

# **B.A. LL.B VI SEMESTER**

## **MOOD COURT**

### **Unit-3**

**Topic:- pre-trial preparation and participation in trial proceedings of criminal cases**

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# INTRODUCTION:-

- Japan is a unitary state, and the same criminal procedure applies throughout the nation. The Code of Criminal Procedure of 1948 (hereinafter CCP), the Act on Criminal Trials Examined under the Lay Judge System, and the Rules of Criminal Procedure of 1949 are the principal sources of law.

# How to prepare for a criminal trial

- The Procedure of Criminal Trial is governed by the Criminal Procedure Code, 1973. There are three basic stages to it:
- Investigation: where evidences are to be collected.
- Inquiry: A judicial proceeding where judge ensures for himself before going on trial, that there are reasonable grounds to believe the person to be guilty.
- Trial: The term 'Trial' has not been defined in the Code but it means a judicial proceeding where guilt of a person is adjudged leading to a acquittal or a conviction based on evidences.

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- A Criminal Trial starts with framing of charges, if a person is not discharged – trial begins, by framing a charge (specific accusation).

After framing of charges the judge proceeds to take the ‘plea of guilt’ which is an opportunity to the accused to acknowledge that he pleads guilty and does not wish to contest the case.

After plea of guilt is taken, if accused pleads ‘not guilty’ or court does not accept his plea of guilt, trial moves on – prosecutor then explains to the court the basic outline of the case and what evidence he proposes to lead in order to prove the same. He asks the court to summon witnesses so that court can record their evidence.

As the prosecution has to start leading evidence to bring the offence to the accused – it is said ‘The Burden of Proof lies on the prosecution’. When witnesses for the prosecution are called they are first examined by the prosecutor – then cross examined by the defence advocate, and with the leave of the court prosecutor can again examine to clarify the loopholes exposes during such cross examination.

# Victims and their participation in the criminal justice process:-

A victims' journey starts with the crime but then can take two different routes. Many victims may choose not to report the crime. As a result, they never come into contact with the criminal justice system. The crimes that such victims have experienced form part of the "dark figure" of crime (the unquantifiable number of crimes that occur, but are not reported). A smaller number of crime victims opt to report the crime and attempt to navigate through the criminal justice system.

Reporting a crime to the relevant authority is the first step in the victim's journey of seeking to achieve justice through the criminal justice system. It is therefore important that the initial interaction with the victim is a positive experience for the victim: it not only sets the tone for the further criminal justice process but, in instances where the case does not go beyond the reporting and/or investigation stage, may represent the entire experience that the victim has with the system.

It is important that from the outset, i.e. at the reporting stage, that the criminal justice system acts in a victim-sensitive way. Among the elements that will define whether or not the victim can develop trust in the process are: the way questions are asked and how physical evidence is collected; the environment and atmosphere to which victims are exposed while reporting the crime; and whether comprehensive information on the process is provided. The need for a victim sensitive approach continues at the investigation and trial stage.

The traditional role of victims in a trial is often perceived to be that of a witness of the prosecution. It is common that victims are required to provide testimony about what has happened to them without being given a true choice as to whether they would like to do so, or the terms on which they would like to share this information.

Victims in role of witness are obliged to provide information, and they may feel that they have no power. They may be asked questions by the judge, the public prosecutor, and/or the defense lawyer, which they feel they need to answer.

Some countries, including the United States and Canada, offer victims the opportunity to make their voices heard by allowing so-called victim impact statements (VIS). When this approach is taken, the victim can usually submit to the court a written statement in a prescribed format that will then be read out in trial. One purpose of such statements is to allow the person or persons most directly affected by the crime to address the court during the decision-making process with a view to personalizing the crime and elevating the status of the victim. From the victim's point of view, VIS are often regarded as valuable in aiding their emotional recovery from their ordeal. It has also been suggested that through their statements, victims may confront an offender with the impact of the crime and thereby contribute to rehabilitation.

VIS may also play a role in determining the sentence: the court, when determining the sentence '*shall consider*' any statements provided by the victims describing the impact of the crime and the harm and damages suffered. However, the court has no obligation to follow the victim's preference, a circumstance which may cause further frustration.

Another form of victim participation, mainly present in countries of French legal tradition, such as Algeria, Belgium, the Democratic Republic of the Congo, or France, is for the victim to play the role of '*civil party*' within the criminal justice process. Subject to the provisions in the respective national legislation, this may allow the victim to be represented by a lawyer, to pose questions to witnesses and the accused, to make initial and closing remarks, and to have access to information contained in the case file. NGOs, victim associations or other third parties may also be represented as a "civil party" in such processes, in particular in cases of mass victimization or structural victimization.