



DRAFTING, PLEADINGS & APPEARANCES

CS Vikas Vohra *Corporate BaBa*

HIGHLIGHTS

- Covers all the major concepts of the subject
- Coloured book for better learning
- Important concepts highlighted for quick revision



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EXECUTIVE : Company Law
 : Securities Laws & Capital Markets
PROFESSIONAL : Drafting, Pleadings and Appearances



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SANDESH



CS Vikas Vohra CA CS Harish A. Mathariya

Welcome to YES Family!!

To begin with, we endorse our heartfelt thank you for showing your trust and confidence in YES Academy. We take pride to welcome you to this prestigious Academy, foundations of which are based on commitment, quality education and integrity. It has been our constant endeavour to deliver better and better. In our attempt to achieve mark of excellence and beyond, we would be even more grateful to have received your continued faith and love. We assure you, your trust will not go in vain and as reflected by our Vision Statement, we would continue to produce Best Company Secretaries as we have been doing for almost a decade now.

Combined experience of Team YES is 40 years+ and adding value each day. We have delivered outstanding results in the past with a bouquet of All India Rankers at all the levels of CS Course and with your efforts, we are confident, we will grow together.

Student convenience has always occupied a centre place at YES Academy and we strive to improve ourselves each day as we sincerely believe that improvement always has its own space, no matter what. Any suggestions from you are always welcome. Though Team shares a very good rapport with all of its students and the students feel very comfortable talking to any of their Teachers, still, if you wish to send us a suggestion, please feel free to write to us yesacademypune@gmail.com or get in touch with us at 8888 235 235/ 8888 545 545.

We assure you the best of success and pride. And yes, its not just a bond of 3 years of your term, but a relationship for life now. We welcome you in advance to this prestigious course of Company Secretaries.

On behalf of **TEAM YES**

CS Vikas Vohra CA CS Harish A. Mathariya
Founders



Whether you like it or not, the inherent question in everyone is – Whats in it for me? It will be your folly to ignore this aspect of life. Some are motivated by money, some by a sense of purpose, some by a learning environment, some need cool environments and some need challenging environments. Nothing works for all. Something works for all. Everybody has a dominant need, which keeps changing as they keep growing. Every heart has a yearning. In that sense, we are all the same and we are all different.

The key is to take others perspective into consideration. Unless you see the world the way other sees it, you cannot empower the world to see it the way you see it. Leadership is to step into others shoes and then empowering them to walk in the direction that's right for them and that's good for all. There is no one way for all the people. Leadership has to be customized.

People relate to you not for what you are with them but for what they can be when they are with you. Deep relationships are not built by making you understand me but in giving you the confidence that I have understood you. Even with children, they find you interesting only if you talk to them about what they are interested in. once they develop that interest in your company, then you can empower them.

The secret is – **TO SEE THROUGH OTHERS EYES!!!!**

MY LOVE AND RESPECT TO.....

To **Rajlaxmi** – My Soul. You are around.

To my **Mummy** – You are my source of inspiration, your sacrifices showed me the right path every time I went wrong

To my **Papa** – You taught me the ability to bounce back and stand still, come what may

To my **Brother** – Who always inspires me believe that Life comes first and then the rest

To every **Student** – Glad to have found so many teachers in you, my source of happiness, my strength

To **Moksha Oswal** – For adding immense value to this book and making it as beautiful as it looks. I remain indebted!!



To my **Competitors** – You added meaning and worth to my name – Vikas. Thank you for being so strong and amazing. You bring out the best in me

To **my Team** – I can fight the world, when someone goes on to argue that you guys aint the best. Because you certainly are.

To **YES Academy** and to every person around, my well wishers, my critics for helping me rise in every walk. Its your blessings, which lets me survive and go far.

VIKAS VOHRA (Corporate Baba)

Sandesh....

Dear Reader,

At the outset, let me first take this opportunity to thank you for spending some of your valuable time with my words. I feel pleased to present to you, notes on updated notes for **Drafting, Appearances & Pleadings for CS Professional as per Companies Act, 2013.**

While writing this book, I have taken every possible effort to cover each and every legal point as may be applicable to you and in the most lucid language, so this sums up the entire syllabus. Howsoever, there is always a scope for improvement. I shall highly appreciate any changes, corrections, errors, interpretations suggested by you so that the same can be incorporated in the subsequent editions. You may write to me at vikasvohralectures@gmail.com or get in touch directly on my cell at +91 8888 078 078.

