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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

HIGH COURTS AND CONSTITUTIONAL SUPREMACY RIGHTS POWERS AND FUNCTIONS

AUTHORED BY - J SANJAY. & DR. SAJI SIVAN S

ABSTRACT

The High Courts of India are an important part of the judicial system of any country as they are the highest court of justice on the state level and only the Supreme Court is higher than the High Courts. They were based on colonial tradition as the Indian High Courts Act, 1861, became constitutional bodies whose role was to protect justice, constitutional supremacy, and balance the federal process. Articles 214 to 231 of the Constitution present a comprehensive system of their establishment, organization, jurisdiction and powers including original, appellate, writ and supervisory power. Interestingly, Article 226 provides that High Courts have broader jurisdiction in writs as compared to the Supreme Court, being free to protect fundamental rights and deal with wider constitutional claims. They also have superintendence over lower courts, control judicial appointment as well as service terms and conditions and serve as a court of record having power of contempt under Article 215. Also, the High Courts are instrumental in the electoral adjudication process in the Representation of the People Act, enhancing democracy by ensuring fair consideration. By ensuring the independence of the judiciary, the protection of constitutional values and the preservation of individual freedoms against the usurpation of legislative and executive power, High Courts capture the vision of the framers of a just and balanced federal government. The eternal existence of the power is a claim to their inimitable role as custodians of justice and constitutional rule in India.

Keywords – High Courts, Constitutional Supremacy, Writ Jurisdiction, Federal Balance

INTRODUCTION

The High Courts have a central role in the Indian judicial hierarchy ranking as the highest courts in their respective states and simultaneously as the custodians of constitutional supremacy in their areas of jurisdiction. They are ranked just below the Supreme Court in the judicial system and serve an important role in the defence of individual rights, interpretation

of laws and the rule of law. Not only does the institution of the High Court guarantee justice in individual cases, it also enhances the federal nature of the Constitution balancing or checking national powers with local powers through the judicial control.

History of the High Courts in India dates back to the colonial period. The Supreme Courts in the Presidency towns, and Sadr Adalats in the provinces, were created before the formal High Courts were established to service the British India. Poor administrative consistency in adjudication and in procedural inefficiency in case handling led to the necessity to have a centralized judicial institution.

The Indian High Courts Act, 1861 was passed to enable the Crown to also establish High Courts at Calcutta, Bombay and Madras by unifying the abilities of the Supreme Courts and the Sadr Adalats. Subsequently, additional High Courts have been established in other provinces as administrative expediency required. Such colonial High Courts were entrusted with original jurisdiction as well as appellate jurisdiction and their judgments enshrined important precedents to Indian jurisprudence.

The transformation of colonial to constitutional High Courts augments the preservation of judicial institutions in India. Simultaneously, the creators of the Constitution empowered these institutions with new authority and charge that exemplify them as central custodians of the Constitution within the respective states.

I. Constitutional Basis Under Articles 214–231

The Indian Constitution gives a comprehensive outline of the High Court Structure, Organisation, and authority. Articles 214 to 231 of Part VI clearly provide procedures related to the establishment, makeup, jurisdiction and the operating mechanisms of the High Courts. Article 214 ensured that each and every state shall have a High Court and thus constitutionalized their existence.¹

Articles 216 to 219 cover the composition, appointment and qualification as well as the oath of the judges of the High Court. The two main articles of the High Court power are articles 226 and 227, which give powers to the High Court to provide writs and supervisory jurisdiction of

¹ Constitution of India, 1950, arts. 214–231.

the relating lower courts and tribunals. The above will give power to the High Courts to control the rest of the judiciary consequently the Independence and integrity of the operational aspects. This framework was used to depict the intention of the framers of the High Courts as not only state courts of appeal but also as backbones to preserve the balance of powers and guard against constitutional disorder.

