## **Procedure of arraignment to imposition of sentence in a criminal trial in the high court;**

## Proof of evidence: A Proof of Evidence is a written summary of what a witness will say in evidence during a hearing. Often a Claimant solicitor will get the client to produce a full story about the accident and the impact that it has had. A Proof of Evidence contains information which will help or hinder the claim and this is how it differs from a Witness Statement.

## II. Arraignment and plea: The *criminal proceeding at which the defendant is officially called before a court of competent jurisdiction, informed of the offense charged in the complaint, information, indictment, or other charging document, and asked to enter a plea of guilty, not guilty, or as otherwise permitted by law. Depending on the jurisdiction, arraignment may also be the proceeding at which the court determines whether to set bail for the defendant or release the defendant on his or her own recognizance.*

Although the initial appearance of the arrested person before a magistrate is sometimes referred to as an *arraignment*, it is not a true arraignment, which only comes after the defendant has been both arrested and formally charged. In all but extremely rare cases, arraignment also takes place before any suppression hearings and the trial itself. The interests at issue in an arraignment are the defendant's right to know of the charges against him or her and the defendant's right to have adequate information from which to prepare a defense. The state also has an interest in having the defendant make a plea so it can prepare accordingly.

1. Plea of guilt
2. Plea of not guilty
3. Prosecution : the institution and continuance of a criminal suit involving the process of pursuing formal charges against an offender to final judgment or can be explained as the party by whom criminal proceedings are instituted or conducted.
4. Submission of “no case to answer “ :  case answer refers to a submission made by a defendant or accused in a court, which states that the claim or prosecution is not sufficient for conviction or judgment. The defendant supports his/her submission by pleading that that the case is based on insufficient legal grounds or insufficient factual evidence. A successful no case submission results in the end of a trial and release of the defendant. No case to answer is heard after prosecution evidence and arguments. In this submission, the accused asks the judge to tell the jury to find that s/he is not guilty. When a no case submission is made, it basically means that the defendant is asking the court for an acquittal without it having to present a defence. The defendant is literally saying to the court that there is no case to answer i.e. the prosecution has not sufficiently proven the legal threshold to establish the commission of a crime in the court of law.
5. Defense: in civil proceedings a defence maybe one of the following:
6. a traverse, i.e. a formal denial of an alleged fact
7. a denial of the plaintiff's claim
8. an allegation of counterclaim(iv) a confession and avoidance
9. a statement of defence raising an objection in point of law to the effect that the facts alleged, even if established, do not disclose a good cause of action. In Scottish written civil pleadings, a defender lodges written defences. In criminal matters there is no written defence; a defence is raised by the plea of not guilty. In Scottish solemn criminal procedure, there are certain special defences that require to be lodged timeously in writing.

Viii . Closing address: the final address to the jury by the attorney for each side of a case in which the attorney usually summarizes the evidence and his or her client's position . Also called *closing statement*, *final argument*, *summation*, *summing-up* NOTE: Rule 29.1 of the Federal Rules of Criminal Procedure requires the prosecution to open the closing argument after the closing of the evidence. The defense replies, and the prosecution may offer a rebuttal.

ix. Judgement: *decision by a court or other tribunal that resolves a controversy and determines the rights and obligations of the parties. A* judgment must be in writing and must clearly show that all the issues have been adjudicated. It must specifically indicate the parties for and against whom it is given. Monetary judgments must be definite, specified with certainty, and expressed in words rather than figures. Judgments affecting real property must contain an explicit description of the realty so that the land can easily be identified.

X. Discharge : in any obligation, the termination of that obligation without liability on either party. In the Scots law of contract, discharge maybe by performance or novation, compensation, confusion, acceptance payment or delegation.

**2** in the law of [**NEGOTIABLE INSTRUMENTS**](https://legal-dictionary.thefreedictionary.com/negotiable%2Binstrument) a bill of exchange is discharged when all rights of action thereon are extinguished. It then ceases to be negotiable, and if it subsequently comes into the hands of a holder in due course he acquires no right of action on the instrument. A bill is discharged by payment in due course.

