

**Legal Issues
in**

The Code of Criminal Procedure, 1973 (Cr.P.C.) in the Context of IP Offences

Module 1 – IP Offences & Criminal Procedure

Introduction

❖ Indian Penal Code, 1860

- Primary Penal Law
- Applicable to all offences, except as those provided for under other laws in India
- The IPC defines an offence as something punishable under the IPC or any special law

❖ The Code of Criminal Procedure, 1973

- Procedural Law for Criminal Trials
- The Cr.P.C. defines an offence as any act/omission made punishable by any law for the time being in force
- Procedures to be followed by the Police, Magistrates for collection of evidence, arrests, bail, etc

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Classification of Offences

- ❖ As per the Cr.P.C. Offences may broadly be classified as –
 - Cognizable v. Non-Cognizable
 - Bailable v. Non-Bailable
- ❖ The 1st table of the Schedule I of the Cr.P.C. lists out offences and their classification
- ❖ The 2nd Table of Schedule I of Cr.P.C., divides the spectrum of possible punishments for offences against other laws into three categories, giving a general guideline for classifying the offence

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OFFENCE	COGNIZABLE OR NON-COGNIZABLE	BAILABLE OR NON-BAILABLE	TRIAL BY WHICH COURT
If punishment with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-Bailable	Court of Session
If punishable with imprisonment for 3 years and upwards, but not more than 7 years	Cognizable	Non-Bailable	Magistrate of the First Class
4 If punishment with imprisonment for not more than 3 years	Non-Cognizable	Bailable	Any Magistrate

Relevant IP Statutes

❖ **The Trade Marks Act, 1999:**

- Falsifying and falsely applying trademarks [Section 102]
- An offence for infringement of Trademark is punishable with imprisonment of not less than 6 months but which may extend to 3 years. The minimum fine under the Act is INR 50,000/- extendable to INR 2,00,000/-.

❖ **Copyright Act, 1957:**

- Offences of infringement of copyright [Section 63]
- An offence for infringement of copyright is punishable with an imprisonment of not less than 6 months but which may extend to 3 years. The minimum fine under the Act is INR 50,000/- extendable to INR 2,00,000/-.

Relevant IP Statutes (Contd.)

❖ **Geographical Indications of Goods (Registration and Protection) Act, 1999:**

- Falsifying and falsely applying geographical indications. [Section 38]
- Falsification or false application of a GI is punishable with a minimum imprisonment of 6 months, which may extend to 3 years and with a minimum fine of INR 50,000/- that may extend to INR 2,00,000/-.

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❖ **The Semiconductor Integrated Circuits Layout Design Act, 2000:**

- Infringement of a registered layout-design is punishable under Section 56 of the Act, with imprisonment of up to 3 years or fine of INR 50,000/- up to the maximum of INR 10,00,000/- or with both.

Relevant IP Statutes (Contd.)

❖ **The Protection of Plant Varieties and Farmers Rights Act, 2001:**

- A criminal action under the Act entails punishment up to 2 years or a fine up to INR 5,00,000/- or with both.

❖ **The Biological Diversity Act, 2002:**

- Punishable with imprisonment for a term, which may extend to 5 years, or with fine, which may extend to INR 10,00,000/-

7 ❖ **The Patents Act, 1970:**

- The Patents Act does not provide criminal remedies.