Many a times, while speaking with students, I come across this question about the opportunities for a Company Secretary and their scope in the times to come. I shall be wrong; if I simply quote that life would be simple post completion of the Course. Perhaps, the times ahead poses a lot of challenges and like I always say the only thing, which shall survive in the long run, shall be the Power of Knowledge and the ability to express the same and apply. Readers, empower yourself so robustly that as and when a challenge arises, it turns its way and says: let's catch hold of a weaker one.



It's said, "Fortune favors the brave". You give your best shot and leave the rest upon god to decide. Realize your strengths, work on your weaknesses, grab the best possible opportunity and overcome your threats. Different people define success differently as it means different to different. Realize your "Being Successful" factors and start chasing them every morning as you get up.

"Do everything no matter how unglamorous, to the best of your ability"

Because in the end, what shall matter would be quality of life you spent and the smiles you lent to the people around you !!!!

With this, I wish you all a happy reading and I hope that you fall in love with this subject. I wish you all good luck and that you achieve what all you work for. Keep working, keep reading, keep spreading love, happiness and smile. You shall be a part of my prayers. I promise to serve you with the best. Someday, we shall once again meet AT THE TOP....

Try to

Reinvent

Yourself

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CHAPTER 1 - JUDICIAL & ADMINISTRATIVE FRAMEWORK

LEGISLATIVE FUNCTIONS

One of the most significant developments of the present century is the *growth in the legislative powers of the executives*. There is *no such general power granted to the executive to make law, it only supplements the law* under the authority of legislature. This supplementary legislation is known as *'delegated legislation'* or *'subordinate legislation'*.

Necessity and Constitutionality

The Parliament cannot supply the necessary quantity and quality legislation for effectively running the country. Some of the limitation of the law making role of the Parliament are:

- i) The Parliament *sits only for a limited period* of time whereas the complexity of modern administration requires that there must be a law-making body available on tap.
- ii) The *bulk of the business* of the Parliament has increased and it has no time for the consideration of complicated and technical matters.
- iii) Certain matters covered by delegated legislation are of *technical nature* which require handling by experts.
- iv) Parliament while deciding upon a certain course of action *cannot foresee the difficulties*, which may be encountered in its execution.
- v) The practice of delegated legislation introduces flexibility in the law. The rules and regulations, if found to be defective, *can be modified quickly*.

Under the Constitution of India, Articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. *The power of Legislature to delegate its legislative power is not prohibited in the Constitution.*

In *Vasant Lal's* case, it was observed that; "The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another." The self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for the



Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits.

FORMS AND REQUIREMENTS

There are various types of delegation of legislative power:

1. **Skeleton delegation:** In this type of delegation of legislative power, the enabling statutes set out broad principles and empowers the executive authority to make rules for carrying out the purposes of the Act. A typical example of this kind is the Mines and Minerals (Regulation and Development) Act, 1948.
2. **Machinery type:** This is the most common type of delegation of legislative power, in which the Act is supplemented by machinery provisions, that is, the power is conferred on the concerned department of the Government to prescribe -
 - i) The kind of forms
 - ii) The method of publication
 - iii) The manner of making returns, and
 - iv) Other administrative details

Another form of delegated legislation is the 'removal or difficulty clause' in any Act itself. Usually such a power comes with a time limit within which it can be exercised.

Requirements

- i. **Prior consultation of interests:** Certain Acts do provide that interested bodies must be consulted before the formulation and application of rules and regulations. The object is to ensure the participation of affected interests so as to avoid various possible hardships.
- ii. **Prior publicity of proposed rules and regulations:** The rules of publication provide that notice of proposed 'statutory rules' is given and the representations of suggestions by interested bodies be considered and acted upon if proper.



- iii. **Publication of Delegated Legislation:** Adequate publicity of delegated legislation is absolutely necessary as if the law is not known a person cannot regulate his affairs to avoid a conflict with them and to avoid losses. The importance of these laws is realised in all countries and legislative enactments provide for adequate publicity.
- iv. **Laying:** After delegation is sanctioned in an Act, the exercise of this power by the authority concerned receives the attention of the House of the Parliament.

TRIBUNALS

- Tribunals in India are a **part of the Executive branch** of the Government which are assigned with the powers and duties **to act in judicial capacity** for settlement of disputes.
- They are **quasi-judicial bodies** that are less formal, less expensive and enable speedy disposal of cases.
- There are tribunals for settling various administrative and tax-related disputes, including Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), National Company Law Tribunal (NCLT), Customs, Excise and Service Tax Appellate Tribunal (CESTAT), National Green Tribunal (NGT), Competition Appellate Tribunal (COMPAT) and Securities Appellate Tribunal (SAT), among others.

