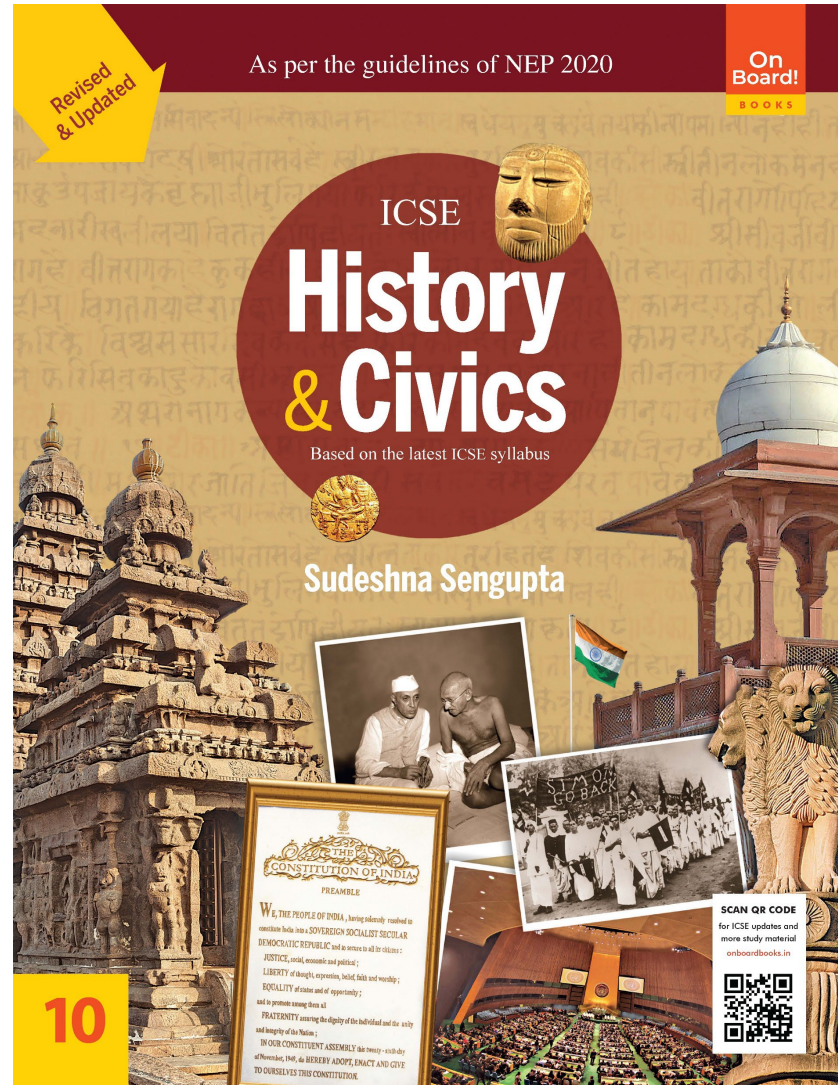


# On Board!

**B O O K S**

# ICSE History and Civics 10



# Section A: Civics

# Chapter 5 The High Court and the Subordinate Courts

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# Chapter 5 The High Court and the Subordinate Courts

Article 214 of the Constitution states, 'There shall be a High Court for each state'. However, the Parliament has the power, according to Article 231, 'to establish by law a common High Court for two or more states or for two or more states and a Union Territory.'

## THE HIGH COURT

The High Court stands at the top of the state judiciary. At present, there are 25 High Courts in the country.

### Composition

Every High Court consists of a Chief Justice and other judges appointed by the President of India. Each High Court has its own number of judges, so the number varies from state to state.

### Qualifications

The qualifications laid down by the Constitution for being eligible for appointment as a judge of the High Court are:

- Must be a citizen of India.
- Must have held a judicial office in India for 10 years.
- Must have been an advocate of a High Court or of 2 or more such Courts in succession for at least 10 years.

## Appointment of judges

The President appoints the judges of the High Court. The President consults the Chief Justice of India and the Governor of that particular state.

## Additional judges

The President has the power to appoint:

- Additional Judges for a limited period, not exceeding 2 years
- An Acting Judge, when a permanent judge of a High Court is temporarily absent or unable to perform his duties. The Acting Judge holds office till the permanent judge resumes his office. But neither the Additional Judge nor the Acting Judge can hold office beyond the age of 62 years.

## Independence and impartiality of the High Courts

As in the case of the judges of the Supreme Court, the Constitution seeks to maintain the independence of the judges of the High Courts by a number of specific clauses, such as: A judge of the High Court can be removed from office by a very rigid process of impeachment. The expenditure with respect to the salaries and allowances of the judges shall be charged on the Consolidated Fund of the State.

