

PROCESS OF TRIAL OF CRIMINAL CASES IN INDIA

*The flow chart is indicative & for general guidance only.

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India has a well-established statutory, administrative and judicial framework for criminal trials. Indian Penal laws are primarily governed by 3 Acts:

1. **The Code of Criminal Procedure, 1973 (Cr.P.C.);**
2. **The Indian Penal Code, 1960 (IPC);**
3. **The Indian Evidence Act, 1872 (IEA).**

Cr.P.C. is a comprehensive and exhaustive procedural law for conducting a criminal trial in India, including the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by Police and Courts, bail, process of criminal trial, method of conviction, and the rights of the accused for a fair trial. The procedure for a criminal trial in India, is primarily, except as otherwise provided, governed by The Code of Criminal Procedure, 1973 (Cr.P.C.). IPC is the primary penal law of India, which is applicable to all offences, except as may be provided under any other law in India. IEA is a detailed treaty on the law of “evidence”, which can be tendered in trial, manner of production of the evidence in trial, and the evidentiary value, which can be attached to such evidence. IEA also deals with the judicial presumptions, expert and scientific evidence. There are certain other laws, which have been enacted to deal with criminality in special circumstances.

It is also important to note that India follows the adversarial system, where generally the onus of proof is on the State (Prosecution) to prove the case against the accused, and until and unless the allegation against the accused are proved beyond reasonable doubt, the accused is presumed to be innocent. In certain exceptional cases, which may relate to terrorism, etc., the onus of proof has been put on the accused person, who claims to be not guilty.

India has a highly developed criminal jurisprudence and prosecution system, supported by judicial precedents, however, there may be certain issues or concerns relating to the execution of the same by Police and implementation by Judiciary. The courts in India, particularly High Courts and Supreme Court have been proactively guarding the rights of the accused. Even Article 21 of the Constitution of India has been interpreted in a highly dynamic manner to protect the rights, life and liberty of the citizens, by also incorporating the principles of natural justice.

By the flowchart hereinbelow, an attempt is being made to make the reader briefly understand the process of criminal investigation and trial in India, as a lot of foreign companies and Ex-pats are coming to India, and due to unfortunate circumstances, they may, at times find themselves embroiled in unnecessary criminal cases.

To appreciate the process of Indian criminal law, it is necessary that to understand following important terminology:

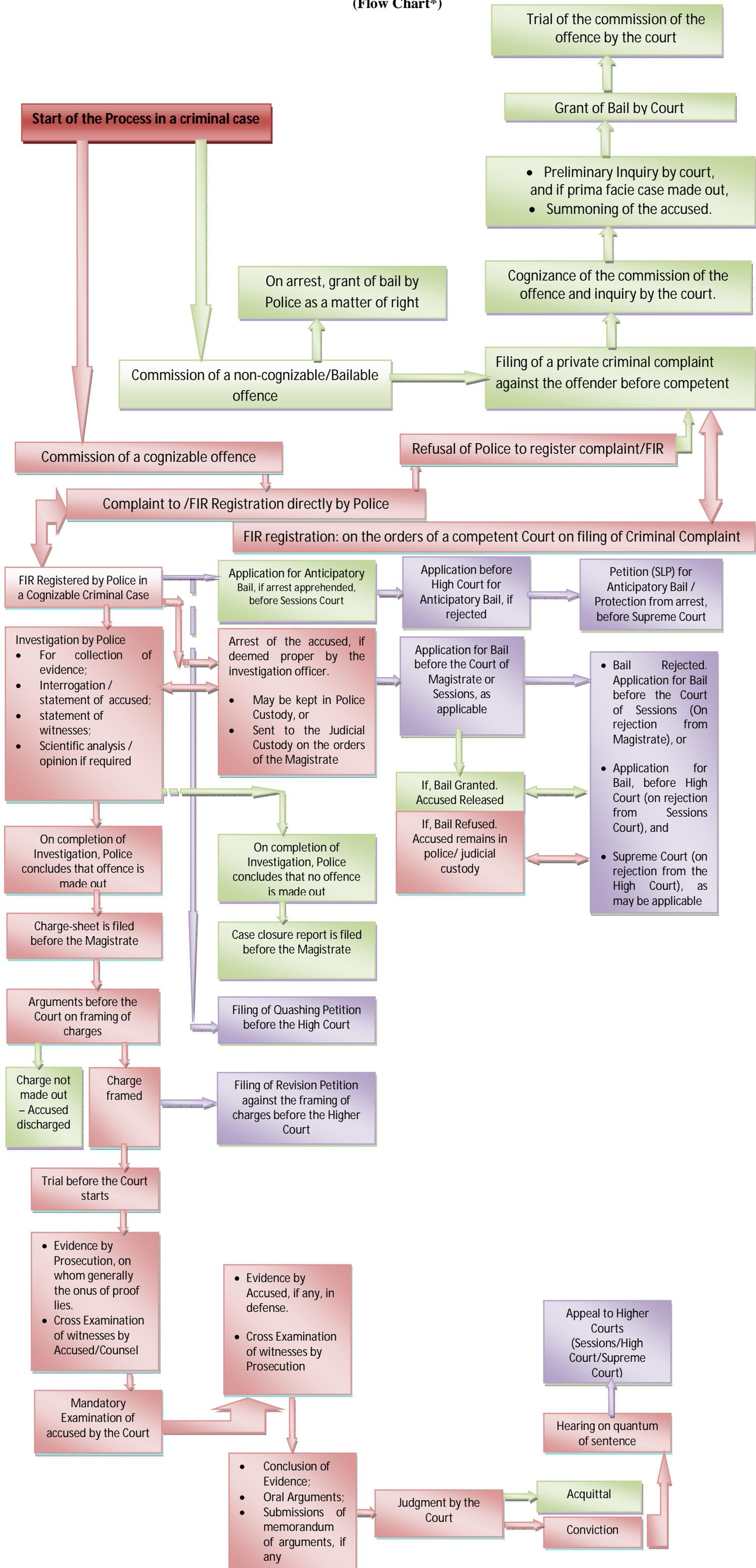
1. **Bailable Offence**, means an offence, which has been categorized as bailable, and in case of such offence, bail can be claimed, subject to fulfillment of certain conditions, as a matter of right under Section 436 of the Cr.P.C. In case of bailable offences, the Police is authorised to give bail to the accused at the time of arrest or detention.
2. **Non-bailable Offence**, means an offence in which the bail cannot be granted as a matter of right, except on the orders of a competent court. In such cases, the accused can apply for grant of bail under Section 437 and 439 of the Cr.P.C. It is important to note that the grant of bail in a non-bailable offence is subject to judicial discretion of the Court, and it has been mandated by the Supreme Court of India that “Bail, not Jail” should be the governing and guiding principle.
3. **Anticipatory Bail**, under Section 438 of the Cr.P.C., means that a person who apprehends arrest on a wrong accusation of committing a non-bailable offence, can apply before a competent court for a direction to police to immediately release such a person on bail in the event of arrest. However, the grant of anticipatory bail is discretionary and dependant on the nature and gravity of accusations, the antecedents of the applicant and the possibility of the applicant fleeing from justice.
4. **Cognizable Offence/case**, has been defined under Section 2 (c) of Cr.P.C., as an offence/case in which a Police Officer can arrest without a warrant.
5. **Non-cognizable Offence/case**, has been defined under Section 2 (l) of Cr.P.C., as an offence/case in which a Police Officer has no authority to arrest without a warrant.
6. Whether an offence/case is **bailable or not bailable**, and **cognizable or non-cognizable**, has been qualified under the 1st Table of the 1st Schedule of Cr.P.C., which relate to the offences under IPC.
7. **F.I.R (first information report)**, is formal recordal of a complaint, by police in case of commission of a cognizable offence, and can be considered as a first step in the process of the investigation of a cognizable offence by Police.
8. The Table II of the 1st Schedule of Cr.P.C., gives a general guideline to determine whether an offence is bailable, non-bailable, cognizable or non-cognizable. The criteria in the table below, is applicable in those cases which are silent on this aspect. For easy understanding, the following criteria may be understood:

Offence	Cognizable or Non-Cognizable	Bailable or Non-bailable
Punishable With Imprisonment For • Less Than 3 Years or with fine only	Non-cognizable	Bailable
Punishable With Imprisonment For • 3 Years or more	Cognizable	Non-Bailable

9. The criminal investigation process and prosecution mechanism in India, can be started in any of the following manner:
 - a. On complaint /reporting /knowledge of the commission of a cognizable offence, any police officer, even without the orders of a Magistrate, can investigate the cognizable case. [Section 156 (1) of the Cr.P.C.]
 - b. In case of failure or inaction of a police officer to investigate a cognizable offence, a criminal complaint can be filed before a Magistrate under Section 190 of Cr.P.C., for taking cognizance of such offence, and on such complaint, the Magistrate himself can take cognizance of the case and do the enquiry, or in the alternative under Section 156 (3) of the Cr.P.C., order Police to register an F.I.R and investigate the offence.
 - c. In case of non-cognizable offence, Police is not obliged to investigate, and the judicial process can be started by filing a criminal complaint before the competent court, under Section 190 of the Cr.P.C.

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(Flow Chart*)



* The flow chart may not be exact as per rules, and does not account for all eventualities.

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