

POWERS OF HIGH COURTS IN INDIA

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Abstract :

The research paper deals with the study of powers of the high courts in India. This study is to analyze the efficiency of the high court in india. High court is second highest court in india after supreme court. High court has both original and appellate jurisdiction. There are 24 high courts in India and union territories doesn't have high courts it automatically comes under nearby state jurisdiction.

Key words : high courts, jurisdiction, original jurisdiction, appellate jurisdiction, cases, judge, writs.

Materials and methods :

Only secondary sources have been referred for this study. The primary sources include interviews with the people weren't possible. Secondary sources include books related to cyber crimes and research articles on the procedural law related to cyber crimes. Ample websites and

blogs have also been referred for the study. This paper is done on basics of doctrinal research methodology.

Objectives :

- 1) To study powers of High court in india.
- 2) To discuss original and appellate jurisdiction.
- 3) To study writ jurisdiction of high court.
- 4) To study the judging validity of laws in high court.

Hypothesis:

Ho: The powers of high court are not more enough to maintain the judicial system of a state.

Ha: The powers of high court are more enough to maintain the judicial system of a state.

Introduction:

The Constitution of India has not made any clear and detailed description of the powers and functions of the High Court as it has done in the case of the Supreme Court. The Constitutions says that the Jurisdiction of the High Court shall be the same as immediately before the commencement of the Constitution, subject to the provisions of the constitution and the laws made by the appropriate legislature. **The aim is to** study the powers of Indian high courts and to analyze it's jurisdictional powers.

The powers and functions of the High Court can be divided as follows:

Original Jurisdiction:

Original jurisdiction in relation to high court refers to the authority of the high court to hear and decide cases for the first time.

All matters relating to revenues are included in the original jurisdiction of the High court.

Besides, civil and criminal cases are also supposed to belong to the original jurisdiction. But only the High Courts at Kolkata, Mumbai and Chennai can have the first trial in civil and criminal cases. The original criminal jurisdiction of the High Court has, however, been abolished

by the Criminal Procedure code, 1973. At present the criminal cases are tried in the city sessions Courts in Kolkata, Mumbai and Chennai.

Appellate Jurisdiction:

Appellate jurisdiction in relation to High Court refers to the power of the High Court to review the decisions of Lower courts. The High Court is the highest court of appeal in the state. It has appellate jurisdiction in civil and criminal cases.

- a. In civil cases, appeal can be made to the High Court against the decisions of the District Judges and the Subordinate Judges.
- b. Again, when any court subordinate to the High Court decides an appeal from the decision of an inferior court, a second appeal can be made to the High Court only on question of law and procedure.
- c. Besides, appeal from the decision of a single Judge of the High Court itself also lies to the High Court. In criminal cases appeals against the decisions of :

A Sessions Judge or an Additional Sessions Judge, where the sentence is of imprisonment exceeding 7 years; or

Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than 'petty' cases can be made to the High Court.

Powers of issuing Directions, Order or Writs:

The High Court has been empowered to issue writs of habeas corpus, mandamus, and prohibition certiorari and quo warranto for the enforcement of the fundamental rights and 'for other purposes'. The Supreme Court can issue the writs only for the enforcement of fundamental rights and not for other purposes. The power of the High Court to issue writs in the nature of habeas corpus cannot be curtailed even during emergency.

Judging the validity of laws:

In the original Constitution the High Courts were given powers of judging the validity of the Central and the State laws. But the 42nd Amendment of the Constitution took away the powers of the High Courts to determine the validity of the central laws and put various conditions on their powers of judging the validity of the State laws. However, the 43rd Constitutional (Amendment) Act, 1978 has restored these powers to the High Courts.

Powers of superintendence:

Every High Court has a general power of superintendence over all the lower courts and tribunals within its jurisdiction except military courts and tribunals. By virtue of this power the High Court can call for returns from such courts; make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and prescribe forms in which books, entries and accounts shall be kept by the officers of any such court.

Powers of taking up cases:

If a case is pending before a sub-ordinate court and the High Court is satisfied that it involves a substantial question of the constitutional law, it can take up the case and decide it itself.

