

# Note



## Note on Indian Judicial System

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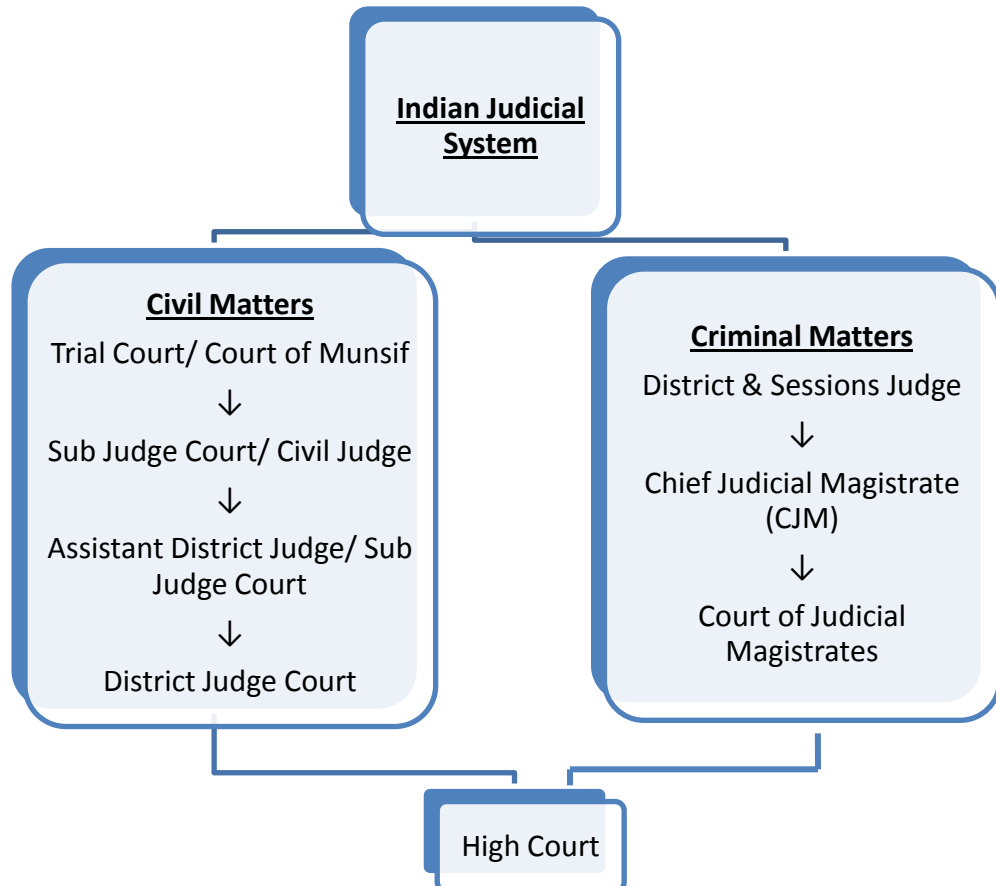
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# Indian Judicial System

## Note

### A. Hierarchy of courts



### B. A few pointers

#### a. Control over subordinate courts

The subordinate courts in India are governed by the Bengal, Agra, Assam Civil Courts Act, 1887. However, the control over subordinate courts vests with High Court as per Article 235 of the Constitution of India.

#### b. About Court of Executive Magistrate

Although, he does not fall within any judiciary, he is usually an IAS officer who declared curfew u/s 144 of CPC in public interest.

#### c. About CPC

CPC deals with both substantive and procedural law. Civil courts are governed by the Civil Rules & Orders (CRO) and criminal courts by

