

# Justice delayed is justice denied law essay



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Most offences in Indian criminal law were created by Statute and have a statutory maximum penalty. For the purposes of trial, these offences were divided into different categories, offences triable by indictment (warrant cases) or offences triable only summarily, or offences triable either way. The most serious offences (eg: murder, rape) are triable only on indictment, at the Sessions Court. A large mass of less serious offences are triable only summarily, in magistrates' courts. The middle category of offences which are triable either way comprise of most burglaries, thefts and frauds.

This project shall first describe the procedure involved in the different kinds of trial provided under the Code of Criminal Procedure, 1973. The researcher shall then proceed to discuss the guidelines to help Magistrates decide which Warrant cases to be sent to Sessions court. Finally, the researcher shall critically examine the justification for the given classification of trials under the Cr. P. C and whether the procedure is consistent with the right to speedy trial guaranteed by the Constitution.

The trial is the pivotal point of a Criminal case. The term trial is not defined in the Code, The words has no fixed or universal meaning and must be construed according to the particular context in which it is used. Trial can be said to be a judicial proceeding which ends in conviction or acquittal. Sec 190 of the Cr. P. C talks of the conditions that need to be fulfilled before proceedings can be initiated by the Magistrate (it specifically empowers a Magistrate to take cognizance of a case). It is the exclusive power of the Magistrate under Sec 204 of the Cr. P. C to refer or reject a case from entering the stage of trial. ' Trial' is the judicial adjudication of a person's guilt or innocence. Under the Cr. P. C, criminal trials have been categorized

into four divisions having different procedures, called Session, Warrant, Summons and Summary trials.

In warrant case if the Magistrate finds that the charge against the accused is groundless, he has power to discharge the accused by recording reasons. If the Magistrate has reason to believe that there is ground to proceed further, he then frame charges against accused which is read and explained and thereafter asks accused whether he pleads guilty of offence or not. If the accused pleads guilty, the Magistrate may convict the accused and proceed further to question the accused about quantum of sentence. Thereafter awards sentence. If the accused pleads to be tried, the magistrate proceeds to examine the witnesses of prosecution, hearing of prosecution and examination of accused under Section 313(1)(b) Cr. P. C follows. The accused shall also be called upon to enter defence and produce his witnesses if any.

In case of offence exclusively triable by a court of Session, the Magistrate may take cognizance if such an offence and commit the case to the court of Session for trial. A court of Session cannot directly take cognizance of offence triable by it. On appearance by the accused before Sessions Court, the Judge hears the public prosecutor regarding the case. If the Judge considers that there is no sufficient ground to proceed with, he can discharge the accused, otherwise he proceeds to frame charge and examines the accused about the charge. If the accused pleads guilty the judge convicts the accused and the question quantum of sentence and award sentence by way of judgment. If the accused wishes to be tried the Judge shall fix dates for examination of prosecution witnesses and shall hear prosecution arguments

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and then call upon accused personally to explain any circumstances against him in evidence. If no case is made-out, the Judge shall record order of acquittal. If the Judge does not think it fit to acquit the accused, he shall thereupon ask the accused to enter on his defence. Accused can also file written statement explaining the circumstances of his involvement in the case. On hearing prosecution and accused, the Judge shall give a judgment. In case the accused is convicted, he shall be heard about quantum of sentence. Thereupon award of sentence follows.

Examination of Court Witnesses:-The court has power to examine any person, at any stage, as court witness in the ends of Justice.

### **Procedure in Summons trial:**

In summons case, the accused is issued summons to appear or brought before the Magistrate. Then particulars of offence are stated and if the accused pleads guilty, he is convicted or otherwise trial follows. It shall not be necessary to frame charges in summons case.

### **Procedure in Summary trial:**

Summary trial is a short-cut procedure of regular trial. Since risk is involved in short cut procedure, senior and experienced judicial officers are empowered to try certain petty cases. Though some offences under this summary trial procedure involved are warrant cases, but the involvement of punishment in summary trial being only three months imprisonment, summons case procedure is followed at the trial. In this summary trial, the Magistrate shall record substance if evidence and a judgment of brief

statement of reasons for the finding follows if the accused does not plead guilty.[5]

Guidelines:

The purpose of these guidelines is to help magistrates decide whether or not to commit 'either way' offences for trial in the Sessions Court. Their object is to provide guidance not direction. They are not meant to impinge upon a magistrate's duty to consider each case individually and on its own particular facts. These guidelines apply to all defendants aged 18 and above.

### **General Mode of Trial Considerations:**

When deciding whether a case is better triable as a Sessions case or a warrant case, a magistrate must keep in mind the following considerations:

a) the nature of the case, b) whether the circumstances make the offence one of a serious character, c) whether the punishment which a magistrate's court would have the power to inflict for it would be adequate, d) any other circumstances which appear to the court to make it suitable for the offence to be tried in one way rather than the other, e) any representations made by the prosecution or the defence.

