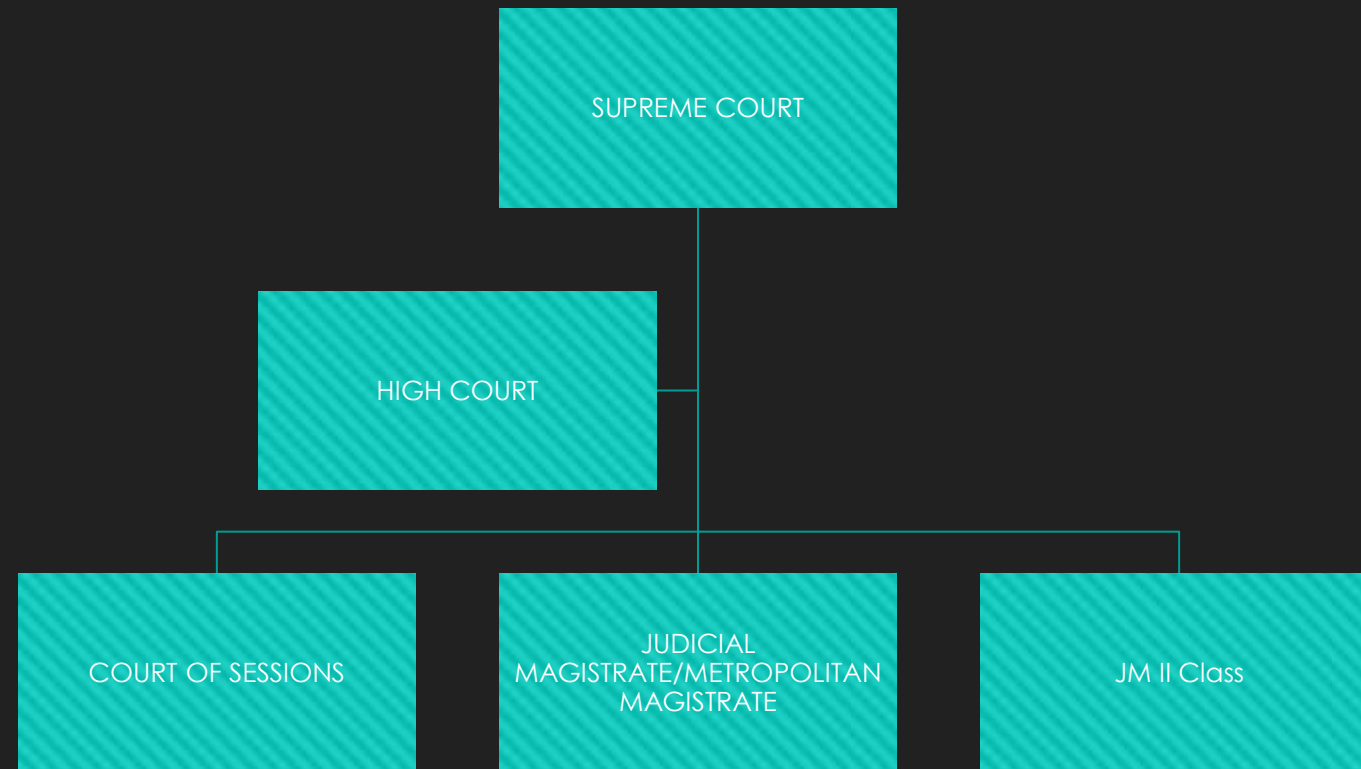


PROSECUTION/SENTENCING

STRUCTURE OF CRIMINAL COURTS



WHAT IS PROSECUTION?

- How is it different from trial?

TYPES OF JUSTICE SYSTEMS

- Adversarial
- Inquisitorial

WHEN DOES PROSECUTION COMMENCE?

- Cognizance

WHO CONDUCTS PROSECUTION?

- PP
- APP
- SPP
- Complainant – Section 302
- 302. Permission to conduct prosecution. (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission: Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.
- (2) Any person conducting the prosecution may do so personally or by a pleader.