Role and Importance: Being the Guards of both fundamental Rights and Rule of Law

The work of the High Courts is no single-sided and limited to conflict resolution. Their primary role is to be watchdogs over basic rights, as enlisted under Part III of the Constitution. High Courts exercise even wider jurisdiction than even the Supreme Court in some way as they can issue writs under Article 226. Whereas, the issue of writs by the Supreme Court under Article 32 is limited to the enforcement of fundamental rights, the High Courts may issue writs not only to protect fundamental rights but to any other purpose as well. This extends their scope of defending citizens against random harassment of the state authorities. The High Courts can also challenge legislative and executive actions of state and central agencies within their territorial jurisdiction through engagement of powers of judicial review, and strike them off as being unconstitutional. This renders them indispensable to the continuation of the principle of constitutional supremacy. Also, High Courts are courts of records under Article 215 and are granted with the power to punish contempt of court to uphold the dignity of judicial proceedings.

II. Constitutional Position of the High Court

The High Courts of India are judicial courts established in the Constitution of India as highest judicial bodies in the states and union territories. Located between the highest court on the national level, the Supreme Court, and lowest courts on the local and district levels, these courts are extremely important in ensuring justice, safeguarding rights and maintaining the balance in the federal structure. Their authority, role and status are well-defined and articulated by the Indian Constitution in Articles 214 to 231, making them essential organs of constitutional government.

² Constitution of India, 1950, art. 226.
 Constitution of India, 1950, art. 227.

III. Establishment under Article 214

The guiding statute provision is Article 214, Japanese Constitution of India, which provides: There shall be a High Court for each State. This makes the High Court a standing constitutional institution. The provision guarantees that each state, as an independent entity in the Indian federal democracy, has its own superior judicial court to which it can present the case in the pursuit of justice.

Article 231 however offers flexibility in that the Parliament can constitute, as it deems fit, a common High Court of two or more states and union territories of which this aspect reflects India and its federal diversity and administrative expediency. An example of this is in the High Court of Punjab and Haryana, which has jurisdiction over both Punjab, Haryana and additionally the union territory of Chandigarh; and the Bombay High Court, which has jurisdiction over both Maharashtra and Goa, and the union territories of Dadra & Nagar Haveli and Daman & Diu.

IV. The jurisdiction and Powers

The authority and responsibilities of High Courts are mainly provided in the Articles 225- 227, but they are extended with articles of procedural legislation like the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973.

Article 225 safeguards the jurisdiction of High Courts at the time of Constitution coming into effect and extends to increase or expand by law.

³Article 226 vests the High Courts with writ powers to enforce the fundamental rights, as well as for any other purpose and grants it broader writ jurisdiction than that created by Article 32 to the Supreme Court.

Article 227 gives the High Courts the power of supervision over any subordinate courts and tribunals within their geographical presence.

Besides that, High Courts also have authority of original jurisdiction in few areas (such as election petitions, matters of admiralty, company law or marriage/divorce within certain

³ Constitution of India, 1950, art. 217.

statutes), and broad powers of appeal (over other courts subordinate to them).

V. Appointment of Judges

To a great extent, the independence and effectiveness of the High Court is dependent on the way in which judicial positions are being appointed. Article 217 states every judge of the High Court to be appointed by the President of India after consultation with the Chief Justice of India, the Governor of the state, and in the case of appointment of judges other than the Chief Justice, and in the case of the High Court to which the Chief Justice belongs.

Qualifications An advocate with more than ten years of experience in the High Court or a decade of judicial service in India qualifies. **Tenure of High Court judges:** The High Court judges serve in office up to the age of 62 years in comparison to 65 years of the Supreme Court judges (Article 217(1)).

In practice, the system has been interpreted by the courts particularly the Supreme Court in the case of *Supreme Court Advocates-on-Record Association v. In the Union of India* cases (popularly known as the Judges Cases), it arose that a collegium arose, and this then led to the system of the collegium. Courts appointments and transfers come mostly at the decision of a group of senior judges with very little interference of the executive in that process, thus protect the independence of the courts.

