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15

HIGH COURTS AND SUBORDINATE COURTS

**Notes**

You have already read about the role of India's highest Court called the Supreme Court. Just below the Supreme Court, there are High Courts which are the highest courts of law in States. The High Courts are part of the Indian judiciary, and function under the supervision, guidance and control of the Supreme Court. As highest court in the State, a High Court supervises the subordinate courts in the State. The High Courts are mainly courts of appeal. These Courts hear appeals from numerous subordinate courts working at district level. The system of appointment of judges, their qualifications and the working of subordinate courts is under the direct control and supervision of the High Court of the State concerned. In this lesson you will read about the State High Courts. You will also get an idea of subordinate courts, including the District and Session Courts.



Objectives

After studying this lesson, you will be able to

- describe the composition and organisation of the High Courts;
- explain the powers and jurisdiction of the High Courts;
- appreciate the role of the High Courts as protector of fundamental rights; and
- explain the working of the subordinate or lower courts.

15.1 The State High Courts

At present there are 21 High Courts for 28 States and seven Union Territories. The High Courts are the highest courts at State level, but being part of integrated Indian judiciary they work under the superintendence, direction and control of the Supreme Court.

15.1.1 Composition

There is a High Court for each State. However, there can be a common High Court for

two or more States. For example, the States of Punjab and Haryana and the Union Territory of Chandigarh have a common High Court situated at Chandigarh. Similarly, the High Court of Guwahati is common for seven northeastern States of Assam, Nagaland, Manipur, Meghalaya, Mizoram, Tripura and Arunachal Pradesh. Delhi, though not a State, has its own separate High Court. Every High Court has a Chief Justice and a number of judges. The number of judges varies from State to State. The number of judges of each High Court is determined by the President.

The judges of the High Courts are appointed by the President of India. While appointing Chief Justice of a High Court, the President has to consult the Chief Justice of the Supreme Court and the Governor of the State concerned. While appointing other judges, the President consults the Chief Justice of the Supreme Court, the Chief Justice of the High Court and Governor of the State concerned. The judges can be transferred from one High Court to another by the President. As mentioned earlier, consultation with the Chief Justice of the Supreme Court in respect of appointments and transfers of the judges of the High Court is also obligatory and binding for the President. While the constitutional status of the President remains intact, the actual selection of judges is made by a team of senior judges of the Supreme Court, headed by the Chief Justice of India in accordance with 1993 ruling as reinterpreted in 1999 by the Supreme Court. This is known as Collegium of the Supreme Court. Its recommendations are binding on the President.

15.1.2 Qualifications, Tenure and Removal of the Judges

In order to be appointed as a judge of a High Court, the person concerned should possess following qualifications:

- (i) He or she should be a citizen of India.
- (ii) He or she should have held a judicial office, at the district level or below for at least ten years.

OR

He or she should have been an advocate in one or more High Courts for at least ten years continuously without break.

Once appointed, the High Court judges hold office till they attain the age of 62 years. After retirement, they may be appointed judges of the Supreme Court or they may practise as advocates either in the Supreme Court or in any High Court other than the High Court in which they served as judges.

A High Court judge may be removed before he or she attains the age of 62 years, only on the ground of incapacity or proved misbehaviour. He or she may be removed if both the Houses of Parliament adopt a resolution by a majority of their total membership and by two thirds majority of members present and voting, separately in each House in the same session. Such a resolution is submitted to the President, who then can remove the concerned judge. This procedure is same as for removal of judges of the Supreme Court.



Notes



Intext Questions 15.1

Fill in the blanks :

- (i) At present there are _____ High Courts in India. (18, 20, 21)
- (ii) The Union Territory of _____ has its own separate High Court. (Daman and Diu, Chandigarh, Delhi)
- (iii) The judges of the High Court are appointed by the _____ (Governor, President, Prime Minister)
- (iv) The retirement age of the judges of a High Court is _____ years. (60, 62, 65)

15.2 Powers and Jurisdiction of the High Court

The High Courts have the power to hear and decide cases which are brought directly to it. This power is called Original Jurisdiction. When a High Court hears an appeal against the decision of a lower court, it is called Appellate Jurisdiction. A High Court is mostly a court of appeal. Appeals in both civil and criminal cases are brought to it against the decisions of the lower courts.

