UNIT-I INTRODUCTION

- The rationale of criminal procedure: the importance of fair trial, the constitutional perspectives
- Pre trial Process: Arrest
- The distinction between cognizable and non-cognizable offences: relevance and adequacy problems
- Steps to ensure accused's presence at trial: warrant and summons
- Arrest with and without warrant (Section 70-73 and 41)
- The absconder status (section 82, 83, and 85)
- Right of the arrested person: Right to know grounds of arrest (Sec.50(1), 55,75)
- Right to be taken to magistrate without delay (Section 56,57)
- Right to not being detained for more than twenty- four hours (section 57):
  Vis-a-vis Article 22(2) of the Constitution of India
- Right to consult legal practitioner, legal aid and the right to be informed about rights to bail.
- Right to be examined by a medical practitioner (section 54)

SEARCH AND SEIZURE (PRE-TRIAL PROCESS)

- Search warrant (section 83, 94,97, 98) and search without warrant
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INTRODUCTION

The Code of Criminal Procedure, 1973 (Cr.P.C.) is the main legislation on procedure for administration of substantive criminal law in India. It provides the machinery for the investigation of crime, apprehension or arrest of suspected criminals, collection of evidence and determination of guilt or innocence of the accused person through a defined process called trial followed by the determination of punishment of the guilty. Additionally, it also deals with provisions relating to maintenance of peace, public tranquility, removal of nuisance, prevention of offences and a very important quasi civil remedy i.e. maintenance of wife, child and parents.

The Act contains ***484 sections divided into 37 Chapters, 2 Schedules and 56 Forms***. It was enacted in 1973 & came into force on ***1st April, 1974***.

DEFINITIONS (Sec. 2)

In this Code, unless the context otherwise requires-

(a) "*bailable offence*" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

DISTINCTION BETWEEN BAILABLE & NON-BAILABLE OFFENCE

- The accused of bailable offence is **entitled to be released on bail, as a matter of right**, while the release of accused of non-bailable offence on bail is a **discretion of Court**.
- Bailable offence is **less serious in nature**, while non-bailable is **more serious in nature**.
- Generally, **offences punishable with imprisonment for less than three years** are ***bailable offence*** and **offences punishable with imprisonment with 3 years and more** are ***non-bailable offences***.
- An accused of bailable offence **cannot apply for anticipatory bail**, while an accused of non-bailable offence, **may apply for anticipatory bail.**

(b) "*charge*" includes any head of charge when the charge contains more heads than one:

(c) "*cognizable offence*" means an offence for which, and "**cognizable case**" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

(l) "*non-cognizable offence*" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

DISTINCTION BETWEEN COGNIZABLE & NON-COGNIZABLE OFFENCE

- In case of cognizable offence, **police may arrest the accused without warrant**, while in case of non-cognizable offence, **police generally does not have a power to arrest without a warrant.**
- Cognizable offence is **more serious in nature** while non-cognizable offence is **less serious in nature.** Examples of cognizable cases would be murder, dowry death, grievous hurt, theft etc. Examples of non-cognizable offences would be keeping a lottery office, voluntarily causing hurt, dishonest misappropriation of property.

- **Offences punishable with imprisonment for 3 years and more are cognizable, while offences punishable with imprisonment for less than 3 years are non-cognizable,** except some exceptions.
- **Police has to record information about a cognizable offence in writing as per Section 154**, while **as per Section 155, Police has to enter information in register prescribed for it and refer the informant to a magistrate.**
- In matter of cognizable offence, **police may investigate the case without order or direction of magistrate**, while in non-cognizable cases **police cannot investigate the case without order or direction of magistrate.**
- In cognizable cases, **FIR is lodged in a police station**, while in non-cognizable case **complaint is lodged in Court of Magistrate.**

(d) "*Complaint*" means any allegation made orally or in writing to a Magistrate, with a view to his taking action, under the Cr.P.C., that some person, whether known or unknown, has committed an offence, but does not include a police report .

Explanation: A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

This explanation should be read with section 155 of the Code according to which, a police officer cannot investigate into a non-cognizable offence without the order of the Magistrate. The information of the non-cognizable offence is entered into the Diary Book. When any police officer produces copy of the entry of diary regarding commission of non-cognizable offence and obtains permission of the Magistrate to investigate into the offence and submits report to the Magistrate that report disclosing after investigation the commission of a non-cognizable offence is referred to by the section 2(d) of Cr.P.C to be deemed as complaint.

INGREDIENTS OF A COMPLAINT

- It may be an oral or a written allegation. It need not be in any particular prescribed form. A telegram or a letter addressed to the Magistrate and containing that some person has committed an offence is sufficient to constitute a complaint.
- The complaint should contain a fact that some person, known or unknown has committed an offence.
- It should be made to a Magistrate. Hence a report by the police or CBI to the Hon'ble High Court is not a complaint.
- The allegation must be made with a view to the Magistrate's taking action according to the Cr.P.C. This taking action is not an administrative action.

DISTINCTION BETWEEN COMPLAINT & FIR

- Complaint is an allegation made orally or in writing to a magistrate, while FIR is information given to police about any cognizable offence.
- Complaint is filed on oath, while for FIR oath is not required.
- Complaint itself is substantial evidence but FIR is not substantial evidence.
- Complaint may be filed in both cognizable and non-cognizable cases, while FIR is lodged only in cognizable cases.

- In complaint case investigation is not conducted, unless magistrate so directs, while in case of FIR, investigation is essential.
- In case of complaint, investigation is held only, on direction or order of magistrate while in case of FIR for investigation, there is no need of order or direction of magistrate.

(g) "*inquiry*" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) "*investigation*" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

DISTINCTION BETWEEN INVESTIGATION, INQUIRY AND TRIAL

- Investigation is the first stage; inquiry is the second stage, while trial is the third stage of any criminal proceedings.
- Investigation is conducted by police for collection of evidence; inquiry is made by magistrate or judge to scrutinize the evidences on record whether oral or documentary just to ensure that a proper investigation has been conducted and a trial is warranted in the particular case. Trial is held by court to find out guilt or innocence of accused.
- Investigation is purely non-judicial proceeding whereas inquiry may be judicial or non-judicial proceeding, while trial is purely a judicial proceeding.
- Investigation ends with submission of charge sheet. Inquiry ends with charge or discharge. While trial ends with conviction or acquittal.

(i) "*judicial proceeding*" includes any proceeding in the course of which evidence is or may be legally taken on oath;

(n) "*Offence*" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871.
Further ***Section 39(2)*** says that act committed outside India is also an offence if that act would be an offence if committed in India.

GENERAL CONCEPT OF OFFENCE

A violation of a penal law is an offence. Thus, any act which is deemed as an offence by any law is an offence. In general, such act which causes a violation of rights of others or cause harm to others and is so dangerous that is also affects the society at large is designated as offence by the legislature through the acts of the parliament.

It is important to note that an act is not offence unless it is clearly defined as an offence by any piece of legislature. Thus, to be an offence, the legislature must designate it to be an offence. Several Acts and Legislations define such acts which constitute offences. The main among them is the Indian Penal Code. It defines acts ranging from theft and murder to fraud and criminal breach of trust and makes them offences. Examples of other acts which define offences are Wildlife Protection Act, Prevention of Corruption Act, Narcotic Drugs and Psychotropic Substances Act, Environmental Protection Act. Some Acts such as Prevention of Corruption Act and Narcotic Drugs and Psychotropic Substances Act also specify the

mode of trial for the offences that they define, while some specify that trial for their offences will be held as per the provisions of Cr.P.C.

(o) "***officer-in-charge of a police station***" includes, when the officer-in-charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present;

(r) "***police report***" means a report forwarded by a police officer to Magistrate under sub- section (2) of section 173;

(u) "***Public Prosecutor***" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

(w) "***summons-case***" means a case relating to an offence, and not being a warrant-case;

(x) "**warrant- case**" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

SUMMONS CASE	WARRANT CASE
Cr.P.C. prescribes only one procedure for all summons cases, whether instituted upon a police report or otherwise.	Cr.P.C. prescribes two procedures for the trial of a warrant case by magistrate- one for cases instituted upon a police report and one for cases instituted otherwise than on a police report.
No formal charge needs to be framed only the particulars of the offence need to be conveyed to the accused.	A charge needs to be framed against the accused.
As per Sec.252, if the accused pleads guilty, the magistrate must record the plea of the accused and may, in his discretion, convict him on such plea.	As per S. 241, after the charge is framed, the accused may plead guilty and the magistrate may convict him on his discretion.
Accused may plead guilty by post without appearing before the magistrate.	Accused must appear personally.
The accused may be acquitted, if the complainant is absent or if the complainant dies.	Magistrate can discharge the accused if complainant is absent, or no charge is framed, or if the offence is compoundable and non cognizable.
The complainant may, with the permission of the court, withdraw the complaint against the accused.	The complainant may, with the permission of the court, withdraw the remaining charges against an accused, if he is charged with several offences and convicted on one or more of them.
When a warrant case is tried as a summons case and if the accused is acquitted under Sec.255, the acquittal will only amount to discharge.	When a summons case is tried as a warrant case and if the accused is discharged under Sec.245, the discharge will amount to acquittal.
Trial of a warrant case as a summons case is a serious irregularity and the trial is vitiated if the accused has been prejudiced.	Trial of a summons case as a warrant case is an irregularity which is curable under Section 465.
A summons case cannot have charges that require a warrant case.	A warrant case may contain charges that reflect a summons case.

No such power to the magistrate in summons case.	After convicting the accused, the magistrate may take evidence regarding previous conviction not admitted by the accused.
Summons case is less serious in nature.	Warrant case is more serious in nature.
All cases which are <u>not</u> punishable by death, imprisonment for life, or for more than two years are summons cases.	All cases which are punishable by death, imprisonment for life, or for more than two years are warrant cases.
<u>Conversion</u> As per Sec. 259, a summons case can be converted into a warrant case if the case relates to an offence that entails more than 6 months of imprisonment as punishment and the judge feels that in the interest of justice, the case should be tried as a warrant case.	A warrant case cannot be converted into a summons case.

CRIMINAL COURTS UNDER Cr.P.C. AND THEIR SENTENSING POWERS (SEC. 26, 28, 29)

COURTS	POWER OF SENTENCING AND FINE
SESSIONS JUDGE AND ADDITIONAL SESSIONS JUDGE	**Any sentence authorized by law**. But **death sentence to be confirmed by the High Court. (Refer Sec.366)**
ASSISTANT SESSIONS JUDGE (ASJ)	Imprisonment upto **10 years and fine authorized by law**
CHIEF JUDICIAL MAGISTRATE (CJM)	Imprisonment upto **7 years and fine authorized by law**
JUDICIAL MAGISTRATE I CLASS (JMFC)	Imprisonment upto **3 years and fine not exceeding Rs. 10,000.**
JUDICIAL MAGISTRATE II CLASS (JMSC)	Imprisonment upto **1 year and fine not exceeding Rs. 5,000**

ARREST

SYNOPSIS

1) Meaning of Arrest.
2) How arrest is made?
3) Arrest by police of a person without an order from a magistrate and/or without a warrant.
4) Rights of an arrested person.
    a) Right to know the grounds of arrest, Art 22(1), Sec 50, 50(A),
    b) Right to consult and to be defended by legal practitioner of his choice - Art 22(1), Sec 303,
    c) Right to legal aid - Art 21, Sec 304,
    d) Right to bail Sec 50(2),
    e) Right to be produced before nearest magistrate within 24 hrs - Art 22(2) Sec 56, 57,
    f) Right not to be detained in custody beyond 24 hrs - Art 22(2) Read with Sec 57, 167,
    g) Right to be examined by medical practitioner

Arrest means apprehension of a person by legal authority so as to cause deprivation of his liberty. Arrest is an important tool for bringing an accused before the court as well as to prevent the happening of a crime or prevent a person suspected of doing crime from running away from the law. ***Sections 41 to 44*** contain basic provisions regarding arrest. There are situations when a person may be arrested by a police officer, a magistrate or even private citizen without a warrant. These are described in Section 41, 42, 43, and 44 as follows-

Arrest by Police (Sec 41)

(1) ***Any police officer may without an order from a Magistrate and without a warrant, arrest any person-***

(a) who has been ***concerned in any cognizable offence***, *or* ***against whom a reasonable complaint has been made***, *or* ***credible information has been received***, *or* ***a reasonable suspicion exists***, of his having been so concerned; or

(b) who has in his ***possession without lawful excuse***, the burden of proving which excuse shall lie on such person, ***any implement of house-breaking***; or

(c) who has been ***proclaimed as an offender*** either under this Code or by order of the State Government; or

(d) in whose ***possession*** anything is found which may ***reasonably be suspected to be stolen property*** and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who ***obstructs a police officer while in the execution of his duty***, or who has ***escaped***, or ***attempts to escape, from lawful custody***; or

(f) who is ***reasonably suspected of being a deserter from any of the Armed Forces of the Union***; or

(g) who has ***been concerned in***, or ***against whom a reasonable complaint has been made***, or ***credible information has been received***, or a ***reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence***, and for which he is, under any law relating to ***extradition***, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, ***being a released convict, commits a breach of any rule made under sub-section (5) of section 356***; or

(i) ***for whose arrest any requisition, whether written or oral, has been received from another police officer***, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer-in-charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

Sec.151- Arrest to prevent the commission of cognizable offences

A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented

Sec.41A - deals with notice of appearance before police officer
Sec.41B - deals with procedure of arrest and duties of officer making arrest
Sec.41C - deals with control room at districts and
Sec.41D - deals with right of arrested person.

Section 42 allows a police officer to ***arrest a person committing in such officer's presence or who has committed a non-cognizable offence, if he refuses to give his name and residence or gives a name or residence which such officer has reason to believe to be false, in order that his name or residence may be ascertained.***

Such person must be released when the true name and residence of such person have been ascertained. Such person may be required to execute a bond, with or without sureties, to appear before a Magistrate if necessary. For a non resident in India, the bond shall be secured by a surety or sureties resident in India. If true name and residence of such person could not be ascertained within twenty-four hours from the time of arrest or if he fails to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith (i.e. immediately) be forwarded to the nearest Magistrate having jurisdiction.

