

PROCEDURAL LAW FOR CRIMINAL MATTERS

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CHAPTER 1: INRODUCTION

The Criminal law occupies a predominant place among the agencies of social control. But when a person commits a crime he is not automatically punished or he himself will not come and confess that has committed a crime and accept punishment. There must be a procedure to enforce the criminal law. The offender must be brought before the court and his guilt must be proved. For this process the procedural criminal law is necessary.

The Criminal Procedure Code (CrPc) is designed to look after the process of the administration and enforcement of the Criminal law. The Criminal procedure is an inseparable part of the penal law. Without the Criminal procedure code the substantive criminal law will become worthless and meaningless. Our law of criminal procedure is mainly contained in the Code of Criminal Procedure, 1973. It provides the machinery for the detection of crime, apprehension of suspected criminals, collection of evidence, determination of the guilt or innocence of the suspected person and the imposition of suitable punishment on the guilty person.

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The Code of Criminal Procedure, 1973 (in short Cr.P.C.) came into force on April 1, 1974. The Code was enacted to consolidate and amend the law related to Criminal Procedure. It extends to the whole of India.

Law can be divided into two kinds, namely, (1) Substantive Law and (2) Procedural Law. The substantive Law is that which defines the "rights" while procedural law determines "the remedies".

Substantive Law defines and regulates the powers, rights, duties, and liabilities of the parties, whereas, Procedural Law deals with methods and procedures to enforce Substantive law. Procedural law is also called "law of action". It is that branch which governs the process of litigation. It embodies the rule governing the institution and prosecution of proceedings. Substantive law is concerned with the ends which the administration of justice seeks. It deals with the rights and remedies.

The Criminal Procedure Code is a Procedural Law. It provides the manner in which court trials are to be conducted for substantive criminal laws such as the Indian Penal Code and other criminal statutes. The primary object of the criminal

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justice system is to ensure that a criminal trial is conducted in a fair, just and unbiased manner.



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CHAPTER 2: FUNCTIONARIES UNDER THE CODE

The functionaries exercising powers and discharging duties under the Code of Criminal Procedure, 1973 are 1) the Police, 2) the Prosecutors, 3) Defence Counsels 4) Magistrates and Courts and 5) Prison Authorities and Correctional Home Services.

POLICE:

The Code does not mention anything about the constitution of police. It assumes the existence of police and devolves upon the various powers and responsibilities. The police force is considered instrumental for the prevention and detection of crime.

The administration of police in a district is done by District Superintendent of Police under the direction and control of the District Magistrate. Every police officer appointed to the police force other than the Inspector-General of Police and the District Superintendent of Police receives a certificate in the prescribed form by the virtue of which he is vested with the powers, functions and privileges of a police officer. The

Supreme Court has held that “such certificates shall cease to be effective and shall be returned as soon as the police officer ceases to be an officer”.

The Cr. P.C confers specific powers, for instance, “power to arrest, search a place, etc. on members of the police force who are enrolled as police officers”. Further, extensive powers have been vested upon officers-in-charge of the police station. These officers, usually called the Station House Officers are also required “to discharge onerous duties in relation to detection, investigation and prevention of offences”. Further, **Section 36** of the Code vests extra-territorial powers upon officers above the rank of officers-in-charge for the purpose of investigation and prevention of crime.

PROSECUTOR

If a crime is cognizable in nature, the state participates in a criminal trial as a party against the Accused. Public Prosecutor or Assistant Public Prosecutor is the state counsel for such trials. His main duty is to conduct Prosecutions on behalf of the state. The Public Prosecutor cannot appear on behalf of the accused. According to the prevailing practice, in respect of cases initiated on police reports, the prosecution is conducted by the Assistant Public

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Prosecutor and in cases initiated on a private complaint, the prosecution is either conducted by the complainant himself or by his duly authorized counsel.

DEFENSE COUNSEL:

According to Section 303, any person accused of an offense before a criminal court has the right to be defended by a pleader of his choice. Such pleaders are not in regular employment of the state and are paid remuneration in the form of legal fees by the accused person. Since a qualified legal practitioner on behalf of the accused is essential for ensuring a fair trial, Section 304 provides that if the accused does not have means to hire a pleader, the court shall assign a pleader for him at the State's expense. At present, there are several schemes through which an indigent accused can get free legal aid such as Legal Aid Scheme of State, Bar Association, Legal Aid and Service Board and Supreme Court Senior Advocates Free Legal Aid society. The Legal Services Authorities Act, 1987 also provides free legal aid for the needy.

PRISON AUTHORITIES AND CORRECTIONAL SERVICES

PERSONNEL:

The Code presumes the existence of Prisons and the Prison authorities. It empowers Magistrates and judges under certain circumstances to order the detention of under-trial prisoners in jail during the pendency of the proceedings. It also empowers the courts to impose sentences of imprisonment on convicted persons and to send them to prison authorities. However, the code does not make specific provisions for creation, working, and control of such machinery. These matters are dealt with in separate acts such as The Prisons Act 1894, The Prisoners Act 1900 and The Probation of Offenders Act 1958.

CHAPTER 3: THE PROCESS OF CRIMINAL INVESTIGATION AND TRIAL IN INDIA.