Also, Article 222 vests the President with the authority to transfer the judges between the High Courts, which also is subject to scrutiny under the old system of the collegium to eliminate executive overreach.

VI. ⁴Hierarchical Position

In the system of courts, the High Courts play a central position of middle-levels. They are subordinate to the Supreme Court of India which is the highest court/court of last resort and the final interpreter of the Constitution. They also have appellate and supervisory powers over the district and subordinate courts and at the same time exercise powers over them.

This hierarchical structure provides not only uniformity (with oversight by the Supreme Court)

⁴ Constitution of India, 1950, art. 215.

but also local flexibility (with oversight of the local courts by High Courts). That is why High Courts play the role of a constitutional guardian of states on one hand and oversight of district judiciary on the other, unifying the central and local aspects of Indian administration of justice.

VII. Common vs. Separate High Courts

The Constitution provides that the creation of High Courts can be flexible. Whereas Article 214 is about a High Court to each state, Article 231 provides the power to establish a common High Court in respect of two or more states or two or more union territories:

Common Courts of High Instances

Punjab High Court and Haryana High Court: It serves the states of Punjab, and Haryana along with Union Territory of Chandigarh.

Bombay High Court: Covers Maharashtra, Goa, and the UTs such as the Dadra and Nagar Haveli and Daman & Diu.

The Guwahati High Court: previously held jurisdiction with regard to some of the states in the northeastern part of the country (before Assam, Nagaland, Meghalaya, Manipur, Mizoram established separate benches or High Courts).

VIII. ⁵Composition and Structure of the High Court

It has been pointed out that the Indian High Courts are constitutional courts which makes their composition and structure directly relevant to their independence, efficiency and capability to uphold constitutional values. Since the framers of the Constitution were conscious of the colonial experience where judicial independence in most cases was subordinated to executive control, they came up with a system that maintains judicial independence and accountability. Articles 216 to 219 provide about the composition of High Courts, whereas issues regarding appointment, tenure and removal of judges are stipulated within the constitutional framework and complemented by the jurisprudence.

IX. Chief Justice and Other Judges Under Article 216

U/s 216 of the Constitution of India, there are provisions that each High Court must have a Chief Justice and such other judges as may, at any given time, be appointed by the President of India.

⁵ Constitution of India, 1950, arts. 233–235.

That implies that the capacity of each High Court is not the issue from the Constitution itself but is calculated by the President depending on the workload and needs of specific High Court. Indeed, some High Courts such as Allahabad High Court which is the largest in India, has sanctioned strength of more than 160 judges in consideration of the prevalent bulk of the cases and minor High Courts like Sikkim or Manipur High Court have just a few judges.

The flexibility of this scheme enables the judiciary to be moulded to meet the diverse needs of different states and still have the foundation as the same constitution.

X. Appointment Procedure Under Article 217

According to provisions in s 216 of the Constitution of India, every High Court must have a Chief Justice and such others as the President of India may at that given time appoint.

It would be suggested that the capacity of each High Court is not defined by the Constitution per se, but is determined by the President according to the requirements and load of a particular High Court. Some High Courts like Allahabad High Court being the largest in India⁶ has sanctioned more than 160 judges in view of the number of cases on hand and some of the minor High Courts like Sikkim or Manipur High Court have only a small number of judges. Such flexibility within this scheme allows the judiciary to be shaped to various purposes of different states and still retain its same constitution.

XI. Qualifications for Appointment

Under article 217 (2), selection to be a High Court judge is governed by set qualifications:

1. Should be an Indian citizen,
2. Has served in a judicial office in India more than ten years.
3. Shall have been an advocate of a High Court (or two or more High Courts in succession), not less than ten years.

This gives confidence that only those individuals with the requisite legal or judicial experience are eligible to have a say in the High Court. Also because of the demands of integrity, legal proficiency and constitutional responsibility, the process also takes cognizance of personal reputation, competence and impartiality.

⁶ *State of Uttar Pradesh v. Vijay Anand Maharaj*, AIR 1962 SC 1166.
 L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.