Arrest by private person (Sec.43)

Even a private person is empowered to arrest a person for protection of peace in certain situations. This is important because police cannot be present at every spot where an offence may be committed and it is up to private citizens to protect the society from disruptive elements or criminals. As per section 43(1), any ***private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station, without any reasonable delay.***

If he keeps the person in his own custody, he will be guilty of wrongful confinement as given in Section 342 of IPC. As per section 43(2), if there is reason to believe that such person comes under the

provisions of section 41, a police officer shall re-arrest him. Further, as per section 43(3), if there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

A new provision has been incorporated as Section 50A, which makes it obligatory for the police officer or any other person making an arrest to give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information. Further, the police officer shall inform the arrested person of his rights as soon as he is brought to the police station. He must make an entry of the fact as to who has been informed of the arrest of such person in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government. It is the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of this section has been complied with in respect of such arrested person.

Arrest by Magistrate

As per ***Section 44(1)***, when any ***offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender***, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody. A magistrate can arrest any person if he is competent at the time and in the circumstances to issue a warrant against such person. Important thing to note here is that magistrates have wider power than private citizen. A magistrate can arrest on the ground of any offence and not only on cognizable offence.

Arrest how made

Section 46 describes the way in which an arrest is actually made. As per **Section 46(1)**, ***unless the person being arrested consents to the submission to custody by words or actions, the arrester shall actually touch or confine the body of the person to be arrested.*** **Section 46(2)** provides that if such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person ***may use all means necessary to effect the arrest***. Thus, if the person tries to runaway, the police officer can take actions to prevent his escape and in doing so, he can use physical force to immobilize the accused.

However, as per Section 46(3), there is no right to cause the death of the person who is not accused of an offence punishable with death or with imprisonment for life, while arresting that person. Further, as per Section 49, an arrested person must not be subjected to more restraint than is necessary to prevent him from escaping. Further, Sec.47 provides for the rules regarding search of place entered by person sought to be arrested.

Due to concerns of violation of the rights of women, a new provision was inserted in **Section 46(4)** that ***forbids the arrest of women after sunset and before sunrise, except in exceptional circumstances, in which case arrest can be done by a woman police officer after making a written report and obtaining a prior permission from the concerned JMFC.***

RIGHTS OF AN ARRESTED PERSON

Cr.P.C. gives wide powers to the police for arresting a person. Such powers without appropriate safeguards for the arrested person will be harmful for the society. To ensure that this power is not used arbitrarily, several restraints have been put on it, which are actually the recognition of the rights of a person being arrested. In order to meet the needs of "fair trial" and justice, several provisions are given in Cr.P.C. that give specific rights to an arrested person. These rights can be described as follows –

1. Right to know the grounds of arrest [Section 50(1)] - According this provision, every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. Even a subordinate officer deputed by a senior police officer to arrest a person under Section 55, is duty bound to notify the person to be arrested of the substance of the written order given by the senior officer, which clearly specifies the offence for which he is being arrested. The same provision exists in case of an arrest made under a warrant in Section 75. In this case, the police officer or any person making arrest under warrant must notify the substance of the warrant to the person being arrested and if required, must show the warrant. If the substance of the warrant is not notified, the arrest would be unlawful. Right to be notified of grounds of arrest is a quintessential right of the arrested person as this allows him to move the proper court for bail, make a writ petition for habeas corpus, or make appropriate arrangements for his defence.

This right is also a fundamental right given by the Constitution in ***Article 22(1)***, which says, "*No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*" It embodies two distinct rights - the right to be informed about the grounds of arrest and the right to consult a legal practitioner of his choice. Supreme Court held in various cases that grounds of arrest must be communicated to the person in the language that he understands otherwise it would not amount to sufficient compliance of the constitutional requirement.

2. Right to be informed of the provision for bail [Section 50(2)]

Some offences that are not very serious and do not require the offender to be kept in custody. For such offences (Technically mentioned in Cr.P.C. as a **bailable offence**), Cr.P.C. allows the offender to ask for **bail as a matter of right**. However, not every person knows about Cr.P.C. and so they cannot know that they can get bail immediately. Thus, **Section 50(2) provides that where a police officer arrests any person other than a person accused of a non-bailable offence without warrant, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.**

3. Right to be taken to magistrate without delay **-** Holding a person in custody without first proving that the person is guilty is a violation of human rights as well as fundamental rights as enshrined in Constitution and is completely unfair thus amounting to an injustice. At the same time, holding a person in custody is necessary for the police to carry on their investigation. These two are contradictory requirements and a balance must be found between them. Since police has arrested the person, it cannot be the agency that determines whether person must be kept confined further. This can only be decided by a competent judicial authority. This is exactly what is embodied in Art.22(2) of Indian Constitution that gives a fundamental right to the arrested person that he must be produced before a magistrate within 24 hours of arrest. It says, "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

Section 57 of CrPC also contains a similar provision for a person arrested without a warrant. It says, "No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under **Section 167**, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court."

Section 76 contains a similar provision for a person arrested under a warrant - This is a very important right meant to prevent abuse of police power. It prevents arrest merely for the purpose of

extracting confessions. The arrested person gets to be heard by a judicial authority that is independent of the police and is unbiased or impartial. This is a healthy provision that allows magistrates to keep a check on the police investigation. It is necessary that the magistrates should try to enforce this requirement and when they find it disobeyed, they should come heavily upon the police. Constitutional Perspective on Art 22(2) shows that on the face of it, Art. 22(2) seem to be applicable on arrests with or without warrants.

4. Right to consult Legal Practitioner [Art 22 (1)] **-** For conducting a fair trial it is absolutely necessary that the accused person is able to consult with a legal practitioner whom he trusts. Second part of Article 22(1) gives this fundamental right to an arrested person. It says that no person who is arrested shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. However, this does not mean that the State must provide a legal practitioner of the person's choice. It is up to the arrested person to contact and appoint such a legal practitioner. The State's responsibility is only to ensure that he is not prevented from doing so. The same right is also provided by Section 303, Cr.P.C. which says, "Any person accused of offence before a Criminal Court or against whom proceedings are instituted under this Code, may as a right be defended by a pleader of his choice."

5. Right to free legal aid [Art 21 and Sec. 304,Cr.P.C.] - A person who does not have the means to hire a legal practitioner is unable to defend himself appropriately. This creates a doubt on the fairness of the trial. Therefore, Section 304 provides that where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, Court shall assign a pleader for his defense at the expense of the State. Non-compliance of this requirement or failure to inform the accused of this right would vitiate the trial resulting into the setting aside of the conviction and sentence.

6. Right to be informed about the right to inform of his arrest to his relative or friend [Section 50A] **–** In order to ensure a fair trial and to improve people-police relationship, the Supreme Court in Joginder Kumar v. State of U.P. (1994), formulated the rules that make it mandatory on the police officer to inform a friend, relative, or any other person of the accused person's choice, about his arrest. These rules were later incorporated in Cr.P.C. under section 50A in 2005.

7. Right to be examined by a medical practitioner [Section 54(1)] - While Section 53 allows a police officer to get the accused examined by a registered medical practitioner, Section 54(1) gives the accused a right to get himself examined by a registered medical practitioner. Section 54 (1) says thus, "When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during, the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of Justice." While Section 53 is meant to aid the police in investigation, Section 54(1) is meant for the accused to prove his innocence. This right can also be used by the accused to prove that he was subjected to physical injury.

8. Right to be produced before a Magistrate within 24 Hors of arrest [Section 57 & 167]

In compliance of Art. 22 of the Indian Constitution, ***Section 57*** of the Cr.P.C. deals with the power of police as to how long they can keep an offender in custody when he has been arrested without a warrant. On the other hand, ***Section 167, sub-section (1) and (2)*** of the Cr.P.C. deals with the power of police as to how long they can keep an offender in custody ***with the order of Magistrate*** when he has been arrested without a warrant.

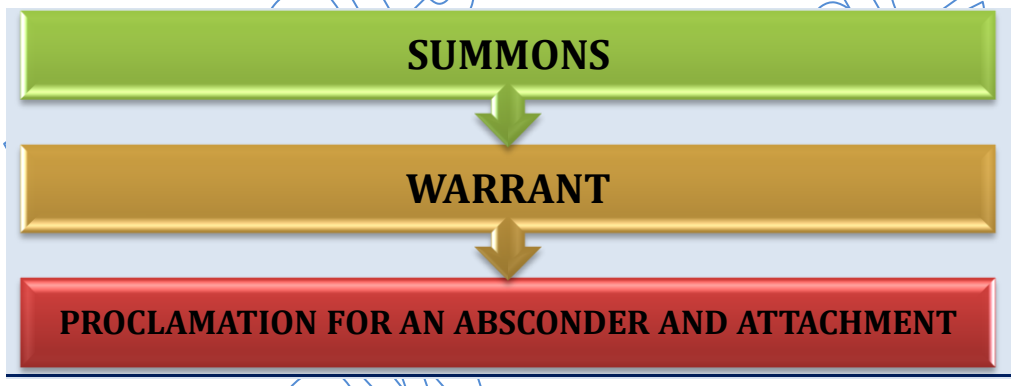
Section 57 of the Cr.P.C. lays down that no police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable,

and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty–four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Sec.167 provides that whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty–four hours fixed by the Sec. 57, and there are grounds for believing that the accusation or information is well founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-Inspector, shall forthwith (i.e. immediately) transmit to the nearest Judicial Magistrate a copy of the entries in the diary relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not the jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. This is what is popularly known as "***police remand***."

PROCEDURE UNDER CR.P.C. FOR COMPELLING APPEARANCE OF A PERSON IN COURTS



To meet the ends of justice, it is critical to produce the accused and other witness or related parties before the court whenever needed. If the accused is found guilty at the conclusion of the trial, he must be present in person to receive the sentence. Also, his presence is necessary if imprisonment is to be enforced. Further, the supremacy of the law will be questionable if there is no formal process to bring the required persons before the court. For this reason, **Chapter VI (Sections 61 to 90)** of Cr.P.C. provides three ways for compelling the appearance of any person who is required to be present in the court, in the court – Summons, Warrant, and Proclamation for person absconding followed by the attachment of his property.

While summons is an order of the court to the person to appear before it, warrant is an order of the court given to a third person to bring the person who is required to be present in the court. Which method is to be used in a particular situation depends on the judicial officer, who is guided by the provisions of this code and appropriate judicial discretion. The third method is used when the person has absconded or is in any other way avoiding arrest, in which case the Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

SUMMON

A Summons is a process issued by a Court, calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to a violation of the law. Typically, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person. The summons announces a date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Willful disobedience is liable to be punished under Section 174 of IPC. It is a ground for contempt of court.

As per ***Section 61***, every summons issued by a Court under this Code shall be ***in writing*** and ***in duplicate***. It must be signed by the presiding officer of the Court or by such other officer as the High Court may, from time to time, by rule direct. It must also **bear the seal of the Court**. The summons should contain adequate particulars such as **the date, time, and place, of the offence charged**. It should also contain **the date, time, and place where the summoned person is supposed to appear**. The standard format of a summons is given in Form 1 of Second schedule.

Procedure for issuing a Summons - When a request in appropriate format is made to the court for compelling the appearance for a person, the court either rejects the request or issues a summons. As per Section 204, if in the opinion of the magistrate taking cognizance of the offence, there is sufficient ground for proceeding, he shall issue a summons if it is a summons case. If it is a warrants case, he may issue a warrant or a summons as he thinks fit. However, Sec.87 empowers a magistrate to issue a warrant even if the case is a summons case if he has reason to believe that the summons will be disobeyed. He must record his reasons for this action. As per Section 205, a magistrate issuing the summons may permit the accused to appear by his lawyer if he sees reason to do so.

Procedure for serving a Summons **[Section 62]**- Cr.P.C. describes the procedures for serving a summons on various categories of individuals - a person, a corporate body, a government servant, and a person residing outside the jurisdiction of the court. Section 62 describes the following procedure for serving a Summons on a person-

- **Every summons shall be served by a police officer or by an officer of the Court issuing it or other public servant**.
- The summons shall, **if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.**
- **Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.**

Service of summons on corporate bodies and societies (Section 63)- By serving it on the secretary, local manager or other principle officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India.

Service when persons summoned cannot be found (Section 64)- Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served **by leaving one of the duplicates for him with some adult male member of his family residing with him**, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

[Note: **A servant is not considered to be a member of the family within the meaning of this section.]**

Procedure when service cannot be effected as before provided (Sec. 65)**-** If service cannot by the exercise of due diligence be effected as provided in section 62, section 63, or section 64, **the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides.**

The service of summons on a witness can also be done by post [Sec. 69]

Service of summons on a Government employee (Section 66)**-** By sending the summons in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section. Such signature shall be evidence of due service.

Service of summons outside local limits of jurisdiction (Section 67) **-** It shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is believed to be there for service.

WARRANT OF ARREST

Chapter VI (Sections 61 to 90) of Cr.P.C. provides two ways for compelling the appearance of any person who is required to be present in the court, in the court - ***Summons and Warrant*****.**

A warrant of arrest is a written authority given by a competent magistrate for the arrest of a person. It is addressed to a third person, usually a police officer, to apprehend and produce the offender in front of the court. When a summons is not productive in making a person appear before the court, the court may issue a warrant to a police officer or any other person to forcibly produce the required person before the court.

Essential Elements of a valid warrant**–**

1. The warrant must clearly mention the name and other particulars of the person to be arrested. As per ***Section 70(1)*****, every warrant of arrest shall be in writing. It must be signed by the presiding officer of the court and must bear the seal of the court. As per section 70(2), a warrant remains in force until it is cancelled or is executed.**

2. ***It must show the person to whom the authority to arrest has been given (Sec. 72)***-A warrant is normally directed to one or more police officers but, if necessary, the court may direct it to any other person or persons. Further, Sec. 73 provides that a magistrate may direct a warrant to any person within his jurisdiction for the arrest of any escaped convict, proclaimed offender, or of any person who is accused of a non-bailable offence and is evading arrest.

3. ***It may include a direction that if the person arrested under the warrant executes a bond and gives security for his attendance in court, he shall be released. Warrant with such a direction is called as bailable warrant of arrest.***

4. ***It must clearly specify the offence.***

Procedure for issuing a warrant **-** When a request in appropriate format is made to the court for compelling the appearance for a person, the court either rejects the request or issues a warrant. As per Section 204, if in the opinion of the magistrate taking cognizance of the offence, there is sufficient

ground for proceeding, and if the case is a warrant case, he may issue a warrant or if he thinks fit, he may issue a summons.

Procedure for executing a warrant **-** As per ***section 75***, a warrant can be executed by showing the substance of the warrant to the person to be arrested. If required, the warrant must be shown to the person arrested. ***Section 76*** mandates that the person executing the warrant must produce the arrested person before the magistrate without unnecessary delay and within 24 hours excluding the time taken for travel from the place of arrest to the magistrate.

