



---

**REVIEW DOCUMENT**

**THE CODE OF CRIMINAL PROCEDURE, 1908**  
**PART-3 (CHARGE, SUMMON, WARRANT CASE, JUDGEJEMENT AND**  
**APPEAL)**

**Author – Ms. Shivika Goyal**

## **The Code of Criminal Procedure, 1973<sup>1</sup>**

**Short Title:** The Code of Criminal Procedure, 1973

**Long Title:** An Act to consolidate and amend the law relating to Criminal Procedure.

**Ministry:** Ministry of Home Affairs

**Enforcement Date:** 01-04-1974

### **Objective-**

There was no uniform law of criminal procedure for whole of India. The Code of Criminal Procedure is an adjectival law, it aims to consolidate and amend the law related to procedure in criminal cases at one place i.e. in the code of criminal procedure. The first code was enacted in 1861 after passing of the Indian Penal Code. This code was then succeeded by Act 10 of 1882 and subsequently followed by Code of Criminal Procedure of 1898. The Law Commission of 1958, in its 14<sup>th</sup> Report made pragmatic recommendation on the reform of Criminal Judicial System.

Thereafter, a draft bill was introduced in the Rajya Sabha on 10<sup>th</sup> December, 1970. The bill was referred to a Joint Select Committee of both houses of the Parliament. The bill was subsequently passed by both the houses of the parliament, it received president assent on 25<sup>th</sup> January, 1974. It came on the Statute Book as THE CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974).

Substantive laws are of no use if a procedure is not addressed to them, they would only act as a cadaver. Procedural laws are life giving substance to the substantive law. Both of them work as complementary to each other and cannot work in isolation. The purpose of this very code is to provide machinery for prosecution, trial and punishment of offenders under the substantive laws. The Substantive law defines the rights, duties and liabilities of persons, while on the other hand the rules of procedure regulate the steps to be followed or the method to be adopted in investigating, inquiry and trial for every offence under the Substantive Law in the Court of Law.

The Cr.P.C. contains 484 Sections and XXXVII Chapters. The code mentions that all offences in the Indian Penal Code 1860 shall be investigated, inquired into, tried unless it is otherwise dealt. However, Cr.P.C. does not affect any special law, local law, or any special jurisdiction or power or procedure provided in any other law.

---

<sup>1</sup><http://legislative.gov.in/sites/default/files/A1974-02.pdf>

## Important Provisions –

**Chapter XVII**, Section 211 to Section 224 deals with the framing of charges. Framing of charges against the accused is the step after charge sheet has been filed by the police under section 173 of the code. Charges are framed by the Court against the accused in that particular case. As per **Section 211**, through charges it is intimated to the accused of what offence he has been charged. The charge must mention the full details of the offence, the section and law against which accused is to be charged. The Magistrate is bound to inform the accused of the offences he has been charged with. All these offences are called heads of charge and all of them are individually and together are known as ‘charge’. As far as possible the date and time of the commission of the offence should also be mentioned in the charge and also the person or thing in respect of whom/which the offence has been committed, as per the requirement of **section 212**.

According to **Section 213**, when the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed. **Section 215** comes into picture if there is an error while framing the charges. **Section 216** empowers the court to alter charges under certain circumstances at any time before pronouncing the judgement.