DUTIES OF A PUBLIC PROSECUTOR

- They have a duty to maintain the file of the case.
- They appear in court and argue on behalf of the victim representing the state.
- They ensure that aggravated punishment is given to the accused.
- They should not use any unfair means or defend the accused.
- They have to record the evidence and cross-examine the witnesses.

CASE LAWS

- Section 302 of the Cr.P.C. (The Code of Criminal Procedure, 1973) and the two Judgments of the Hon'ble Supreme Court of India i.e. M/s. J.K. International vs. State, Govt of NCT of Delhi and Ors., AIR2001SC 1142 (<http://supremecourtfindia.nic.in/jonew/judis/17616.pdf>) and Dhariwal Industries Ltd. vs. Kishore Wadhwani and Ors., AIR2016SC 4369 (<http://supremecourtfindia.nic.in/jonew/judis/43935.pdf>), are the answer to the proposition that in the case of Magistrate Trial, a Complainant or any other person can, in addition to the Public Prosecutor, assist the Court and participate in the conduct of the Trial.

PROSECUTION OF ARTIFICIAL PERSONS

- Appearance of Company representative

PROSECUTION OF PUBLIC SERVANTS

- Public Servants defined under Section 21 of IPC
- Sanction under Section 197 is needed in order to institute prosecution

PROSECUTION ELEMENTS

- Witness statements – Complainant, Eye-witness, Mahazar witness, Investigating Officer
- Expert evidence/testimony
- Documents and seized property
- Mahazar

SUMMARY TRIAL

- Section 260 (1) CrPC

SENTENCING

- Chief Judicial Magistrate – Up to 7 years
- JMFC – Up to 3 years
- JMSC – Up to 1 year
- Sessions court – Imprisonment for life/Death

SENTENCE

- TERM OF IMPRISONMENT/FINE
- RI/SI
- VICTIM COMPENSATION
- DEATH
- FORFEITURE OF PROPERTY

SUSPENSION OF SENTENCE

- Bail from appellate court

PARDON/COMMUTE SENTENCE

- Governor/President (In consultation with Council of Ministers)
- Commutation can be done in a court of appeal.

HEARING BEFORE SENTENCE

- Section 235 (2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

POST SENTENCE HEARING

- On Quantum of conviction

CONSIDERATIONS WHILE SENTENCING

- Nature and gravity of offense
- Penalty under law
- Age/Sex
- Proportionality
- Antecedents
- Character of offender
- Impact of social order

REVISION

- As per Section 397 of CrPC, the High Court or any Sessions Judge have been empowered to call for and examine the records of any proceeding satisfy oneself:
- as to the correctness, legality, or propriety of any finding, sentence or order, whether recorded or passed, and
- as to the regularity of any proceedings of an inferior court.

CONSEQUENCES OF CONVICTION

- Employment
- Visa
- Antecedent

COGNIZABLE OFFENCES

- Section 2(c) of Cr.P.C. defines it to be an offence in which the police officer can arrest the convict without a warrant and can start investigation without the due permission of the court. T
- These are the offences that are usually very serious and generally heinous in nature.
- For example: Rape, murder, kidnapping, dowry death etc.
- All cognizable offences are non-bailable due to their serious and heinous nature.

NON COGNIZABLE OFFENCES

- Section 2(1) of Cr.P.C. defines Non-cognizable Offence.
- It refers to it as an offence for which a police officer has no authority to arrest without a warrant.
- These are the offences that are not serious or usually petty in nature.
- For example: assault, cheating, forgery, defamation etc.
- Non-cognizable offences are usually bailable because of their non serious nature.

INHERENT POWERS – SECTION 482

- The jurisdiction is completely discretionary.
- Quash criminal prosecution/proceedings
- Interim reliefs
- Any proceeding if it finds that initiation to abuse of the process of Court, Court would be justified to the quashing of these proceedings.

QUESTIONS