Before we turn to the process of Indian Criminal Investigation and Trial, it is necessary to understand following important terminologies and concepts:-

A) **Bailable Offence** means an offence, which has been categorized as bailable and in case of such offence, bail can be claimed, subject to fulfilment of certain conditions, as a matter of right under Section 436 of the Cr. P.C. In case of bailable offences, the Police is authorised to give bail to the accused at the time of arrest or detention.

B) **Non-Bailable Offence** means an offence in which the bail cannot be granted as a matter of right, except on the orders of a competent court. In such cases, the accused can apply for grant of bail under Section 437 and 439 of the Cr. P.C. It is important to note that the grant of bail in a non-bailable offence is subject to judicial discretion of the Court and it has been mandated by the Supreme Court of India that “Bail not Jail” should be the governing and guiding principle.

C) **Anticipatory Bail** under Section 438 of the Cr. P.C means that a person who apprehends arrest on a wrong accusation of committing a non-bailable offence, can apply before a competent court for a direction to the police to immediately release such a person on bail in the event of arrest. However, the grant of anticipatory bail is discretionary and dependant on the nature and gravity of accusations, the antecedents of the applicant and the possibility of the applicant fleeing from justice.

D) **Cognizable Offence/case**, has been defined under Section 2 (c) of Cr. P.C, as an offence/case in which a Police Office can arrest without a warrant.

E) **Non-cognizable Offence/case**, has been defined under Section 2 (l) of Cr. P.C., as an offence/case in which a Police Officer has no authority to arrest without a warrant.

Whether an offence/case is bailable or not bailable, and cognizable or non-cognizable, has been qualified under the 1st Table of the 1st Schedule of the Cr. P.C., which relate to the offences under IPC.

F) F.I.R (First Information Report) Section 154 is formal recordal of a complaint by police in case of commission of a cognizable offence and can be considered as a first step in the process of the investigation of a cognizable offence by the Police.

G) Table II of the 1st Schedule of Cr. P.C. gives a general guideline to determine whether an offence is bailable, non bailable, cognizable or non-cognizable. The criteria in the table below, is applicable in those cases which are silent on this aspect.

For easy understanding, the following criteria may be understood:

Offence	Cognizable or Non-Cognizable	Bailable or Non-Bailable
Punishable with Imprisonment for less than 3 years or with fine only	Non-cognizable	Bailable
Punishable with Imprisonment for 3 years or more	Cognizable	Non Bailable

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H) CLASSIFICATION OF CRIMINAL LAW

Substantive Criminal Law or Real Criminal Law	Procedural Criminal Law or Adjective Criminal Law
Indian Penal Code, 1860	1. Code of Criminal Procedure, 1973 2. Indian Evidence Act, 1872

- Indian Penal Code and Code of Criminal Procedure are together known as the “twin sisters” of criminal law.
- Code of Criminal Procedure is the procedural law for conducting a criminal trial in India. The procedure includes the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by Police and Courts, bail, the process of criminal trial, a method of conviction, and the rights of the accused of a fair trial by principles of natural justice.
- Indian Penal Code (IPC) is the primary penal law of India, which applies to all offences.

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- Indian Evidence Act (IEA) is a comprehensive, treaty on the law of “evidence”, which can be used in the trial, the manner of production of the evidence in a trial, and the evidentiary value which can be attached to such evidence.

**MANNER IN WHICH COGNIZABLE AND NON-COGNIZABLE
CASES ARE DEALT WITH:**

On complaint /reporting /knowledge of the commission of a cognizable offence, any police officer, even without the orders of a Magistrate, can investigate the cognizable case. (Section 156 (1) of the Cr.P.C.)

In case of failure or inaction of a police officer to investigate a cognizable offence, a criminal complaint can be filed before a Magistrate under Section 190 of Cr. P.C., for taking cognizance of such offence and on such complaint, the Magistrate himself can take cognizance of the case and do the enquiry or in the

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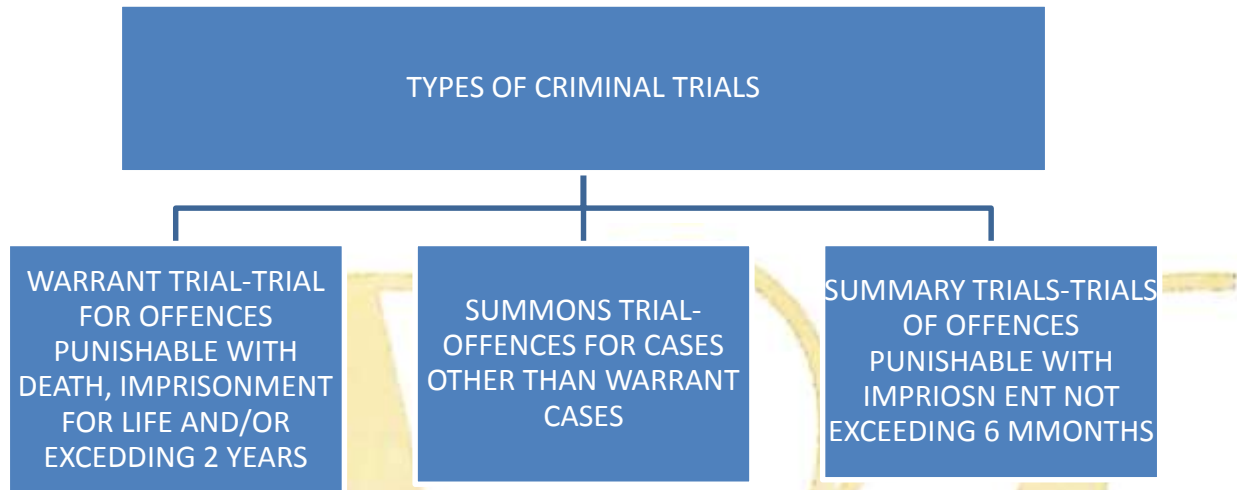
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alternative under Section 156 (3) of the Cr. P.C. order the Police to register an F.I.R and investigate the offence.