15.2.1 Original Jurisdiction

The original jurisdiction of the High Courts is very limited. Cases of alleged violation of fundamental rights can be started in High Courts, or in the Supreme Court. The High Courts have the power to issue orders to restore the fundamental rights of the people. You will recall that these orders are called writs.

Power to Issue Writs: You have read in the 'Right to Constitutional Remedies' in the lesson on Fundamental Rights that the Supreme Courts and High Courts can issue **writs** to ensure that rights of the people are not violated either by State or otherwise. The Constitution has specifically given the power 'to issue certain **writs**' to the High Courts. These Courts can issue writs (which are binding directions of the Court) to any person or authority, including government of the State concerned. The writs in the nature of **Habeas, Corpus, mandamus, prohibition, quo warranto**, and **certiorari** (explained in lesson 6) for the enforcement of rights of the people. This power is exercised in the original jurisdiction of the High Court, and is not derogatory to similar power of the Supreme Court.

A High Court can hear election petition in its original jurisdiction, challenging the election of a Member of Parliament or State Legislative Assembly. It can set aside the election of a member if it finds that he or she used corrupt means in his or her election. All the lower courts function under the superintendence control and guidance of the High Court in the State.

High Courts hear appeals against the judgements of the subordinate courts. In civil cases, appellate jurisdiction extends to all such cases which involve an amount exceeding Rs. 5 lakh. Any party to a civil dispute, which is dissatisfied with the decision of the



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District Court may appeal against the decision of the District Court in the High Court. It also hears cases relating to patents and designs, succession, land acquisition, insolvency and guardianship.

The High Courts hear and decide appeals against decisions of the sessions courts in criminal cases. An accused who is found guilty by a sessions court, and awarded a sentence may file an appeal against the verdict of the sessions court. Sometimes even State may appeal against a sessions court judgement for enhancement of punishment. The High Court may accept the decision of the sessions court, or alter it and increase or reduce the sentence, or change the nature of sentence, or may acquit an accused. However, if an accused is awarded death sentence by the sessions court, the sentence must be confirmed by the High Court before the person is hanged to death. Even if the accused does not file an appeal against death sentence, the State refers it to the High Court for confirmation.



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15.2.2 Transfer of Cases to the High Court

If a High Court is satisfied that a case pending in a subordinate court involves a substantial question of law as to the interpretation of the Constitution, the High Court may withdraw such a case from the lower court. After examining the case, the High Court may either dispose it off itself, or may return it to the lower court with instructions for disposal of the case.

15.2.3 Superintendence of Subordinate Courts

A High Court has the right of superintendence and control over all the subordinate courts in all the matter of judicial and administrative nature. In the exercise of its power of superintendence, the High Court may call for any information from the lower courts; may make and issue general rules and prescribe norms for regulating the practice and proceedings of these courts; and it may issue such directions, from time to time, as it may deem necessary.

It can also make rules and regulations relating to the appointment, demotion, promotion and leave of absence for the officers of the subordinate courts.

15.2.4 Court of Record

A High Court is also a court of record, like the Supreme Court. Lower courts in a State are bound to follow the decisions of the High Court which are cited as precedents. A High Court has also the power to punish for its contempt or disrespect.