Some more observations: a) the court should never make its decision only on the grounds of convenience or expedition, b) the court should assume for the purposes of deciding the mode of trial that the prosecution version of the facts is correct, c) where cases involve complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material the court should consider committal for trial, d) in general, except where otherwise stated, either-way offences should be tried summarily.

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## Problems and Suggested Reforms

The problem lies here: in cases of conviction, the sentence that may be passed is limited by (a) the procedure adopted for purposes of trial and (b) the limits placed by S. 29 Cr. P. C. on different classes of Magistrates. If the case is tried by the Chief Judicial Magistrate (or the Chief Metropolitan Magistrate), the upper limit of sentencing would be any sentence authorized by law, “ except a sentence of imprisonment for life or of imprisonment for a term exceeding seven years”. A Magistrate of the First Class (or a Metropolitan Magistrate) may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding Rs. 5000 or of both.[6]

The procedure for recording evidence also varies according to the form of trial. Section 274 Cr. P. C., prescribes that in summons cases and inquiries, “ the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court”. The proviso enables the Magistrate to cause such memorandum “ to be made in writing or from his dictation in open Court” and where the Magistrate is unable to make such memorandum himself and records reasons for his inability.

S. 376 (d) provides that no appeal from a convicted person shall lie when a sentence of fine only is passed not exceeding Rs. 200/- in a case tried summarily by the Magistrate empowered under section 260.

It has been found that S. 260[7]and 355[8]are either unutilized or under-utilized.[9]Though it is true that only those Magistrates (other than CJMs and MMs) who are duly empowered, either by name, or by virtue of office, or

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under the statute creating the offence can try cases summarily, most of the Magistrates are not empowered. This is one among the many reasons why summary procedures is not fully utilized. When a Judge of the same cadre can deal with the case summarily when he is posted as a Metropolitan Judge without any empowerment there is no reason why such empowerment should be needed for all other magistrates to deal with the cases summarily under Section 262 of the Code

The Law Commission has in its 154th report also recommended increasing the limit of the sentence as prescribed in Section 262 of the Code from three months to three years. It has also recommended some incidental amendments to Sections 2(x) and 2(w). The researcher feels that Section 2(x) defining 'warrant case' be amended by substituting the word 'three' for the word 'two'. Consequently all cases which are not warrant cases and relating to offences punishable with imprisonment lower than three years shall become Summons cases which shall be tried by following the summary procedure prescribed in Chapter XXI of the Code. This way, a large number of cases which do not involve serious offences can be disposed of expeditiously. As the Magistrate has power under S. 260(2) to try the case regularly if he feels that it is desirable to do so in the interest of justice no prejudice would be caused.

## Conclusion

The rationale behind having separate trial procedures for different categories of offences seems quite sound. The more serious the punishment the greater care must be taken to ensure the accused is served justice and miscarriage

of justice does not take place on account of inexperience of the judge. Thus we have separate procedures for warrant cases and summons cases. Then again we have separate procedure for warrant cases initiated by other than police reports which takes twice the time taken by a warrant case initiated by a police report. Also, a sessions court can take cognizance of an offence only after a magistrate court has taken cognizance of it. This involves further delays.

The Right to Speedy Justice guaranteed by the Indian Constitution and discussed in the A. R. Antulay case[10], P. Ramachandra Rao v. State of Karnataka[11] believes in the axiom that justice delayed is justice denied. Summary trials take the least amount of time since they are decided summarily at the evidence of the accused and the witness. Justice is speedier and its interests are better served. But, as discussed above, this simple method of trial is only available for so called “ minor offences” for which the punishments are for only up to two years. This leads us to an incongruity, for instance in cases of many white collar crimes, the grievousness of the crime is actually a function of the money involved. In these scenarios the Cr. P. C prescribes punishment of 2 yrs for cases of cheating[12] thus making it triable by “ Any Magistrate”. In the same line all the offences of fraud and cheating[13] with one or two exceptions falling under three years and all triable by any magistrate’s court. The Code does not make any separate provisions for a Sessions court to deal with a case that involves the swindling of crores of rupees. All such cases have to be dealt with as Summons case in the court of a Magistrate who does not have the seniority or experience to deal with cases which have such a serious



impact. As discussed, Summons case can be converted into a Warrant case[14]but that requires yet another step and therefore the process of justice is further delayed.

A simple solution to this problem could be the addition of a pecuniary jurisdiction clause in matters that involve amounts greater than a particular amount can be directly taken up by the Sessions court. Also, a trial court ought to take care while send a case to the Sessions court it should also assign a fixed date of hearing, in this way the proceedings could be greatly hastened[15]. Another suggestion would be that a magistrate be allowed to take cognizance of the case only based on the mandatory written submissions of the prosecution and the defendant. After taking cognizance the court may proceed with the hearing of the case as per Warrant procedure.

However, the researcher is of the opinion that proper training should be given to all the Magistrates in trying the cases via the summary procedure. The training should be inclusive of mock trails and writing of judgments in summary trials by the trainees. A reasonably quick trial would go a far way in serving the interests of the right to speedy trial which is an essential part of our right to life and liberty as enshrined in Article 21.