Xi. Finding of guilt and sentence : A finding of guilt is a ruling made by a judge. A judge will make a finding of guilt in one of two situations: An [accused](http://lawfacts.ca/glossary#Accused) has pled guilty and accepts facts that amount to a criminal [offence](http://lawfacts.ca/glossary#Offence); OR the [Crown](http://lawfacts.ca/glossary#Crown) has proven at a [trial](http://lawfacts.ca/glossary#Trial) that an accused committed a criminal offence. Except in certain cases, if a judge makes a finding of guilt, the judge will . Depending on the [type of sentence](http://lawfacts.ca/taxonomy/term/22) given, the judge may also register a conviction against the offender.

**1b. Remedies available to the accused after imposition of sentence :**

* 1. **SUSPENSION OF SENTENCE:-**

“Suspension” means to take or withdraw sentence for the time being. It is an act of keeping the sentence in abeyance at the pleasure of the person who is authorised to suspend the sentence, and if no conditions are imposed, the person authorised to suspend the sentence has the right to have the offender re-arrested and direct that he should undergo the rest of the sentence without assigning any reason. This position is given in the Law commission 41st Report P.281 Para 29.1; and also in cases like Ashok KumarVs. Union of Inida (AIR 1991 SC 1792); State of Punjab V. Joginder Singh (AIR 1990 SC 1396). 2. Section 389 (1) and (2) of Cr.P.C deals with a situation where convicted person can get a Bail from appellate court after filing the criminal appeal. Since we are concerned with the power of the trial court to suspend the sentence, section 389 (3) must be taken into account. Section 389 (3) is applicable only in the following conditions:-

1. the court must be the convicting court,

2. The accused must be convicted by the court,

3. The convict must be sentenced to imprisonment for a term Not

exceeding three years,

4. the convict must express his intent to present appeal before the

appellate court,

5. The convict must be on bail on the day of the judgment,

6. There should be right of appeal (Mayuram Subramanian Srinivasan

Vs. CBI (2006) 5 SCC 752)

**Suspension of Fine:**

1. Whenever an offender is ordered to pay fine, such payment should be made forthwith. Section 424 of the code, however, enables the court to suspend the execution of sentence in order to enable him to pay the amount of fine either in full or in installments. It deals with two types of cases which are like this.

2. Sub-section (1) provides that when an offender has been sentenced to fine only and to imprisonment in default of payment of fine and the fine is not paid forthwith, the court may order that the fine should be paid in full within 30 days, or in two or three installments the first of which should be paid within 30 days and the other or others at an interval or intervals of not more than 30 days.

3. Sub-Section (2) refers to a case where there is no sentence of fine but an order of payment of money has been made by the court and for non payment of such amount, imprisonment is awarded. In such cases also, the court can grant time to pay amount. In either case, if the amount is not paid, the court may direct the sentence of imprisonment to be executed at once.

4. Hon'ble Supreme court in Ravikant S.Patil Vs. Sarvabhouma Bagali (2007) 1 SCC 673) has held that:Para- 15 “It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non existent, but only non -operative. Be that as it may. In so far as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction.As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction **continues to operate even after stay of conviction”.**

**(b) Right of the accused against “ Double Jeopardy” Art; 20 (2) of the constitution and Sec. 300 of Cr.P.C Art. 20 (2) of the constitution lays down that” no person shall be prosecuted and punished for the same offence more than once:-**The right of the accused against Double Jeopardy is the recognition of the latin maxim - “Nemo debit bis vexari pro eadem causa” that means no man shall be punished or put in Jeopardy or Peril twice for the same offence. Article 20 (2) of Constitution of India bars prosecution and punishment after an earlier punishment for same offence. Where the complaint is permitted to be withdrawn and as a result the accused is acquitted. Trial of accused on fresh complaint for the same offence base on the same facts would be barred by section 300 Cr.P.C (Eciyo coconut oils Pvt. Ltd Vs. State of Kerala 2002 (2) crimes 147 ). Second trial is barred when accused is convicted or acquitted. There is a difference between acquittal and discharge, discharge of the accused does not amount to acquittal and thus no bar on proceedings U/sec. 300 Cr.P.C in Ranvir Singh Vs. State of Haryana, 2008 Crl.J2152 (2155) (P&H).