Control over sub-ordinate courts:

The High Court can control the subordinate courts in the State. It is to be consulted by the Governor in the matter of appointing, posting and promoting district judges. The High Court plays an important role in the appointment, promotion, etc. of the staff of the subordinate courts including the District Court.

Other powers:

Besides the above powers, the High Court performs some other functions:

- 1) Like the Supreme Court, the High Court also acts as a Court of Record.
- 2) It has the power to punish for contempt of itself.
- 3) The High Court can frame the required rules to carry out its judicial functions.

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 thus maintains the status quo existing on the eve of the commencement of the Constitution in relation to the jurisdiction and powers of the High Courts. The status quo is, however, subject to the provisions of the Constitution and to any law made by the appropriate legislature in pursuance

High court has following powers to :

- 1) govern the jurisdiction of lower courts.
- 2) issue directions, orders or writs.
- 3) control subordinate courts.
- 4) withdraw pending cases from subordinate court and dispose of all such cases itself.
- 5) review and revise the judgments of subordinate courts.
- 6) High Courts entertain the cases related to civil or criminal. It can try cases of lower courts, if proved incapable of exercising their power as per authorization extended by law.

Power of High Court to transfer cases and appeals (Section 407)

1. Whenever it appears to the High Court that:

a fair and impartial inquiry or trial cannot be tried by any Criminal Court subordinate thereto, or some question of law arises out of unusual difficulty; or an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or for the purpose of justice, it may order that : Court trying or inquiring, not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence; any particular case, or appeal, transferred

from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; any particular case committed for trial of to a Court of Session; or particular case or appeal transferred to and tried before itself.

2. The High Court may also act under this section either on the report of the lower Court. It can also act on the application of a party interested, or on its own initiative. Provided that no application shall lie for transferring a case from one criminal Court to another criminal Court in the same sessions division. Unless an application for such transfer has made to the Sessions Judge and rejected by him.

3. Every application shall made by motion. Except when the Advocate-General of the State applies, such application should support by affidavit or affirmation.

4. When the accused person forwards the application, the High Court may direct him to execute a bond, with or without sureties. It can also direct for the payment of any compensation which the High Court may award.

5. Every accused person along with the application in writing attach copy of the grounds on which application is made. It shall give it to the public prosecutor. No order shall made on the merits of the application. Unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

6. Where the application made for the transfer of a case of appeal from any subordinate Court. The High Court may, in the interest of justice, order the proceeding of the subordinate court to held on stay. Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

7. Where an application for an order under Sub-Section (1) dismissed, the High Court may, order the applicant to pay compensation to any person who has opposed the application. The compensation should not exceed one thousand rupees or as court considers appropriate in certain cases. If the application was frivolous or also vexatious.

8. When the High Court orders under Sub-Section (1) that a case be transferred from any Court for trial before itself, it shall also observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

9. Nothing in this section shall be deemed to affect any order of Government under section 197.

Writ jurisdiction :

Articles 226 and 227 are the parts of the constitution which define the powers of the High Court.

Article 226, empowers the high courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them.

Kinds of writs:

1)Habeas Corpus - A simple dictionary meaning of the writ of Habeas Corpus is "a writ requiring a person under arrest of illegal detention to be brought before a judge or into court, especially to secure the person's release unless lawful grounds are shown for their detention".

2)Mandamus - A writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty.

3)Prohibition - A writ of prohibition is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction in cases pending before it or acting contrary to the rules of natural justice.

4)Quo warranto - This simply means "by what warrant?". This writ is issued to enquire into the legality of the claim of a person or public office. It restrains the person or authority to act in an office which he / she is not entitled to; and thus, stops usurpation of public office by anyone.

This writ is applicable to the public offices only and not to private offices.

5) Certiorari- Literally, Certiorari means "to be certified". The writ of certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court, tribunal or quasi-judicial authority.

The High Court is conferred with this power under Article 226 of the Constitution of India for enforcement of any of the fundamental rights conferred by part III of the Constitution or for any other purpose.