In case of non-cognizable offence, the Police is not obliged to investigate, and the judicial process can be started by filing a criminal complaint before the competent court, under Section 190 of the Cr. P.C.

TYPES OF CRIMINAL TRIAL

According to the Code of Criminal Procedure, a Criminal Trial is of three types. Depending upon the type of criminal trial the different stages of a criminal trial are discussed below.



WARRANT TRIAL

According to Section 2(x) of Code of Criminal Procedure, 1973, a warrant case is one which relates to offenses punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a magistrate. Later, if the magistrate is satisfied that the offense is punishable for more than two years, he sends the case to the sessions court for trial. The process of sending it to sessions court is called “committing it to sessions court”.

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Important features of a warrant case are:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once.
- Section 207 of Cr. P.C. 1973 provides for supply of copies of documents such as police report, FIR, statements recorded or any other relevant document to the accused.

STAGES OF TRIAL IN WARRANT CASES (SECTIONS 238 to 250 OF THE CRPC)

Different Stages of Criminal Trial in a Warrant Case when instituted by the police report:-

- **First Information Report:** Under Section 154 of the Code of Criminal Procedure, an FIR or First Information Report is registered at the local Police Station. An FIR puts the case into motion. It is information given by someone (aggrieved) to the police relating to the commission of an offense.

- **Investigation:** The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then the conclusion is filed to the magistrate as a police report.
- **Charges:** If after considering the police report and other important documents, the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.
- **Plea of guilty:** Section 241 of the Code of Criminal Procedure, 1973 deals with the plea of guilty. After framing of the charges, the accused is given an opportunity to plead guilty and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon his discretion convict the accused.
- **Prosecution evidence:** After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to

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prove the guilt of the accused. The prosecution is required to support their evidence with statements of its witnesses. This process is called “examination in chief”. The magistrate has the power to issue summons to any person as a witness or order him to produce any document.

- **Statement of the accused:** Section 313 of the Criminal Procedure Code gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.
- **Defence evidence:** An opportunity is given to the accused in a case where he is not being acquitted to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence. In India, since the burden of proof is on the prosecution, the defense in general, is not required to give any defense evidence.
- **Judgement:** The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually

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done when the person is convicted of an offense punishable with life imprisonment or capital punishment.

Different Stages of Criminal Trial in a Warrant Case when instituted on a

Private Complaint:-

- On the filing of the complaint, the court will examine the complainant and its witnesses on the same day or any other day to decide whether any offense is made against the accused person or not.
- After examination of the complainant, the Magistrate may order an inquiry into the matter and call for a report on the same.
- After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.

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- After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summons depending on the facts and circumstances.
- The trials are normally divided into warrant trial and a summons trial. For trial of warrants cases by Magistrate two procedures are prescribed. In a case instituted on a police report, under Section 238 of the Cr.P.C, the Accused appears or is brought before the Magistrate. The Magistrate has to satisfy himself that he has been supplied with all necessary documents submitted with the chargesheet. Section 239 of the Cr. P.C provides that if the Magistrate after considering the chargesheet filed u/s. 173 of the Cr. P.C and hearing the Accused considers the charge to be groundless, he shall pass a reasoned Order to discharge the Accused. However, after considering the abovementioned documents, the Magistrate comes to a prima facie conclusion that there are grounds for proceeding with the trial, he shall proceed to frame the charge against the Accused. After framing of charge under section 240 of the Cr.P.C, the Magistrate has to proceed under section 242 and under sub section (3) of that section, the Magistrate is bound to take

all such evidence as may be produced in support of the prosecution. This provision under Sub- Section (1) and (2) of Section 243 of the Cr.PC are mandatory. The Provision of section 243 apply equally to cases instituted on police report or private complaint. After the examination and cross-examination of all the witnesses of the prosecution i.e. after the completion of the prosecution's case the accused shall be called upon to enter his defence and any written statement put in shall be filed with the record.

- In a case instituted otherwise than on a police report, under section 244 of CRPC the accused appears or is brought before the Magistrate. The Magistrate shall proceed to hear the prosecution and shall take all such evidence as may be produced in support of the prosecution. After taking all evidence under section 244 (1) of CrPC, the magistrate shall reach a conclusion whether the case has been made out against the accused. If no case is made out, the Magistrate shall discharge the accused under a reasoned Order. If there is strong suspicion about the commission of the offence and involvement of the accused, the court shall proceed to frame charge instead of discharging the accused. If the accused is not discharged

under section 245 of CrPC the Magistrate shall proceed as set out herein above.

