordinate courts comprising criminal and civil courts. The various categories of subordinate civil and criminal courts are given below-

1. Civil Court:

In general, the hierarchy of courts which exist in each state for the administration of civil justice consists of-

a>District court-

There is a Court of district judge in each district which is the Principal Civil Court of original jurisdiction. It also exercises appellate jurisdiction for the order and decree of the subordinate courts in cases up to Rs 5000/- in value. The District Judge has the power to control and supervise the whole subordinate judicial court in the District.

b> Lower Court-

Below the District court, there are a number of courts of judges having different designations in different states. In some States they are designated as *Munsifs* while in others they are called as Civil Judge class I and class II.

c> Other Small Causes Court-

Besides the lower subordinate Courts, a few more courts of minor jurisdiction which are called the Court of Small Causes. They are meant to provide cheap and speedy justice in petty civil cases. The Court of Small Causes has a Registrar who is the ministerial officer of the court. The Judge of the Small Causes Court can decide civil cases up to the value of Rs 1000.

d>The village *Panchayat* –

Commonly known as '*Gram Panchayats*' was established in compliance with the directive principles contained in Article 40 of the Constitution of India. Each *Gram Panchayat* consists of an elected head called the *Sarpanch* and *Up-Sarpanch* to assist the *Sarpanch*. The members of the *Panchayat* are called the *Panches* who are elected by the village people. As regards civil cases, the *Gram Panchayat* decides cases involving money, goods or compensation claims to the extent of Rs 200/- in value. However, this pecuniary limit can be extended up to Rs 500.

2> The code of criminal procedure,

provides that there shall be every state, the following classes of criminal court-

a>The Court of Session –

Each district of the State has a Court of Session which is presided over by a District and Session Judge. Additional Session Judge may also be appointed for assisting the Session Judge in his work. They are equal in rank and not subordinate to the Session Judge. The criminal cases of a grave nature are tried in the Session Court and the Session Judge can pass any sentence.

b>Judicial Magistrates-

The code of Criminal Procedure, 1973 provides to the appointment of Chief Judicial Magistrate in every district. The appointment of the Chief Judicial Magistrate is made by the High Court of the state concerned. He can pass any sentence authorised by law except a sentence of death or of imprisonment for life or imprisonment for a term not exceeding seven years.

c>Executive Magistrates-

In every district and in every Metropolitan area, the State government may appoint as many persons as it thinks fit to be

Executive Magistrate and shall appoint one of them to be District Magistrate. The jurisdiction of the Executive Magistrate shall extend to local limits of the areas defined by the District Magistrate and they shall exercise all or any of the powers with which they may be invested by the Code of Criminal Procedure.

2. Revenue Court-

The different categories of Revenue courts functioning in the state are as follows -

a>The Board of Revenue-

It is the highest Revenue Court in a state. It decides all judicial matter and cases relating to settlement in whole of the state.

b>Commissioners and Additional Commissioner-

The whole of the state is divided into several Divisions each having a Commissioner who exercises powers and perform duties assigned to him by the Code of Land Revenue of the state. An Additional Commissioner may also be appointed by the state government in a Division. He assists the Commissioner in his work.

c>Collectors and Additional Collector-

Each division of the state is further divided into several district, each having a Collector who is incharge of the district. Additional collectors are also appointed by the state government to assist the Collector of the district.

d>Assistant Collector-

There is Assistant Collector of First and Second class in each district. In some States they are designated as Deputy Collectors.

e>Tehsildar and Naib Tehsildar –

These are revenue officers in the *Tehsil* which is a unit of collection of revenue. They deal with revenue matters according to the provisions of the Land Revenue Act.

