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Paper : **Criminal Justice Administration**

Module : **Trial Process including Cognizance and Framing of Charge**

ज्ञान-विज्ञान विमुक्तये

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Description of Module

Subject Paper Module Title	Law Criminal Justice Administration Trial Process including cognizance and framing of charges
Module Id	LAW/CJA/XIII
Learning Objectives	• To provide fundamental knowledge relating to cognizance, charge and trial process under the Code of Criminal Procedure. • To know about conceptual analysis, legal and regulatory framework of trial process, taking cognizance and framing of charge in India. • To understand trial of warrant cases, summons cases, summary trial, framing of charge and basic rules regarding charge and alteration of charge and its consequence, omission and error of charge.
Pre-requisites	For understanding this module, basic understanding of cognizance, charge and summary trial is required.
Key Words	Criminal procedure, cognizance, charge, trial, warrant case, summons case, conviction, acquittal, prosecution, defence, argument, judgment.

1. Introduction:

The law of criminal procedure is intended to provide a mechanism for the enforcement of criminal law. Without proper procedural law, the substantive criminal law which defines offences and provides punishments for them would be almost worthless. Thus, the law of criminal procedure is meant to be complementary to criminal law and has been designed to look after the process of its administration. In view of this objective, the law of criminal procedure creates the necessary machinery for the detection of crime, arrest of suspected criminals, collection of evidence, determination of guilt or innocence of the suspected person, and the imposition of proper punishment on the guilty person. Trial process including framing of charge and taking cognizance are some of the important aspects of criminal justice administration system in India. Hence, it is indispensable for a student of criminal law to understand the important segments like cognizance, charge and trial process. This module, therefore, will provide a brief insight on aspects of trial process including cognizance and framing of charges under the Code of Criminal Procedure. The module will help students to understand the various legal provisions pertaining to trial of different cases, charge, alteration of charge, taking cognizance in different offences and restrictions thereto.

2. Cognizance: Meaning

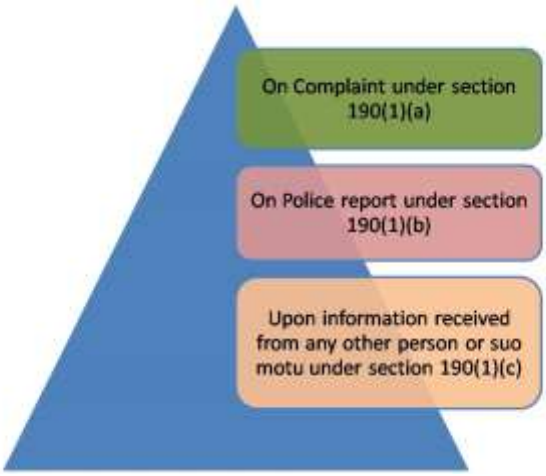
Cognizance literally means knowledge or notice and taking cognizance of offence means, taking notice or becoming aware of the alleged commission of offence. While plain and dictionary meaning thereof is 'taking note of', 'taking account of', 'to know about', 'to gain knowledge about', 'awareness about certain things' etc. In law, the common understanding of the term 'cognizance' is ‘taking judicial notice by a court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter 'judicially'. Thus, legal sense of taking judicial notice by a court of law or a Magistrate is altogether different from the view and idea a layman has for it; however, a broad and general comprehension is ‘judicial notice by a court of law on a crime which, according to such court, has been committed against the

complainant, to take further action if facts and circumstances so warrant.'[1] It is an established principle of law that cognizance is taken of the offence and not of the offender. Therefore, the Magistrate will have to take cognizance of the offence first before he could proceed to conduct a trial.

3. Law relating to Cognizance:

Chapter XIV of the Code of Criminal Procedure (hereinafter referred as 'Code') under the caption 'Conditions requisite for initiation of proceedings' employs the word 'cognizance'. Sections 190 and 193 provide for methods for taking cognizance under the Code. For better analysis of the scope of cognizance and the consequences arising there from, it is worthwhile to highlight the scheme of relevant provisions in the Code and the case laws touching the same.

3.1 Cognizance of offence by the Magistrate:



Section 190 of the Code outlines as to how cognizance of offences will be taken by a Magistrate on a complaint, or on a police report or upon information from any other person or suo motu.[2] Section 191 takes care of the situations where the Magistrate himself is a

[1] In the case of R.R. Chari v. State of U.P. (AIR 1951 SC 207) the Supreme Court has opined that **"**taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of offence".