SUMMONS TRIAL

- According to Section 2(w) of Code of Criminal Procedure, 1973 those cases in which an offense is punishable with an imprisonment of less than two years are summons cases. A summon case doesn't require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the magistrate if after looking into the case he thinks that the case is not a summons case.

Important points about summons case are:

- A summons case can be converted into a warrant case.
- The person accused need not be present personally.
- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses.

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The different stages of criminal trial in a summons case are given from Section 251 to Section 259 of the Code of Criminal Procedure.

STAGES OF CRIMINAL TRIAL IN A SUMMONS CASE

- **Pre-trial:** In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
- **Charges:** In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate orally states the facts of the offense to which he is answerable.
- **Plea of guilty:** The Magistrate after stating the facts of the offense will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and shall proceed to convict him at his discretion.
- **Plea of guilty and absence of the accused:** In cases, where the accused wants to plead guilty without appearing in the court, the accused is supposed to send Rs.1000/- by post or through a messenger (lawyer) to the Magistrate. The absentee should also send a letter containing an

acceptance of guilt and the amount of fine provided in the summons. The Magistrate can at his discretion convict the accused.

- **Prosecution and defense evidence:** In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.
- **Judgement:** When the sentence is pronounced in a summons case, the parties need not argue on the amount of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.
- Section 274 of CRPC deals with the record in summons cases and inquires. The Magistrate shall as the examination of each witness proceeds, make a memorandum of the substance of his evidence in the language of the Court. However, if the magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability

cause such memorandum to be made in writing or by dictation in open court.

SUMMARY TRIAL

- Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offenses to reduce the burden on courts and to save time and money. Those cases in which an offense is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months. The trial procedure is provided from Section 260 to Section 265 of the Code of Criminal Procedure.

STAGES OF CRIMINAL TRIAL IN SUMMARY CASES

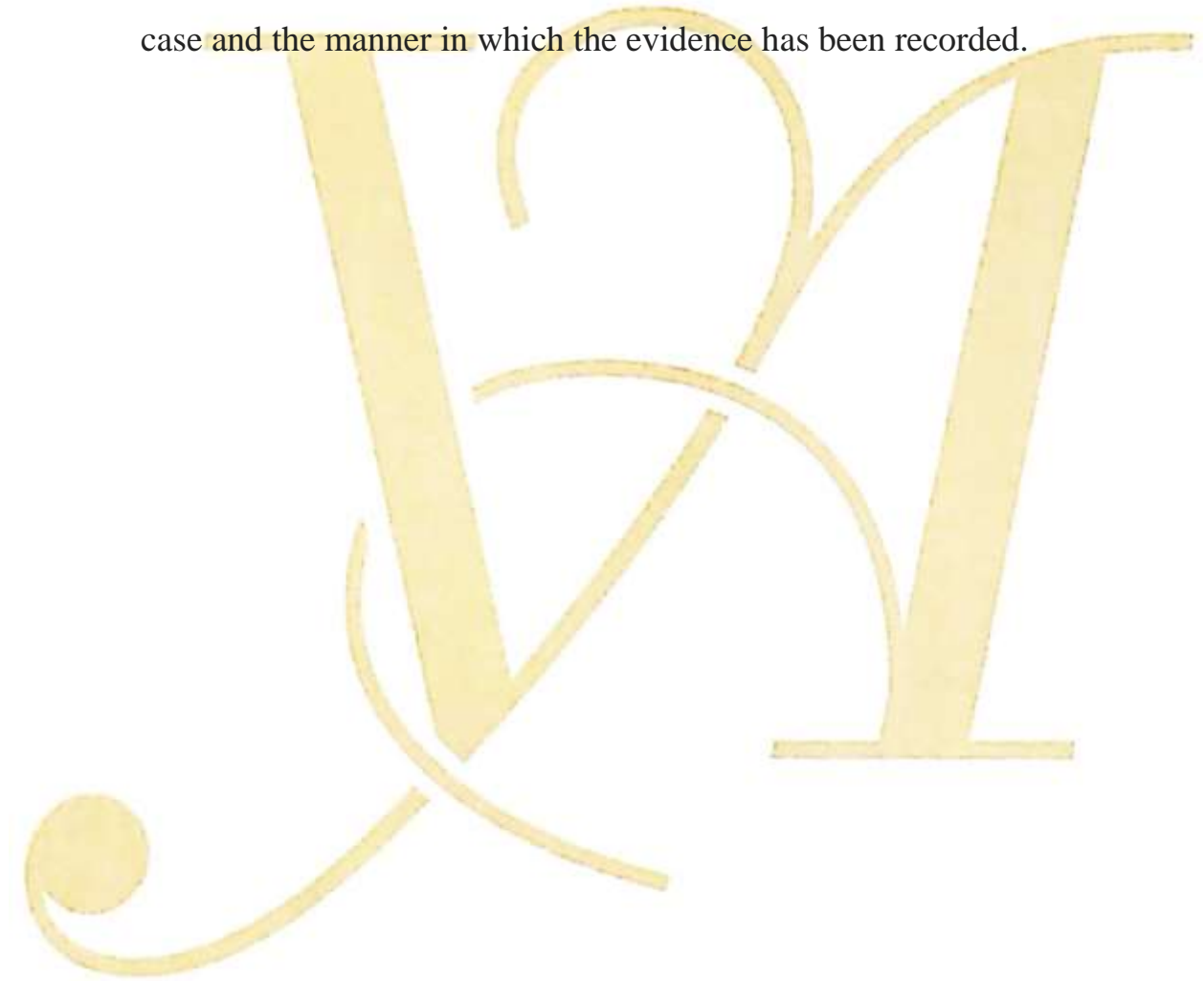
- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.

