

**Q.1.09. Name the criminal courts in India and their powers. Mention the sentences authorised by law.**

The **criminal courts** in India in order of their power are as follows:

- (1) Supreme Court
- (2) High Courts
- (3) Sessions Courts
- (4) Magistrates' Courts, presided over by
  - (a) Chief Judicial Magistrate and, in any metropolitan area, Chief Metropolitan Magistrate
  - (b) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates
  - (c) Judicial Magistrates of the second class, and
  - (d) Executive Magistrates

The Supreme Court, located in New Delhi, is the highest judicial tribunal in the Country. Its function is supervisory and the interpretation of law as declared by it is binding on all the courts in India. It can pass any sentence.

The High Court, located usually in the capital of every State, is the highest judicial tribunal in the State. It is empowered to try any offence and pass any sentence authorised by law.

The Sessions Court is located usually at the District Headquarters. It is therefore also known as District Sessions Court. It has jurisdiction over all kinds of criminal offenses but it can try only those cases which have been committed to it by a magistrate. It can pass any sentence authorised by law including a sentence of death which is subject to confirmation by the High Court. An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or for a term exceeding ten years.

The Magistrates' Courts are presided over by magistrates. There are two kinds of magistrates, namely, Judicial Magistrates (including Metropolitan Magistrates in Metropolitan areas) and Executive Magistrates. Judicial Magistrates are divided into two classes, namely, first class and second class.

A judicial magistrate of the first class in charge of a district (not being a metropolitan area) is known as Chief Judicial Magistrate. A Judicial Magistrate in charge of a subdivision is known as subdivisional Judicial Magistrate. The Judicial Magistrates in relation to metropolitan areas are known as Metropolitan Magistrates. The Chief Judicial Magistrate in relation to a metropolitan area is known as Chief Metropolitan Magistrate.



Executive magistrates are appointed by the State Government. They are usually officers of revenue department like District Collector, Subcollector, or a Tehsildar. They may be placed in charge of a district, subdivision, or taluka and have all the powers of a district or subdivisional magistrate.

The *sentencing powers* of Magistrates in order of their rank are as follows:

(a) Courts of Chief Judicial Magistrate and Chief Metropolitan Magistrate	Imprisonment up to seven years; fine without limit
(b) Courts of Judicial Magistrate of the first class and Metropolitan Magistrate	Imprisonment up to three years; fine up to Rs. 5,000.00
(c) Courts of Judicial Magistrate of the second class	Imprisonment up to one year; fine up to Rs. 1,000.00

*Special Magistrates*, either Metropolitan, Judicial, or Executive, may be appointed by the Government for special purposes or when regular magistrates cannot cope up with the extra load of work, or the inquiry has to be completed within a certain time.

*Juvenile Magistrates*, usually ladies, preside over Juvenile Courts and try juvenile offenders. *Juvenile offenders* are children (boys below 16 years and girls below 18 years of age) who are accused of having committed a crime. They are tried under the Children Act, 1960 (60 of 1960) which provides for treatment, training, and rehabilitation of youthful offenders.

**Sentences authorised by law:** These are: (1) death (2) imprisonment for life (3) imprisonment-rigorous, simple, or solitary (4) forfeiture of property (5) fine, and (6) treatment, training, and rehabilitation of youthful offenders.



Q.1.11. How is evidence recorded in a court of law? Describe the procedure.

Q.1.12. Comment on: (1) leading question (2) hostile witness (3) cross examination.

Having been sworn or affirmed in any court of law, the witness is first examined by the side which has called him. This is known as *examination-in-chief* (direct examination). This is followed by *cross examination* by the opposing counsel, after which the witness may be *re-examined* (*re-direct examination*) by the first counsel. Questions may be put by the judge or juror (coroner's court) to clear any doubtful points.