XII. ⁷Tenure of Judges

Judges of the High Court retire at 62 years (Article 217(1)), as opposed to judges of the Supreme Court who retire at 65 years. Because of this, frequently high functioning High Court judges are elevated to the Supreme Court before their retirement.

After retirement, judges can be appointed as ad hoc judges under Article 224A, or they can reenter service into a tribunal, commission, or arbitration panel, but these posts are questioned in terms of judicial independence because they may provide the former judges with post-retirement rewards by the executive.

XIII. Removal of Judges

High Court judges have a security of tenure which is not readily interfered with. Article 217(1) (b) states that a judge may be removed by the President only on the grounds of proved misbehaviour or incapability to hold an office of a judge, according to the procedure outlined in Article 124(4) and (5) [the equivalent procedure applicable to the Supreme Court judges as well].

This procedure, which is commonly referred to as impeachment, must be:

- A motion in either House of Parliament,
- Majority of a two-thirds majority of members present and voting.
- This is followed by order of removal being issued by the President.
- This rigid and bureaucratic process of removal keeps the judges free of political and governmental interference.

XIV. ⁸Oath and Conduct of Judges

Article 219 stipulates that all judges of a High Court shall take and subscribe an oath before assuming office and this oath must affirm their belief in the Constitution and in the impartial execution of their duties. Further, Article 220 also prohibits retired judges of High Courts to practice in the same court where they presided till, they retire, but they may practice before Supreme Court or other High Courts.

⁷ *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1966 SC 242.

Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

⁸ *Waryam Singh v. Amarnath*, AIR 1954 SC 44.

Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

XV. Powers of the High Court

High Court is the highest appellate organ in the level of the State and carries out a broad spectrum of powers which are both constitutional and statutory in nature. These powers are spread across civil, criminal, and constitutional similarities and are necessary to have the continuity of the rule of law. The framers of constitution had Invisible High Courts not just as Courts of Appeal but to defend rights, overview the inferior judicial bodies and observe propriety of the Constitution in States. Everyone in the High Court may be described as follows:

Original Jurisdiction

The High Courts have a limited and essential original jurisdiction, which enables some proceedings directly to be brought before them and by-pass subordinate courts. This is separate to their appellate jurisdiction.

Constitutional cases: The High Court's exercise original jurisdiction in matters pertaining to the enforcement of fundamental rights under Article 226 as well as in other cases by virtue of the expressly granted competence under Article 226 to exercise powers to entertain any other writ applications.

Related to election disputes-Section 80 Representation of people Act 1951-High Court have exclusive jurisdiction to try election disputes in respect of state legislative assemblies and councils.

⁹Admiralty and Maritime jurisdiction: High Courts (such as Calcutta, Bombay and Madras High Courts) of some older states have remained courts of original jurisdiction in admiralty and maritime cases because of their colonial history.

Company law and matrimonial matters: High Courts also have original jurisdiction in regard to winding up of companies (High Courts relinquished jurisdiction to NCLTs in 2013 under the Companies Act, 2013) and certain matrimonial matters.

Therefore, despite the minor number of cases, there is original jurisdiction that is necessary to address delays when it comes to certain constitutional or statewide-important cases.

Appellate Jurisdiction

The predominant role of the High Courts is to provide appellate jurisdiction This corresponds to both civil cases as well as criminal cases in Australia which are determined by courts that

⁹ *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441.

are junior.

Civil Appeals

Appeals against jump bail under section 96 of the Civil Procedure code (CPC), of decrees of district courts. Second Appeals under S.100 CPC where the appeals can be entertained only on substantial questions of law.

Criminal Appeals

Appeals under code of criminal procedure (CrPC) of orders of magistrates or sessions courts. The High Court can even hear appeals against acquittals (State appeals).

High Courts also use revisional powers under Section 397 CrPC to ensure that there is no misrepresentation of justice. This appellate jurisdiction ensures citizens' access to second-level scrutiny and allows the correction of judicial errors from subordinate courts.