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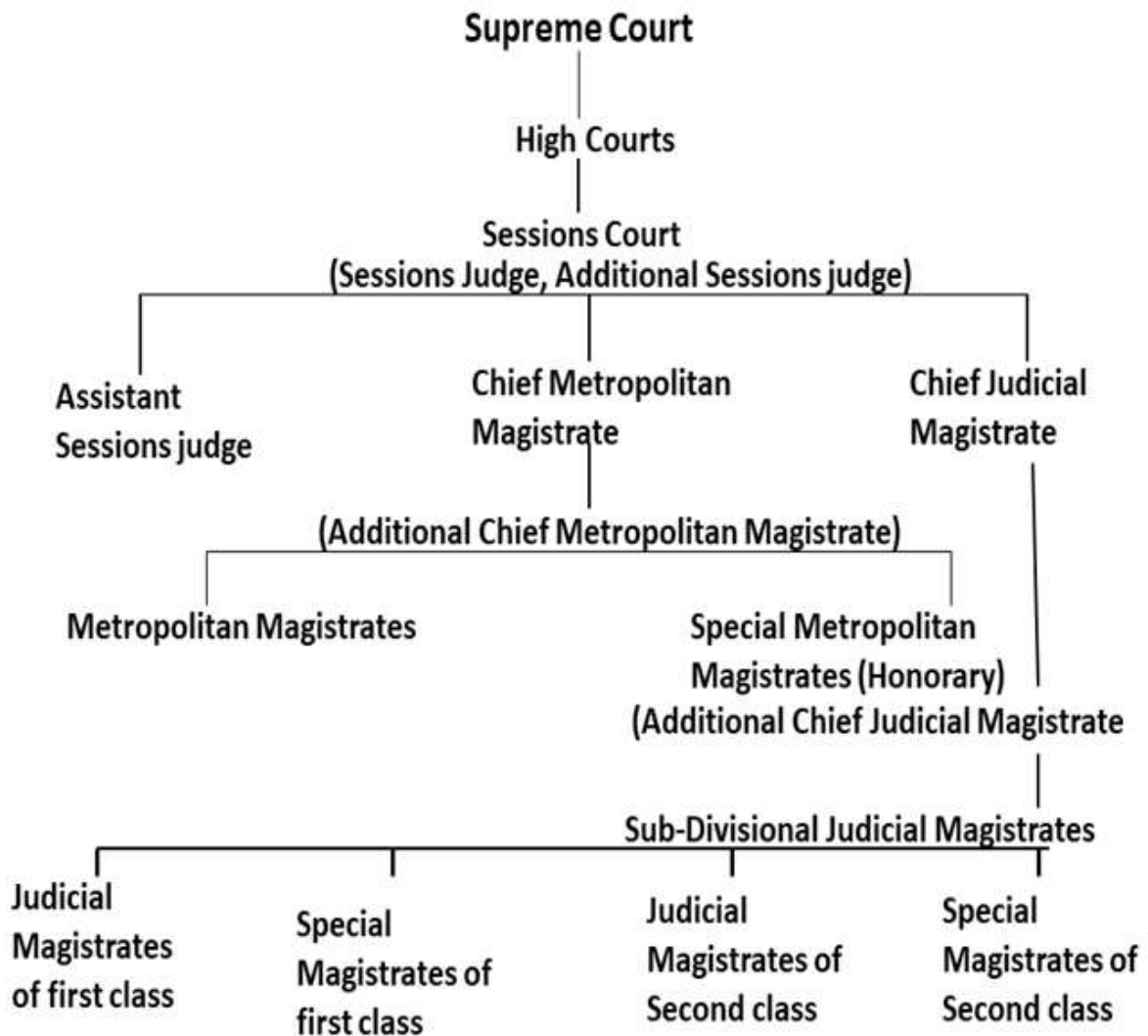
- In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.
- The provisions of section 262 are imperative and a breach thereof amounts to an illegality and not an irregularity.
- Judgement in cases tried summarily – Section 264 of the CrPC lays down that in every case tried summarily, the Magistrate must record the substance of the evidence and the judgement that is delivered must also contain a brief statement of the reason or coming to a particular finding.
- Language of Record and Judgement – Section 265 emphasizes that every such record i.e. the particulars mentioned in Section 263 and the substance of evidence and judgement must be recorded in the language of the Court.
- Section 326(3): The provision of Section 326(3) of the CrPC, bars the use of pre-recorded evidence by a successor Judge when the trial has to be conducted according to provisions of Section 262 and 265 of the CrPC (i.e. summary trial). When in a summary trial, the evidence has been recorded partly by one Magistrate who has taken notes of evidence and made them part of the record of the case and that Magistrate is succeeded

by another Magistrate, the Successor can decide the case on evidence partly recorded by his predecessor and partly recorded by himself. It is not required that in every case where the case is sent to another Magistrate, the evidence must be reheard. It depends upon the particular case and the manner in which the evidence has been recorded.