❖ **The Designs Act, 2000:**

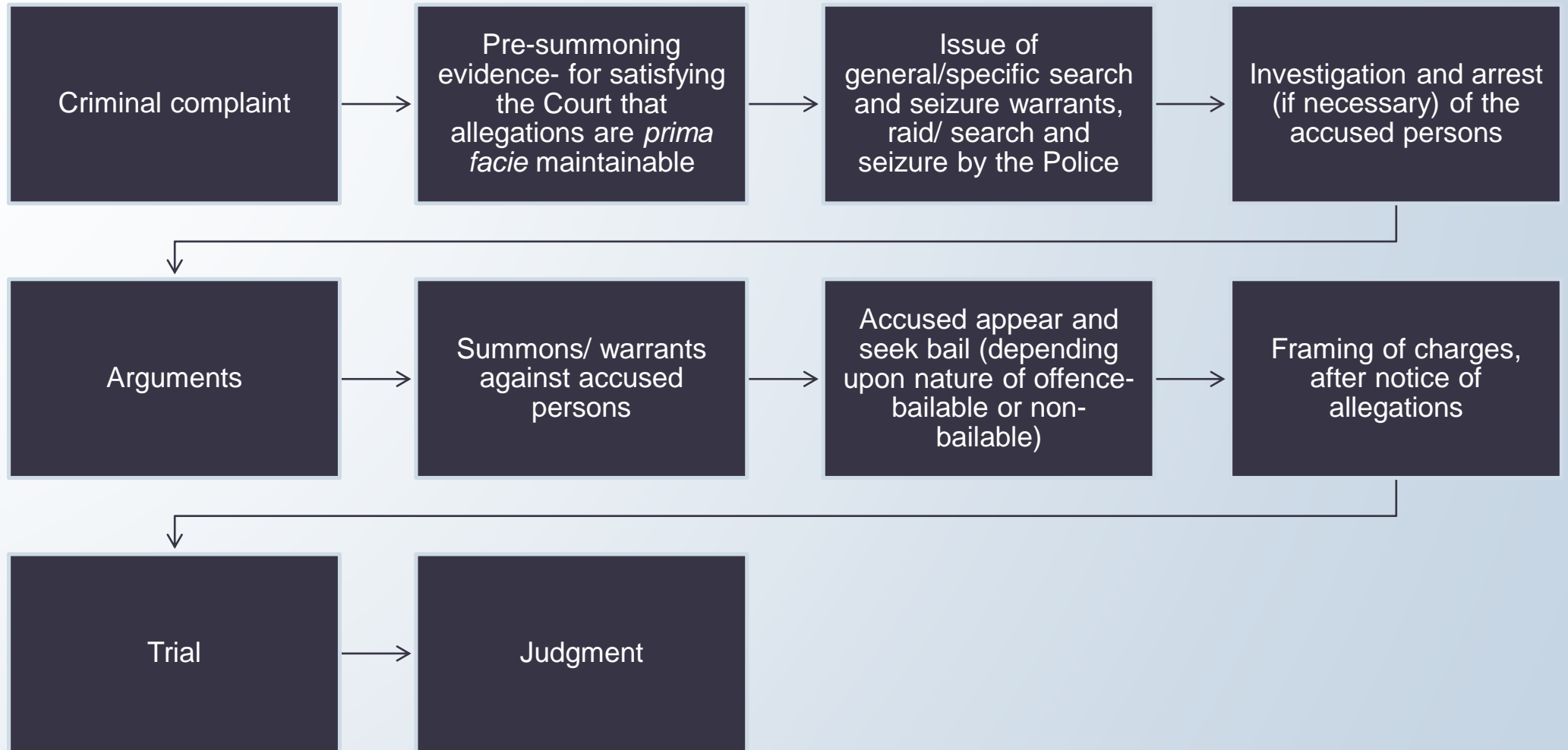
- The Act does not provide criminal remedies.

Classification of IP Offences

COGNIZABLE OFFENCE	NON-COGNIZABLE OFFENCE
<ul style="list-style-type: none"> ❖ The Trade Marks Act, 1999 [Section 115(3)] ❖ The Geographical Indications of Goods (Registration & Protection) Act, 1999 [Section 50(3)] ❖ The Biological Diversity Act, 2002 	<ul style="list-style-type: none"> ❖ The Protection of Plant Varieties and Farmers Rights Act, 2001

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- ❖ The Copyright Act, 1957



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❖ The onus of proof lies on the complainant to show that an IP offence has taken place.

- ❖ The process and prosecution as a criminal offence in India, can commence in any of the following manners:
 - Cognizable Offence: By complaint of a cognizable offence [F.I.R.] to a police officer. The officer can investigate the cognizable offence without obtaining a prior order from the court [Section 156 (1) of the Cr.P.C.]
 - In the event that the police fails to or refuses to investigate a cognizable offence, a criminal complaint can be filed before a Magistrate [Section 190 of Cr.P.C.], for taking cognizance of the offence. Up receipt of a complaint, the Magistrate can itself take cognizance and conduct an enquiry or order Police to register an F.I.R. and investigate the offence [Section 156(3) of the Cr.P.C.]
 - Non-cognizable offence: The process may be started by filing of a criminal complaint before the competent court, as the police would not directly investigate in this case [Section 190 of the Cr.P.C.]

Types of Cases

SUMMONS-CASE (SECTION 2(w))	WARRANTS-CASE (SECTION 2(x))
Case relating to offence, which is not a warrants case	A case relating to an offence punishable with: <ul style="list-style-type: none">• Death• Imprisonment for life• Imprisonment for a term exceeding two years

S. No.	Type of IP	Type of Case
1.	Copyright	Summons and Warrant Case
2.	Trademark	Summons and Warrant Case
3.	Geographical Indication	Summons and Warrant Case
4.	Plant Varieties and Farmer's Rights	Summons Case
5.	Protection of Traditional Knowledge and Bio-Diversity	Warrant Case
6.	Semiconductor Integrated Circuits Layout-Design	Warrant Case

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THANK YOU!

Questions?

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