The allowances of a judge or his rights with respect to absence or pension shall not be revised by the Parliament to his disadvantage.

After retirement, a permanent judge of a High Court shall not plead before any authority in India except the Supreme Court and a High Court.

No discussion can be carried on in the legislature regarding the conduct of any judge in the discharge of his duties, except when the impeachment motion is discussed.

The transfer of judges has to be carried on after consultations with the Chief Justice and 4 senior judges of the Supreme Court.

## Tenure

A judge of the High Court shall hold office until the age of 62 years. Every judge, permanent, acting or additional, may vacate his office earlier, in any of the following ways:

- By tendering resignation in writing addressed to the President of India.
- By being appointed as the judge of the Supreme Court.
- By being transferred to any other High Court by the President.
- By being removed through the process of impeachment.

## Oath of office

Every judge before entering upon the office must take the oath of office. This oath is administered by the Governor of the state.

## Salary and emoluments

At present, a Judge of a High Court draws a salary of Rs 2.25 lakhs per month, while the Chief Justice gets Rs 2.5 lakhs per month. He is also entitled to such allowances and rights with respect to leave and pension as determined by the Parliament from time to time.

## Transfer

The Union Government has full control over the High Courts when it comes to the transfer of judges. A transferred judge shall be entitled to compensatory allowance in addition to his salary.

# JURISDICTION

## Original jurisdiction

The original jurisdiction of the High Court implies that it can try original cases. These include:

- Cases relating to state revenue and its collection
- Cases regarding wills, divorce, marriage, admiralty and contempt of court.
- Every High Court has the power to interpret the Constitution. This power of judicial review comes directly under the original jurisdiction of the High Court.
- The High Courts of some cities have original jurisdiction, in cases, both civil and criminal, arising within their area. This is an exception as generally in other states, criminal cases are heard in the Sessions Court at the district level.

## Appellate jurisdiction

This is applicable to both civil and criminal cases. In civil cases, an appeal can be made to the High Court when:

- The cases in the Court of the District Judge or the Subordinate Judges are of a higher value and hence beyond their jurisdiction.
- A question of procedure and law is involved, as distinguished from facts. In criminal cases, it consists of appeals against the decisions of:
  - A Sessions Judge or an Additional Sessions Judge
  - An Assistant Sessions Judge, the Chief Metropolitan Magistrate or other Judicial Magistrates
  - A death sentence by a lower court has to be confirmed by the High Court.
- Appeals by the state also made to the High Court, when a Sessions Judge passes the order of acquittal.



## Revisory jurisdiction

The High Court has been vested with the revisory jurisdiction whereby, if the High Court feels that the Subordinate Court has acted beyond its jurisdiction or a gross irregularity has been committed in any case, the High Court can send for the record of that case. Further, a High Court may interpret a particular constitutional point only and leave the case to the specific lower court, or may take up the case as a whole.

A revision of jurisdiction is applicable when:

- There is an error in law.
- The principles of natural justice have been violated.
- Wrong judgements have been pronounced.
- There has been an error in procedure.

## FUNCTIONS

### Judicial review

Like the Supreme Court, the High Court too has the power of judicial review. If any law or ordinance, questions the Fundamental Rights or contravenes some provisions of the Constitution, then the High Court can declare the law as 'null and void'.

### Power to issue writs

Like the Supreme Court, the High Courts too enjoy the power to issue writs against an individual or an official. These writs are issued for the enforcement of Fundamental Rights and to protect them from being violated.

## Control over Subordinate Courts

The High Court has administrative control over the subordinate judiciary.

- The Governor of a state has to consult the High Court of that state in matters pertaining to the appointment, posting and promotion of District Judges.
- The High Court, along with the State Public Service Commission, has to be consulted in appointing persons to the State Judicial Service.
- The power of posting and promotion, granting of leave, transfers, suspension, punishment, compulsory retirement of those in the judicial service and those below the post of the District Judge, is given to the High Court.
- The decision on the settlement of fees to be allowed to officers, clerks and advocates of the Subordinate Courts is taken by the High Court.
- The High Court prescribes forms in which books, entries and accounts shall be kept by the courts.

### Court of record

The orders and judgements of the High Courts are preserved for future reference.

These can be produced in any court as precedents. The High Court can also punish a person for its contempt.

## SUBORDINATE COURTS

The courts functioning in the districts are called Subordinate Courts. They hear civil and criminal cases pertaining to the district.