CHAPTER 4: HIERARCHY OF COURTS

Hierarchy of Criminal Courts



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THE SUPREME COURT OF INDIA / THE APEX COURT:

The Supreme Court of India is the highest Court of Appeal in the entire country under purview of Articles 132, 133, 134 & 136 of the Constitution of India. It is the supreme judicial authority in our country and is considered as the highest constitutional court in India. It is the court of Record. As per **Article 141** of the Indian Constitution, law declared by the Supreme Court binds all Courts in India. Mainly, it is an appellate court which takes up appeals against judgments of the High Courts of the states and territories. However, it also takes up writ petitions in cases of serious human rights violations or any petition filed under **Article 32** which is the right to constitutional remedies or if a case involves a serious issue that needs immediate resolution.

- **Extensive Powers of Apex Court under the Indian Constitution :**

- ❖ As per **Article 32**, Supreme Court has Writ jurisdiction.
- ❖ As per **Article 129**, the Apex Court has the power to punish for Contempt of Court.

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❖ **Article 131** gives the power of original jurisdiction to the Supreme Court, to resolve the dispute arising between the Centre and the States or between two States.

• As per **Article 143**, the Supreme Court has Advisory Jurisdiction.

• **Interpretation of the Constitution** - Only the Apex Court has the power to settle a question based on any issue related to the Constitution.

• **Power of Judicial Review (Article 137)**- All the laws enacted are subjected to scrutiny by the Judiciary.

• **Court of Appeal** – The Apex Court is the highest court for appeal in India. It has the power to hear appeals from all the cases lying in the various High Courts and subordinate courts of our country. A certificate of the grant is to be provided according to **Article 132(1), 133(1) and 134** of the Constitution with respect to any judgment, decree or final order of all cases of the High Court involving the question of law. Appeals to the Supreme Court can be made under the following categories:-

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- ❖ Constitutional Matters
 - ❖ Civil Matters
 - ❖ Criminal Matters
 - ❖ Special Leave Petition
- **Sentencing power of the Supreme Court** – Any sentence authorized by Law.

THE HIGH COURTS:

In our country, there are various High Courts at the State and Union territory levels, which together with the Supreme Court of India at the national level, comprise of the country's judicial system. Each High Court has jurisdiction over a State, Union Territory or a group of States and Union Territories. As per our Constitution, High Court is responsible for the entire administration of Justice in the State.

- **Original Jurisdiction** – In some issues, the case can be directly filed in the High Courts. It has Original Jurisdiction in Civil and Criminal matters. This is known as the original jurisdiction of the High Court. E.g., matters relating to the Fundamental Rights.

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- **Appellate Jurisdiction** - The High Court is the Appellate Court in respect of criminal and civil matters decided by the Subordinate Courts of that particular State.
- **Criminal Jurisdiction** – High Courts exercises inherent powers under Section 482 of Criminal Procedure Code and also Revisional Jurisdiction under Section 397 read with Section 401 of the Criminal Procedure Code.
- **Extensive Powers of High Courts :**
 - ❖ As per **Article 215** of the Indian Constitution, High Courts have power to punish for Contempt of Court.
 - ❖ It has Revisional Jurisdiction conferred under the Civil Procedure Code, 1908 and Criminal Procedure Code, 1973.
 - ❖ As per **Article 226 and 227** of the Indian Constitution, High Courts has Jurisdiction to try matters pertaining to Writs.

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- ❖ Judgements passed by the High Courts shall be binding on all the Subordinate Courts, Tribunals and authorities within the territory of State.
- **Supervisory Jurisdiction** - This refers to the power of general superintendence of the High Court over the matters of all the Subordinate Courts.
- **Sentencing power of the High Court** – Any sentence authorized by Law under Section 28(1) of Criminal Procedure Code, 1973.

THE SESSIONS COURT :

In India, there are district courts under different State governments for each and every district or for one or more districts together taking into account the number of cases, population distribution in the district.

The State Government establishes the Sessions Court which has to be presided by a Judge appointed by the High Court. The Court of Sessions ordinarily sits at such place or places as ordered by the High Court. The High Court Judges appoints : -

- (i) District Court Judges;

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- (ii) Additional District Court Judge
- (iii) Principal Court Judge, Additional Principal Court Judge and Judges of City Civil Court and Sessions Court, Mumbai.
- (iv) Chief Judge and Additional Chief Judges of Court of Small Causes. Additional as well as **Assistant Sessions Judges.**

These District Courts administer justice at the district level. In the District level, the District Judge or Additional District Judge exercises jurisdiction both on Original side and Appellate side in Civil and Criminal matters arising in the District. The Territorial and Pecuniary jurisdiction in Civil matters is usually set in concerned State enactments on the subject of Civil courts. On the Criminal side, jurisdiction is exclusively derived from the CRPC. As per the code, the maximum sentence a Sessions Judge may award to a convict is capital punishment.