As per ***Sec. 77*****, a warrant may be executed anywhere in India.** Section 78 specifies that if a warrant is to be executed outside the local jurisdiction of the court issuing it, such court may send it to the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed instead of directing it to the police officer within the jurisdiction of the issuing court.

Section 79 specifies the procedure for executing a warrant outside the local jurisdiction of the issuing court.

Section 87 provides for issue of warrant in lieu of, or in addition to, summons.
When can a warrant be issued for recovery of a fine [Sec.421]- When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender; or

(b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter. In this case, the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law.

WHEN CAN A PERSON BE DECLARED ABSCONDER? PROCLAMATION AND ATTACHMENT [SEC. 82, 83, 84, 85]

At times, a person accused of an offence is absconding or is hiding from his place of residence so as to frustrate the execution of a warrant of arrest and he could not be traced out for effecting arrest with the help of warrant and therefore the Court requires to make a publication in writing to make the accused aware that he is required to appear at a specified place and at a specified time ***not less than thirty days*** from the date of such publication. This publication is called ***proclamation***. When such proclamation is published and the accused is declared by the Court as a proclaimed offender anyone can arrest the accused from anywhere and hand over him to the nearest police station as a proclaimed offender. Further the Court issuing an order of proclamation may simultaneously issue an order to attach the movable or immovable property of the accused. Effect of the order of attachment is that the property, movable or immovable, comes within the purview of legal encumbrances. **Section 82 and 83 provide when and under what circumstances proclamation and attachment, respectively, can be made.**

Consequences of Proclamation [Section 83] - Attachment of property of person absconding

The publication of proclamation in accordance with the procedure described in Sec. 82, is the last of the steps taken to produce a person before the court. ***If the person still fails to appear before the court after the process of proclamation, Sec. 83 empowers the court to attach the property of the person who is absconding at any time*****.** The property can be movable or immovable. The property can be any property within the district or even outside the district as the District magistrate of the other district endorses the proclamation. Further, if, at the time of making proclamation, the court is satisfied that the

person is about to dispose of his property or is about to move his property out of the jurisdiction of the court, it may order the attachment of the property simultaneously with the issue of proclamation. If the property to be attached is in a debt or is a movable property, the attachment is done either by seizure, by the appointment of a receiver, by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf. Court can also use any one or more of these modes as it think fit. If the property is immovable, it can be attached by taking possession, by appointing a receiver, by an order prohibiting the payment of rent to the proclaimed persons or by any or all of these methods.

Sec. 84 **provides a means to protect the interests of any person other than the proclaimed person in the attached property.** Any such person who has an interest in the attached property **can claim it within six months from the date of attachment on the ground that the claimant has an interest in the property and the interest is not liable to be attached under section 83.** The claim shall be inquired into and may be allowed or disallowed in whole or in part. Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, ***within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute*****;** but subject to the result of such suit, if any, the order shall be conclusive.

Release, Sale, and restoration of the property (Sec. 85)- If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment. If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it ***shall not be sold until the expiration of six months from the date of the attachmen*****t** and until any claim preferred or objection made under section 84 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, appears voluntarily or is apprehended and brought before the Court and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein; such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale, and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

PROVISIONS RELATING TO SEARCH, SEARCH WARRANTS & SEIZURES

Sec 91 provides for issue of summons to produce a document or other thing.

When search-warrant may be issued (Sec. 93)-

(a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) Where such document or thing is not known to the Court to be in the possession of any person, or

(c) Where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, **it may issue a search-warrant**; and the person to whom such warrant is directed, may search or inspect.

Only District Magistrate or Chief Judicial Magistrate is authorized to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority. The search under Section 93 must be for some specific article or thing or document and not for stolen property. The law does not authorize for search of anything but specified articles which have been or can be made the subject of summons or warrant to produce. A general search-warrant can only be issued if the Court considers that the purpose of any enquiry, trial or other proceeding of the Code would be served by such search. General search warrant cannot be issued when the person, in whose possession a thing lay, is known and the place where the things lay is also known.

The power of search given by this Section includes also the power to take possession of the document or thing. Where the person against whom a search warrant is issued prays for the stay thereof and offers to produce the document or thing before the court whenever required, the magistrate has jurisdiction to stay execution of the warrant conditionally on the execution of a bond.

Search for persons wrongfully confined (Sec. 97)- District Magistrate, or Sub-divisional Magistrate or Magistrate of the first class may issue, a search-warrant to make a search for a wrongfully confines person.

Power to compel restoration of abducted females (Sec.98)- Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge or such child.

Search by police officer (Sec. 165) – Whenever an officer-in-charge of police station or a police officer **making an investigation** has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station. The general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

When officer-in-charge of police station may require another to issue search-warrant (Sec. 166)- An officer-in-charge of a police-station or a police officer not being below the rank of Sub-Inspector making an investigation may require an officer-in-charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

GENERAL PRINCIPLES OF SEARCH AND SEIZURE

Persons in charge of closed place to allow search (Sec. 100)

(a) Whenever any place liable to search of inspection is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(b) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(c) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(d) There should be two or more independent and respectable inhabitants of the locality to attend and witness the search. The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no witness of search shall be required to attend the Court unless specially summoned by it.

(e) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(f) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

***Power of police officer to seize certain property (Sec. 102)*- Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

OTHER IMPORTANT PROVISIONS RELATING TO BONDS UNDER Cr.P.C.

Chapter VIII makes provisions for security for keeping peace and good behavior.

***Security for keeping the peace on conviction (Sec.106)*- Court of Session or Court of a Magistrate of the first class** may order for execution of a bond, with or without sureties, for keeping peace for such period, **not exceeding three years**, as it thinks fit.

***Security for keeping the peace in other cases (Sec.107)*-** When an **Executive Magistrate** receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, **not exceeding one year**, as the Magistrate thinks fit.

***Security for good behaviour from persons disseminating seditious matters (Sec. 108)*-** When an **Executive Magistrate** receives information that there is within his local jurisdiction any person who, within or without such jurisdiction, either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of any seditious matter, or some matter amounting to criminal intimidation or defamation of Judge/Court or some obscene books or matter, may be ordered to execute a bond, with or without sureties, for his good behaviour for such period, **not exceeding one year**, as the Magistrate thinks fit.

***Security for good behaviour from suspected persons (Sec. 109)*-** When an **Executive Magistrate** receive information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, **not exceeding one year**, as the Magistrate thinks fit.

Security for good behaviour from habitual offenders (Sec. 110) **Executive Magistrate**/may order to execute a bond, with sureties, for good behaviour by such habitual offender or other such person as mentioned under Sec. 110, for such period, **not exceeding three years**, as the Magistrate thinks fit.

PROVISIONS FOR MAINTENANCE OF WIFE, PARENTS AND CHILDREN (Sec. 125-128)

Section 125 of the Cr.P.C. is enacted for social justice and specifically to protect the women and children as also old and infirm poor parents within the constitutional sweep of Art. 15(3) reinforced by Art.39 of the Constitution. Sec. 125 of the Cr.P.C. gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long they are unable to maintain themselves. Basic features of Sec. 125 are-

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) his legitimate or illegitimate child, not being a married daughter, who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) his father or mother, unable to maintain himself or herself,

a **JMFC** may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

(2) It is also provided that the Magistrate may order the father of a minor female child to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

(3) Such Magistrate may also order payment of the monthly allowance for the interim maintenance and expenses of proceeding till the pendency of proceedings and such application for the monthly allowance for the interim maintenance and expenses of proceeding shall as far as possible, be disposed of within 60 days from the date of the service of notice of the application to such person.

(4) For the purposes of maintenance, minor means a person who, under the provisions of the Indian Majority Act, 1875 is deemed not to have attained his majority. And wife includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

(5) If such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for doing so. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(6) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section-

(a) if she is living in adultery, or
(b) if, without any sufficient reason, she refuses to live with her husband, or
(c) if they are living separately by mutual consent.

Sec. 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, provides option to Muslims to be governed by the provisions of Sec. 125 of the Cr.P.C. Sec. 5 of the said Act says that a divorced Muslim woman can claim maintenance u/S.125 Cr.P.C. after passing of Muslim women (Protection of Rights on Divorce) Act, 1986, only when, on the date of the first hearing of the application for maintenance, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of section 125 to 128 of the Cr.P.C. (***Mohd. Ahmed Khan v. Shah Bano Begum***)

UNIT-II PRE-TRIAL PROCESS (FIR)

1) FIR (section 154)
2) Evidentiary value of FIR (Section 145 and 157 of Evidence Act)

PRE-TRIAL PROCESS: MAGISTERIAL POWERS TO TAKE COGNIZANCE

1) Commencement of proceedings (section 200, 201, 202)
2) Dismissal of complaints (section 203, 204)
3) Bail: concept, purpose: Constitutional overtones
4) Bailable and non-bailable offences (section 436, 437, 438)
5) Cancellation of bail [Section 437(5)].
6) Anticipatory bail (section 438)
7) Appellate bail powers (section 389 (1), 395 (1), 437 (5))
8) General principles concerning bond (section 441 - 450)

FIRST INFORMATION REPORT [FIR]

a) Meaning of FIR
b) Evidentiary value of FIR
c) Effect of delay in lodging FIR

The letters FIR mean ***First Information Report***. A First Information Report is an information or description of the situation and the act that constitutes a cognizable offence as given to the officer-in-charge of a police station by any person. Such information is signed by the person giving the information.

- It is information to the police station at first in point of time that an offence has been committed and on the basis of which the investigation is commenced.
- Vague, cryptic and indefinite telephonic information cannot be treated as FIR.
- If the information is given orally, it is reduced in writing by the officer-in-charge, read over to the informant, and then signed by the person.
- The substance of this information is also entered into a register which is maintained by the officer. This is the first time when an event is brought to the attention of the police.
- The objective of the FIR is to put the police in motion for investigating the occurance of an act, which could potentially be a cognizable offence.
- There cannot be two FIR's against the same accused in respect of the same offence. But rival versions in respect of the same episode may take the shape of two different FIR's and investigation can be carried on under both of them by the same investigating agency.
- Registering of FIR includes only the process of entering the substance of the information relating to the commission of cognizable offence in a book kept by the officer-in-charge of the police station. The information may relate to the commission of either cognizable offence or non-cognizable

offence. Sec. 154 deals with the cognizable offences and Sec. 155 deals with the non-cognizable offences.

Sec. 154 of Cr.P.C. lays down that every information relating to the commission of a cognizable offence, if given orally, to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Sec. 154 also says that any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, and such officer shall have all the powers of an officer-in-charge of a police station.

Section 155 makes provisions regarding non-cognizable cases. Substance has to be entered in a book kept for the purpose in Police Station. It further provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Any police officer receiving such order to investigate may exercise the same power in respect of investigation, except the power to arrest without a warrant, as an officer-in-charge of a police station may exercise in a cognizable case. Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

EVIDENTIARY VALUE OF FIR AND EFFECT OF DELAY

A FIR is not substantive evidence that is it is not evidence of the facts which it mentions. However, it is very important since it conveys the earliest information about the occurrence of an offence and it can be used to corroborate the information under Sec. 157 of Indian Evidence Act or to contradict him under Sec. 145 of Indian Evidence Act, if the informant is called as a witness and he appears in court in a trial. It is considered that FIR has a better corroborative value if it is recorded before there is time and opportunity to embellish or before the memory of the information becomes hazy. The FIR can only discredit the testimony of its maker. It can by no means be utilized for contradicting or discrediting the other witnesses.

The law has not fixed any time for lodging the FIR. In different judicial pronouncements it has come out that the FIR should be filed as promptly as possible and if delayed, the explanation for delay should be given in the FIR because delay in lodging the FIR often results in embellishment, which is a creature of an after-thought. If the delay is unreasonable and not satisfactorily explained, it becomes fatal for the prosecution case. But where the delay is reasonable and was satisfactorily explained, the delay cannot by itself be a ground for disbelieving and disregarding the entire prosecution case.

If the FIR is made by the accused himself, it cannot be used against him because of Sec. 25 of Evidence act which forbids any confession made to the police to be used against the accused. A FIR can also be used as a dying declaration under Section 32 of Indian Evidence Act.

Police officer's power to investigate cognizable cases (Sec.156)- Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. No proceeding of a police officer in any such case shall at any stage be called in

question on the ground that the case was one which such officer was not empowered under this section to investigate as it is a judicial principle that whatever a public officer does, he does it in good faith. Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.

Procedure for investigation has been prescribed under Sec. 157
Sec. 160 empowers a Police Officer to require attendance of witnesses in the course of investigation for recording their statements after which

Sec. 161 empowers the police to examination of such witnesses.

Sec. 162 makes 2 distinct provisions- First, statements to police not to be signed, and Secondly, prescribes the use of such recorded statements in evidence.
When any witness is called for by the prosecution in such inquiry or trial whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Sec. 163 provides for a mandatory restriction that no inducement should be offered to any witness.

Sec. 164 provides for the manner of recording of confessions and statements during investigation.
Procedural requirement of Sec. 164 Cr.P.C are—

(a) Any metropolitan magistrate or judicial magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation, before the commencement of the inquiry or trial.
(b) The magistrate, before recording any such confession, is duty bound to explain to the person making it that he is not bound to make a confession and that, if he does so it may be used against him and the magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.
(c) If at any time before confession is recorded, the person appearing before the magistrate states that he is not willing to make confession, the magistrate shall not authorize the detention of such person in police custody.
(d) Any such confession shall be recorded in the manner provided in section 281 Cr.P.C for recording the examination of an accused person and shall be signed by the person making the confession and the magistrate shall make a memorandum at the foot of such record.
(e) Sub-Section (5) provides for the mode of recording of statements (other than confessions) during the course of investigations.

Procedure when investigation cannot be completed in twenty-four hours (Sec.167)- The arrested person has to be produced before the Magistrate and if further custody is required for the purpose of investigation then, police remand has to be sought, which should not be given for more than 15 days in total after which the accused can only be sent in judicial remand which again has certain defined limits-

***(a) ninety days**, where the investigation relates to an **offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years**;*
***(b) sixty days**, where the investigation relates to any other offence,*

On the expiry of the said period of ninety days, or sixty days, as the case may be, **the accused person shall be released on bail (as a matter of right)** if he is prepared to and does furnish bail.