[2] **Section 190- Cognizance of offences by Magistrates -**

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

complainant. The said provision removes any doubt as to the scope for prejudice or malice on the part of the Magistrate by allowing the Chief Judicial Magistrate to transfer the case to any other Magistrate. By virtue of section 192, a Chief Judicial Magistrate, who takes cognizance of an offence, by passing administrative order, may make over the case to any other Magistrate subordinate to him for inquiry or trial.

Under section 190(1)(a), a Magistrate can take cognizance upon receiving a complaint. But the question as to whether the Magistrate has taken cognizance of the offence depends upon the steps taken afterwards. If he applies his mind to proceed with the complaint under sections 200 to 203, he must be said to have taken cognizance; whereas if he applies his mind to the complaint and proceed under section 156(3) or section 93, he cannot be said to have taken cognizance of the offence.[3]

This position was strengthened in Tula Ram v. Kishore Singh[4] where the Supreme Court has held that in complaint cases if the Magistrate does not proceed as per sections 200, 202 or 203 and has ordered investigation under section 156(3), or issues a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence.

Recently, in Vasanti Dubey v State of M.P.[5] the Supreme Court has reiterated the position and held that in cases where police has submitted an adverse report under section 156(3) to the Magistrate, he has no power to direct the police officer to submit the challan. Though, the Magistrate is empowered to i) reject such adverse police report and direct an inquiry under section 202 or ii) he can take cognizance under section 190 at once.

The Magistrate may also take cognizance of an offence under section 190(1)(b) on receiving the police report. If he is of the opinion that *prima facie* the case is made out, he may straightaway issue a process. The Magistrate is not bound by the conclusion reached by the police and it is open to him to take cognizance on the basis of the police report, even though the police might have recommended in their report that no case is made out.[6]

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(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

[3] See, K.N.C. Pillai, *R. V. Kelkar's Criminal Procedure*, Sixth Edition, Eastern Book Company (2014).

[4] (1977)4SCC459.

[5] (2012)2SCC731.

[6] See, K.N.C. Pillai, *R. V. Kelkar's Criminal Procedure*, Sixth Edition, Eastern Book Company (2014) at 226.

Cognizance is taken of the offence and not of the offender. Therefore, the power of Magistrate to take cognizance includes those persons who have not been arrayed by the police but there is sufficient evidence to make out their involvement in the alleged offence. A Magistrate can take cognizance of offence only within the time limits prescribed by law for this purpose under sections 467 to 473.

Where any Magistrate who is not empowered to take cognizance of an offence under clauses (a) and (b) of section 190(1), takes cognizance of such an offence under any such clause, his proceedings shall not be bad in law merely on the ground of his not being competent to do so.[7] On the other hand, if a Magistrate, not empowered to take cognizance, takes cognizance of an offence on the basis of an information received or *suo-motu* under section 190(1)(c) and proceeds further, his proceedings shall be void and will be of no effect as per section 461(k).

3.2 Cognizance of offence by the Court of Sessions:

Section 193 of the Code provides for cognizance of offence by Court of Session.[8] On a plain reading of the aforesaid provision, it is clear that no Court of Session can take cognizance of any offence as a court of original jurisdiction except as otherwise expressly provided by the Code or any other law for the time being in force. Section 26 read with First Schedule of the Code requires a Magistrate taking cognizance of an offence, exclusively triable by the Court of Sessions, to commit the case for trial to the Court of Sessions as per section 209.[9] The idea is that the Court of Session is not required to perform all the preliminary formalities under sections 207-209 of the Code which the Magistrate have to do before the case is committed to the Court of Session.

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[7] Section 460(e). See also, Purshottam Jethanand v. State of Kutch AIR 1954 SC 700

[8] **Section 193-Cognizance of offence by Court of Session-** Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this code.

[9] **Section 209- Commitment of case to Court of Session when offence is triable exclusively by it-** When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-
(a) Commit, after Complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this code relating to bail, remand the accused the custody until Such commitment has been made;
(b) Subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
(c) Send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
(d) Notify the Public Prosecutor of the commitment of the case to the Court of Session.

However, the Court of Session may take cognizance without commitment by the Magistrate if so expressly provided by the Code or by any other law for the time being in force. In this context, an example can be cited that of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 where Special Judge- Sessions Judge is specified to take cognizance of the offences under it instead of the Magistrate.