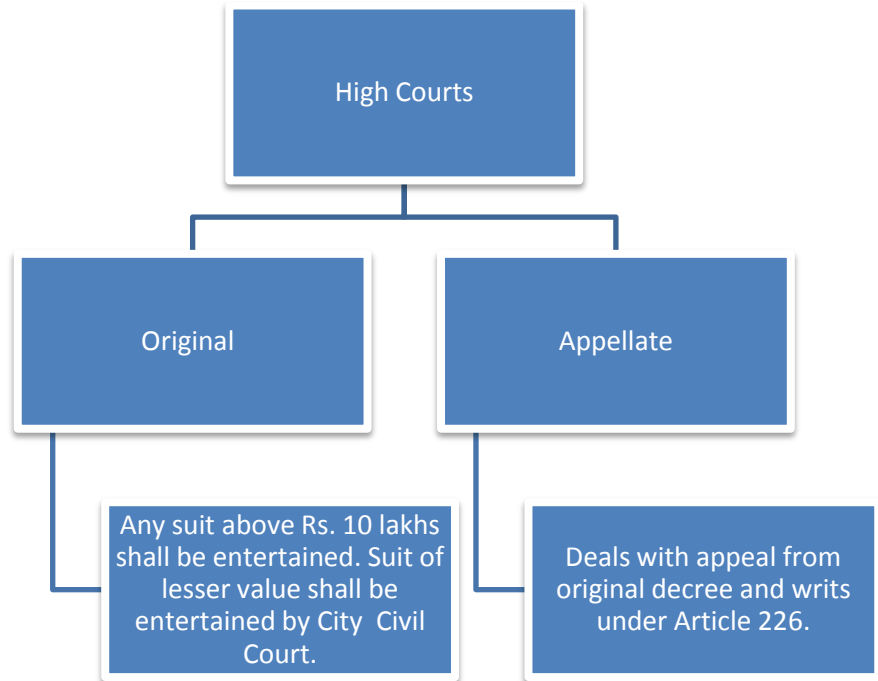


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Criminal Rules and Orders. These are framed state wise by the respective high courts. However, it does not apply to High Courts, which has its own set of rules, which again are state wise.

#### d. About High Courts



The parameter for determining jurisdiction of High Courts has been laid down in CPC as follows:

- i. Territorial
- ii. Pecuniary – Civil Judge (Junior) can try suits upto Rs. 30 lakhs as laid down by Bengal, Agra and Assam Civil Courts Act, 1887. The jurisdiction is thus entirely on the basis of value of suits, which is determined by the Suit Valuation Act, 1887. This also pre-emption cases even if the value exceeds Rs. 30 lakhs.
- iii. Subject-wise

#### e. About pre-emption rights

Pre-emption matters are taken by the Civil Judge (Junior) irrespective of the suit value. Pre-emption is a right that finds way into our system through Mohameddan principles and Land Reforms Act. Herein, is the



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concept of a *Bargadar*, who was the tenant given right to cultivate and paid rent as a part of his produce. Presently, there is a register for them.

f. About eviction suits

Eviction suit can be filed by the landlord (ownership is not a mandatory criteria). Grounds of eviction are provided in Section 6 of West Bengal Premises Tenancy Act, 1956.

g. Stages of trial

Suit begins with filing of plaint



Summon issued in the name of the defendant



Defendant files a written statement with the court.



Interlocutory orders are passed at times. Its actually a mini trial u/s 7(1) and 7(2) of CPC.



Issues are framed



Peremptory Hearing (PH) begins wherein plaintiff brings in his witnesses. This signals the beginning of trial.



Fixed for arguments

h. About amendment of pleadings

The SC is of the view that amendment cannot be made forever. It is allowed at any time before the trial begins after considering the following: (a) Will it change the nature of the suit.

(b) New things have been brought in.

(c) If the assessee was not in possession of such facts earlier.

(d) If it is derogatory against the defendant.

i. About types of suits

Following are the types of suit-

- i. Class 1—Title suits and other suits (eviction suit, declaration of marriage, defamation etc.)



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- ii. Class 2—Money suits, execution of decree.
- iii. Judicial miscellaneous cases—Pre-emption matters( Section 47),

j. What is a Judgement?

It is a statement given by the judge on the grounds of decree or order. It sets out the facts of the case, *obiter dicta/ratio decidendi*, inter-locutory order and order.

k. What is a Decree?

Under sec. 2(2) of CPC, it is the formal expression of the adjudication of the court, which conclusively determines the rights of the parties to the suit. It should be signed within 15 days of judgement.

l. What is an Order?

It means the formal expression of any decision of the court, which is not a decree. It is any order during intermittent period.

m. About Injunction Petition (order 39, rule 1&2 of CPC)

In this case, Plaintiff has to prove the following:

- i. A prima facie case;
- ii. If injunction is not granted, plaintiff shall have irreparable lot.

n. About Reference, Review, Revision

Reference: At any time before judgement, a court may state a case & refer it for opinion of the High Court.

Review: Any Court may review its own case, on an application.

Revision: The High Court may call for the record of any case decided by any subordinate Court, in which no appeal lies thereto.

o. Powers of Magistrate under CrPc

In criminal matters the State is the prosecutor. Under Section 156, if the police does not register a complaint; application can be made to the Magistrate. A Magistrate can order arrest by pointing fingers.



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p. About Cognizable & Non- cognizable Offence:

Cognizable case means a case in which the police can arrest without warrant.

Non- cognizable case means a case in which the police cannot arrest without warrant.

q. About eviction-suits

This process is a long drawn process and can at times take 20 years. Under this section, the decreeholder applies to the Court for execution of an eviction order. Order 21 of CPC details the process laid down for this. Briefly, the Court then sends a notice to the judgement debtor, followed by a public announcement through a bailiff accompanied by a drum beater. Thereafter, a group of policemen are sent (on applicant's request, subject to payment of required fees) to enforce the eviction order. However, Order 21 Rule 99 of the CPC allows any person to make an application to the court complaining of dispossession if any.