Article 227 determines that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction (except a court formed under a law related to armed forces).

The High Court, can, under Article 227 –

Call for returns from such courts,

Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts. Prescribe forms in which books, entries and accounts be kept by the officers of any such courts.

Settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts.

Scope , Powers and Difference between Article 226 and Article 227

The Hon'ble Supreme Court, in the case of Surya Devi Rai vs. Ram Chander Rai, relied on several constitutional judgments of the Hon'ble Apex court, one of which was Umaji Keshao Meshram and Ors. vs. Smt. Radhikabai and Anr, which laid down scope, power and differences between Article 226 and Article 227.

The first and foremost difference between the two articles is that Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, excepting that the power of superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended

to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors.

The court further observed that power under Article 227 shall be exercised only in cases occasioning grave injustice or failure of justice such as when:

(i) The court or tribunal has assumed a jurisdiction which it does not have, (ii) The court or tribunal has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and

(iii) The jurisdiction though available is being exercised in a manner which tantamount to overstepping the limits of jurisdiction.

The Hon'ble Court in case of *Surya Devi rai vs. Ram Chander Rai*, further observed that there is lack of knowledge of the distinction between the understanding of Article 226 and 227 and hence it is a common custom with the lawyers labeling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncements.

After reeling on the catena of decisions of the apex court, the Hon'ble Supreme Court in *Surya Devi Rai vs. Ram Chander Rai* laid down the following differences:

- i. Firstly, the writ of certiorari is an exercise of its original jurisdiction (Article 226) by the High Court; exercise of supervisory jurisdiction (Article 227) is not an original jurisdiction and in this regard, it is akin to appellate revisional or corrective jurisdiction.
- ii. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more (Art 226). In exercise of supervisory jurisdiction (Art 227) the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the

High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute the impugned decision with a decision of its own, as the inferior court or tribunal should have made.

iii. The jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved but the power conferred under Article 227 viz the supervisory jurisdiction is capable of being exercised suo moto as well.

The court concluded that under Article 226 of the Constitution, writ is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted:

- (i) without jurisdiction, by assuming jurisdiction where there exists none, or
- (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or
- (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate court has assumed a jurisdiction which it does not have, or has failed to exercise a jurisdiction which it does have, or the jurisdiction though available is being exercised by the court in a manner not permitted by law, and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

The Hon'ble Supreme Court, through this judgment, brought all the subordinate Judicial bodies under the ambit of Article 226 of the Constitution of India, curtailing the alternate remedy of Appeal available to the aggrieved, which directly or indirectly made no difference in the powers of Article 226 and 227 of the Constitution of India.

Radhey Shyam & Anr vs Chhabi Nath & Ors

In 2015, the Constitution Bench of the Hon'ble Supreme Court comprising of H.L Dattu, CJI, Sikri.J, and A.K. Goel. J, was placed with the matter in order to consider the correctness of the law laid down in Surya Devi Rai vs. Ram Chander Rai.

The Hon'ble Court observed that:

"This Court unfortunately discerns (with Surya Devi Rai vs. Ram Chander Rai) that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also, in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases, the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals, writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed, it has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226."

Hence, by this judgment, the Hon'ble Supreme Court upheld the difference laid down between Article 226 and 227 but at the same time it curtailed few powers in the hands of the Hon'ble High Courts regarding exercising the powers under Article 226 by entertaining the petitions not affecting the Fundamental rights of the individual. And hence, overruled the judgment of Surya Devi Rai vs. Ram Chander Rai.

The jurisdiction of 226 and 227 is vast and has to be exercised sparingly. It can be exercised to correct errors of jurisdiction, but not to upset pure findings of the fact, which is within the domain of an appellate court only. This is where the power of revision comes into picture. The purpose of revision is to enable the revision court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court. The jurisdiction of Article 226 cannot be used as a Revision or Appeal court as the rejection of the order by the subordinate court does not arise the question of violation of fundamental right when the alternate remedy of appeal is available to the aggrieved.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

A study on powers of High courts in India

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