In this regard, the Supreme Court in Rattiram v. State of M.P.[10] has come across an interesting question as to the validity of a trial by Sessions Court where the cognizance was directly taken by the Sessions Judge without the case being committed to it by the Magistrate as required under section 193 of the Code. It was observed by the Court that the opinion was divided on this issue at the apex level. On one hand in Moly v. State of Kerala[11] and Vidyadharan v. State of Kerala[12] it has been held that the conviction by the Special Court is not sustainable if it has *suo-motu* taken cognizance of the complaint directly without the case being committed to it, whereas on the other hand in State of M.P. v. Bhooraji[13] it was opined that the ground that the court has taken cognizance without the committal proceeding shall not affect the trial and subsequent conviction unless it is proved that the same gives rise to failure of justice.

The Court held that Moly v. State of Kerala and Vidyadharan v. State of Kerala were decided *per incuriam* and upheld the ratio of State of M.P. v. Bhooraji which relied on section 463 of the Code and held that the trial of any case, though not committed, may not be vitiated inasmuch as there is no failure of justice or no prejudice is caused to the accused person.

4. Summoning before Committal of case to Sessions Court:

The question whether the Sessions Court can invoke powers under section 319 of the Code at the stage of section 193 was finally answered affirmatively by the Constitutional Bench in Dharam Pal & Others v. State of Haryana & Another[14]. The Bench held that the case of

[10] (2012)4SCC516.
[11] (2004)4SCC584.
[12] (2004)1SCC215.
[13] (2001)7SCC679.
[14] (2014)3SCC306.

Kishun Singh v. State of Bihar[15] has rightly pondered on the issue and laid down correct law. The Bench reiterated the ratio of *Kishun Singh* case and held that the powers under section 319 of the Code can be invoked at the committal stage. The Sessions Court under section 193 possess original jurisdiction to take cognizance of the offences and can issue summons against those persons not named as offenders but whose complicity in the case would be evident from the materials available on record.

On committal, the Sessions Court shall have all the powers under section 209. Hence, even without recording evidence, upon committal under section 209, the Session Judge may summon those persons not named as accused by the police to stand trial along with those already named therein.

Very recently, the Supreme Court in Hardeep Singh v. State of Punjab[16] again dwelled upon some important issues including the scope of section 319 and held that the power under section 319 can be exercised at any time after the charge sheet is filed and before the pronouncement of the judgment, except during the stage of section 207/208, committal etc.

The Constitutional Bench in *Hardeep Singh* case has held that the steps under section 207/208 and committal cannot be termed as judicial steps which require only application of mind rather than application of judicial mind. The compliance of section 207 and committal proceeding are administrative work. Therefore, in a case triable by Sessions Court, the Magistrate is not allowed to apply his mind to the merits of the case and determine as to whether any accused needs to be added or removed to face trial before the Sessions Court.

5. Commencement of proceedings before Magistrate:

Sections 204 to 208 deal with the subsequent proceedings that would follow after cognizance is taken. Once the cognizance is taken by the Magistrate, he issues process for appearance of the accused before him. Section 204 is source of such power of the Magistrate which deals with issue of process in summons and warrant cases. It provides that if the Magistrate taking cognizance is of the opinion that there is sufficient ground for proceeding and the case appears to be-

[15] (1993) 2 SCC 16.
[16] (2014)3SCC92

(a) a summons-case, he shall issue summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

If circumstance demands, the Magistrate issuing summons may dispense with the personal attendance of the accused and may permit him to appear by his pleader.[17] Generally in case of petty offences the Magistrate must issue summons to the accused to appear in person or through his pleader but in limited cases the accused may be given exemption from personal attendance only for the reasons recorded in writing by the Magistrate.[18]

Section 207 of the Code provides that the Magistrate is required to furnish to the accused the copies of the statements, documents and police reports. The police under section 173(6) may make a request to the Magistrate that any statement recorded under section 161 may not be disclosed to the accused for the reasons of their irrelevancy to the subject matter of the proceedings or that its disclosure is not in the interest of justice. But the first proviso to section 207 allows Magistrate to direct that a copy of such statement to be furnished to the accused. After completion of the above proceedings, the Magistrate shall proceed with the trial of the case by fixing the date.

Recently, in V.K. Sasikala v. State[19] the Supreme Court read fair investigation as part of fair trial and held that one of the facets of just, fair and transparent investigation is the right of the accused to ask for all such documents that he may be entitled to under the scheme of the Code. It is the duty of the Court to make available to the accused those documents which are not marked or not exhibited and are not relied upon by the prosecution but which may in some way support the case of the accused.

6. Steps after taking of cognizance- Framing of Charge and Discharge proceeding:

[17] Section 205, Code of Criminal Procedure.
[18] Section 206, Code of Criminal Procedure.
[19] (2012)9SCC771.