XVI. ¹⁰Writ Jurisdiction Under Article 226

The most important strength of the High Courts is that they have a writ jurisdiction under Article 226. As opposed to the Supreme Court which under Article 32 can only issue writs of enforcement of fundamental rights only, the High Courts can both issue writs of fundamental rights and of any other nature.

This extends the High Court jurisdiction of writs wider than Supreme Court jurisdiction of writs.

XVII. High Court Categories of Writs

1. **Habeas Corpus** - to obtain the freedom of an individual who is unlawfully imprisoned.
2. **Mandamus** - an order to an agent to perform its duties.
3. **Prohibition** -giving instructions to the lower court or tribunal to cease proceedings beyond jurisdiction.
4. **Certiorari**- cancelling judgements of a lower court or tribunal where there is illegal action.
5. **Quo Warranto** - to claim against or question claim of, illegal occupation of a public office.

¹⁰ *State of Bombay v. Narottamdas Jethabhai*, AIR 1952 SC 131.

XVIII. Supervisory Jurisdiction Under Article 227

High Courts have superintendence powers over every court and tribunal within their respective jurisdiction under article 227.

This is wider than appellate power in the sense that it enables the High Court to interfere in the cases not only on getting an appeal but also when it itself has found deficiencies of justice by lower courts.

XIX. Distinction between Articles 226 and 227

Article 226 mainly focuses on enforcement of rights and duties and can be resorted to by individuals.

Article 227 is an in rem supervisory power by the High Court over the lower courts. This supervisory jurisdiction maintains uniformity of precedents and discipline in the functioning of the judiciary at the State level.

XX. Domination of Subordinate Judiciary

Under Articles 233 to 235, High Courts have very extensive powers over the subordinate judiciary.

Article 233: A consultation of the High Court is required in the appointment of district judges.

Article 234: Persons (other than district judges) may be appointed to the judicial service of a state only after consultation with the High Court.

Article 235: The process of transfers, promotions, and disciplinary actions on judicial officers is within the remit of High Courts.

It is a system that makes the judiciary independent of the executive and enforces the freedom of separation of power. The High Court is not only a judicial institution, but an administrative custodian to judicial cadres in the State.

XXI. Judicial Review

The High Courts along with Supreme Court are custodians of judicial review in India.

When acts of the State Legislatures, executive and even Central laws (where permissible by the Constitution) breach the provisions of the Constitution, they are capable of being declared by them as unconstitutional.

This is not specifically stipulated but part of Article 13, 226 and 227.

High Courts protect the fundamental rights, prevent arbitrary administrative action to uphold constitutional supremacy over legislative or executive excess as a result of judicial review.

The root of such a principle can be found in similar cases such as *Kesavananda Bharati v. State of Kerala vs. State of India* (1973) & challenges subsequent to it in the High Courts of the states.

XXII.¹¹ Authorities of the High Court

The powers of the High Court are pre-determined not only by express meaning, but also the much broader principle of judicial independence. The High Court, as the supreme court in a state is not a body intended only to decide cases but wields constitutional functions that matter its independence, dignity and power above the other lower judicial bodies. These powers collectively keep the reputation of the High Courts to be the custodians of justice in the states.

1. Independence of the High Court Due Constitutional Security

The Constitution has some clauses to ensure the independence of the High Courts against executive influence and political involvement.

Article 215 also brings it out as a court of record, which by its own recognition alone is an expression of its constitutional authority and independence to the High Court.

Article 220 prohibits such conflict of interest on the part of judges of High Courts; when a judge is retired, he/she cannot plead or act in the High Court of which he has been member of, this is to ensure fairness and integrity.

Article 221 protects the salaries, allowances, and rights of the judges of High Courts since their remuneration cannot be altered to their disadvantage after appointment. Such a salve is a potent guard against executive domination because paying wages cannot be employed as a tool of coercion.