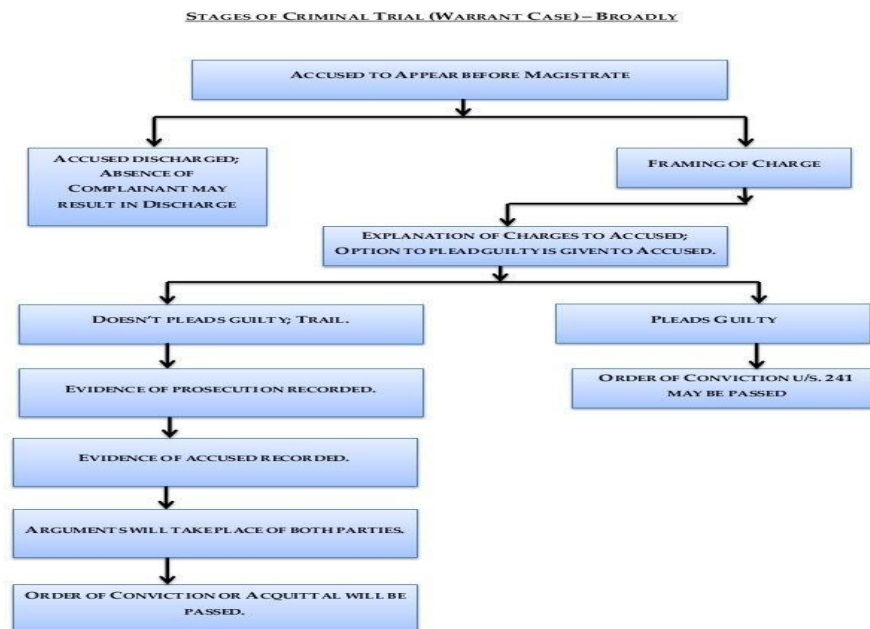
**Section 218** is an important provision of the Charge Chapter. The concept of joinder of charges is explained here. According to this concept for every distinct offence of which a person is accused there shall be separate charge and every such charge shall be tried separately. The subsequent sections are an exception to the general rule mentioned in Section 218. **Section 219- Section 224** provides for instances where joint trial may be conducted.

**Chapter XIX** deals with Trial of Warrant cases by Magistrate. Warrant Cases are those cases which relate to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years (Section 2(x)). A case can be instituted either on police report or otherwise than on police report. Procedure for trial of both of them is different from each other. **Section 238- Section 243** deal with procedure to try the case instituted on police report. The second part i.e. **Section 244- Section 247** deals with the procedure of trying cases instituted otherwise than on police report. **Section 247- Section 250** deal with conclusion of trial either by way of acquittal or conviction of the accused of the accused.

---

:

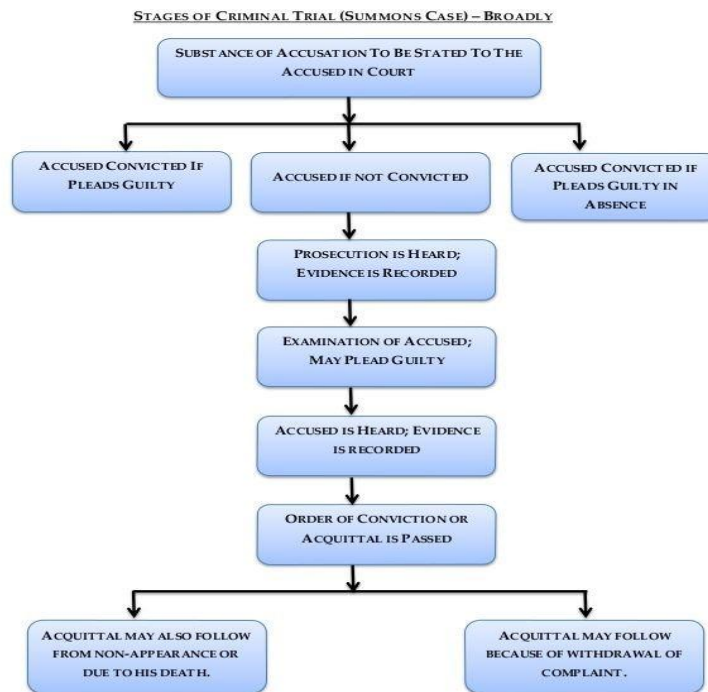
<https://www.legalbites.in/meaning-form-and-content-of-charge-under-the-criminal-procedure-code-1973/> accessed on September 9, 2020 at 12:53 am.