One basic requirement of a fair trial in criminal jurisprudence is to give precise information to the accused as to the accusation against him. This is of significant value as it helps the accused in the preparation of his defence. In all trials under the Code, the accused is informed of the accusation in the beginning itself. In case of serious offences the Code requires that the accusations are to be formulated and reduced to writing with great precision and clarity. This 'charge' is then to be read and explained to the accused person.[20]

A 'charge' simply means an accusation. For the purposes of trial procedures, under the Code, it signifies a formal accusation in writing against a person that he committed an offence. The Code however does not define charge, but section 2(b) of the Code says that "Charge includes any head of charge when the charge contains more heads than one".

A charge is a written notice of the precise and specific accusation against the accused person which he is required to meet. It is the first notice to the person of the matter whereof he is accused and it must convey to him with sufficient clarity and certainty that the prosecution intends to prove against him and of which, he would have to clear himself. Its object is to warn the accused of the case, he is to answer.

Charge must be properly framed and evidence tendered must relate to matters stated in the charge. A charge is not an accusation in the abstract, but a concrete accusation of an offence alleged to have been committed by a person. The object being to enable the accused to know the case he will have to meet and to be ready before evidence is given.

It is held in VC Shukla v. State through CBI[21] that charge serves the purpose of notice or intimation to the accused, drawn up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.

6.1 Essentials of a valid Charge:

Section 211 of the Code deals with contents of Charge and states that

(1) Every charge under this Code shall state the offence with which the accused is charged.

[20]See sections 228, 240 and 246 of the Code of Criminal Procedure.
[21] 1980 Cr. L.J, 690 (SC).

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Sections 211 & 212 specify about contents of charge and mentioning of particulars as to time and place of the alleged offence in the charge.[22]

In cases where the content of charge does not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner is

[22] This rule is to an extent relaxed in a case of criminal breach of trust or of dishonest misappropriation. When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates. It is obvious that the relaxation given by the above rule is applicable only in case of criminal breach of trust or dishonest misappropriation and not in case of any other offence like theft, falsification of accounts under Section 477-A of the IPC, cheating etc.

which the alleged offence was committed as will be sufficient for the accused to understand the accusation. Similarly, in every charge words used in describing an offence shall be deemed to have been used in the sense attached to them by the law under which such offence is punishable.

6.2 How and when can a 'Charge' be altered?

According to section 216 of the Code any Court may alter or add to any charge at any time before judgment is pronounced. The section invests a comprehensive power to remedy the defects in the framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any subsequent stage prior to the judgment. However, the Court shall not alter charge or add to any charge to the prejudice of the accused person.

The Code contemplates two situations in which the Court can convict the accused of offences for which he is not charged. These are:

a. Such a circumstance is found in section 221(2) of the Code which permits the Court to convict an accused for an offence not charged with if it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1) of section 221. Section 221 of the Code thus provides for framing of alternative charges and convicting an accused for an offence where only one of the alternative charges is framed.

b. The second such circumstance authorising the Court to convict an accused for a different offence not charged with is where the prosecution fails to prove all particulars constituting the offence but could only prove few facts which in itself constitute a minor offence. The accused may be convicted for such minor offence though not charged with.[23]

Section 464(1) validates the order of sentence of any court passed in lack of framing of charge.

[23] For detailed analysis on alternative charge, see Pattabhi Ramarao K and Neeraj Tiwari, "Judicial Understanding of Alternative and Inclusive Charges", (2014) 1 *Madras Law Journal (Cri.)* 29.

In the case of Kantilal Chandulal Mehta v. State of Maharashtra[24], it is held that the Code gives ample power to the courts to alter or amend a charge whether by the trial court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it & putting forward any defence open to him, on the charge finally preferred against him**.**

It was held in Harihar Chakravorthy v. State of W.B.[25] that the court has a very wide power to alter the charge; however, the court is to act judiciously and to exercise the discretion wisely. It should not alter the charge to the prejudice of the accused person.

In the case of K. Prema S. Rao v. Yadla Srinivas Rao[26], a charge under section 306 IPC was not specifically framed by the trial court, but all facts and ingredients constituting offence under section 306 IPC were mentioned in the statement of Charges framed under section 494A and section 304-B of IPC. In this context, the Supreme Court has held that if alteration of charge is not likely to prejudice the accused in his defence or the prosecutor in the conduct of the case, Court may proceed with the trial. But where the Court finds that alteration of charge is going to cause prejudice to the accused or to prosecutor, the Court may direct a new trial.

6.3 Basic Rule relating to a 'Charge':

Section 218 prescribes a basic rule which states that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately.