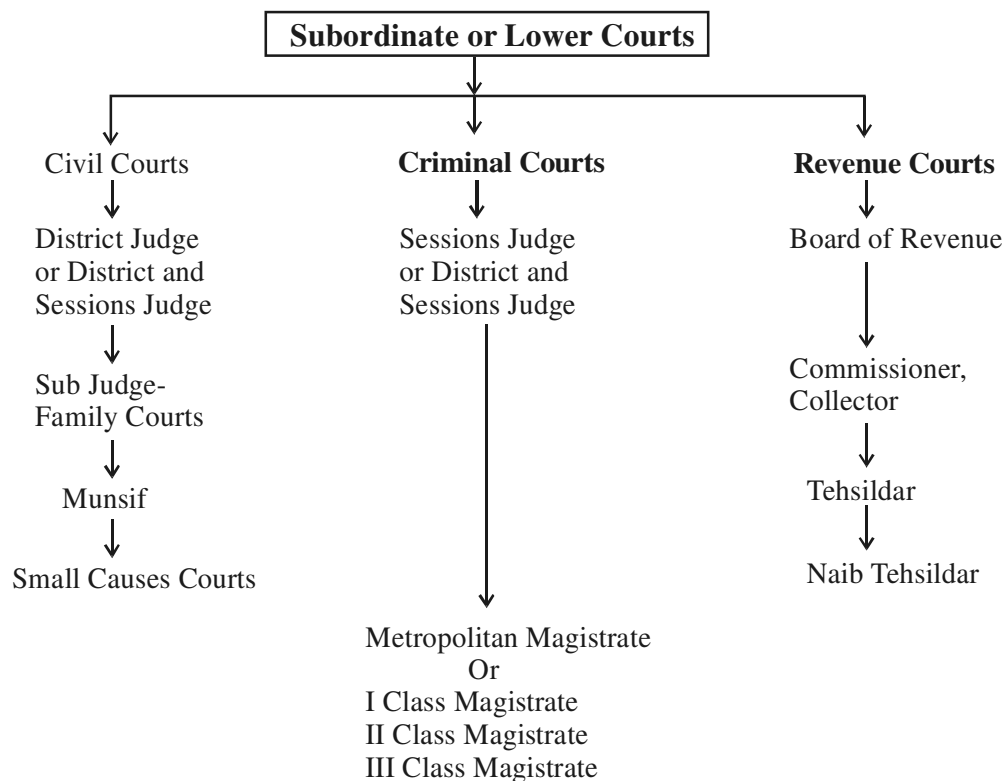
Intext Questions 15.2

- 1. Though not a state, _____ has High Court.
2. Which punishment awarded by lower courts cannot be implemented without confirmation by the High Court?

15.3 Subordinate or Lower Courts in Districts



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In each district of India there are various types of subordinate or lower courts. They are civil courts, criminal courts and revenue courts. These Courts hear civil cases, criminal cases and revenue cases, respectively.

Civil cases pertain to disputes between two or more persons regarding property, breach of agreement or contract, divorce or landlord – tenant disputes. Civil Courts settle these disputes. They do not award any punishment as violation of law is not involved in civil cases.

Criminal cases relate to violation of laws. These cases involve theft, dacoity, rape, pick-pocketing, physical assault, murder, etc. These cases are filed in the lower court by the police, on behalf of the state, against the accused. In such cases the accused, if found guilty, is awarded punishment like fine, imprisonment or even death sentence.

Revenue cases relate to land revenue on agriculture land in the district.

15.3.1 Qualifications and Appointment of Judges

The judges of subordinate courts are appointed by the Governor in consultation with the Chief Justice of the High Court of the concerned State. These days, in most of the States judicial service officers including the magistrates are selected through competitive examinations held by the State Public Service Commission. They are finally appointed by the Governor.

Any person who has been an advocate for at least seven years or one who is in the service of the State or the Central Government is eligible to be a judge of the District Court provided he/she possess the required legal qualifications.

15.3.2 Civil Courts

The Court of the District Judge is the highest civil court in a district to deal with civil cases. Very often the same court is called the Court of District and Sessions Judge, when it deals with both civil and criminal cases at the district level. The judge of this court is appointed by the Governor of the State.