Therefore, judicial independence is, itself, constitutionally entrenched, which is why the High Courts are functionally and authoritatively independent.

¹¹ *Shivdeo Singh v. State of Punjab*, AIR 1963 SC 1728.

2. ¹²As a Court of Record by the High Court (Article 215)

The fact that the High Court operates as a court of record is one of its most significant attributes as stipulated in Article 215. The two effects of being a court of record are:

Records of proceedings, judgments and decisions have the power of law and cannot be disputed by lower court. The records are kept to provide binding precedents, and as evidence of formal court business.

The right to punish contempt of court. High Courts possess ample power to punish by contempt, either civil (disobedience of court orders) or criminal (acts that scandalizes or dishonor the court).

A respect towards judicial institutions and a hindrance to the judicial administration are impossible without the powers of contempt. As an example, in *Naresh Shridhar Mirajkar v. In the State of Maharashtra* (1966) case, it was again established by the Supreme Court that the High Courts being a court of records have inherent powers to punish in contempt to secure the power and integrity of its own person.

Such a designation of the High Courts as a court of record therefore ensures that High Courts have the institutional honour and control over their proceedings and directions.

3. The Power of the Superintendence of the Lower Courts

In in addition to the judicial functions, High Courts have a supervisory power over tribunals and lower courts under Article 227 of the Constitution. This authority of superintendence envisages:

Appeals against the decision of inferior courts.

Correction of errors committed below: revising or amending the orders received in lower courts upon the discovery of errors of jurisdiction.

Development of framing rules and norms of administrative practice and case management in the lower courts.

¹³Due regard to the recommendations and the advice of the State governments with regard to promotions, postings/transfers of judges of subordinate courts as provided in Articles 233- 235. The supervisory power means discipline, accountability and predictability in the courts system. Unlike simple appellate powers, this broad discretion over superintendence tends to make High

¹² M.P. Jain, *Indian Constitutional Law*, 8th ed.

¹³ □V.N. Shukla, *Constitution of India*, 14th ed. (Eastern Book Company, 2019).

□Upendra Baxi, 'The Indian Supreme Court and Politics' (1966-67) 39 *Pacific Affairs* 425.

□Rajeev Dhawan, 'Judicial Appointments in India: The Collegium System and its Critique', *Economic and Political Weekly* (July 2016).

Courts the heads of the judiciary in a state, charged with the duty of judicial administration as well as judicial review.

The case of Waryam Singh v. The Supreme Court in the case of Marnath (1954) held that the High Court has the role and duty to exercise supervisory jurisdiction within their control over other courts in exercising their powers provided under Article 227 has been clearly overruled that the high courts can have a very wide remit around them in terms of supervisory jurisdiction.

XXIII. Election Challenges

The other statutory power bestowed on High Courts is to hear election disputes. Complaints on the election results of a State Legislative Council or Legislative Assembly seat can only be tried by the High Court of that state in view of Representation of the People Act, 1951.

This accords the High Court the status of an election tribunal of first instance to state-level legislative elections. Because the system of free and fair elections is an element of the basic structure of the Constitution, the powers of High Courts in settling such contests have a profound relationship with democracy survival. Their unbiased judgement makes the result of the electoral process valid at the state level.

As in the case of a few other election petitions such as Indira Nehru Gandhi v. The elections adjudged by In Raj Narain (1975), proceedings before the Allahabad High Court became central to the political and constitutional history of India and exemplified the great power High Courts have in electoral adjudication.

XXIV. Conclusion

The High Court institution plays the key role in the judicial and constitutional life of India. The High Courts serve as the most important constitutional judges within a state in a federal union but, under the supremacy of the Supreme Court of the United States. They ensure regional access to justice, protection of fundamental rights, interpretation of state laws, and the strengthening of the constitutional supremacy against the arbitrary conduct of state powers. Their design, powers and authority, as carefully done in the Constitution, show the aspiration of the framers, not only having a responsive justice system, but also a balanced federal polity.

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