Sec. 172 provides for the maintenance of the diary of proceeding in investigation.
Sec. 173 provides for submission of report of police officer on completion of investigation.
Sec.174 makes provision for power of police to inquire and report on suicide, etc
Sec.176 provides for inquiry by Magistrate into the cause of death.

Inquiry under Sec. 174 and 176 are done with the purpose of somehow reaching to the apparent cause of death of persons who have died under unnatural circumstances.

PRE-TRIAL PROCEEDINGS
MAGISTERIAL POWERS TO TAKE COGNIZANCE

"Commencement of proceedings" happens with the proceedings that take place after "taking of cognizance" of an offence by a magistrate under Section 190. The term ***"taking cognizance"*** is not defined in the code, but generally taking cognizance of offence means ***taking judicial notice of the commission of an offence by a magistrate or judge***.

Magistrate takes cognizance u/Sec.190 while Court of Session takes cognizance u/Sec.193 after commitment of cases to him by the magistrate u/Sec. 209. However the Court of Session may take direct cognizance in cases of defamation of High dignitaries and public servant, if the complaint is made in writing by the public prosecutor u/Sec. 199(2) and in some other specified cases viz under NDPS Act, SC/ST Act etc.

Sec. 190 prescribes 3 modes of taking cognizance of offences-
Any magistrate of the First class and any magistrate of the second class specially empowered by CJM may take cognizance of any offence-

(a) **Upon receiving a complaint of facts** which constitute such offence.
(b) **Upon a police report** of such facts.
(c) **Upon information received from any person other than a police officer or upon his own knowledge,** that such offence has been committed.

When cognizance is taken upon a complaint made by any person, it is critical to examine the complainant to ensure that the complaint is genuine before starting the trial and summoning an accused. The frivolous and vexatious cases that are just meant to harass an accused must be rejected at the thresh-hold. This is exactly the objective of Section 200, which implores a magistrate to examine the complainant under oath and any witnesses.

Section 200 says- "**A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.**

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Sec. 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

Section 201 says that **if the magistrate is not competent to take cognizance** of an offence, he shall **(a)** if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect; **(b)** if the complaint is not in writing, direct the complainant to the proper Court.

To further protect a person from frivolous cases arising from complaints from private parties, ***Section 202*** empowers a **magistrate** to **inquire into the case himself** or **direct an investigation to be made by a police officer or by such other person as he thinks fit**, **for the purpose of deciding whether or not there is sufficient ground for proceeding** and he can postpone the issue for process for this purpose.

Issue of Process (Section 204)**-** Once it is determined that a prima facie case exists against the accused, the magistrate proceeds with the case as per **Section 204** by the way of issuing a process, which means-
If the case appears to be –

(a) **a summons-case**, he shall issue his summons for the attendance of the accused, or
(b) **a warrant-case**, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

In this Section, **no summons or warrant shall be issued against the accused until a list of the prosecution witnesses has been filed.**

In a proceeding instituted upon a complaint made in writing, every summons or warrant issued shall be accompanied by a copy of such complaint. No such summons or warrant shall be issued unless the required process fee has been submitted by the complainant.

Dismissal of a Complaint (Section 203)**-** As mentioned before, upon receiving a complaint, a magistrate can conduct an inquiry or direct investigation of the complaint under Section 202. **Section 203 empowers a magistrate to dismiss the complaint, if, after considering the statements on oath from the complainant or his witnesses or the result of the inquiry or investigation, he believes that there are no sufficient grounds for proceeding further, he must record the reasons for dismissal.**

After compliance of the proceedings as mentioned under Sections 204 to 208, if the magistrate finds that the offence is triable exclusively by the Court of Sessions then he will commit the case to Court of Session as per Sec. 209.

PROVISIONS REGARDING BAIL : CONCEPT, PURPOSE

The purpose of arrest and detention of a person is primarily to make sure that the person appears before the court at the time of trial and if he is found guilty and is sentenced to imprisonment, he must be made available to serve his sentence. However, if it is reasonably evident that the person charged with an offence can be made available for the above mentioned purposes without keeping him imprisoned, then it is unfair to keep him in custody until his guilt is proven. It is a violation of a person's fundamental right to restrict person's liberty without any just cause.

Bail is one such mechanism which is used to ensure the presence of an accused whenever required by the court. Cr.P.C. does not define the term bail. A person who is in custody, because he or she has been charged with an offence or is involved in pending criminal proceedings, may apply to be released on bail. Normally, in signing a bail agreement a person undertakes that he will be present every time the matter is in court until the proceedings are finished, will comply with any conditions set out in the agreement as to conduct while on bail, and the court will forfeit a specified sum of money if the person fails, without proper

excuse, to comply with any term or condition of the agreement. Two authorities that may grant bail are the police and the courts. A person may be required to provide a security as well.

What is a Bailable and Non-Bailable offence-

An offence can be classified as a bailable or a non-bailable offence. In general, a bailable offence is an offence of relatively less gravity and for which the accused has a right to be released on bail while a non-bailable offence is a serious offence and for it, the accused cannot demand to be released on bail as a right. More specifically, ***Section 2(a)*** defines bailable offence as well as non-bailable offence as follows–

"***Bailable offence***" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force and "non-bailable offence" means any other offence.

In general, the intention of the justice system is to give bail and not jail before the accused is convicted. It is said that since the accused is presumed innocence, he must be released so that he can fight for his defense. Thus, releasing a person on bail is a rule, while denying bail is an exception.

Provisions for Bail can be categorized by the type of offence committed i.e. bailable offence or non-bailable offence

Bail for Bailable offences – A person accused of a bailable offence can demand to be released on bail as a matter of right. This is provided for by Section 436 according to which "When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such court to give bail, such person shall be released on bail. Further, such officer or court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance.

Sec. 50(2) imposes an obligation on the police officer to notify the detained person about his right to get bail if he is detained on a bailable offence. The right to bail cannot be nullified or practically denied by imposing a very high amount for bail. Sec. 440(1) specifically provides that the amount of bail cannot be unreasonably high. An amendment to Sec. 436 mandates that an indigent person, who is unable to provide any bail amount, must be released. If a person is unable to provide bail amount for a week, then he can be considered indigent. Sec. 436-A allows a person to be released on his own surety if he has already spent half the maximum sentence provided for the alleged crime in jail. However, this does not apply if death is one of the punishments specified for the offence.

***Bail for non-bailable offences*–** When a person is detained for a non-bailable offence, he cannot demand to be released on bail as a matter of right. He can, however, request the court to grant bail. The provisions in this case are governed by Section 437. Here, bail cannot be claimed as a matter of right rather bail becomes a matter of discretion of the police officer or the Court. There are certain considerations that must be given regard to while giving bail in case of non-bailable offences. These are–

- ⇨ the nature of the crime
- ⇨ the nature of the charge, the evidence, and possible punishment
- ⇨ the possibility of interference with justice
- ⇨ the antecedents of the applicant and family circumstances
- ⇨ furtherance of the interest of justice
- ⇨ the intermediate acquittal of the accused
- ⇨ socio-geographical circumstances

- ⇨ prospective misconduct of the accused
- ⇨ the period already spent in prison
- ⇨ protective & curative conditions on which bail might be granted.

If the investigation is not done within 24 hours, the arrested person must be brought before the court and if required, the police must take police custody for further detention for the purpose of investigation. The court may extend the detention by 15 days. However, the detention cannot extend more than 60 days (or 90 days, if the offence is punishable by death or imprisonment for life), after which the accused must be released on bail. This provision applies for bailable as well as non-bailable offence.

SPECIAL POWERS OF HIGH COURT AND COURT OF SESSION REGARDING BAIL

Section 439 gives special powers to High Court and Court of Session regarding bails.

When can bail be denied–

1. As per Section 436(2), if a person has violated the conditions of the bail-bond earlier, the court may refuse to release him on bail, on a subsequent occasion in the same case. He can also be asked to pay penalty for not appearing before the court as per the conditions of the previous bail.

2. It is clear that the provision for bail in case of non-bailable offences gives a discretionary power to the police and court. However, this power is not totally without any restraint. Section 437 disallows bail to be given in the following conditions.

(a) if there appears reasonable grounds for believing that the person has been guilty of an offence punishable with death or imprisonment for life;

(b) if such offence is a cognizable offence and the person has been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence. The person may, however, be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.

Cancellation of Bail- As per ***Sec. 437(5)***, any Court which has released a person on bail under Sec. 437(1) or 437(2), may direct that such person be arrested and commit him to custody. This basically cancels the bail. However, it must be noted that only the court that has given the bail can cancel it. Thus, a bail given by a police officer cannot be cancelled by a court under this section. To do so the special power of High Court or Court of Session under Section 439 has to be invoked. The power given by Section 439 for cancellation has no riders. It is altogether a discretionary power. Bail may be cancelled on following grounds–

(a) When the accused was found tampering with the evidence either during the investigation or during the trial

(b) When the accused on bail commits similar offence or any heinous offence during the period of bail.

(c) When the accused had absconded and trial of the case gets delayed on that account.

(d) When the offence so committed by the accused had caused serious law and order problem in the society

(e) If the high court finds that the lower court has exercised its power in granting bail wrongly

(f) If the court finds that the accused has misused the privileges of bail

(g) When the life of accused itself is in danger

Appeal Provision for Bail- It has been held that an order granting bail is an interlocutory order and so it cannot be challenged under the revisional jurisdiction of the Session Court or High Court. In general, there is no right of appeal against the decision of refusing the bail. However, a person can always file for Special Leave Petition to High Court or Supreme Court against such decision.

ANTICIPATORY BAIL

It has been observed that many cases are instigated against a person just because of political motivation or personal vengeance. They lack enough evidence and are actually meant to harass a person by getting him arrested. When a person apprehends such situation he may apply to Court of Session or the High Court under ***Section 438*** for a direction that he be released on bail upon his arrest. This provision is commonly known as Anticipatory Bail, i.e. **bail in anticipation of an arrest in case of non-bailable offences.** Anticipatory bail is technically an incorrect term because a bail can be given only if a person has already been arrested. In this case, the court directs that the person be released on bail as soon as he is arrested. Thus, it is a direction to provide bail and not the bail itself.

While applying under this section, the person has to explain the circumstances because of which he believes he might be arrested. In granting such a direction the court takes into account the following considerations–

1. The nature and gravity of the accusation.
2. The antecedents on the applicant including the fact as to whether he has previously been imprisoned upon a conviction by a court in respect of a cognizable offence.
3. The possibility of the accused to flee from justice.
4. Whether the accusation has been made with the object of injuring or humiliating the applicant by having him arrested.

The order may also include conditions such as the person shall make himself available for interrogation by a police officer whenever required, the person shall not leave India, the person shall not make any inducement, threat, or promise to any person acquainted with the facts of the case, or any other condition that the court may think fit. It is clear from Sec. 438(1), that the power to grant anticipatory bail is given concurrently to Court of Session and High Court. Thus, a person can approach either of the courts to get this relief.

Refusal of Anticipatory Bail**-** Although, there is no specific provision that prohibits granting anticipatory bail, there are certain situations where such bail is normally not granted. These are-

1. In case of dowry death or wife harassment.
2. In case of economic offences
3. In case of atrocious crimes

Anticipatory bail cannot be applied for after the person is arrested. After arrest, the accused must seek remedy under Section 437.

Cancellation of Anticipatory Bail**-** There is no specific provision that allows a court to cancel the order of anticipatory bail. However, in several cases it has been held that when Section 438 permits granting anticipatory bail, it is implicit that the court making such order is entitled upon appropriate considerations to cancel or recall the order.

The High Court or the Session Court, as the case may be, shall dispose of the application u/s 438 of Cr.P.C within thirty days of the date of such application. It is also provided that where the apprehended accusation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, no final order shall be made on such application without giving the State not less than seven day's notice to present its case.

Anticipatory bail application can be moved directly to High Court instead of Session Court. If an application for anticipatory bail is dismissed by the Session Court, a similar application before the High Court is maintainable since such application is neither expressly nor impliedly barred.

Appellate bail powers- Sec. 389 provides for suspension of sentence pending the appeal; release of appellant on bail. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

GENERAL PROVISIONS CONCERNING BONDS (SEC. 441 TO 450)

Sec. 441 - *Bond of accused and sureties.*
Sec. 442 - *Discharge from custody.*
As soon as the bond has been executed, the person for whose appearance it has been executed shall be released.
Sec. 444 - *Discharge of sureties.*
Sec. 445 - *Deposit instead of recognizance.*
Sec. 446 - *Procedure when bond has been forfeited.*
Sec. 447 - *Procedure in case of insolvency or death of surety or when a bond is forfeited.*
Sec. 450 - *Power to direct levy of amount due on certain recognizances.*

UNIT-III FAIR TRIAL

1. Conception of fair trial
2. Presumption of innocence
3. Venue of trial
4. Right of the accused to know the accusation (section 221- 224) and accusation be held in the accused's presence
5. Right of cross- examination and offering evidence in defence: the accused's statement
6. Right to speedy trial

CHARGE

1. Framing of charge
2. Form and content of charge (section 211, 212, 216)
3. Separate charge for distinct offence (section 218, 219, 220, 221, 223)
4. Discharge : Pre-charge evidence

PRELIMINARY PLEAS TO BAR THE TRIAL

1. Jurisdiction (section 26, 177- 189, 461, 462, 479)
2. Time limitations: Rationale and scope (section 468 - 473)
3. Pleas of autrefois acquit and autrefois convict (section 300, and Art 20(b)
4. Estoppel
5. Compounding of offences
6. Trial before a Court of Sessions: Procedural steps and substantive rights
7. Summary Trial (Sec 260-265)

The right to a have fair trial is a basic right of an accused and it has to be ensured at every stage of a criminal trial. It is one of the most extensive human rights. It has been recognised even as a basic fundamental right in the Constitution of India. The aim of the right is to ensure the proper administration of justice. The right to fair trial includes the following rights in civil and criminal proceedings:

- the right to be heard by a competent, independent and impartial tribunal,
- the right to a public hearing i.e. right to be present and attend the proceedings of his trial,
- the right to be heard within a reasonable time,
- the right to counsel i.e. to engage a lawyer,
- the right to free legal aid,
- the right to speedy trial.