[24] (1969) 3 SCC 166.
[25] AIR 1954 SC 266.
[26] 2003 Cri.L.J, 69.

6.3.1 Exceptions to the above rule:

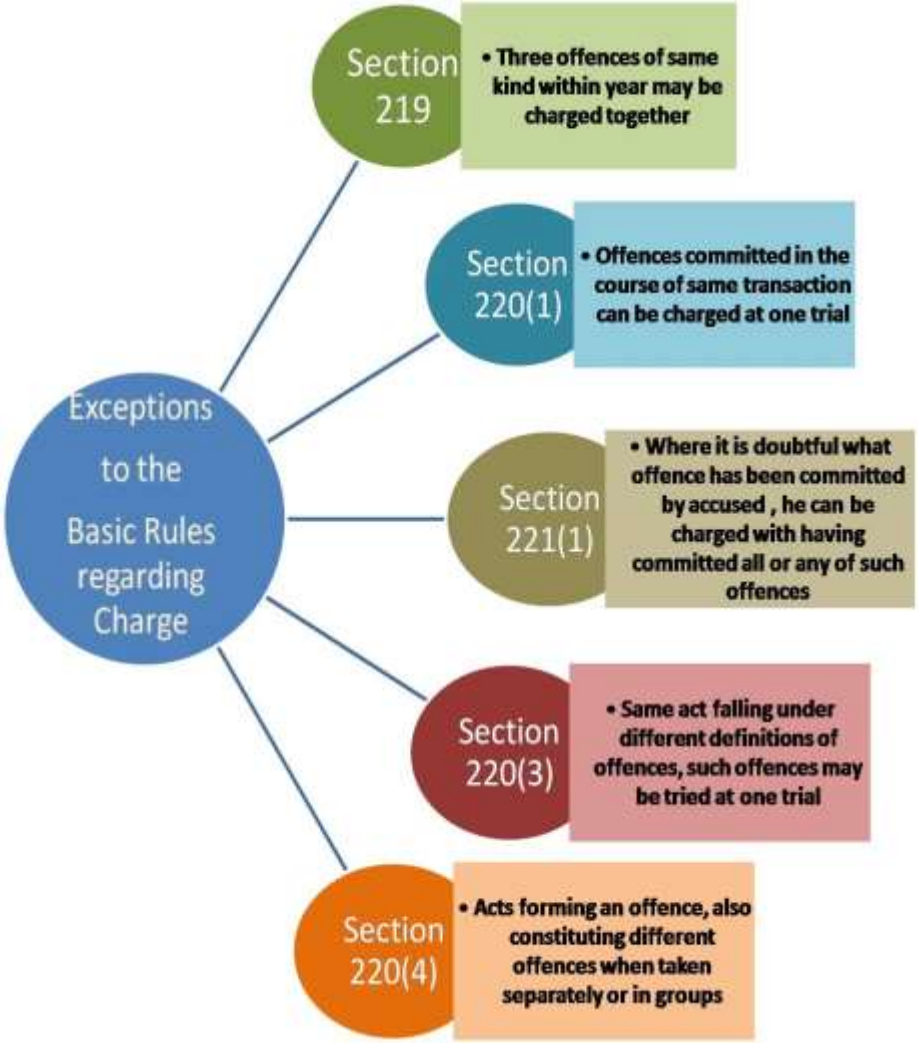
- If the accused person desires to be tried together for all the charges by an application in writing, the Magistrate may try together all or any number of charges, if such person is not likely to be prejudiced.

- When a person is accused of more offences than one of the same kind committed with in the period of 12 months from the first to the last of such offences, he may be charged with, and tried at one trial for any number of them not exceeding three.

- When the offences are committed in the course of same transaction, the accused may be charged with and tried at one trial for every such offence.

- If acts alleged constitute an offence falling within two or more separate definitions of any law by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offence.

- Where it is doubtful what offence has been committed by accused , he can be charged with having committed all or any of such offences, and any number of such charges may be tried at one trial or he may be charged in the alternative with having committed someone of the said offences



6.4 Procedure for joint Charge:

Section 220 pertains to trial for more than one offence. If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be

charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

As discussed above, the basic rule regarding charge is that for every distinct offence there shall be a separate charge & for every such charge there shall be separate trial. The only exceptions recognized are contained in Sections 219,220,221 & 223 of Cr.P.C. Therefore separate trial is the rule and the joint trial is an exception. The sections containing the exceptions are only enabling provisions.