**( c) RIGHT OF THE ACCUSED AND APPLICATION OF THE PRINCIPLE OF “RES-JUDICATA' OR 'ISSUE -ESTOPPEL” TO CRIMINAL PROCEEDINGS:-**

The maxim Res- Judicata pro veritate accipitur, is no less applicable to criminal than to civil proceedings. In Lalta Vs. The State of U.P., in AIR 1970 SC 133 the Apex court of India, held that when an issue of fact has been tried by a competent court on a former occasion and a finding of the fact has been reached in favour of the accused, such a finding would constitute an estoppel or res-judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even might be permitted by the terms of section 300 (2), code of Criminal Procedure, 1973. Section 300 does not preclude the applicability of this rule of issue -estoppel. The same view has been affirmed in some other decisions.

**(d) RIGHT OF THE ACCUSED NOT TO SUFFER IMPRISONMENT FOR LONGER THAN MAXIMUM.**

**( e) RIGHT OF ACCUSED TO BE HEARD ON QUESTION OF SENTENCE IN WARRANT CASES;** The relevant provision as to the right of the accused to be heard on question of sentence in warrant cases exclusively triable by a court of Session is provided in Section 235 (2) of the Code of Criminal Procedure, whereas in cases pending trial before Judicial Magistrate can be located in Section 248 (2) of the same code.This provision of hearing on question of sentence is mandatory. Non –compliance with the provisions of section 235 (2) of the code of Criminal Procedure, is not an irregularity, but is an illegality which vitiates the sentence.

**(f) PROTECTION AGAINST CONVICTION OR ENHANCED PUNISHMENT UNDER EX-POST FACTO LAW ( ARTICLE 20 (1) OF THE CONSTITUTION:-** Substantive law imposing liability of penalty cannot be altered to the prejudice of the person supposed to be guilty with retrospective effect held in Rao Shiv Bhadur Singh Vs. State of Vindhya Pradesh, AIR 1953 SC 394

(g) **RIGHT TO APPEAL IN CASE OF CONVICTION (SECTIONS. 351, 374, 379, 380 OF Cr.P.C and Articles. 132 (1) and 136 (1) OF THE CONSTITUTION):-**Not withstanding anything in the criminal code, appeal to the court to which decrees or orders made in such court are ordinarily appealable Non-filling of appeal by co-accused cannot be treated as a factor against accused, it would not be in any event take away right of accused to file appeal (VADAMALAI VS. SYED THASTHAKEET, AIR 2009 SC 1956).

(h) **RIGHT TO FILE APPEAL AGAINST THE ORDER OF CONVICTION (SECTION 372, 373, 374 CR.P.C AND ARTICLE 132 (1), 134-A):-** the right of appeal is not a natural or inherent, it is a creature of statute (SAJID ALI VS. STATE OF NCT, 2007 (2) CRIMES 268 (DEL)). Right of appeal can neither be interfered with or impaired not it can be subjected to any condition (Dilip S.Dhanukar Vs. Kotak Mahindra Co.Ltd. 2007 Crl. L.J. 2417 (2421) SC).

**(I) RIGHT TO BE RELEASED ON PAROLE OR FURLOUGH (SECTIONS 5 (A) AND 5 (B) OF THE PRISONERS ACT, 1894):-** The parole and furlough rules are part of the penal and prison system with a view to humanise the prison system. All fixed term sentences of imprisonment of above 18 months are subject to release on parole after a third of the period of sentence has been served. It is a provisional release from confinement but is deemed to be a part of the imprisonment

**(j) RIGHT OF THE ACCUSED UNDER-TRIAL OR CONVICT TO LIVE WITH HUMAN DIGNITY AND RIGHT TO MEET HIS RELATIONS:-**Under Article 21 of the Constitution of India, the right to 'life' includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

**(k) PROPER EXECTUION OF SENTENCE:-**The accused has right to proper execution of sentencing includes consulting president of India and begs pardon under Article 72, Governor under Article 161 of Indian Constitution.

**(l) REMISSION:** Remission of sentence means, waiver of the entire period of the balance of imprisonment. It is granted under special circumstances including the circumstances under which the offence had taken place and the manner of the disposal of the case through trial and appeals. When once remission is granted, it is not revocable. Apart from granting, remission of sentences, in individual cases the government may grant remission generally to serve certain classes of persons as an act of policy of the State. Remissions may be by restricting the sentence to a period of imprisonment already undergone. Commutation of sentence means, altering the sentence from one grade to lower grade. Rigorous imprisonment may be converted into simple imprisonment. Imprisonment can be converted into fine. Death sentence may be converted into life sentence and life sentence to a sentence of 14 years imprisonment. The sentence of 14 years may be reduced to any term of imprisonment. **Remission of sentence. Joginder Singh Vs. State of Punjab & others, 2001 (8) SCC 306 = AIR 2001 SC 3703 = 2002 Cr. L.J 86.**

CONCLUSION:-The Code of Criminal Procedure, 1973. Provides for wide discretionary powers to the Judge once the conviction is determined. The power used by court as mentioned supra, is not to be used indiscriminately in a routine,casual and cavalier manner for the reason that an exception clause requires strict interpretation.