THE MAGISTRATE'S COURT :

- The Magistrates are usually appointed by the High Court.

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- The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.
- The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.
- Metropolitan Areas
 - (1) The State Government may, by notification, declare that as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code
 - (2) As from the commencement of this Code, each of the Presidency-towns of Bombay, Calcutta and Madras and the city of Ahmadabad shall be deemed to be declared under sub-section (1) to be a metropolitan area.
 - (3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not

be so made as to reduce the population of such area to less than one million.

(4) Where, after an area has been declared, or deemed to have been declared to be a metropolitan area, the population of such area falls below one million, such area shall on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place.

(5) Where the State Government reduces or alters, under sub-section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place.

Explanation- In this section, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

- In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.
- The presiding officers of such Courts shall be appointed by the High Court.
- The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

CHIEF JUDICIAL MAGISTRATE AND ADDITIONAL CHIEF JUDICIAL MAGISTRATE.

- In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.
- The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall

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have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

- The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.
- Subject to the general control of the Chief Judicial Magistrate, every Sub divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

The hierarchy of the Courts has been developed in such a manner that it becomes easy for everyone who is living in this country to knock the doors of the courts whenever a dispute arises. It provides a platform for the citizens for appealing to higher courts, in case they feel that justice has been denied to them by the lower courts. India is a country with a huge population in it. Therefore, it needs this existing system of Judiciary to prosper and makes its process easier, so that people can approach it easily so that Justice is given to all citizens of this country.

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CHAPTER 5: POWERS OF CRIMINAL COURTS

Chapter III of the CRPC code deals with the Powers of Courts to take cognizance of the offences. For this purpose, offences are divided into two groups, i) Offences under IPC, and ii) offences under any other law. The courts by which these two offences are triable are specified below:-

* Any offence under IPC may be tried by a) High Court, b) Session Court and c) Any other court by which such offence is shown in the first schedule to be triable.

* Any offence under any other law, may be tried by: i) High Court. ii) Any other court by which such offence is shown in the first schedule.

JURISDICTION IN THE CASE OF JUVENILES:

Section 27: Any offence not punishable with death or imprisonment for life committed by a Juvenile, who at the date when he appears or is brought before court is under the age of 16 years, may be tried by the court of CJM or any other court specially empowered.

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SENTENCES WHICH HIGH COURTS & SESSION JUDGES MAY PASS:

As per the provisions laid down in Section 28 of the code:-

- (i) High Court may pass any sentence authorized by law.
- (ii) Session Judge or ADJ may pass any sentence authorized by law but any sentence of death passed by such judges shall be subject to confirmation by the High Court.

SENTENCES WHICH MAGISTRATES MAY PASS:-

- (i) Section 29 of Code, the court of CJM may pass any sentence authorized by law except sentence of death or of imprisonment for life or imprisonment for a term exceeding 7 year.
- (ii) The court of Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding three years or of fine not exceeding Rs.10, 000.
- (iii) The court of 2nd Class Magistrate may pass an imprisonment for a term not exceeding One year or of fine not exceeding Rs.5000/- or of both.

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- (iv) Sentence of Imprisonment in default of fine:-The court of Magistrate may award such term of imprisonment in default of payment of fine as authorized by law under Section 30 of the code, not exceeding one fourth of the term of imprisonment and also not excess of the powers.



CHAPTER 6: THE ENTIRE PROCESS OF CRIMINAL TRIAL IN
BRIEF

LAWS ON CRIMINAL PROCEDURE

- Criminal Procedure Code 1973
- Indian Penal Code 1872
- Indian Evidence Act 1872

CLASSES OF CRIMINAL COURTS

- Judicial First Class Magistrate's - 3 years / fine of Rs. 10,000/-
- Chief Judicial Magistrate's - any sentence except death, life or exceeding 7 years
- Court of Sessions : Any sentence but confirmation of HC in death penalty
- HC : any sentence
- SC: any sentence

REGISTRATION OF FIR.

- First Information Report (FIR) means the report of information (first information statement) disclosing a cognisable offence, lays before the police

- The investigation starts with filing of FIR - registered u/s 154 of CRPC
- FIR sets criminal law into motion
- FIR is mandatory when disclosing cognisable offence. If police fails to lodge FIR, file private complaint

ANTICIPATORY BAIL

- Anticipatory Bail, under Section 438 of the Cr.P.C.

ARREST

- Police provided with wide powers of arrest
- Arrest to be governed by law
- Arresting against law is an encroachment on personal liberty
- The power is discretionary and to be used with caution
- No restraint on a person when not arrested

INVESTIGATION

- For investigation u/s156 of the CRPC, Police have powers independent of Magistrate's control
- To collect evidence by investigation agency

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- Accused can be arrested during investigation. Magistrate has no power to stop an investigation u/s 156(3) : *Prakash Singh Badal V State of Punjab (AIR 2007 SC 1274)*. On investigation if there is no sufficient evidence release the accused on a bond. Otherwise go for trial

PRODUCTION OF ACCUSED

- Accused is produced before court within 24 hours after arrest
- Under section 167 CrPC, Magistrate can allow police custody for more time but not more than 15 days for investigation

POLICE OR CASE DIARY

- Investigation Officer has to keep a Case Diary in each case to record day to day particulars of investigation
- The Police Diary is to contain proceedings of the Police Officer, but not statements of witnesses
- Police diary is used by the court when the diary contradicts with the evidence of witness
- Neither the accused nor his agent has to see this diary.