TYPES OF COURTS

- There are two types of courts- **civil and criminal**. The civil courts deal with matters of civil nature whereas the criminal courts deal with criminal matters. Then there are Constitutional Courts.
- In India, we have courts at various levels - different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them.
- They form a hierarchy with the **Supreme Court of India at the top, followed by High Courts of respective states with District and Sessions Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.**



SUPREME COURT OF INDIA

- Supreme Court of India is the highest level of court of Indian juridical system. The Supreme Court **exercises original jurisdiction** exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States.
- The Supreme Court has **original but not exclusive jurisdiction for enforcement of Fundamental Rights** as per the provision of Constitution of India through the way of writs. This court is also an appellate court.
- Supreme Court has the **power to withdraw or transfer any case from any High Court**. The Supreme Court has the authority to review any verdict ordered.
- The **order of Supreme Court is binding on all courts across India**. The Supreme Court has the option to **report its opinion to the President about any questions raised of public importance** referred to it by the President.

HIGH COURTS OF INDIA

- Article 226 of Constitution of India has given the power to the High Courts **to issue different writs for the enforcement of Fundamental Rights** guaranteed under the Constitution.
- Article 227 of Indian Constitution has **empowered all High courts to practice superintendence over all the courts or tribunal** effective within the regional jurisdiction of the High Court.
- All the High Courts have the power to pronounce punishment for contempt of court. The High Courts are confined to the jurisdiction of State, group of States or Union Territory.
- The subordinate courts are covered by the administrative power of the High Courts under which they function.

LOWER COURTS OF INDIA

- The District Court in India are **established by the respective State Government in India for every district or more than one district** taking into account the number of cases, population distribution in the district.



- The court at the district level has a dual structure that runs parallel - one for the **civil side** and one for the **criminal side**.
- The **civil side** is simply called the **District Court** and is headed by the **district judge**. The **subordinate courts** covering the civil cases, in this aspect are considered as **Junior Civil Judge Court, Principal Junior and Senior Civil Judge Court**, which are also known as **Subordinate Courts**. All these courts are treated with ascending orders.
- The **criminal court** at the **district level** is headed by the **Sessions Judge**. Usually there are **Additional Sessions Judges** as well in the Court to share the workload of the Sessions Judge.
- The **subordinate courts** covering the **criminal cases** are **Second Class Judicial Magistrate Court, First Class Judicial Magistrate Court, and Chief Judicial Magistrate Court** along with **family courts** which are established to deal with the issues related to disputes of matrimonial issues only. The status of Principal Judge of family court is at par with the District Judge.

REVENUE COURTS

- There is a government apparatus to deal with revenue matters. These are 'courts' but are not a part of Judiciary because they come under the administration of the State governments.
- Revenue courts deal with **matters pertaining to stamp duty, registration etc.**
- At the lowest level, we have the '**Tehsildar**' or **Assistant Tehsildar**. Above it is the office of the '**Sub-Divisional Officer**' (SDO). Then comes the office of **District Collector** and above it is the '**Board of Revenue**'.
- The **Board of Revenue** is the highest decision making body at the State level.

PROCEDURAL ASPECTS OF WORKING OF CIVIL COURTS

1. JURISDICTION

- The Civil Procedure Code 1908 stipulates that the courts shall have jurisdiction to **try all suits** of a civil nature **excepting suits of which cognizance is either expressly or impliedly barred**.
- If the court does not have any jurisdiction at all, the parties cannot subsequently confer it by an agreement.



- The onus of proving that the court does not have jurisdiction lies on the party who disputes the jurisdiction. The jurisdiction is basically of three types.

(a) **Pecuniary**

(b) **Territorial:** The territorial jurisdiction is conferred on a court by following factors:-

(i) By virtue of the fact of residence of the Defendant

(ii) By virtue of location of subject matter within jurisdiction of the court.

(iii) By virtue of cause of action arising within jurisdiction of such court.

(c) **As to subject matter:** For example, Motor Vehicles Act provides for special tribunal for matters under it. Similarly disputes relating to terms of service of government servants go to Administrative Tribunals.