The elementary fact is that whenever an offence is committed, it is not only the victim (i.e. the aggrieved person) who suffers rather it is the society at large who is traumatised by such happening. Also, the State happens to be the guardian of the rights of the persons as a Constitutional mandate. This is why in criminal cases, the State represents the victim and prosecutes the case against the accused. Public prosecutors are the persons representing the State and the victim. On the other hand, there is every possibility that the so called accused might not be held guilty at the time of judgment which means he should not be tortured from the day of initiation of criminal proceedings against him. His rights are equally to be ensured till the time he is proven guilty. In a nutshell, there is a conflict of interests of the accused on one hand and the victim as well as the society represented through State on the other hand. Considering these, the procedural law i.e. Cr.P.C. makes every endeavour to strike a balance between these mutually conflicting interests. A fair trial is thus a mandate of the procedural laws which has to be ensured at every stage that is from the lodging of FIR till the conviction and even after the conviction.

1. ***Adversarial trial system*****-** The system adopted by the Criminal Procedure Code, 1973 is the adversary system based on the accusatorial method. In adversarial system responsibility for the production of evidence is placed on the prosecution with the judge acting as a neutral referee between the parties. On the contrary, in inquisitorial trial system responsibility for the production of evidence at trial is the job of the trial judge and it is the trial judge who decides which witnesses will be called at trial and who does most of the questioning of witnesses.

2. ***Presumption of innocence*****-** The basic underlying principle in criminal justice system is that ***the accused person is presumed to be innocent unless his guilt is proved beyond reasonable doubt.*** Actually this principle is based on legal motto that it is better that ten criminals escape than that one innocent person is wrongfully convicted. As a basic element of the right to a fair trial, the presumption of innocence means that the burden of proof in a criminal trial lies on the prosecution and that the accused has the benefit of doubt. The presumption of innocence is in fact a legal instrument created by the law to favour the accused based on the legal inference that most people are not criminals.

3. ***Independent, impartial and competent judges*****-** The basic institutional framework enabling the enjoyment of the right to a fair trial is that proceedings in any criminal case are to be conducted by a competent, independent and impartial court. Independence presupposes a separation of powers in which the judiciary is institutionally protected from undue influence by or interference from the executive branch. The rationale of this provision is to avoid the arbitrariness and biases that would potentially arise if criminal charges were to be decided on by a political body or an administrative agency. In a criminal trial, State happens to be the prosecuting agency as well as the investigating machinery and so it becomes critical to unchain the judiciary of all suspicion of executive influence and control, direct or indirect. In this regard, Sec. 6 of the Code is relevant which separates courts of Executive Magistrates from the courts of Judicial Magistrates. A similar duty has been casted upon the State under Article 50 of the Indian Constitution to take steps to separate the judiciary from the executive.

4. ***Venue of trial and public hearing*****-** Fair trial also requires public hearing in an open court. Right to public hearing is one of the essential elements reflecting a fair trial. The right to a public hearing means that the hearing should as a rule is conducted orally and publicly, without a specific request by the parties to that effect. The court is obliged to make information about the time and venue of the public hearing available and to allow the attendance of any interested members of the public, within reasonable limits. A judgment is considered to have been made public either when it was orally pronounced in court or when it was published, or when it was made public by a combination of those methods. Section 327 of the Code makes provision to the effect that trials of criminal cases should be conducted in open courts but it also gives discretion to the presiding judge or magistrate that if he thinks fit, he can deny the access of the public generally or any particular person to the court. The provisions pertaining to the venue or place of inquiry or trial are contained in Sections 177 to 189 of the Code. It is general rule that every offence is to be inquired into or tried by a court within whose local jurisdiction it was committed. Trial at any other distant place would generally mean hardship to the parties in the production of evidence and it would also adversely affect the defense preparation.

5. ***Knowledge of the accusation to be given*****-** It is also one of the attributes of the fair trial that the accused person is given adequate opportunity to defend himself. But this right cannot be fruitfully exercised unless the accused person is not informed of the accusation against him. But the Code considered the value of this object and provides under many provisions that when an accused person is brought before the court for trial, the particulars of the offence of which he is accused shall be stated to

him. In case of serious offences, the court is required to frame in writing a formal charge and then read and explain the charge to the accused person.

6. ***Trial in the presence of the accused*-** The general rule in criminal cases is that all inquiries and trials should be conducted in the presence of the accused person. The underlying principle behind this is that in a criminal trial the court should not proceed ex parte against the accused person. It is also necessary for the reason that it facilitates the accused to understand properly the prosecution case and to know the witnesses against him so that he can check their truthfulness in a later stage by cross-examination. Though the Code does not mandates presence of the accused in the trial but it can be indirectly inferred from the provisions which allow the court to dispense with the personal presence of the accused person under certain circumstances.

7. ***Evidence to be taken in the presence of the accused*-** It is of the essence that in a trial the evidence should be taken in the presence of the accused person. Section 273 of the Code provides that all evidence taken in the course of the trial shall be taken in the presence of the accused. Also there are certain exceptions to this rule that if the personal attendance of the accused is dispensed with, the evidence shall be taken in the presence of his pleader. The right created by this section is further supplemented by section 278, which provides that whenever the law requires the evidence of a witness to be read over to him after its completion, the reading shall be done in the presence of the accused, or of his pleader. These provisions enable the accused person to prepare his arguments for rebuttal of such evidences. Sec. 279 casts a mandatory duty on the court that whenever any evidence is given in any language not understood by the accused, it shall be interpreted to him in open court in a language understood by him. But non-compliance with this provision will be considered as a mere irregularity not vitiating the trial if there was no prejudice or injustice caused to the accused person.

8. ***Cross-examine prosecution witnesses*-** For the determination of any criminal charge against the accused he is entitled to examine the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This mandates that the parties be equally treated with respect to the introduction of evidences by means of interrogation of witnesses. The prosecution must inform the defense, of the witnesses it intends to call at trial within a reasonable time prior to the trial so that the defendant may have sufficient time to prepare his defense. Though, in adversarial trial system, the burden of proving the guilt is entirely on the prosecution and the law does not call for the accused to lead evidence to prove his innocence, yet the accused is given a right to disprove the prosecution case. The refusal without any legal justification by a magistrate to issue process to the witnesses named by the accused person would be a good enough to vitiate the trial.

9. ***Expeditious trial*-** In accordance with the judicial principle "justice delayed is justice denied", speedy trial is necessary to gain the confidence of the public in judiciary. Delayed trial defeats the objective of the re-socialization of the offenders too. Delayed justice leads to unnecessary harassment. Section 309(1) gives directions to the courts with a view to have speedy trials and quick disposals.

10. ***Prohibition on double jeopardy*-** The concept of double jeopardy is based on the doctrine of 'autrefois acquit' and 'autrefois convict' which mean that if a person is tried and acquitted or convicted of an offence, he cannot be tried again for the same offence or on the same facts for any other offence. This concept is embodied in Section 300 of the Code which provides that persons once convicted or acquitted not to be tried for the same offence or on the same facts for the other offence. This is based on a famous maxim '***nemo debet vis vexari pro una et eadem causa***' which means that no man should be put twice in peril for the same offence. Plea of double jeopardy is not applicable in case the proceedings for which the accused is being tried are distinct and separate from the offence for which the accused has

already been tried and convicted. Article 20(2) of the Constitution of India makes the said provision a Constitutional mandate.

11. ***Aid of counsel*****-** The requirement of fair trial involves two things:

(a) an opportunity to the accused to secure a counsel of his own choice; and

(b) the duty of the state to provide a counsel to the accused in certain cases.

The right is recognised because of the obvious fact that ordinarily an accused person does not have legal knowledge and the professional skill to defend him before a court of law wherein the prosecution is conducted by a competent and experienced prosecutor. In India, right to counsel is recognised as fundamental right of an arrested person under article 22(1) which provides that no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Sections 303 and 304 of the Code are manifestation of this constitutional mandate. Under Sec. 304 of the Code, the imperative duty arises only if the trial is before the Sessions Court, while in the cases before the Magistrate, the duty would arise only if the State Government issues a notification to that effect. Further, Article 39-A was also inserted in the Constitution as per Constitution (42nd Amendment) Act, 1976, which requires that the State should pass suitable legislations for promoting and providing free legal aid. To fulfill this Constitutional mandate, the Parliament enacted Legal Services Authorities Act, 1987.

CHARGE, CONTENTS OF CHARGE, EFFECTS OF ERRORS IN CHARGE

Charge means to prefer an accusation against someone**.** To charge a person means to accuse that person of some offence. However, charge is not a mere accusation made by a complainant or an informant. A charge is a formal recognition of concrete accusations by a magistrate or a court based upon a complaint or information against the accused. A charge is drawn up by a court only when the court is satisfied by the prima facie evidence against the accused. The basic idea behind a charge is to make the accused understand what exactly he is accused of so that he can defend himself. A charge gives the accused accurate and precise information about the accusation against him. A charge is written in the language of the court and the fact that the charge is made means that every legal condition required by law to constitute the offence charged is fulfilled in the particular case.

Framing of charge means drawing up in writing by the Judge or Magistrate in separate prescribed form of charge sheet regarding specific accusation, appeared prima facie, in the materials collected during investigation, against the accused, mentioning therein the detailed information of the crime for which he is charged. Substance of the specific accusation as to the date, time, place, the person against whom or the things, in respect of which the crime is allegedly committed, the circumstances of the crime, the law and sections allegedly violated, are written in the charge sheet as well as read over and explained to the accused in order to make him aware regarding the full particulars of the allegation against him so that he can take his defense properly. The Judge or Magistrate is not bound to frame the charge blindly on basis of the charge sheet filed by the police. The Judge or Magistrate may add new sections of law, if there are materials, in addition to the sections of law mentioned in the charge sheet filed by the police or may not accept any section of law, if there is no material, mentioned in the charge sheet filed by the police. If the accused, hearing the substance of accusation, pleads him guilty, he is convicted then and there but if he pleads not guilty, the trial begins.

Charge is required to be framed in three types of cases and the cases are-

1. Sessions cases under section 228 of Cr.P.C,
2. Warrant cases triable by Magistrate instituted on police reports under section 240 of Cr.P.C and
3. Warrant cases triable by Magistrate instituted otherwise than on police report or instituted on the basis of private complaint under section 246 (1) of Cr.P.C.

(Note: In trials of summons cases and in summary trials, charge is not framed)

It is a basic principle of law that when a court summons a person to face a charge, the court must be equipped with at least prima facie material to show that the person being charged is guilty of the offences contained in the charge. Thus, while framing a charge, the court must apply its mind to the evidence presented to it and must frame a charge only if it is satisfied that a case exists against the accused.

According to ***Sec. 2(b) of Cr.P.C.***, ***when a charge contains more than one heads, the head of charges is also a charge.***

CONTENTS OF A CHARGE (SEC.211)

Sec. 211 specifies the contents of a charge as follows-

1. Every charge under this Code shall state the offence with which the accused is charged.
2. If the law that creates the offence gives it any specific name, the offence may be described in the charge by that name only. (For instance- Theft has been defined under IPC therefore in charge an act amounting to theft must be mentioned in that name only.)
3. If the law that creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.
4. The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
5. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.
6. The charge shall be written in the language of the court.
7. If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the court may add it at any time before sentence is passed.

Time and Place of the offence (Sec. 212)**-** The charge must also specify the essential facts such as time, place, and person comprising the offence. For example, if a person is charged with Murder, the charge must specify the name of the victim and date and place of the murder. It is possible that exact dates may not be known and in such cases, the charge must specify information that is reasonably sufficient to give the accused the notice of the matter with which he is charged. **For instance-** in cases of criminal breach of trust, it will be enough to specify gross sum or the dates between which the offence was committed.

Manner of committing the offence (Sec. 213)**-** Sometimes, even the time and place do not provide sufficient notice of the offence with which a person is charged, there the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Effects of errors in a Charge (Sec. 215)**-** In general, an error in a charge is not material unless it can be shown that the error misled the accused or that the error caused injustice. Sec. 215 says, "**No error in stating either the offence or the particulars required to be stated in the charge, and no omission to**

state the offence shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

Sec. 464 further provides that an order, sentence, or finding of a court will not be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any mis-joinder of charges, unless in the opinion of the court of appeal, confirmation, or revision, a failure of justice has in fact happened because of it. If such a court of appeal, confirmation, or revision find that a failure of justice has indeed happened, in case of omission, it may order that a charge be immediately framed and that the trial be recommenced from the point immediately after the framing of the charge, and in case of error, omission, or irregularity in the charge, it may order new trial to be held upon a charge framed in whatever manner it thinks fit.

Alteration of charge (Sec. 216)**-** Any court may alter or add to any charge at any time before judgment is pronounced. Every such alteration or addition shall be read and explained to the accused. If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court to prejudice the accused in his defense or the prosecutor in the conduct of the case the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge. If the alteration or addition is such that proceeding immediately with the trial is likely to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary. lf the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

Thus, even if there is an error in a charge, it can be corrected at a later stage. An error in a charge is not important as long as the accused in not prejudiced and principles of natural justice are not violated.

According to the ***Sec. 217***, a prosecutor or accused shall be allowed to recall witnesses when charge is altered. The term used in section is "shall" and not "may" which says that it is mandatory and not obligatory for the Court unless for the purpose of vexation or delay.

DIFFERENCE BETWEEN CHARGE AND FIR

An FIR is a mere allegation of the happening of a cognizable offence by any person. It provides a description of an event but it may not necessarily provide complete evidence. Upon receipt of an FIR, the police investigate the issue, collect relevant evidence, and if necessary, place the evidence before a magistrate. Based on these preliminary findings of the police, the magistrate then formally prepares charge/s, with which the perpetrator is charged. Thus, an ***FIR is one path that leads to a charge.*** An FIR is vague in terms of the offences but charge is a precise formulation of the offences committed. An FIR is a description of an event, while a charge is a description of the offences committed in that event. An FIR may or may not name an offender but a charge is always against a person. An FIR is always of a cognizable offence, but a charge may also include a non-cognizable offence. The initial requirement in conducting a fair trial in criminal cases is a precise statement of the charges of the accused. This requirement is ensured by Cr.P.C. through Sec. 211 to 214, which define the contents of a charge. Precise formulation of charges will amount to nothing if numerous unconnected charges are clubbed together and tried together. To close this gap, Sec. 218 enunciates the basic principle that for every distinct offence there should be a separate charge and that every such charge must be tried separately.

SEPERATE CHARGE FOR DISTINCT OFFENCE

Sec. 218 lays down a general rule which is– "***For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately: Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person."***

Simply put, Sec. 218 says "distinct offences" must be separately charged and tried separately. The object of Sec. 218 is to save the accused from being frustrated in his defense if distinct offences are lumped together in one charge or in multiple charges but tried in the same trial.