## Civil courts

These courts hear cases relating to land, property, money transactions, marriage, divorce, will and guardianship. It must be noted that disputes pertaining to agricultural land is tried by the revenue courts and not the civil courts. The District Judge's Court is the highest civil court in a district. Other civil courts under the jurisdiction of the District Court are the Courts of the Subordinate Civil Judge (First Class), Court of Sub-Judge (also called the Munsiff's Court) and Courts of Small Causes.

An appeal from the Small Cause Court can be made to the Court of the Sub-Judge or Munsiff. From there it can be taken to the Court of Civil Judge (First Class), to the District Judge and then to the High Court. All the civil courts in the district are under the administrative control of the District Judge.

### **Appointments, transfers and promotions**

- Appointment, posting and promotion of District Judges in any state shall be made by the Governor of the state in consultation with the High Court.
- The District Judge should be an advocate or a pleader for at least 7 years.
- He should be an officer in judicial service of either the Union or the state.
- Appointments of judicial officials other than District Judges are made by the Governor of the state after consultation with the State Public Service Commission and the State High Court.

## Sessions courts

The Court of the Sessions Judge is the highest criminal court in the district. It is presided over by the District Judge, who is, therefore, called the District and the Sessions Judge. In the Sessions Court, criminal cases of murder, dacoity and robbery are tried.

The Chief Metropolitan Magistrate cannot award death sentence or life imprisonment. She/he can pass a sentence of imprisonment for 7 years.

Panchayats also form an important feature of the Indian judiciary. Panchayats are formed at the grassroot level, i.e. the villages. They try petty civil and criminal cases.

The Sessions Judge hears appeals against the judgement of the lower courts, while appeals against the rulings of the Sessions Judge can be heard in the High Courts.

## Revenue Courts

- The lowest revenue court is the Court of the Tehsildar.
- The highest revenue court in a district is the Court of the Collector.
- The Commissioner's Court coordinates all the districts in a division.
- The highest revenue court under the High Court is the Board of Revenue.
- The High Court is the supreme judicial body in the state.

## Lok Adalat

Lok Adalat means the 'People's Court'. It was set up by the Legal Services Authorities Act, 1987 as a legal forum, which would provide speedy justice and hassle-free legal aid.

**Procedure** The Lok Adalat is presided over by a sitting or a retired judicial officer as the Chairman, with two other members, usually a lawyer and a social worker. The main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties and its order can be executed through legal process. No appeal can be made against the order of the Lok Adalat. The decisions of the Lok Adalats are accepted as decrees of a civil court and are binding on the concerned parties.

### Importance

- The spirit of compromise satisfies all the parties involved in the case.
- It is very convenient for most people as the Lok Adalats render speedy and inexpensive justice.
- The judgements are final as no appeal can be made against it. All cases close immediately.
- They can also solve disputes that have not reached the court. This saves a lot of time, money and harassment.

## Family courts

The Family Courts, set up in 1984, were intended for a speedy settlement of disputes relating to marriage, family and associated matters. All state governments have been directed to set up one Family Court in each district.

## To Remember

**Introduction** – There are 25 High Courts in India, the Guwahati High Court exercises its jurisdiction over 4 states, Composition: Every High Court shall have a Chief Justice and such other judges as the President may appoint, Appointment: All appointments are made by the President in consultation with the Chief Justice of India, Qualification: Should be a citizen of India, should have held judicial office for 10 years, Tenure: A High Court judge shall hold office until the age of 62 years, can be removed through impeachment, Transfer: A High Court judge can be transferred after consultation with the Chief Justice of India, Jurisdiction: Original jurisdiction implies that the High Court can try original cases, appellate jurisdiction is applicable to both civil and criminal cases, revisory jurisdiction is exercised by the High Court if it feels that the Subordinate Courts have gone beyond their jurisdiction.

**Function of the High Court** – Judicial review, can issue writs, exercises control over Subordinate Courts, acts as a Court of Record.

**Independence of High Court** – The Constitution has provided for the independence of the High Court, through provisions like a High Court Judge can be removed by a very rigid process of impeachment, salaries and allowances of the judge of a High Court cannot be legislated upon, etc.

**Subordinate Courts** – These courts function in the districts, courts that hear civil cases at the district level are called District Courts and those that hear criminal cases are called Sessions Courts, the District Judge's Court is the highest civil court in a district, Sessions Court is the highest criminal court in a district, Revenue Courts deal with cases of land records, Lok Adalats solve cases through mutual understanding, Family Courts settle disputes relating to marriage, family.

**Thank You**