2. STAY

- With the object of preventing courts of concurrent jurisdiction simultaneously trying two parallel suits in respect of the same matter in issue, **Civil Procedure Code has vested inherent power in the court to stay the suit.**

- The **pendency of a suit in Foreign Court does not preclude the courts in India for trying a suit founded on same cause of action.**

- The application for stay of suit is maintainable at any stage of the suit. The court does not have option to refuse on ground of delay.

3. RES JUDICATA AND BAR TO FURTHER SUITS

The basic principle is that a final judgement rendered by a court of competent jurisdiction is **conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim.**

4. PLAINT

- The entire legal machinery under the Civil Law is set in motion by filing of complaint and hence complaint is the actual starting point of all pleadings in a case.



- Where the Plaintiff sues upon a document in his possession or power he shall produce it in the court when plaint is presented.
- If the document is not in his possession, the Plaintiff will state in whose possession it is.
- A document, which has to be produced and has not been produced at the time of presenting the plaint cannot be received in evidence at the hearing of the suit without permission from the concerned court.
- The court has **power to reject** the plaint on following grounds:
 - (i) Where it **does not disclose the cause of action**.
 - (ii) Where the **relief claimed is undervalued** and Plaintiff fails to correct the valuation within the time fixed.
 - (iii) If the relief is properly valued but **insufficient court fee / stamp is paid** and the Plaintiff fails to make good such amount.
 - (iv) Where the suit **appears to be barred by any law**, from the statements in the plaint.

5. SUMMONS

- When the suit is duly instituted **summons may be issued to Defendant to appear and answer the claim**.
- It is a process directed to a proper officer requiring him **to notify the person named, that an action has been commenced against him, in the court** from where process is issued and that he is required to appear, on a day named and answer the claim in such action.
- Defendant to whom a summons has been issued **may appear in person or by a pleader** duly instructed or by a pleader accompanied by some person who is able to answer all questions.
- To expedite the filing of reply and adjudication of claim, **the court may direct filing of written statement on date of appearance and issue suitable summons** for that purpose. Failure to do so may result in Ex-parte judgement.

6. APPEARANCE OF PARTIES

- On the day fixed in the summons **the Defendant is required to appear and answer** and the parties shall attend the court unless the hearing is adjourned to a future day fixed by the court.
- If the **Defendant is absent court may proceed ex-parte**.



- Where on the day so fixed it is found that summons has not been served upon Defendant as consequence of failure of Plaintiff to pay the court fee or postal charges the court may dismiss the suit.
- Where neither the Plaintiff nor the Defendant appears the court may dismiss the suit.
- If the Defendant appears and Plaintiff does not appear and the Defendant does not admit the Plaintiff's claim wholly or partly, court shall pass order dismissing the suit.
- If Defendant appears and admits part or whole of the claim the decree will be passed accordingly.
- If the Plaintiff shows sufficient cause reopening of the matter is mandatory.

7. ADJOURNMENTS

Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.

8. EX-PARTE DECREES

A decree against the Defendant without hearing him or in his absence can be passed under the following circumstances:-

- (i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgement against him, or make such order in relation to the suit and on pronouncement of such judgement a decree shall be drawn up.
- (ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.
- (iii) Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is properly served the court may make an order that suit will be heard ex parte. If an ex parte decree is passed and the Defendant satisfies that he was prevented by sufficient cause then he has the following remedies open:
 - (i) Prefer appeal against decree.
 - (ii) Apply for Review.



(iii) Apply for setting aside the Ex-parte Decree.

9. INTERLOCUTORY PROCEEDINGS

- The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as "status quo".
- It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, temporary as compared to final.
- It does not finally determine cause of action but only decides some intervening matter pertaining to the cause. One of the most common interlocutory reliefs sought is that of 'injunction'.

10. EXAMINATION OF PARTIES

Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.

11. PRODUCTION OF DOCUMENTS

- The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been filed in the court or ordered to be produced.
- No documentary evidence in the possession or power of any party, which should have been but has not been produced in accordance with the aforesaid requirements, shall be subsequently admissible.

12. FRAMING OF ISSUES

- The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.
- Court is required to pronounce judgement on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party.



- If the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may first try it, if issue relates to:-
 - (i) Jurisdiction of the court,
 - (ii) Bar to the suit created by law for the time being in force.

13. SUMMONING AND ATTENDANCE OF WITNESSES

- On the date appointed by the court and not later than 15 days after the date on which issues are settled parties shall **present in court a list of witnesses whom they propose to call either to give evidence or to produce documents.**
- If signature of witness is not taken on any part of deposition or correction it does not make deposition invalid.
- The court also has the **power to recall any witness** who is already called earlier and put such questions as deemed fit.

