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## PROCESS OF TRIAL OF CRIMINAL CASES IN INDIA

\*The flow chart is indicative & for general guidance only.

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India has a well-established statutory, administrative and judicial framework for criminal trials. Indian Penal laws are primarily governed by 3 Acts:

1. The Code of Criminal Procedure, 1973 (Cr.P.C.);

has no authority to arrest without a warrant.

3 Years or more

- 2. The Indian Penal Code, 1960 (IPC);
- 3. The Indian Evidence Act, 1872 (IEA).

Cr.P.C. is a comprehensive and exhaustive procedural law for conducting a criminal trial in India, incuding the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by Police and Courts, bail, process of criminal trial, method of conviction, and the rights of the accused for a fair trial. The procedure for a criminal trial in India, is primarily, except as otherwise provided, governed by The Code of Criminal Procedure, 1973 (Cr.P.C.). IPC is the primary penal law of India, which is applicable to all offences, except as may be provided under any other law in India. IEA is a detailed treaty on the law of "evidence", which can be tendered in trial, manner of production of the evidence in trial, and the evidentry value, which can be attached to such evidence. IEA also deals with the judicial presumtions, expert and scientific evidence. There are certain other laws, which have been enacted to deal with criminality in special circumstances.

It is also important to note that India follows the adversarial system, where generally the onus of proof is on the State (Prosecution) to prove the case against the accused, and until and unless the allegation against the accused are proved beyond reasonable doubt, the accused is presumed to be innocent. In certain exceptional cases, which may relate to terrorism, etc., the onus of proof has been put on the accused person, who claims to be not guilty.

India has a highly developed criminal jurisprudence and prosecution system, supported by judicial precedents, however, there may be certain issues or concerns relating to the execution of the same by Police and implementation by Judiciary. The courts in India, particularly High Courts and Supreme Court have been proactively guarding the rights of the accused. Even Article 21 of the Constituion of India has been interpreted in a highly dynamic manner to protect the rights, life and liberty of the citizens, by also incorporating the principles of natural justice.

By the flowchart hereinbelow, an attempt is being made to make the reader briefly understand the process of criminal investigation and trial in India, as a lot of foreign companies and Ex-pats are coming to India, and due to unfortunate circumstances, they may, at times find themselves embroiled in unnecessary criminal cases.

To appreciate the process of Indian criminal law, it is necessary that to understand following important terminology:

- 1. **Bailable Offence**, means an offence, which has been categorized as bailable, and in case of such offence, bail can be claimed, subject to fulfillment 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.
- 2. **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.
- 3. **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 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.
- 4. 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.
- 5. Non-cognizable Offence/case, has been defined under Section 2 (l) of Cr.P.C., as an offence/case in which a Police Officer
- 6. Whether an offence/case is **bailable or not bailable**, and **cognizable or non-cognizable**, has been qualified under the 1<sup>st</sup> Table of the 1<sup>st</sup> Schedule of Cr.P.C., which relate to the offences under IPC.
- 7. **F.I.R** (**first information report**), 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 Police.

aspect. For easy understanding, the following criteria may be understood:

8. The Table II of the 1<sup>st</sup> 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

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	Cognizable	Non-Bailable

- 9. The criminal investigation process and prosecution mechanism in India, can be started in any of the following manner:
  - a. 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.]
  - b. 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 alternative under Section 156 (3) of the Cr.P.C., order Police to register an F.I.R and investigate the offence.
  - c. In case of non-cognizable offence, 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.

## PROCESS OF TRIAL OF CRIMINAL CASES IN INDIA (Flow Chart\*) Trial of the commission of the offence by the court Grant of Bail by Court Start of the Process in a criminal case Preliminary Inquiry by court, and if prima facie case made out, Summoning of the accused. Cognizance of the commission of the On arrest, grant of bail by offence and inquiry by the court. Police as a matter of right Filing of a private criminal complaint Commission of a non-cognizable/Bailable against the offender before competent offence Refusal of Police to register complaint/FIR Commission of a cognizable offence Complaint to /FIR Registration directly by Police FIR registration: on the orders of a competent Court on filing of Criminal Complaint Application before Petition (SLP) for **Application for Anticipatory** FIR Registered by Police in High Court for Bail, if arrest apprehended, Anticipatory Bail / a Cognizable Criminal Case before Sessions Court Anticipatory Bail, if Protection from arrest, rejected before Supreme Court Investigation by Police Arrest of the accused, if Application for Bail collection of For deemed proper by the before the Court of Rejected. evidence; investigation officer. Magistrate or Application for Bail Interrogation / Sessions, as before the Court statement of accused; May be kept in Police applicable of Sessions (On Custody, or statement of rejection from Sent to the Judicial witnesses; Magistrate), or Scientific analysis / Custody on the orders of the Magistrate opinion if required Application for Bail, before High If, Bail Granted. Court (on rejection **Accused Released** Sessions from If, Bail Refused. Court), and On completion of Accused remains in On completion of police/ judicial Investigation, Police Supreme Court (on Investigation, Police concludes that offence is custody rejection from the concludes that no offence made out High Court), as is made out may be applicable Charge-sheet is filed Case closure report is filed before the Magistrate before the Magistrate Arguments before the Filing of Quashing Petition Court on framing of before the High Court charges Charge not Charge Filing of Revision Petition made out framed against the framing of Accused charges before the Higher discharged Trial before the Court starts Evidence by Prosecution, on whom generally Evidence by the onus of proof Accused, if any, in lies. defense. Appeal to Higher Cross Examination Courts of witnesses by Cross Examination (Sessions/High Accused/Counsel of witnesses by Court/Supreme Prosecution Court) Mandatory



Conclusion of Evidence;

Oral Arguments;

Submissions of

of arguments, if

memorandum

Judgment by the

Court

Examination of

accused by the Court

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Hearing on quantum

of sentence

**Acquittal** 

Conviction

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\* The flow chart may not be exact as per rules, and does not account for all eventualities.

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