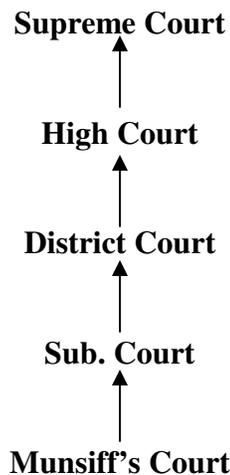


## **COURTS AND PROCEDURE**

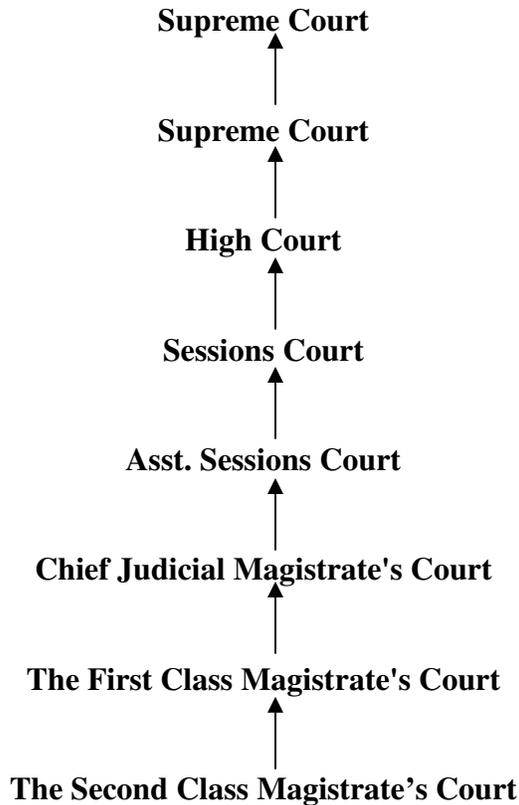
Law is an instrument of social control. It is a rule of conduct. The object of law is to give everyone his due. Whenever wrongs are committed against the society or individuals law steps in. Wrongs committed against the society are called crimes. It is the duty of the State to protect the society from offenders. So crimes are considered as offences against the State and prosecutors have been appointed by the Government to conduct criminal cases before Courts of Law. However, disputes relating to property, breach of contracts, wrongs committed in money transactions, minor omissions etc are categorized as civil wrongs. In such cases civil suits should be instituted by the aggrieved persons. Courts of law administer justice by considering the nature of the wrong done. Criminals are convicted and punished before criminal courts. Civil wrongs are redressed before civil courts by granting injunctions or by payment of damages or compensation to the aggrieved party.

The hierarchy of civil courts is given below. Every suit should be instituted before the court of lowest jurisdiction. In the civil side the Munsif's Court is the court of



lowest jurisdiction. If the value of the subject matter of the suit is worth rupees one lakh or below, the Munsiff's Court is the competent court to try the suit. If the value exceeds above rupees one lakh the suit should be filed before the Subordinate Judge's Court (Sub Court). An appeal from the decisions of the Munsiff is filed before the District Court. Appeals from the decisions of the Sub Court is filed before the District Court if the subject matter of the suit is of value up to rupees two lakhs. If the value is above two lakhs, the appeal should be filed before the High Court and next to the Supreme Court.

Administration of criminal justice is carried out through Magistrate- Courts and Sessions courts. The hierarchy of criminal courts is given below. The Court at the lowest



level is called Judicial Magistrate of the second class. This Court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding three years or with fine upto ten thousand rupees. In Kerala, the second and the First Class Magistrate Courts have been unified. The Chief Judicial Magistrate can impose any fine and punishment up to seven years imprisonment. The Assistant Sessions Judge is competent to impose punishments up to ten years imprisonment and any fine. The Sessions Judge can impose any punishment

authorized by law; but the sentence of death passed by him should be subject to the confirmation by the High Court. (see for details Sections 28 and 29 of Criminal Procedure Code.)

### **High Court**

High Court stands at the head of a State's judicial administration. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing other Judges is the same except that the Chief Justice of the High Court

concerned is also consulted. They hold office until the age of 62 years and are removable only by the rare process of impeachment.

Each High Court has power to issue to any person within its jurisdiction writs, orders or directions. Writs are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. Each High Court has powers of superintendence over all Courts and Tribunals within its jurisdiction. It can call for returns from such Courts, make and issue general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept. The High Court has the power to withdraw cases from the subordinate courts if the case involves a substantial question of law as to the interpretation of the constitution.