14. AFFIDAVITS

Affidavit shall contain only such facts as the **deponent is able of his own knowledge to prove except on interlocutory applications.** The affidavits have to be properly verified to avoid any dispute at a later stage. Even if evidence is given on affidavit the court may direct that such person will be produced for cross-examination.

15. FINAL ARGUMENT

- Once the documents have been exhibited in the court and the witness(es) of both the sides examined and cross-examined, the stage is set for final arguments.
- It allows both the sides to present its case after taking into account the submissions made by the witnesses of the other party and the documents produced by it. It can, therefore, be **said to be an opportunity for both the sides to present a summary of their case or defence.**

16. JUDGEMENT

Judgement means the statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when



the judgement is to be pronounced judge shall fix a day in advance for that purpose. Where judgement is not pronounced within 30 days from the date on which hearing of case was concluded, the court shall record the reasons for such delay

17. DECREE AND EXECUTION

After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

PROCEDURAL ASPECTS OF WORKING OF CRIMINAL COURTS

- Code of Criminal Procedure (CrPC), 1973 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.
- A criminal court is usually set in motion with the registration on a First Information Report (FIR) under the CrPC.
- Indian Penal Code (IPC) is the primary penal law of India, which applies to all offences.
- Indian Evidence Act is a comprehensive, treatise on the law of evidence, which is 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.



TYPES OF CRIMINAL TRIAL

WARRANT CASES

- A warrant case is one which relates to **offences 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 offence 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".

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**
- The Magistrate should ensure supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

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

1. **First Information Report:** Under Section 154 of the Code of Criminal Procedure, an FIR is registered by any person. **FIR puts the case into motion.** An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
2. **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 that conclusion is filed to the Magistrate as a police report.



3. **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.*
4. **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 its discretion convict the accused.
5. **Prosecution evidence:** After the charges are framed, and the *accused pleads not guilty*, then *the court requires the prosecution to produce evidence to prove the guilt of the accused*. The prosecution is required to support their evidence with statements from its witnesses. This process is called "examination in chief". The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.
6. **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.
7. **Defence evidence:** An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.
8. **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 done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment.



SUMMONS CASES

According to Section 2(w) of Code of Criminal Procedure, 1973, those cases in which an **offence is punishable with an imprisonment of fewer than two years is a summons case**. A summons 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

- 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.

Stages of Criminal Trial in a Summons Case

1. **Pre-trial:** In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
2. **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 would orally state the facts of the offense he is answerable.
3. **Plea of guilty:** The **Magistrate** after stating the facts of the offence **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 may convict him on his discretion.
4. **Plea of guilty and absence of the accused:** In cases of **petty offences**, where the **accused wants to plead guilty without appearing** in the court, the accused should **send a letter containing an acceptance of guilt** and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.
5. **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.



6. **Judgement:** When the sentence is pronounced in a summons case, *the parties need not argue on the quantum 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.

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 offences to reduce the burden on courts and to save time and money.

Those cases in which *an offence 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.*

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.
- 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.

APPELLATE FORUM

- Under the Civil Procedure Code, an appeal may be an appeal from order or an appeal from decree.
- All orders are not appealable and complete discription of the appealable orders has been given in Code of Civil Procedure .
- The *appeal has to be preferred within prescribed limitation period* before the appellate court. The limitation period for appeal to High Court is 90 days and appeal to District Court is 30 days.



- If the *period of limitation is expired, then application for condonation of delay also is required to be moved.*
- *The Code of Criminal Procedure, 1973 also contains elaborate provisions on appeals against a judgment or order of the criminal courts.*
- *Appeals to the Sessions Court and to the High Court are largely governed by the same set of rules and procedure. But the High Court being the highest appellate court within a state, has been given primacy in many cases where appeal is permissible.*
- *Thus, District and Sessions Court and High Courts are the most common appellate forums.*
- *The Supreme Court is the appellate court of last resort and enjoys very wide plenary and discretionary powers in the matters of appeal.*
- *Under Article 136 of the Constitution, the Supreme Court also enjoys a plenary jurisdiction in matters of appeal. However, Article 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any court or tribunal in India in its discretion.*

REFERENCE AND REVISION UNDER CRIMINAL PROCEDURE CODE

REFERENCE

Cr.P.C. empowers a *Court subordinate to the High Court to make a reference to the High Court under sub-section (1) if following conditions exist: -*