Below the Court of District Judge, there may be one or more courts of sub judges in the district. Separate family courts, which are equal to courts of sub judge, have been established in districts to exclusively hear cases of family disputes, like divorce, custody of children, etc. Below them there are courts of munsifs and small causes courts which decide cases involving petty amounts. No appeal can be made against the decisions of the small causes courts. All these courts hear and settle civil disputes.

The Court of the District Judge (called the District Courts) hears not only appeals against the decisions of the courts of sub judges, but also some of the cases begin directly in the Court of District Judge itself. Appeals against the decisions of this court may be heard by the High Court of the State.

Civil Courts deal with cases pertaining to disputes between two or more persons regarding property, divorce, contract, and breach of agreement or landlord – tenant disputes.

15.3.3 Criminal Courts

The Court of the Sessions Judge (known as Sessions Courts) is the highest court for criminal cases in a district. Below this court, there are courts of magistrates of First, Second and Third class. In metropolitan cities like Delhi, Calcutta, Mumbai and Chennai, First Class Magistrates are called Metropolitan Magistrates. All these criminal courts are competent to try the accused and to award punishment, as sanctioned by law, to those who are found guilty of violation of law.

Criminal Courts hear criminal cases which are related to violation of laws. These cases involve theft, dacoity, rape, arson, pick-pocketing, physical assault, murder etc. In such cases the guilty person is awarded punishment. It may be fine, imprisonment or even death sentence.

Normally every accused is presented by the police before a magistrate. The magistrate can finally dispose off cases of minor crime. But, when a magistrate finds **prima-facie** case of serious crime he/she may commit the accused to the sessions court. Thus, sessions courts try the accused who are sent upto them by the magistrate concerned.

As mentioned above, an accused who is awarded death sentence by the sessions court, can be hanged to death only after his sentence is confirmed by the High Court.

15.3.4 Revenue Courts

Revenue courts deal with cases of land revenue in the State. The highest revenue court in the district is the Board of Revenue. Under it are the Courts of Commissioners, Collectors, Tehsildars and Assistant Tehsildars. The Board of Revenue hears the final appeals against all the lower revenue courts under it.



Notes



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Political Science

Land Revenue: It is a sort of tax on agriculture land which the government collects from the farmers.



Intext Questions 15.3

1. Name the highest civil court of a district.
.....
2. Which is the highest criminal court in a district?
.....
3. Fill in the blanks:
 - (i) There can be no appeal against the decision of _____ Courts.
 - (ii) The highest revenue court in a State is the _____.



What You Have Learnt

The distinct feature of our judiciary is that it has a single integrated and unified judicial system.

The High Court is the highest court in a State. The number of judges varies from State to state. The President appoints them. They hold office up to the age of 62 years. They may be removed earlier by the President on receipt of a request from both Houses of Parliament.

It has original and appellate jurisdiction. It is the protector of the fundamental rights. It is also court of record, and can punish for its contempt.

There are 21 High Courts for 28 States and seven Union Territories.

In every district there are subordinate civil, family, criminal and revenue Courts. Appeals against the decisions of the lower courts are taken to the High Court of the State.



Terminal Exercises

1. Describe the composition of the High Court.
2. How can a judge of the High Court be removed from office?
3. Explain the original jurisdiction of the High Court.
4. Describe the appellate jurisdiction of the High Court.
5. How are the subordinate courts in a district organised?
6. In what way are the powers and functions of civil courts different from criminal courts in a district?



Answers to Intext Questions

15.1

- (i) 21
- (ii) Delhi
- (iii) President
- (iv) 62

15.2

- (1) Delhi
- (2) Death Sentence

15.3

- (1) Court of the District Judge (District Court)
- (2) Court of the Sessions Judge (Sessions Court)
- (3) (i) Small Causes Courts
(ii) Board of Revenue

Hints for Terminal Exercises

- (1) Refer to Section 15.1.1
- (2) Refer to Section 15.1.2
- (3) Refer to Section 15.2.1
- (4) Refer to Section 15.2.2
- (5) Refer to Section 15.3
- (6) Refer to Sections 15.3.2 and 15.3.3



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