2**. Methods to which civil proceedings may commence in a High Court.**

## 1. Originating Summons

Originating Summons (OS) is one of the two modes in commencing a civil action.  An action is commenced by an OS when (1) it is required by a statute or (2) a dispute, which is concerned with matters of law, is unlikely to be any substantial dispute of fact.  An Originating Summons may be in *Inter partes* or *Ex-parte*of the Rules of Court.

OS is heard based on affidavits filed in support.  OS cases are heard by registrars or judges in chambers or in open Court.  A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the OS.  Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.

An application can be made to convert an OS into a Writ at any stage of proceedings.  Alternatively, the Registrar or Judge can decide to convert an OS into a Writ without any application from the parties.  Once the decision to convert has been made, the steps relating to a Writ applies.  The Registry will assign a new Suit Number to the proceedings and a pre-trial conference will be called for the service of the Statement of Claim.

**Examples of originating summons**

**Judicial Management**

This type of OS case can be filed if the selected legislation is **Companies Act**.

**Taxation**

This type of OS case can be filed if the selected legislation is **Legal Profession Act**.

**Probate and Administration or Legislation**

The applicable legislations for this OS are:

* Probate and Administration Act (Cap. 251)
* Rules of Court with the provision number as Order 71 or Order 72

 Accordingly, the Nature of Case is Probate and Administration.

**General**

Other types of legislation fall under the OS (General) type.  No additional fields are displayed when for this OS case.

**Enforcement of Syariah Court Order**

This type of OS can be filed if the selected legislation is **Cap 3 Administration of Muslim Law Act**.

**Mental Capacity**

This OS type is filed under the **Mental Capacity Act**legislation.

**Guardianship of Infant**

The legislation applicable for this OS case is **Cap 122 Guardianship of Infants Act**.

**Division of Matrimonial Assets During Marriage**

The applicable legislation for this type of OS is **Cap353 Women's Charter Section 59**.

**OS (To Commence Divorce Within Three Years of Marriage)**

The applicable legislation for this type of OS is **Cap353 Women's Charter Section 94**.

2. **Originating motion**

A type of document that starts a civil proceeding. This is often required when:

1. there is no defendant
2. you are making an application to the court under a particular Act, or
3. the Supreme Court (General Civil Procedure) Rules 2015 or the Supreme Court (Miscellaneous Civil Proceedings) Rules 2018 tell you to use an originating motion.

**3. Writ of summons**

The most common type of document that starts a civil proceeding. A writ is used unless an originating motion is required.

**4. Petitions**

Petition is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit.

* A petition is a formal request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit.
* A petition is made to the court by a petitioner against a respondent, versus a complaint, which is filed by a plaintiff against a defendant.
* A petition asks the court to provide a court order, while a complaint is filed to seek damages or to get the defendant to start or stop doing something.
* Petitions are often used in an appeal—a petition to appeal states why the legal issues surrounding a case should be reviewed by another court.

## **Example of Petition**

In 2009, the United States Supreme Court heard the case of Citizens United v. Federal Election Commission, which focused on campaign spending by organizations. The court held that campaign spending was considered a form of speech protected by the [First Amendment](https://www.investopedia.com/terms/f/first-amendment.asp) to the U.S. Constitution and that organizations, such as [nonprofits](https://www.investopedia.com/terms/n/non-profitorganization.asp) or unions, and businesses were allowed to spend money on political issues without government interference.

The case reached the Supreme Court after Citizens United issued a petition of appeal. The Supreme Court’s decision can be reversed by a future court judgment, or if a Constitutional amendment addressing the issue of campaign finance is passed.

**REFERENCES:**

Investopedia, Supreme Court of Victoria

[www.eLitigation.sg](http://www.eLitigation.sg) , district courts. Legal dictionary.