- (1) *The case pending before it must involve a question as to validity of any Act, Ordinance or Regulation. A mere plea raised by a party challenging the validity of an Act is not sufficient to make a reference to the High Court unless the Court itself is satisfied that a real and substantial question as to validity of the Act is actually involved for the disposal of the case.*
- (2) *Secondly, the Court should be of the opinion that such Act, Ordinance Regulation, is invalid or inoperative but has not been so declared by High Court or by the Supreme Court.*
- (3) *While making a reference to the High Court, the Court shall refer to the case setting out its opinion and reasons for making a reference.*



REVISION

Revision *lies both in pending and decided cases* and it can be filed before a High Court or a Court of Session. *Very wide discretionary powers have been conferred* on the Sessions Court and the High Court.

The *purpose* of revision is to enable the revision court to satisfy itself as to the *correctness, legality or propriety of any finding, sentence or order recorded or passed* and as to the regularity of any proceedings of the inferior criminal court.

No Revision where right to Appeal exists:

The party having right of appeal cannot apply for revision. The Cr.P.C. provides a remedy, by way of appeal and if the party does not file an appeal against an order of the inferior criminal Court, he will not be permitted to prefer a revision against that order. But legal bar does not stand in the way of High Court's exercise of power of revision *suo moto*. It can itself call for the records of proceedings of any inferior criminal Court and has power to enhance the sentence by exercising its revisional jurisdiction.

Revision may be treated as Appeal:

Section 401 vests a *discretionary power in the High Court to treat a revision petition as an appeal* and deal with it under its appellate jurisdiction. But it can do so when an appeal against the order of the inferior Court lies but the petitioner has filed a revision under an erroneous belief that an appeal does not lie and when it is in the interest of justice to do so.

Enhancement or Reduction of Sentence:

The High Court, under its revisional jurisdiction *does not exercise power of enhancing the sentence in every case in which the sentence passed appears to be inadequate. It would interfere when it is convinced that the sentence passed is inadequate.*

The District Magistrate, a Sessions Judge or the Government pleader may draw the attention of the High Court to a sentence which is inadequate and deserves to be enhanced or the High



Court can also *suo motu* call for the record of a particular case where it is of the opinion that the sentence awarded is grossly inadequate.

Reduction:

If after hearing the State, i.e., the Government pleader, the High Court comes to a conclusion that the sentence imposed on the accused is too severe and needs to be reduced, it may reduce it exercising its revisional jurisdiction. However, it cannot be reduced below the prescribed statutory limit, if any, provided in the Indian Penal Code or the relevant Act.

REFERENCE, REVIEW AND REVISION UNDER CIVIL PROCEDURE CODE

REFERENCES

Where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance or Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

REVIEW

Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibilia' which means the law does not compel a man to do that what he cannot possibly perform.



Difference between Appeal and Review

Review:

1. Section 114 and Order 47 deal with review.
2. A review *lies to the same Court*.
3. There is *only one review*. Second review application does not lie.
4. Review of judgment involves *reconsideration of the same subject matter* by the same judge.
5. The *grounds of review are narrower* than the grounds of appeal.

Appeal:

1. Sections 96 to 112 and Orders 41 to 45 deal with appeals.
2. An appeal *lies to the superior court* from inferior court.
3. There are three appeals - (a) from District Munsiff Magistrate Court/Subordinate Judge's Court to District Judges (First Appeal); (b) from District Judge's Court to High Court (Second Appeal); (c) from High Court to Supreme Court (Third Appeal).
4. An appeal is *heard by a different judge*.
5. The *grounds of appeal are wide* than the grounds of review.

REVISION

The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears-

- (a) To have exercised a jurisdiction not vested in it by law, or
- (b) To have failed to exercise a jurisdiction so vested, or
- (c) To have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

The High Court shall not, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.



A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Illegally or with material irregularity

Section 115 empowers the High Court to satisfy itself upon three matters, viz.,

- (a) that the **order of the subordinate court is within its jurisdiction**
- (b) that the case is one in which the **court ought to exercise jurisdiction**
- (c) that in exercising jurisdiction the **court has not acted illegally** that is in breach of some provision of law, or with material irregularity.

If the High Court is satisfied upon those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court upon questions of fact or law. The High Court will not interfere with an incorrect decision of the lower court where there is no question of lack of jurisdiction or material irregularity in procedure. Where there is a wilful disregard or conscious violation of a rule of law or procedure the case is one of material irregularity calling for interference in revision.

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Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 10,000 students.

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