In Chunnoo v. State[27], it was held, a court has got the discretion to order a separate trial even though the case is covered by one of the exceptions enabling a joint trial. A joint trial of a very large number of charges is very much to be deprecated even though it is not prohibited by law. A separate trial is always desirable whenever there is risk of prejudice to the accused in a joint trial. Similarly in Ranchhod Lal v. State of MP[28], the Supreme Court has taken the view that it is the option of the court whether to resort to Section 219,220 & 223 of the Code or whether to act as laid down in Section 218 and that the accused has no right to claim joinder of charges or of offenders.

6.5 Omissions to frame 'Charge' or error in 'Charge':

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Section 222 provides that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. In addition to this, sub-section 3 provides that when a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

[27] AIR 1954 ALL 795.
[28] AIR 1965 SC 1248.

For example, A is charged under Section 407 of the IPC, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 of IPC in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said Section 406.

Let's take another example. A is charged under section 325 of IPC, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

6.6 Discharge:

If upon consideration of the record and documents and hearing the submissions of the accused and the prosecution, the Judge finds that the charge against the accused is groundless and there is a not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so.[29]

The words "not sufficient ground for proceeding against the accused" in section 227 of the Code mean that the judge is required to apply a judicial mind in order to determine whether a case for trial has been made out by the prosecution. It may be better understood by the proposition that whereas a strong suspicion may not take the place of proof at the trial stage, yet it may be sufficient for the satisfaction of the court in order to frame a charge against the accused person.

In Union of India v. Prafulla Kumar[30], the Supreme Court held that for the purpose of determining whether there is sufficient ground for proceeding against an accused, the court possesses a comparatively wider discretion to determine the question whether the material on record, if not rebutted, is such on which a conviction can be said to be reasonably possible.

[29] See sections 227, 239 and 245 of the Code of Criminal Procedure.
[30] (1979) 3 SCC 4.

In the case of State of Bihar v. Ramesh Singh[31] it is held that at the beginning and at the initial stage of the trial, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged.

7. Nature and Kinds of Trial:

Trial is the judicial adjudication of a person's guilt or innocence. Under the Code, criminal trials have been categorized into three divisions having different procedures, called warrant, summons and summary trials.

A warrant case relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The Code provides for two types of procedure for the trial of warrant cases triable by a magistrate, viz., those instituted upon a police report and those instituted upon complaint.[32] In respect of cases instituted on police report, it provides for the Magistrate to discharge the accused upon consideration of the police report and documents sent with it. In respect of the cases instituted otherwise than on police report, the Magistrate hears the prosecution and takes the evidence. If there is no case, the accused is discharged. If the accused is not discharged, the Magistrate holds regular trial after framing the charge. In respect of offences punishable with death, life imprisonment or imprisonment for a term exceeding seven years, the trial is conducted in a Sessions Court after being committed or forwarded to the court by a Magistrate.[33]

A summons case means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding two years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice", to the accused when the person appears in pursuance to the summons. The court has the power to convert a summons case into a warrant case, if the Magistrate thinks that it is in the interest of justice.[34]

The High Court may empower magistrates of first class to try certain offences in a summary way. A Magistrate of second class can summarily try an offence only if punishable only with

[31] (1977) 4 SCC 39.
[32] See Chapter XIX of the Code of Criminal Procedure.
[33] See Chapter XVIII of the Code of Criminal Procedure.
[34] See Chapter XX of the Code of Criminal Procedure.

a fine or imprisonment for a term not exceeding six months. In a summary trial, no sentence of imprisonment for a term exceeding three months can be passed in any conviction. The particulars of the summary trial are entered in the record of the court. In every case tried summarily in which the accused does not plead guilty, the Magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.[35]

7.1 Stage wise progress in a Criminal Trial:

The common features of the trials in all three of the aforementioned procedures may be roughly broken into the following distinct stages:

7.1.1 Framing of charge or giving of notice:

This is the beginning of a trial. At this stage, the judge is required to sift and weigh the evidence for the purpose of finding out whether or not a prima facie case against the accused has been made out. In case the material placed before the court discloses grave suspicion against the accused that has not been properly explained, the court frames the charge and proceeds with the trial. If, on the contrary, upon consideration of the record of the case and documents submitted, and after hearing the accused person and the prosecution in this behalf,

[35] See Chapter XXI of the Code of Criminal Procedure.

the judge considers that there is not sufficient ground for proceeding, the judge discharges the accused and records reasons for doing so.

The charge is read over and explained to the accused. If the accused pleads guilty, the judge shall record the plea and may, in his discretion, convict him.[36] If the accused pleads not guilty and claims trial, then trial begins. A person is taken to have pleaded guilty only if he has pleaded guilty to the facts constituting ingredients of the offence without adding anything external to it.