### **Supreme Court**

The Supreme Court the highest court in the country. It has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to Central-State and inter State disputes. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court for the enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.. The Supreme Court, if satisfied that cases involving substantially the same questions of law of general importance are pending before it and the High Courts, it may withdraw such case and dispose them by itself.

The appellate jurisdiction of the Supreme Court can be invoked both civil and criminal cases, if the High Court certifies that the case involves a substantial questions of law as to the interpretation of the Constitution. Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies: (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court. In criminal cases, an appeal lies to the Supreme Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death (b) has withdrawn for trial before itself any

case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death. (c) certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court.

The Supreme Court has the power to grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution.

## **Writs**

Article 32 of the Constitution confers original jurisdiction on the Supreme Court to issue directions, orders or writs for the enforcement of fundamental rights. Similar powers are conferred on the High Court under article 226 of the Constitution. The writ jurisdiction of the High court is wider than that of the Supreme Court. The High Court can issue writs for the violation of fundamental rights or for any other purpose.

There are five types of Writs- Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo warranto.

### **1. Habeas Corpus:**

"Habeas Corpus" is a Latin term which literally means "you may have the body." The writ is issued to release a person who has been detained unlawfully whether in prison or in private custody. When the writ is issued, the detenu should be produced before the Court and if the detention is found illegal the Court will order that he be immediately released. However in Kanu sanyal Vs District Magistrate, Darjeeling(A.I.R.1974S.C 510) The Supreme Court held that while dealing with the application of writ of *habeas corpus*, production of the body of the person alleged to be unlawfully detained was not essential.

## **2. Mandamus:**

Mandamus is a Latin word, which means "We Command". Mandamus is an order from the Supreme Court or High Court to a lower court or tribunal or public authority to perform a public or statutory duty.. It is issued to secure the performance of public duties and to enforce private rights with held by the public authorities.

## **3. 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. . There are several conditions necessary for the issue of writ of certiorari (a) There should be court, tribunal or an officer having legal authority to determine the question with a duty to act judicially. (b) Such a court, tribunal or officer must have passed an order acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or officer. (c) The order could also be against the principles of natural justice or (d) it could contain an error of judgment in appreciating the facts of the case.

## **Writs of Prohibition**

The Writ of prohibition means to forbid or to stop and it is popularly known as 'Stay Order'. This writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. The writ of prohibition is issued by any High Court or the Supreme Court to any inferior court, or quasi judicial body prohibiting the latter from continuing the proceedings in a particular case, where it has no jurisdiction to try. After the issue of this writ, proceedings in the lower court etc. come to a stop.

While the writ of prohibition is available at the earlier stage, the writ of certiorari is available on similar grounds at a later stage. It can also be said that the writ of prohibition is available during the pendency of proceedings the writ of certiorari can be resorted to only after the order or decision has been announced.

## **The Writ of Quo-Warranto**

The word Quo-Warranto literally means "by what warrants?" or "what is your authority"? It is a writ issued with a view to restrain a person from holding a public office which he is not entitled. The writ of quo-warranto is used to prevent illegal assumption of

any public office or usurpation of any public office by any body. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a writ of quo-warranto against the person and declare the office vacant.

### **Handling of Government Cases**

Before the Criminal Courts, the Public Prosecutors conduct cases for the State. Government Pleaders have been appointed to conduct civil cases for the government.

However the necessary feedback to successfully defend the case should be supplied by the Department concerned. Officials of the concerned Government Department should read the petition carefully and prepare a detailed statement of facts and send it to the Government pleader or prosecutor concerned at the earliest. The following matters should be considered while preparing the Statement of Facts.

1. Give a brief history of the case in the beginning.
2. Read the petition carefully and answer paragraph by paragraph, ground by ground
3. Every averment and allegation must be answered
4. Clubbing of paragraphs should be avoided. Cross reference can be made.
5. Costs should be claimed in fit cases.(eg. frivolous and vexatious litigation)

### **Follow up action**

1. Pursue the matter with Government Pleaders
2. If there is an interim stay against the Government, get it vacated.
3. Get copies of judgments in time. Delay may affect the right to appeal.
4. Execution of decrees/orders favourable to the Government must be ensured and implemented.
5. Decree amount should be deposited in time to avoid additional payment by way of interest etc.

Lack of vigilance and responsibility on the part of Prosecutors and Govt. Pleaders often lead to the failure of govt. cases. If the officials of the concerned Govt. Dept. is cautious and make timely inquiries and communications with Government Pleaders, the interest of the Government can be protected in such cases.

Dr. A Prasanna  
Associate Fellow, IMG