DISTINCTION BETWEEN INQUIRY AND INVESTIGATION

Inquiry	Investigation
1. Done by magistrate	1. By police or by one authorized by magistrate
2. The object is to find the truth or falsity of anything	2. Purpose is to collect evidence or all facts
3. Inquiry can be judicial or non-judicial investigation	3. Investigation is non judicial

MAGISTRATE TAKING COGNISANCE

The Magistrate can take cognisance :-

- i. On receiving a private complaint of facts
- ii. Upon police report of such facts
- iii. Upon receipt of information from any person other than a police officer

PROCEEDINGS BEFORE MAGISTRATE

- On taking cognisance, magistrate issue summons/warrant (along with a copy of the complaint) for attendance of the accused

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- In petty offence (under fine of Rs 1000), the case will be summarily disposed of u/s 206

DOCUMENTS PROVIDED TO ACCUSED

- The Police Report
- FIR Copy of the statements u/s 161
- The confessions and statements u/s 164
- Other documents forwarded to magistrates with police report

BAIL APPLICATION

- Bail Application under Section 439 of the CRPC, if any, will be heard by the court

POLICE REPORT

- On completion of investigation ordered by Magistrate u/s 156, police officer has to send the final report to the Magistrate to take cognisance u/s 173 (1)
- The report should include steps of proceeding to the spot, investigating the facts & circumstances, measures for discovery of facts/materials, arrest of accused, searching and seizing, examining witnesses etc.

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POLICE CHARGE SHEET

- Charge is a specific first accusation against a person so as to make him know his offence
- If a case is made out charge sheet will be filed by the police

STATEMENT U/S 164

- This is statement by the accused during investigation voluntarily
- Accused is not bound by law to make a statement
- The statement can be used against the accused
- It must be signed by the accused, read over to him and admitted as correct
- The statement is to be sent to trial court

HEARING OF CHARGE SHEET

- Opportunity will be given to both the prosecution and defense to argue on the charge sheet
- The court can add or alter any charge but a charge once framed has to end in acquittal/punishment

DISCHARGE OF THE ACCUSED

- In case, prosecution makes out no charge the accused will be discharged

FRAMING OF CHARGE

- In case sound reasons of crime exist charge against the accused will be framed by the court

CONVICTION OF PLEA GUILTY

- If the accused pleads guilty, he will be punished at the court's discretion and based on circumstances
- The accused will be allowed to explain the circumstances under section 313

SESSIONS TRIAL PROCEEDURE

- Public Prosecutor will open the case by describing the charge & stating the evidence he relies on
- On hearing both sides & considering all records, the judge may discharge the accused /frame charges

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- The charge sheet will be read out and the plea of the accused will be recorded
- If accused pleads guilty the judge may convict him, otherwise date will be fixed for prosecution evidence & issue processes

TAKING PROSECUTION EVIDENCE

- The judge shall go on taking evidence of all witnesses & Cross & Re-examination
- Then the judge shall examine the accused personally
- On hearing both sides if there is no evidence the accused will be acquitted
- Otherwise he will be allowed to enter upon his defense

TAKING DEFENSE EVIDENCE

- Thereafter the judge shall record the defense evidence
- Thereafter the Public Prosecutor will sum up the case
- The defense pleader then will give the reply
- Then the public prosecutor will reply to the legal points

MODE OF TAKING EVIDENCE

- Evidence in the presence of the accused & allow every opportunity to defend him
- When taking evidence it shall be recorded
- Then read the contents to the witness & in case of clarification the magistrate can alter the record after making a memorandum of such alterations
- obtain the sign of the witness in summons case but in warrant case magistrate has to sign

GENERAL PROVISIONS ON TRIAL

- No two trials for same offense : like Res Judicata in civil proceedings
- Trial must be against an offense
- Discharge or dismissal of complaint is not an acquittal
- A person acquitted can be charged with a different offense
- A person charged with grievous hurt can be charged with death when victim dies

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- One not summoned can also be examined
- Trial enables the accused to question any evidence against him u/s 313
- Court can ask anything that is necessary before the accused enter on defense

ACCUSED GET AN OPPORTUNITY

- Accused to be given an opportunity to make representation against the punishment before it is imposed

JUDGMENT (S 353 -354)

- Ends in acquittal or conviction of the accused
- Not to pass conviction & sentence on the same day

The factors to be considered are: -

- Adequacy of sentence
- Nature of offence
- The circumstances of crime
- The age and character of the offender
- Injury to the accused
- Reformation of the offender
- The judgment should be adequate

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Disclaimer:

This information has been compiled from the following sources:

- <https://www.google.com/amp/s/blog.ipleaders.in/all-about-the-various-stages-of-criminal-trial-in-india/amp/>
- http://cbseacademic.nic.in/web_material/doc/Legal_Studies/XI_U4_Legal_Studies.pdf
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