Trial starts after the charge has been framed and the stage preceding it is called inquiry. After the inquiry, the charge is prepared and after the formulation of the charge, trial of the accused starts. A charge is nothing but formulation of the accusation made against a person who is to face trial for a specified offence. It sets out the offence that was allegedly committed.

In Union of India v. Prafulla Kumar[37], the Supreme Court observed that while considering the question of framing a charge under the provisions of the Code the court has the undoubted power to sift and weigh the materials for the limited purpose for finding out whether or not a prima facie case against the accused has been made out. In exercising this power the court cannot act merely as a post office or a mouthpiece of the prosecution. It is observed further that the test to determine a prima facie case against the accused would naturally depend upon the facts of each case and it is difficult to lay down the rule of universal application.

7.1.2 Recording of prosecution evidence:

If accused refuses to plead guilty or claims to be tried, the Judge shall fix a date for the examination of witnesses. The prosecution is asked to examine its witnesses before the court. The Court may issue any process for compelling the attendance of any witness. The statement of witnesses is taken on oath. This is called examination-in-chief. The accused has a right to cross-examine all the witnesses presented by the prosecution.

Section 309 of the Code provides that the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued day-to-day until all the witnesses in attendance have been examined.

[36] See sections 229, 241 of the Code of Criminal Procedure.
[37] (1979) 3 SCC 4.

7.1.3 Statement of accused:

The court has powers to examine the accused at any stage of inquiry or trial for the purpose of eliciting any explanation against incriminating circumstances appearing before it.[38] However, it is mandatory for the court to question the accused after examining the evidence of the prosecution if it incriminates the accused. This examination is without oath and before the accused enters a defence. The purpose of this examination is to give the accused a reasonable opportunity to explain incriminating facts and circumstances in the case.

7.1.4 Defence evidence:

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence, the judge considers that there is no evidence that the accused has committed the offence, the judge is required to record the order of acquittal.[39]

It is held in Kumar v. State of Karnataka[40], that the words "no evidence'' in section 232 simply import the sense that there is upon the record only such evidence which , even if it were perfectly true, would not amount to legal proof of the offence against the accused. At this stage the court should not consider what value should be attached to such evidence.

However, when the accused is not acquitted for absence of evidence, a defence must be entered and evidence adduced in its support. The accused may produce witnesses who may be willing to depose in support of the defence. The accused person is also a competent witness under the law. The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing.[41]

The accused person is entitled to present evidence in case he so desires after recording of his statement. The witnesses produced by him are cross-examined by the prosecution. Most accused persons do not lead defence evidence. One of the major reasons for this is that India follows the common law system where the burden of proof is on the prosecution, and the degree of proof required in a criminal trial is beyond reasonable doubt.

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[38] Section 313, Code of Criminal Procedure.
[39] Section 232, Code of Criminal Procedure.
[40] 1976 Cri.L.J 925 (Kar. HC).
[41] Section 233, Code of Criminal Procedure.

In this connection the case of Dinesh Borthakur v. State of Assam[42] is worth to discuss. The case deals with distinction between investigation that leads to filing of police report and trial that leads to determination of guilt. In this case police report was filed on the basis of investigation which includes statement of some prosecution witnesses, service of sniffer dog and forensic report but at the time of trial of the case it was noticed by the court that prosecution failed to prove the case beyond reasonable doubt and the case is based on circumstantial evidence only. The Court held that while the services of a sniffer dog may be taken for the purpose of investigation, its frailties cannot be taken as evidence for the purpose of establishing the guilt of an accused.

Even in Gade Lakshmi Mangaraju alias Ramesh v. State of A.P[43] the Court opined that "The possibility of an error on the part of the dog or its master is the first among them. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Last, but not the least, is the fact that from scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Investigation exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them."

The law in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused.

In Sharad Birdhichand Sarda v. State of Maharashtra[44] the Supreme Court opined that before arriving at the finding as regards the guilt of the appellant, the following circumstances must be established:

> (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established;
> (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused and should not be explainable on any other hypothesis except that accused is guilty;
> (iii) the circumstances should be conclusive nature;

[42] (2008) 5 SCC 697.
[43] (2001) 6 SCC 205.
[44] (1984) 4 SCC 116.

(iv) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with innocence of the accused on preponderance of probability.