Source: Google Images

**Chapter XX** deals with the trial of Summon Cases by Magistrate. Summon cases are cases relating to those offences which are not warrant cases as mentioned in Section 2(w). The procedure is enlisted in Sections 251- Section 259. **Section 251** of the Code provides that, when in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offense of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defense to make, but it shall not be necessary to frame a formal charge. Under **Section 252** if he pleads guilty, the Magistrate shall convict him. If he's not held guilty then the trial shall continue.

He shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other things. After hearing the case in detail and recording the evidence the magistrate shall hold the accused guilty or set him free as per the provisions of **Section 255**. **Section 259** is a special provision which allows the conversion of Summon Case to Warrant Cases under certain special circumstances.



3

Image source : Google Images

**Chapter XXVII**, Sections 353- Section 365 deal with the provision of Judgement . In layman's term judgement is a final order, verdict or decision that solves the dispute between the parties and sets their rights and liabilities according to facts and circumstances of the case in accordance with the procedure established by law. **Section 353** requires that the judgement shall be pronounced in an open court by the presiding officer of the court after termination of the trial. The judgement can be pronounced by- delivering the whole of the judgement or by reading out whole of the judgement or by only reading out the operative part and explaining the substance in the judgement. The judgement shall be written in the language of the court and it shall contain the points of determination for the court's decision which can be either acquittal or conviction as expressly mentioned in **Section 354**.

The procedure for pronouncing judgement by a metropolitan magistrate is different from that of a trial court. The particulars that are to be mentioned in such judgement are stated in **Section 355**. **Section 357** is a special provision according to which a provision for paying compensation to the victim has been made. When a court imposes a sentence or a fine, then while passing the judgment, the court can order to recover the whole or partial amount by calculating the whole expenses incurred in the prosecution process, in certain situations such as-

- When a person faces losses or injuries because of the offence committed, then under the civil court he can recover the Compensation amount.
- When a person is convicted for causing death or abetting another person to commit the same act, he will be liable to pay compensation under “Fatal Accident Act, 1855” to the family of the person who died.
- When any person is convicted for causing theft, misappropriation, cheating or breach of trust or stealing property, he will be liable to pay the compensation amount to the bonafide purchaser of that property and the property possession is restored to the entitled person.
- If a fine is imposed in a case which is subject to appeal then the payment should not be done until the period of appealing is over. If appealed, then the person must wait until the appeal decision is made.
- If there is no fine being imposed in the sentence, the court can separately order the defendant to compensate for the losses or injuries incurred.

**Section 357 A** was inserted in the year 2005 to provide for enforcement of victim compensation scheme. According to it every State shall coordinate and consult with the Central government to prepare a scheme to provide funding to the suffered person and their families. Facilities of rehabilitation must also be provided. **Section 360** is a very special provision of the code which provides for release of an offender on probation of good conduct or after admonition. Probation is the release of an offender from detention, due to good behaviour under the supervision of the officer. Admonition is giving a warning to the person who has committed the act for the very first and in the heat of a moment.

Any person who is below the age of 21 years is convicted for the offence and punishable with fine or imprisonment for a term of 7 years or less, any woman convicted for the offence resulting in imprisonment for life or death penalty and no previous conviction is shown against him or her, and if it appears to the court he is convicted for the offence than by seeing all the character, circumstance in which the offence was committed he will be released on Probation of good conduct, and court will direct him to enter into bond with or without the surety to appear before the court and receive the punishment whenever he is called.

Lastly, the judgment once pronounced cannot be changed or altered. In case of any clerical or arithmetical error, the alteration can be done, as per **Section 362**. According to Section 363 it is mandatory to provide a copy of the judgment free of to the accused person in whichever language he requested to without any delay.