**Examination-in-chief:** In private cases, this consists of questions put to the witness by the counsel (lawyer) for the side which has summoned him. In government prosecutions, the public prosecutor commences this examination. The *object* is to place before the court all the facts that bear on the case and if the witness be an expert, his interpretation of these facts. At this stage, no leading questions are allowed except in those cases in which the judge is satisfied that a witness is hostile. A **leading question** is one that suggests its own answer. As for example, "Doctor, is this injury caused by a sharp weapon?" is a leading question. It should be worded as, "Doctor, what type of weapon would cause this injury?". A witness is expected to tell the truth but if he is influenced, intimidated, or bribed, he may purposely conceal a part of the truth or give outright false evidence and is then liable to be found guilty of *perjury*. The court, in its discretion, may declare such a witness as a hostile witness. Thus, a **hostile witness** is one who purposely makes statements contrary to facts or to what he has already said in a lower court or in the same court on a previous occasion. The ordinary as well as the expert witness may become hostile. When such a witness is being examined, leading questions may be asked in the *examination-in-chief* to elicit the facts.

**Cross examination:** In this stage, the counsel for the opposite side, that is counsel for the accused, seeks to extract from the witness, any facts that may appear to be favourable to his client and which he believes to be within the knowledge of the witness. Leading questions are therefore allowed. The *object* is to weaken the evidence of the witness by showing that his details are inaccurate, conflicting, contradictory, or that his opinions are ill-founded and opposed to that of well recognised authorities. The witness must therefore be prepared to face questions regarding his qualifications, experience, and professional knowledge. The cross



examination need not be confined to the statements made by the witness in the examination-in-chief. When appropriate material is available, questions challenging even the character of the witness may be asked. The court can however forbid any question which may appear to be either insulting, annoying, or needlessly offensive in form (section 152 IEA). There is no limit for cross examination although the presiding officer can always overrule irrelevant questions.

Cross examination may sometimes act as a double edged weapon. If the opposing counsel is not familiar with the subject or does not put his questions with great caution, the answers brought out may be more adverse to his own case rather than those elicited in the examination-in-chief.

A medical officer was being cross examined by the defence in a case of alleged medical negligence during a delivery.

Defence: Doctor, when did you conduct the last delivery?

Doctor : Some time in 1945 or 1946 when I was doing my midwifery term as a medical student and once thereafter some time in 1954 as an emergency when a neighbour delivered suddenly.

Defence: So, is it right to say, now that it is 1979, that you conducted the last delivery about 25 years ago?

Doctor : Yes

Defence: If as you say, you conducted the last delivery some time in 1954, how do you consider yourself competent to opine on a case of delivery in 1979 after a lapse of about 25 years?

Doctor : The process of birth has not changed since then.

The charge was incest. The 14 year old girl was trembling in the witness box. She was facing her father whom she was accusing of being the parent of her expected child. His lawyer was cross examining.

Lawyer : Do you hate your father?

Girl : Yes

Lawyer : Do you want to see him go to prison?

Girl : I want to see him dead every time I feel the child kicking in my body.

It took the jury only five minutes to come in with a verdict of guilty.

**Re-examination:** After cross examination, the witness may be re-examined by the counsel who called him. The *object* is (1) to clear up any doubts that may have arisen during cross examination, and (2) to explain some matter (that may appear damaging his direct testimony) in proper perspective so that undue emphasis or possible misinterpretation can be avoided. (In one cross examination, a lawyer had elicited an answer from the doctor to the effect that the injury was on the right arm and the blood spot seen on the shirt sleeve was attributable to the injury. On

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re-direct, it was brought out that the wound was just an abrasion, and medicolegally, the injury was simple in nature).

At re-examination, leading questions are not allowed, no new matter may be introduced without the permission of the judge and consent of the opposing counsel, and the opposing side has the right of cross examination on the new points.

**Court questions:** The judge may ask any questions to the witness at any stage of trial to clear any doubtful points.

The evidence thus recorded by the presiding judge or magistrate should be read by the witness, and signed by him after getting any corrections, if need be, done by the court under its initials. Subsequent to discharge, the witness is liable to be recalled if his evidence needs further elucidation.

Q 1.13. Discuss documentary evidence.