However, a strict observance to Sec. 218 will lead to multiplicity of trials, which is also not desirable. Therefore, ***Sections 219 to 223 provide certain exceptions to this basic rule.*** These are as follows –

EXCEPTION 1

Sec. 219 provides that ***three offences of the same kind within a year*** *can* ***be charged and tried at one trial***. For example, if a person is accused of theft in three different homes in the span of 1 year, he can be charged with all the three at once and tried at the same trial. The period of 12 months is counted from the occurrence of the first offence up to the last offence.

NOTE: An offence is considered to be of the '**same kind**' if it is punishable by the same amount of punishment under the same section of IPC or of the local or special law. Further, if the attempt to commit an offence is an offence, then it is considered an offence of the same kind for the purpose of this section.

EXCEPTION 2

Offences committed in the course of same transaction Section 220(1) - If a person commits multiple offences in a series of acts that constitutes one transaction, he may be charged with and tried in one trial for every such offence. **For example,** A commits house-breaking by day with intent to commit adultery, and commits in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under Sec. 454 (Lurking house trespass or house breaking with an intention to commit offence punishable with imprisonment) and Sec. 497 (Adultery) of the IPC.

EXCEPTION 3

Offences of criminal breach of trust or dishonest misappropriation of property and their companion offences of falsification of accounts – Sec. 220(2)

EXCEPTION 4 - ***Same act falling under different definitions of offences – Sec. 220(3)***

EXCEPTION 5

Acts forming an offence, also constituting different offences when taken separately or in groups - [Sec. 220(4)] - When several acts together constitute an offence and those acts, which taken individually or in groups, also constitute another offence or offences, the person committing those acts may be charged with and tried at one trial. For example, A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged, with and convicted of offences under Sec. 323(Voluntarily causing hurt), Sec. 392(Robbery) and Sec. 394(Voluntarily causing hurt while committing robbery) of the IPC.

EXCEPTION 6

Where it is doubtful what offence has been committed - Sec. 221 - If a single act or a series of acts is of such nature that it is doubtful which of the several offence the facts of the case will constitute, the accused may be charged with having committed all or any of such offences and all or any of such charges may be tried at once. Further, in such a situation, when a person is charged with an offence but according to evidence it appears that he committed another offence, he may be convicted of the offence which he is shown to have committed even if he is not charged with that offence. For example, A is accused of an, Act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property or criminal breach of trust or cheating.

Further, in the same case mentioned, if A is only charged with theft and it appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods, he may be convicted of criminal breach of trust of receiving stolen goods (as the case may be) though he was not charged with such offence.

EXCEPTION 7

Certain persons may be charged jointly i.e. joinder of accuseds'- Sec. 223**-** The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

PRELIMINARY PLEAS TO BAR THE TRIAL

Basic rules regarding jurisdiction have been incorporated under Sec. 26, Chapter XIII (Jurisdiction of criminal courts in inquiries and trials) i.e. Sec. 177-189, Sec. 461, Sec.462 & Sec. 479 of Cr.P.C.

Sec. 26- Courts by which offences are triable**-** Subject to the other provisions of this Code,—

(a) ***any offence under the Indian Penal Code,1860*** may be tried by—

(i) the High Court, or

(ii) the Court of Session, or
(iii) any other Court by which such offence is shown in the First Schedule to be triable;

(b) ***any offence under any other law*** shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—
(i) the High Court, or
(ii) any other Court by which such offence is shown in the First Schedule to be triable.

Ordinary place of inquiry and trial (Sec. 177- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

As per Sec. 178, the place of inquiry or trial-

a) When **it is uncertain in which of several local areas an offence was committed**, or
b) Where **an offence is committed partly in one local area and partly in another**, or
c) Where **an offence is a continuing one, and continues to be committed in more local areas than one**, or
d) Where **it consists of several acts done in different local areas**,
it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Sec. 179- Offence triable where act is an offence by reason of anything which has been done and of a consequence which has ensued - The offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

Sec. 180- Place of trial where act is an offence by reason of relation to other offence - When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first- mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

Sec. 181- This Section determines the place of trial where the offences committed are-

(a) being a **thug**, or **murder committed by a thug**, of **dacoity**, of **dacoity with murder**, of **belonging to a gang of dacoits**, or of **escaping from custody**, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found,
(b) Any offence of **kidnapping or abduction** of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained,
(c) Any offence of **theft, extortion or robbery** may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property,
(d) Any offence of **criminal misappropriation** or of **criminal breach of trust** may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person,
(e) Any offence which includes the **possession of stolen property** may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

Sec. 182- Offences committed by letters, including cheating etc.- *may be* inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; or any offence punishable under Sec. 495 or Sec. 494 of IPC, 1860 may be inquired into or tried by a Court within whose

local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife by first marriage has taken up permanent residence after the commission of offence.

Sec. 183- Offence committed on journey or voyage **-** The offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

Sec. 184- Place of trial for offences triable together **–** Where-

a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of Sec. 219, Sec. 220 or Sec. 221, or
b) the offence or offences committed by several persons are such that they may be charged with, and tried together by virtue of the provisions of Sec. 223,

offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

Sec. 185- Power to order cases to be tried in different sessions divisions.

Sec. 188- Offence committed outside India

a) by a citizen of India, whether on the high seas or elsewhere; or
b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. Provided that no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

OBJECTIONS REGARDING JURISDICTION BARRING TRIAL

General Concept **-** When an accused appears or is brought before the court for a trial, he may raise certain pleas or objections to avoid the trial. For example, he may plead that the court does not have jurisdiction in the case or that the offence happened too long ago, or that he has already been tried and acquitted for the same offence. Such pleas are intended to stop the trial from proceeding further and discharge the accused. However, such pleas may also be raised by prosecution when the court does not have competency or jurisdiction in the case.

Such pleas are required by the law to be raised at the beginning of a trial or as soon as charges are framed. Following are the pleas that can be raised –

1. ***Court without Jurisdiction*** **-** Jurisdiction of criminal courts is of two kinds. One that determines the competency of the court to try a specific offence and the other that determines whether the offence happened in the territory of the court, which is also known as territorial jurisdiction.

   Competency of the Court to try the offence is to be understood by keenly observing Section 26 read with column 6 of the First Schedule, which determines which Court can try a given offence. For example, offences against public tranquility can be tried by any magistrate while the offence of counterfeiting a government stamp can be tried only by a Court of Session. Similarly, only the prescribed Court or Magistrate has the power for all the offences defined in IPC and other laws. Thus, any party to the proceeding can raise the plea that the court is not competent to try the concerned offence. ***Sec. 461*** provides that if any magistrate, who is not empowered to try an offence, tries the offender for that offence, the proceedings shall be void. Also, an executive magistrate has no power to try for any offence. Further, as per ***Sec. 479***, no Magistrate or Judge can try any case in which he is a

party or in which he is interested. If a trial is initiated in violation of this rule, a plea can be raised in this regard.

2. ***Territorial Jurisdiction*****-** This jurisdiction is determined according to ***Sections 177 to 188***. These rules have been enacted mainly for the purpose of convenience of the court, the investigating agency, the accused, and the victim. The general concept is that only the court in whose territory the offence or any part of offence has happened, can try that offence. In simple terms, an offence committed in Mumbai cannot be tried in a court in Delhi. However, most cases are not as simple as that. For example, A hurts B by a knife in Juvenile Justice Act in and D dies because of the wound in Indore. In this case, both the courts in Juvenile Justice Act in and Indore have jurisdiction.

Any violation of the rules of territorial jurisdiction does not ipso facto (i.e. in itself) vitiate the trial unless it has in fact resulted in failure of justice. However, if a plea of territorial jurisdiction is raised in the beginning of the trial, then such objection must be sustained and the trial must be stopped.

3. ***Time barred proceedings*** **-** Earlier, there was no limitation as such in which an offence can be taken cognizance of. This caused grave injustice to the accused as important witnesses became unavailable, or important evidences was destroyed by time. For these reasons, Cr.P.C. has been incorporated with some general rules for taking cognizance of the crimes within a specific period of their happening. In general, the principle that ***offences punishable with only fine or with imprisonment up to 3 yrs should be tried within a limited time.*** The provisions regarding such limitations are contains in ***Section 467 to 473*** and an accused can take advantage of the appropriate section to raise the plea that the case against him is barred by the prescribed period of limitation.

Section 468 contains the basic rule which provides that no court shall take cognizance of an offence punishable with fine only or with imprisonment up to three yrs after the expiry of the period of limitation.

- ***The periods of limitations are–***
  - ⇨ **6 months**, if the **offence is punishable by fine only**.
  - ⇨ **1 year**, if the **offence is punishable with imprisonment of a term not exceeding 1 year**.
  - ⇨ **3 years**, if the **offence is punishable with imprisonment of a term not exceeding 3 year**.

Trial of offences of serious nature, i.e. offences which entail punishment of imprisonment of more than 3 yrs, or death, as of yet, are not barred by any time limitation.

4. ***Plea of autrefois acquit and autrefois convict (Double jeopardy)*** **-** This means that if the offender has already been tried for the exact same offence before and he has been either acquitted or convict in that trial, he cannot be tried again on that offence. Art. 20(2) of the Constitution recognized this principle as a fundamental right. It says that no person shall be prosecuted and punished for the same offence more than once. While the Article gives this right only upon previous conviction, Sec. 300 of Cr.P.C. fully incorporates this principle.

5. ***Disabilities of the accused*** **-** Under the broad interpretation of Art. 21 by Supreme Court, an accused has a fundamental right to be represented by a legal practitioner in his trial. If he is indigent, it is the responsibility of the State to provide a lawyer for him. Sec. 304 also requires the court to assign a pleader for the accused in certain situations. If this is not done, a plea can be raised in this regard. If the trial still proceeds, despite the objects, the trial is deemed to be vitiated. Also, if the accused is of unsound mind and consequently incapable of making his defense, the Code requires the court to postpone the trial until the accused has ceased to be so. The accused can raise this plea for objecting the trial.

6. ***Principle of issue estoppel***- Where an issue of fact has been tried by a competent court on the former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution, not 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 for a different offence which might be permitted under Sec. 300.

COMPOUNDING OF OFFENCES (Sec. 320)

Meaning of compounding of an offence- The word "**compounding**" means the act of combining things to form a new whole. In Sec. 320 of Cr.P.C, the word compounding means to combine the two rival parties by compromise. Compounding of an offence means, in order to restore harmony between the victim and accused, they resolve their disputes amicably and peacefully. And in case of compounding of an offence the victim or the person against whom an offence is committed is given some gratification. The gratification need not always necessarily be of a financial character. It is enough if it acts as an inducement to the victim to abstain from the prosecution. And the victim, being gratified, desires to settle the dispute voluntarily, to abstain from the prosecution. It is laid down in the Sec. 320 of the Cr.P.C. that if the offence is compounded, such compounding shall have the effect of acquittal.

Who can compound an offence?

Section 320 of Cr.P.C provides two tables, one in sub-section (1) and the other in sub-section (2), each having three columns. The first column contains the name of offence, second column contains section of the IPC applicable and the third column contains person by whom offence may be compounded. Both the sub-section (1) and sub-section (2) say that the offences may be compounded by only the persons mentioned in the third column of those tables. But the difference is that the ***offences mentioned in the first column of sub-section (1) can be compounded without permission of the Court whereas the offences mentioned in the first column of sub-section (2) can be compounded only with the permission of Court.*** If any person other than the person so specified, in the third column, compounds an offence, it will not have the effect of acquittal of the accused. Under sub-section (2) even the Supreme Court can grant permission to compound an offence.

What offences can be compounded?

Sec. 320 of Cr.P.C provides that **no offence shall be compounded except as provided by this section.** When any offence is compoundable under this section, **the abetment of such offence** or **an attempt to commit such offence** (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence. When the person who would otherwise be competent to compound an offence is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 of such person may, with the consent of the Court compound such offence. When the accused has been committed for trial or when he has been convicted and an appeal is pending no compounding for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard. A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section. No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence. The compounding of an offence under this section shall have the ***effect of an acquittal*** of the accused with whom the offence has been compounded. ***No offence shall be compounded except as provided by this section.***

DIFFERENCE BETWEEN COMPOUNDABLE & NON-COMPOUNDABLE OFFENCES

a) In case of compoundable offences, the law allows compromise between the parties; while in case of non-compoundable offences, law does not allow the compromise of cases.
b) Compoundable offences are of private nature, for which damages may be recovered in a civil action, while non-compoundable offences are of public nature.
c) Once an offence is compounded lawfully, it has an effect of acquittal of the accused, but non-compoundable cases cannot be compounded.
d) Generally compoundable cases may be compromised between parties, but for some cases permission of Court is required for compromise of case, while in non-compoundable cases, Court has no power to permit the compounding of an offence.

TRIALS

SESSIONS TRIAL ***Sections 225 to 237*** deals with trial before the Court of Session. A Court of Session cannot take a direct cognizance of a case unless a case has been committed to it as per Sec. 209, Cr.P.C. or else, a matter must be one falling under Sec. 199(2) of Cr.P.C.

Summary of the Session Trial procedure - Trial is conducted by the public prosecutor before the Court of Session. He opens the case. If the Court does not found sufficient ground for proceeding against accused, the Court of Session discharges him. If prima facie case is made out, charge is framed in writing. If the accused pleads guilty, the Court may convict him, but when accused claims to be tried, Judge fixes a date for examination of witnesses. If prosecution fails to prove guilt, the Judge acquits the accused, but when prosecution succeeds, accused enters upon his defense. Then argument is made on part of both sides. Then Judge pronounces judgment of the acquittal or conviction. In case of acquittal, if the accused is in custody, Court directs to release him. In case of conviction, the Judge hears the accused on the quantum of punishment, then he awards sentence basing on gravity of offence and on other relevant circumstances.

Sec. 225- Trial to be conducted by Public Prosecutor In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor, in case based on police report.

Sec. 226- Opening case for prosecution When the accused appears (if he is on bail) or is brought before the court (if detained in custody) in pursuance of the commitment of the case under Sec. 209. The prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Sec. 227- Discharge If upon considering the record of the case and the documents submitted therewith, and after hearing submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so.

Sec. 228- Framing of charge A Sessions Judge, if is of the opinion that offence is not exclusively triable by Sessions Court, will frame a charge under proper Sections and transfer the case to the Court of CJM or competent Judicial Magistrate. Where he find that offence is exclusively triable by his court, will frame a charge in writing against the accused, read and explain to him and will proceed forth with the trial.

Sec. 229- Conviction on plea of guilty If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon

Sec. 230- Date for prosecution evidence If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

Sec. 231- Evidence for prosecution On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross- examination.