7.1.5 Final Arguments:

When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply. Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.[45]

7.1.6 Judgment of acquittal or conviction:

After hearing arguments, the court shall give a judgement in the case. Provisions regarding the delivery and pronouncement of the judgement, its language and content, various directions regarding the sentence and other post-conviction orders etc are to be followed as per law.

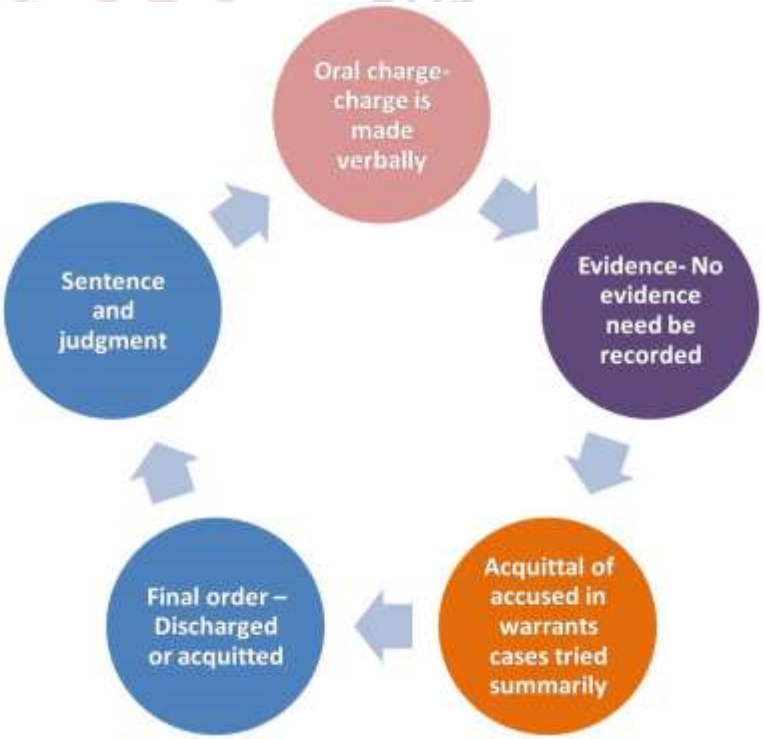
Here it is also pertinent to mention that the Code contains detailed provisions for compounding of offences. It lists various compoundable offences under the Indian Penal Code, of which 21 may be compounded by the specified aggrieved party without the permission of the court and 36 that can be compounded only after securing the permission of the court. Compounding of offences brings a trial to an end. Under the Code an accused can also be withdrawn from prosecution at any stage of trial with the permission of the court. If the accused is allowed to be withdrawn from prosecution prior to framing of charge, this is a discharge, while in cases where such withdrawal is allowed after framing of charge, it is acquittal. If the court convicts the accused person, it may release the offender after admonition or on probation of good conduct in accordance with the provisions of section 360 or of the Probation of Offenders Act, 1958. If the offender is not so released, then the court shall hear him on the question of sentence and pass sentence on him according to law.[46]

[45] Section 234, Code of Criminal Procedure.
[46] Section 235, Code of Criminal Procedure.

7.2 Essentials of Summary Trials:

The Chief Judicial Magistrate, Metropolitan Magistrate and Magistrate of the first class are empowered under section 260 of the Code to try a case summarily. It can be inferred by a combined reading of section 2(x), which defines 'warrant case', and clause (i) of section 260(1) that all summons cases can be tried summarily. According to clause (i) of section 260(1) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years can be so tried. If in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, he shall re-hear the case depending on the nature of the case.

Under section 261 of the Code the High Court may confer on any Magistrate of second class with the powers to summarily any offence which is punishable with fine or with imprisonment for a term not exceeding six months. In summary trials the procedure followed at the hearing is that of trial of summons case. Unlike other trials in case of summary trial the accusation is made verbally known to the accused.



8. Summary:

The module dealt with some of the important aspects of criminal procedure. It covered three stages of criminal process viz. cognizance, framing of charge and trial. It can be seen from the discussion so far that the Code confers power to take cognizance both on Magistrate and Sessions Court. The Magistrate is given powers in cases where he decides not to take cognizance and want to further satisfy himself whether there is a prima facie case or not. It is also seen that some special statues confer extraordinary powers on Sessions Court to take cognizance directly without the committal of the case by the Magistrate. Similarly at the stage of framing of charges the courts are put under an obligation to be sure enough that the charge is clear and unambiguous. In certain cases courts can try offences jointly. Even courts are empowered to alter a charge at a later stage before the judgment is pronounced. The module also discussed various kinds of trial provided in the Code and highlighted the procedural requirement under each of these trial process.