**Chapter XXIX** Section 372- Section 394 deals with the provision of Appeal . Though the word “appeal” has not been defined in The Code of Criminal Procedure, 1973, however in lay man’s term

it can be described as the judicial examination of a decision, given by a lower court, by a higher court. According to **Section 372** except for the statutory provisions laid down by Cr.P.C. or any other law which is in force, an appeal cannot lie from any judgment or an order of a criminal court. This section was amended in the year 2009 and a proviso was added to it under which the victim was given the right to appeal against any order passed by the court, on three grounds, namely- • Acquitting the accused, or Convicting for a lesser offence, or Imposing inadequate compensation. Also, such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

**Section 374** provides that a person who has been convicted of a crime shall appeal to the Supreme Court or the High Court or the Sessions Court as per the circumstances. As per **Section 377**, State Governments have been empowered to direct the Public Prosecutor to appeal against the sentence on the grounds of inadequacy to either the session court or the High Court, however in only those cases where the trial for conviction has not been held by the High Court. An important point to note here is that the right to appeal against sentences on the grounds of inadequacy has not been granted to the victims or the complainants or any other person, it is only with the State. Moreover, it is mandatory for the Court to give the accused a reasonable opportunity to show cause against any enhancement of the sentence in the interest of justice. The accused has the right to plead for his acquittal or a reduction in the sentence while showing cause.

Similarly, the District Magistrate, and the State Government have the powers under **Section 378** to direct the Public Prosecutor to present an appeal in case of an acquittal to Court of Sessions, and the High Court, respectively, subject to certain conditions enlisted in the section itself.

The accused has been given the right to appeal under **Section 379**. The accused has been given to approach the Supreme Court against the judgment of the High Court if the High Court has reversed an order of his acquittal on appeal by convicting him, thereby, sentencing him to imprisonment for life or for ten years or more, or to death. A similar right to appeal has been granted to one or all accused persons if more than one persons have been convicted in a trial and such order has been passed by the court as per **Section 380**.

However, there are certain circumstances under which no appeal shall lie. These provisions have been laid down under **Section 265G, Section 375 and Section 376** of the CrPC.

## **Amendments-**

### **• Section 357 –**

**Section 357A** was added in the year 2009 which provides for establishment of Victim Compensation Scheme. In every State, after coordination and consultation with the Central government scheme should be made to provide funding to the suffered person and their families. Facilities of



rehabilitation must also be provided. Whenever an order is made by the court, the quantum of amount for compensation will be decided by the District and State Legal Service Authority.

Also, during the end of the trial, if the court thinks that the amount is not enough for rehabilitation facilities, the court can make recommendations for compensation. When the victim is identified but the accused person is not still found and no trial is taken place, the victim or his family members can write an application to the District and State legal Authority for granting the compensation amount. After completing the inquiry process within 2 months, the amount of compensation can be granted. Immediate free of cost first aid and medical facilities should be provided to the victim by the District or State Legal Authority by the order of a police officer not below the rank of an officer in charge.

**Section 357 B** was added in the year 2013 along with Section 357 C. It obliges the state government to pay Compensation under Section 357A in addition to the payment of fine to the victim under Section 326A, 376AB, Section 376D, 376DA, 376DB of the Indian Penal Code.

Further, all hospitals whether private or public, should provide medical and first aid facilities to the victim who falls under Section 326A, 376, 376A, 376B, 376C, 376D, 376DA, 376DB and 376DE of the IPC and should inform the police about the incident as soon as possible.

#### ● **Proviso to Section 372-**

In 2009 proviso was added to Section 372 which confers upon the victim, the right to prefer an appeal against the order of the Criminal Court in the following three instances: (a) Acquittal of the accused person; (b) Conviction of the accused person for a lesser offence; and (c) Imposition of inadequate compensation. Earlier no such right was available to the victim, only state had the right to right to file an appeal. Later it was considered that if state fails to file an appeal and the Victim is not happy then he should also have certain rights.



## ABOUT THE AUTHOR



I'm Shivika Goyal from University Institute of Legal Studies Panjab University Chandigarh. I'm a keen observer, a quick learner and an ardent reader. I am glad to have worked under legaleagle law forum. The Bare Act Review Internship program helped me in doing a lot of research, I studied the bare acts carefully, observed its drafting, learnt the merits and launces in each bare act. The experience was quite an enriching and the journey learning experience with this will be cherished forever.