Sec. 232- Acquittal If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defense on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.

Sec. 233- Entering upon defense

Where the accused is not acquitted under Sec. 232 he shall be called upon to enter on his defense and adduce any evidence he may have in support thereof. If the accused puts in any written statement, the Judge shall file it with the record. If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

Sec. 234- Arguments When the examination of the witnesses (if any) for the defense is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply.
Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

Sec. 235- Judgment of acquittal or conviction After hearing arguments and points of law (if any), the Judge shall give a judgment in the case. If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Sec. 360 hear the accused on the question of sentence, and then pass sentence on him according to law.

Sec. 236- Previous conviction (For the purpose of enhanced punishment)

DISTINCTION BETWEEN ACQUITTAL & DISCHARGE

- ⇨ A person once acquitted can't be re-arrested while a person discharged can be rearrested and committed for a further enquiry & trial.
- ⇨ An acquittal may result from absence of complainant, or withdrawal of complaint or compounding of offence, while discharge result from inquiry in absence of evidence on record in support of allegation.
- ⇨ An order of acquittal is a judicial decision establishing the innocence of accused, while an order of discharge is merely an interlocutory order at the stage of enquiry.
- ⇨ An acquittal bars a second trial on the same facts and for the same offence, while a discharge does not bar the institution of fresh proceeding, when new or better evidence become available against the accused.

TRIAL OF WARRANT CASES BY MAGISTRATE

Sections 238 to 243 deals with trial of cases instituted on police report, ***Sections 244 to 247*** deal with cases instituted otherwise than on a police report; ***Sections 248 to 250*** deal with common provisions regarding conclusion of trial.

CASES INSTITUTED ON A POLICE REPORT (*Sec. 238 to 243*)

Sec. 238- *Compliance with section 207*
Sec. 239- *When accused shall be discharged*
Sec. 240- *Framing of charge*
Sec. 241- *Conviction on plea of guilty*
Sec. 242- *Evidence for prosecution*
Sec. 243- *Evidence for defense*

CASES INSTITUTED OTHERWISE THAN ON POLICE REPORT (Sec. 244 to 247)

Sec. 244- *Evidence for prosecution*
Sec. 245- *When accused shall be discharged*
Sec. 246- *Procedure where accused is not discharged*
Sec. 247- *Evidence for defense*

CONCLUSION OF TRIAL (*Sec. 248 to 250*)

Sec. 248- ***Acquittal or conviction*** - If in any case in which a charge has been framed the magistrate does not found guilty the accused, he makes order of acquittal and release of accused if he is in jail. If accused is found guilty, he is heard on quantum of punishment and sentenced in accordance with law unless he is submitted to higher Court for enhanced punishment u/Sec. 325 or released on probation or after admonition u/Sec. 360.

Release on Probation (Sec. 360)- Cr.P.C deals with release of accused on probation.
It says "At the time of conviction-

a) If the convicted person is below 21 years of age or woman and the offence is not punishable with death or life imprisonment or
b) If the convicted person is not below the 21 years of age and offence is punishable with imprisonment up to 7 years

And if the conviction is for the first time to the accused, he may be ordered to be released on bail with or without sureties for keeping peace and maintaining good behaviour up to 3 years or after admonition as the case may be.

Sec. 360 is a piece of beneficial legislation and its object is to avoid sending the first time offender to prison for an offence which is not of a serious character and thereby running the risk of turning him into hardened criminal. This has become more important in recent times due to increasing emphasis on reformation and rehabilitation of the accused as a useful member of the society without subjecting him to deleterious effect of jail life.

Sec. 249- ***Absence of complainant***

When the **proceedings have been instituted upon complaint**, and on any day fixed for the hearing of the case, the **complainant is absent**, and **the offence may be lawfully compounded or is not a cognizable offence**, the Magistrate may, in his discretion, ***at any time before the charge has been framed, discharge the accused.***

Sec. 250- Compensation for accusation without reasonable cause

TRIAL OF SUMMONS CASES

In summons cases **formal charge framing is not required**, so when accused comes before Court, he is asked that whether he pleads guilty or not? If he pleads guilty, then the Magistrate may convict him or release on probation or after admonition u/Sec. 360 Cr.P.C. If accused claims not to be guilty and claims to be tried, the Magistrate proceeds to take prosecution evidence and also hears the defense. After hearing both the sides, Magistrate either acquits or convicts the accused. In case of conviction, Magistrate passes sentence upon the accused or submits the case to higher court for an enhanced sentence u/Sec. 325 or release him on probation or after admonition u/Sec. 360 Cr.P.C.

Sec. 251- *Substance of accusation to be stated* (not necessary to frame a formal charge)
Sec. 252- *Conviction on plea of guilty*
Sec. 253-*Conviction on plea of guilty in absence of accused in petty cases*
Sec. 254- *Procedure when not convicted*
Sec. 255- *Acquittal or conviction*
Sec. 256- *Non-appearance or death of complainant*

If on the appointed day or adjourned date of hearing, complainant does not appear, the magistrate may **dismiss the complaint** case and **may acquit the accused**.

Sec. 257- *Withdrawal of complaint*

The complainant may withdraw his complaint **at any time before a final order is passed.**

Sec. 259- *Power of Court to convert summons-cases into warrant cases*

SUMMARY TRIAL (Sec. 260 to Sec. 265)

"Summary trial" means ***short trials avoiding the regular lengthy procedure***. Summary trial ***aims at speedy or quick disposal of minor offences***. The procedure followed in the summary trial is to some extent the ***procedure of trial of summons cases*** having some differences to the effect that in summary trial not the formal and elaborate recording of evidence and judgment but only a memorandum of the substance of evidence or a brief statement are recorded. ***In summary trial no sentence of imprisonment for a term more than three months can be imposed by the Magistrate.***

WHAT OFFENCES MAY BE TRIED SUMMARILY AND BY WHOM

Section 260 provides the power to try case summarily. According to this section-

(a) any Chief Judicial Magistrate;
(b) any Metropolitan Magistrate;
(c) any Magistrate of the first class specially empowered in this behalf by the High Court,

may, if he thinks fit, try in a summary way all or any of the following offences:

i. offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
ii. theft under section 379, section 380 or section 381 of the IPC where the value of the property stolen does not exceed two hundred rupees;
iii. receiving or retaining stolen property under section 411 of the IPC, where the value of the property does not exceed two hundred rupees;
iv. assisting in the concealment or disposal of stolen property, under section 414 of the IPC, where the value of such property does not exceed two hundred rupees;
v. offences under sections 454 and 456 of the IPC;

vi. insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation, under section 506 of the IPC;

vii. abetment of any of the foregoing offences;

viii. an attempt to commit any of the foregoing offences, when such attempt is an offence;

ix. any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871.

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear, the case in the manner provided by this Code.

The distinction between the warrant and the summons procedures in a summary trial is abolished and all cases would be tried by summons procedure whether the case is a summons case or a warrant case.

PROCEDURE FOR SUMMARY TRIAL

Sec. 262 provides the procedure for summary trials.

1) In trials under this Chapter, the procedure specified in this Code for trial of summons-case shall be followed except as hereinafter mentioned.
2) No sentence of imprisonment for a term exceeding **three months** shall be passed in the case of any conviction under this Chapter.

Sec. 263 further provides regarding **record in a summary trials**. According to this section, in every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particles, namely;

(a) the serial number of the case;
(b) the date of the commission of the offence;
(c) the date of the report or complaint;
(d) the name of the complainant (if any);
(e) the name, parentage and residence of the accused;
(f) the offence complained of and the offence (if any) proved, and in cases;
(g) Coming under clause (ii), clause (iii)or clause (iv) or sub-section (1) of Section 260, the value of the property in respect of which the offence has been committed;
(h) the plea of the accused and his examination (if any);
(i) the finding;
(j) the sentence or other final order;
(k) the date on which proceedings terminated.

Sec. 264 of Cr.P.C lays down that the judgment in cases tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

Sec. 265 provides for the language of record and Judgment- Every such record and judgment shall be written in the language of the Court. The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or Judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate and the record or Judgment so prepared shall be signed by the Magistrate.

SUBSTANTIVE RIGHTS DURING TRIALS AND OTHER IMPORTANT PROVISIONS

Sec. 273- Evidence is to be taken in presence of accused.

Sec. 303- Right of person against whom proceedings are instituted to be defended- Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may **of right be defended by a pleader of his choice**.

Sec. 304- Legal aid to accused at State expense in certain cases- Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defense at the expense of the State.

Tender of pardon to accomplice - Sec. 306 to 308, Cr.P.C deal with tender of pardon. Where a grave offence is alleged to have been committed by several persons and there is no evidence to fix up guilt on any one of them, the Court resort to tender pardon to one of the accomplices, if that accomplice turns out as a witness for prosecution i.e. turned ***approver***. The very object of the tendering pardon is to obtain aid of evidence from the approver. A magistrate who tenders a pardon u/Sec. 306 is bound to record his reasons for so doing. Every person accepting a pardon u/Sec. 306 is to be examined in the Court of Magistrate and in the subsequent trial if any. A person getting pardon u/Sec. 306 is bound to make a full and true discloser of what he knows related to offence. Sec. 306 applies to any offences triable exclusively by the Court of Session or by the Court of special Judge, any offence punishable with imprisonment which may extend to seven years or with more severe sentences.

Power to summon material witness, or examine person present (Sec.311)- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

Sec. 313 - Power to examine the accused.

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) **may** at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) **shall** after the witnesses for the prosecution have been examined and before he is called on for his defense question him generally on the case:

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

No oath shall be administered to the accused when he is examined. The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he had committed.

Sec. 315 - Accused person to be competent witness.

(1) Any person accused of an offence before a Criminal Court shall be a competent witness ***for the defense*** and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial: Provided that—

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

Sec. 327 - Court to be open. But trial of rape and certain defined offences shall be conducted in camera.

Sec. 428 - Period of detention undergone by the accused to be set off against the sentence of imprisonment.

Sec. 433 - Power to commute sentence.

The appropriate Government may, without the consent of the person sentenced commute—

(a) a sentence of death, for any other punishment provided by the IPC;
(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
(c) a sentence of rigorous imprisonment for simple imprisonment for any term to which that person might have been sentenced, or for fine;
(d) a sentence of simple imprisonment, for fine.

Sec. 460 - Irregularities which do not vitiate proceedings.

(a) If any Magistrate not empowered by law to do any of the following things, namely:—
(b) to issue a search-warrant under section 94;
(c) to order, under section 155, the police to investigate an offence;
(d) to hold an inquest under section 176;
(e) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
(f) to take cognizance of an offence under clause (a) or clause (b) of sub-Section (1) of section 190;
(g) to make over a case under sub-section (2) of section 192;
(h) to tender a pardon under section 306;
(i) to recall a case and try it himself under section 410; or
(j) to sell property under section 458 or section 459, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Sec. 461 - Irregularities which vitiate proceedings.

If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

(a) attaches and sells property under section 83;
(b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
(c) demands security to keep the peace;
(d) demands security for good behaviour;
(e) discharges a person lawfully bound to be of good behaviour;
(f) cancels a bond to keep the peace;
(g) makes an order for maintenance;
(h) makes an order under section 133 as to a local nuisance;
(i) prohibits, under section 143, the repetition or continuance of a public nuisance;
(j) makes an order under Part C or Part D of Chapter X;
(k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190;
(l) tries an offender;
(m) tries an offender summarily;
(n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;
(o) decides an appeal;
(p) calls, under section 397, for proceedings; or
(q) revises an order passed under section 446, his proceedings shall be void.

UNIT-IV JUDGMENT

1. Form and content (section 354)
2. Post conviction orders in lieu of punishment(section 360, 361, 31): emerging penal policy (Plea Bargaining)
3. Compensation and cost (section 357,358)
4. Modes of providing judgment (section 353, 362, 363)

APPEAL, REVIEW, REVISION

1. No appeal in certain cases (section 372, 375 , 376)
2. The rationale of appeals, review, revision
3. The multiple ranges of appellate remedies
4. Appeal before Supreme Court of India and High Courts (section 374, 379) and (Article 31,132, 134, 136 of Constitution of India)
5. Appeal to Sessions Court (section 374)
6. Special right to appeal (section 380)
7. Government appeal against sentencing (section 377, 378)
8. Judicial power in disposal of appeal (section 368)
9. Legal aid in appeals
10. Revisional jurisdiction (section 397- 405)
11. Transfer of cases (section 406, 407)

FORM, CONTENTS AND MODES OF PROVIDING JUDGMENTS (Sec. 353, 354, 362, 363)

"***Judgment***" means the expressions of the opinion of the Judge or Magistrate arrived at after due consideration of the evidence and of the arguments. Judgment only refers to a judgment of acquittal or conviction, but cannot mean an order of discharge under Sec.245. The word "judgment" has not been defined in the code. It is a word of general importance and means only "Judicial determination or decision of a court."

Art. 353- Judgment

1) The judgment in every trial in any Criminal Court of original jurisdiction **shall be pronounced in open Court** by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—
   (a) by delivering the whole of the judgment; or
   (b) by reading out the whole of the judgment: or
   (c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.
2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.
3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court and if it is not written with his own hand, every page of the judgment shall be signed by him.
4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.
5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

Art. 354- Language and contents of judgment-

1) Every judgment—
   a) shall be written in the language of the Court;
   b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;
   c) shall specify the offence (if any) of which, and the section of the IPC or other law under which, the accused is convicted and the punishment to which he is sentenced;
2) If it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.
3) When the conviction is under the IPC and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.
4) When the conviction is for an offence punishable with dealt or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.
5) When the conviction is for an offence punishable with imprisonment for a term of one year of more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.
6) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sec. 362- Court not to alter judgment- *No* court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

Sec. 363- Copy of judgment to be given to the accused and other persons.

When it's a sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost. Where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost **whether or not he applies for the same**. When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right, the Court shall inform him of the period within which, if he wishes to appeal his appeal should be preferred. Any person affected by a judgment or order passed by a criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order of any deposition or other part of the record.

POST-CONVICTION ORDERS IN LIEU OF PUNISHMENT (360, 361, 31) & PLEA BARGAINING (Sec. 265-A to Sec. 265-L)

Order to release on probation of good conduct or after admonition (Sec.360)–

a) When any person **not under twenty-one years of age** is **convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less**, or

b) when any person **under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life**, and **no previous conviction is proved against the offender**, if it appears to the Court before which he is convicted, ***regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed***, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

Sec. 361- Special reasons to be recorded in certain cases

Where in any case the Court could have dealt with-

a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958, or

b) a youthful offender under the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders,

but has not done so, **it shall record in its judgment the special reasons for not having done so**.

Sec. 31 - Sentence in cases of conviction of several offences at one trial.

1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Sec. 71 of the IPC, sentence him for such offences, to the several punishments, prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.
2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Provided that-

a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence

3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

PLEA BARGAINING

The provision relating to plea bargaining was inserted as a new ***Chapter XXI-A*** extending from ***Sections 265-A to Sec. 265-L*** in Cr.P.C in the year 2005 for speedy trial. ***A "plea bargaining" means pleading guilt by the accused in return of which he is let-off lightly and therefore he does not choose to defend***

himself on a charge of having committed an offence. This is a bargaining by the accused so that he may not be sentenced to imprisonment.

Plea bargaining is applicable only in offences punishable with imprisonment upto 7 years. Under the provision of plea bargaining, accused may file an application for plea bargaining in court in which trial is pending, stating briefly the description of case and offences. After receiving application, the court shall issue notice to the public prosecutor or complainant as the case may be and to accused to appear on the date fixed for the case. On such fixed date court shall provide time to parties to work out a mutually satisfactory disposition of the case, which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case. Where a satisfactory disposition of the case has been worked out, the court shall award the compensation to the victim in accordance with the disposition and hear the parties on the quantum of the punishment, releasing the accused on probation of good conduct or after admonition u/Sec. 360. After hearing the parties court may release the accused on probation or pass sentence on accused as minimum as may be practicable keeping in view the facts and circumstances of the case.

COMPENSATIONS AND COST (Sec. 357, 358)

Art. 357 - *Order to pay compensation.*
Art. 357-A - *Victim Compensation Scheme*
Art. 358 - *Compensation to person groundlessly arrested*

APPEALS (Sec. 372 to 394)

The right of appeal is a creation of statute even where the right to appeal exists; it is not a mere matter of procedure but is a substantive right. The word "appeal" means ***the right of carrying a particular case from an inferior Court with a view to ascertain whether the judgment is sustainable***.

No appeal to lie unless otherwise provided (Sec. 372)-No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Sec. 373 - Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour

Appeals from convictions (Sec. 374)

1) Conviction by High Court in its extraordinary original criminal jurisdiction - ***Appeal to the Supreme Court***.
2) Conviction by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court **in which a sentence of imprisonment for more than seven years** - ***Appeal to the High Court***.
3) Save as otherwise provided in sub-section (2), any person,—
   a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or
   b) sentenced under Sec. 325, or
   c) in respect of whom an order has been made or a sentence has been passed under Sec. 360 by any Magistrate,

   may appeal to the Court of Session.

Sec. 375 - No appeal in certain cases when accused pleads guilty.

Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal-

a) if the conviction is by a High Court; or
b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

No appeal in petty cases (Art. 376) – No appeal where-

a) A High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;
b) A Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;
c) A Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or
d) In a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees.

Sec. 377 - Appeal by the State Government against sentence

The State Government may in any case of conviction on a trial held by any Court other than a High Court, direct the Public prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy. When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

Sec. 378 - Appeal in case of acquittal

The State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision. No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court. If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

Sec. 379 - Appeal against conviction by High Court in certain cases

Where the High Court has, on appeal reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

Sec. 380 - Special right of appeal in certain cases

When more persons than one are convicted in one trial, and an appealable judgment of order has been passed in respect of any of such person, all or any of the persons convicted at such trial shall have a right of appeal.

Sec. 381 - Appeal to Court of Session how heard

Petition of appeal (Sec. 382)

Every appeal shall be made in the form of a petition in writing presented by the appellant of his pleader, and every such petition shall be accompanied by a copy of the judgment or order appealed against.

Procedure when appellant in jail (Sec. 383)

If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer-in-charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Sec. 384 - Summary dismissal of appeal

Sec. 385 - Procedure for hearing appeals not dismissed summarily

If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given-

a) to the appellant or his pleader;
b) to such officer as the State Government may appoint in this behalf;
c) if the appeal is from a judgment of conviction in a case instituted upon complaint to the complainant;
d) if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

Sec. 386 - Powers of the Appellate Court

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

b) in an appeal from a conviction—
- **i.** reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or
- **ii.** alter the finding, maintaining the sentence, or
- **iii.** with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

c) in an appeal for enhancement of sentence—
- **i.** reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or
- **ii.** alter the finding maintaining the sentence, or
- **iii.** with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

d) in an appeal from any other order, alter or reverse such order;

make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Sec. 394* - *Abatement of appeals.

1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.
2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

REFERENCE

Reference is not defined in the Code. But Sec. 395 of Cr.P.C deals with reference. ***A reference is a proceeding by which a court seeks guidance from High court. When a criminal court other than a High court is not certain about the constitutionality of a particular enactment or law involved in the case before it, such Court may make a reference to the High Court for decision on that point.*** The object of revision, on the other hand, is to provide adequate remedy to the aggrieved parties to move the higher court when no right to appeal is available. Thus in order to avoid miscarriage of justice because of the limited scope for an appeal, the provision for review procedure has been incorporated in Cr.P.C. The revisional powers conferred on the High courts are wide and discretionary in nature, although subject to certain limitation.

Sec. 395 says-

"When any Court is satisfied that a case pending before it, involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in any Act, ordinance or Regulation, the determination of which is necessary for the disposal of the case and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or but the Supreme Court shall state a case setting out its opinion and the reasons therefore and refer the same for the decision of the High Court. Any Court making a reference to the High Court may, during the pendency of reference, either commit the accused to jail or release him on bail to appear when called upon."

As per ***Sec. 396***, "when such question referred, is answered by the High Court, the referring Court shall dispose of the case in conformity with the order or opinion of the High Court."

REVISION

Revision is a supervisory jurisdiction of High Court and Sessions Court. The objects of revision are-

- ⇨ To prevent miscarriage of justice,
- ⇨ To prevent irregularity of procedure.

Sec. 397 of Cr.P.C confers power on High Court and Sessions Court to exercise the powers of revision. The High Court and Sessions Court has power—

a) To call for and examine the record of any proceeding before a lower court

b) To direct or to suspend execution of any sentence.

Sec. 399 deals with criminal revision by Sessions Court while ***Sec. 401 deals with criminal revision by High Court***. Both these courts have concurrent power in this regard.

Where revision petition is filed under erroneous belief that no appeal lie thereto, High Court may convert the revision petition in to appeal and deal with same accordingly. High Court can exercise the revisional power suo moto or on the petition of any aggrieved party. But under the revisional jurisdiction, High Court cannot convert the finding of acquittal into one of the conviction.

Limitations on revisional jurisdiction-

a) Where appeal lies, no revision petition can be filed by the party, who has right to appeal.
b) No revision petition can be filed against revisional order of Session's Court.
c) The powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

DIFFERENCE BETWEEN REFERENCE AND CRIMINAL REVISION

1) Reference is made by a subordinate Court to High Court to decide the validity of Act, Ordinance or Regulation or a question of law, which has not been settled by High Court or Supreme Court, while criminal revision lies only on a question of law relating to correctness, legality or propriety of any finding, sentence or order.
2) Reference can be made only in pending cases, while criminal revision lies both in pending and decided cases.
3) Reference can be made to High Court only, while criminal revision can be filed in High Court or in Session's Court.
4) Reference is made by subordinate court only, while criminal revision is done on petition filed by parties to cases or on Court's own motion.
5) A subordinate court makes reference, only when it thinks that opinion of High Court is necessary to adjudicate the matter pending before it, while object of the revision is to confer upon High Court and Session's Court a supervisory jurisdiction to prevent the miscarriage of justice.

POWER TO TRANSFER CASES

Sec. 406 - *Power of Supreme Court to transfer cases and appeals*
Sec. 407 - *Power of High Court to transfer cases and appeals*
Sec. 408 - *Power of Sessions Judge to transfer cases and appeals.*
Sec. 409 - *Withdrawal of cases and appeals by Sessions Judges.*

482. Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

UNIT-V JUVENILE DELINQUENCY

1) Nature and magnitude of the problem
2) Causes of juvenile delinquency
3) Juvenile court system
4) Treatment and rehabilitation of juveniles
5) Juvenile and adult crime
6) Legislative and judicial protection of juvenile offender
7) Juvenile justice (Protection and Care) Act 2000

JUVENILE JUSTICE ACT

SYNOPSIS

- ⇨ Causes of Juvenile Delinquency.
- ⇨ Child in need of care and protection.
- ⇨ Procedure followed by Juvenile Justice Court.
- ⇨ Orders that can be passed for delinquent children under this Act.
- ⇨ Main features of Juvenile Justice (Care and Protection) Act, 2000.
- ⇨ Protections given by the legislature and the judiciary to juvenile delinquents

Juvenile Justice Act has been enacted and passed with a view to introduce a uniform law relating to juvenile justice for due protection and proper care of children and juvenile adolescents who commit an offence. This Act set out a standard norm for the investigation and trial of juvenile offenders. This present Act is called ***Juvenile Justice (Protection and Care of Children) Act, 2000*** and it replaces the Juvenile Justice Act, 1986 which stands repealed with the enforcement of this Act.

Following are the objects of this Act-

a) To take care of neglected children and juveniles in conflict with law,
b) To protect them,
c) Take measures for their treatment, development and rehabilitation,
d) Make provisions for justice and proper custody of children.

Main causes of Juvenile Delinquency may be discussed under the following heads-

a) Family conditions
b) Physical reasons
c) Psychological reasons
d) Social background
e) Compelling circumstances
f) Evil effects of means of entertainment
g) Pornography websites on computers
h) Involvement in gambling, liquor etc.
i) Unemployment, poverty, illiteracy
j) Bad association with criminals etc.
k) Political reasons.

Constitutional mandates which led to the enactment of this act–

1) Constitution of India in several provisions, including Article 15(3), Article 39(e) and (f), Articles 45 and 47, imposes on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected;
   a) Art 15(3) **-** State can make any special provision for women and children.

b) ***Art 39 (e)*** - It shall be the duty of the state to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

c) ***Art 39 (f)*** - It shall be the duty of the state to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

d) ***Art 45/Now Art 21A*** - The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

e) ***Art 47*** - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

f) ***Art 51(k)*** - It shall be the duty of the citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

2) Since the United Nations General Assembly has adopted the **Convention on the Rights of the Child** on the 20th November, 1989 and Government of India has ratified the Convention on the 11th December, 1992. The Convention has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child. The Convention also emphasizes on social reintegration of child victims, to the extent possible, without resorting to judicial proceedings.

DEFINITIONS UNDER THE ACT

As per ***Section 2(d)***,"***child in need of care and protection***" means a child-

a) who is found without any home or settled place or abode and without any ostensible means of subsistence,
b) who resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
c) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
d) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
e) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,
f) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
g) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
h) who is being or is likely to be abused for unconscionable gains,
i) who is victim of any armed conflict, civil commotion or natural calamity.

Section 2(k) - **"juvenile"** or **"child"** means a person who has not completed eighteenth year of age.

Section 2(l) - **"juvenile in conflict with law"** means a juvenile who is alleged to have committed an offence.

Section 2(b) - **"Begging"** means –

i. soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under any pretence;

ii. exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal.

COMPOSITION & PROCEDURE FOLLOWED BY JUVENILE JUSTICE BOARD

Composition (Sec.4)-

1) The State Government may constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.
2) A Board shall consist of ***a Metropolitan Magistrate or a Judicial Magistrate of the First class***, as the case may be, ***and two social workers*** of whom at least ***one shall be a woman***, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First class and the Magistrate on the Board shall be designated as the principal Magistrate.
3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.
4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.
5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if –
    a) he has been found guilty of misuse of power vested under this act,
    b) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence,
    c) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or
    d) he fails to attend less than three fourth of the sittings in a year.

Procedure (Section 5)-

1) The Board shall meet at such times and shall, observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.
2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.
3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings: Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.
4) In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate, shall prevail.

Section 6 - Powers of the Board

1) Where a Board has been constituted for any district or a group of districts, such Board shall, have power to deal exclusively with all proceedings under this Act, relating to juvenile in conflict with law.

2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceedings comes before them in appeal, revision or otherwise.

Orders that may be passed regarding a Juvenile (Section 15)

1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

- **a)** allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
- **b)** direct the juvenile to participate in group counselling and similar activities;
- **c)** order the juvenile to perform community service;
- **d)** order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
- **e)** direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- **f)** direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- **g)** make an order directing the juvenile to be sent to a special home,-
  - **i.** in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;
  - **ii.** in case of any other juvenile for the period until he ceases to be a juvenile:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order.

3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law.

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

4) The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

Section 16 - ***Orders that may not be passed against a Juvenile***

1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit: Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

Observation Home – ***Sec. 8***
Special Home – ***Sec. 9***
Bail to Juvenile – ***Sec. 12***

PROTECTIONS GIVEN BY THE LEGISLATURE AND THE JUDICIARY TO JUVENILE DELINQUENTS

Protection by Legislature - The legislature has enacted several laws for the protection of Juveniles. Most important among them is Juvenile Justice (Care and Protection) Act, 2000. Through Juvenile Justice (Care and Protection) Act, 2000, several measures have been adopted to ensure that a juvenile is not punished or treated like hardened criminals. Some of the measures are –

1. Hearing of cases involving juvenile by Juvenile Justice Board
2. Bail Provisions for juvenile
3. No prison term to juvenile.
4. No joint proceeding of Juvenile and Non Juvenile
5. Removal of disqualification attached to conviction

Social Protection **-** Juvenile Justice Act also contains measures to ensure that a juvenile in conflict of law is given opportunities to reform-

1. Establishment of Observation and Special Home
2. Education and Training facilities

Preventive Measures-

1. Several acts such as employment of juveniles in dangerous activities, forcing juveniles to beg, or steal, or giving intoxicating substances to a juvenile, publication of names or other details of a juvenile in conflict of law in media, have been made cognizable offences by Juvenile Justice Act.
2. Supervision by Probation Officer to ensure that a juvenile is not influenced by bad elements.

Several other acts such as Factories Act, 1948 also include provisions for protection of Juveniles.

Protections given by Judiciary **-** Judiciary has always been very sympathetic to the cause of Juveniles. Even before appropriate laws were enacted, Judiciary promoted directives for the protection of juveniles through its judgment. For example, it was the judiciary, which emphasized on Education for children by making it a fundamental right under Art. 21.