

THE CRIMINAL PROCEDURAL CODE, 1973

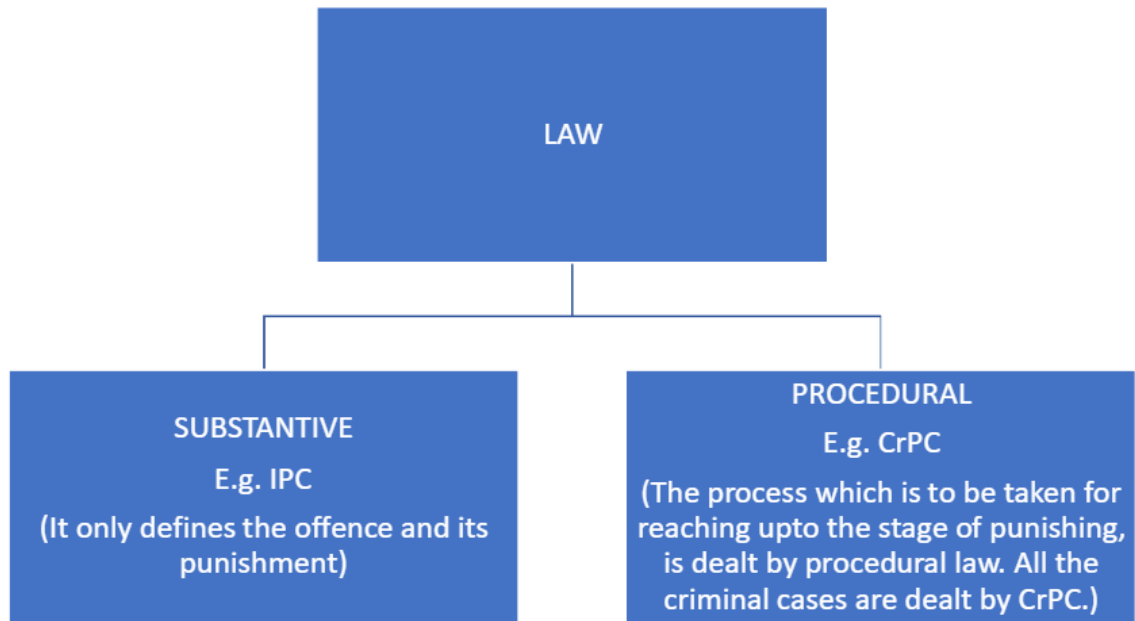
Concept of the Criminal Procedure Code (CrPC)

- 1) The 1973 Code of Criminal Process establishes the necessary machinery for apprehending offenders, investigating criminal cases, putting them before Criminal Courts, and punishing the guilty individual.
- 2) It specifies crimes and imposes punishments, whereas procedural law is in charge of implementing substantive law.
- 3) The whole framework of the Criminal Process Code is based on three fundamental considerations:
- 4) A fair trial should be provided to an accused individual in accordance with acknowledged natural justice standards.
- 5) Every effort should be taken to avoid inquiry and trial delays, which are harmful to the individuals involved and society.
- 6) The procedure should be simple and, to the greatest extent feasible, secure a fair deal for the community's poorer members.
- 7) The Code establishes the hierarchy of criminal courts in which particular offences can be tried, as well as the maximum penalties that such courts may inflict.
- 8) The aim outlined above will be accomplished if all state functionaries collaborate with coordination, commitment, and integrity.

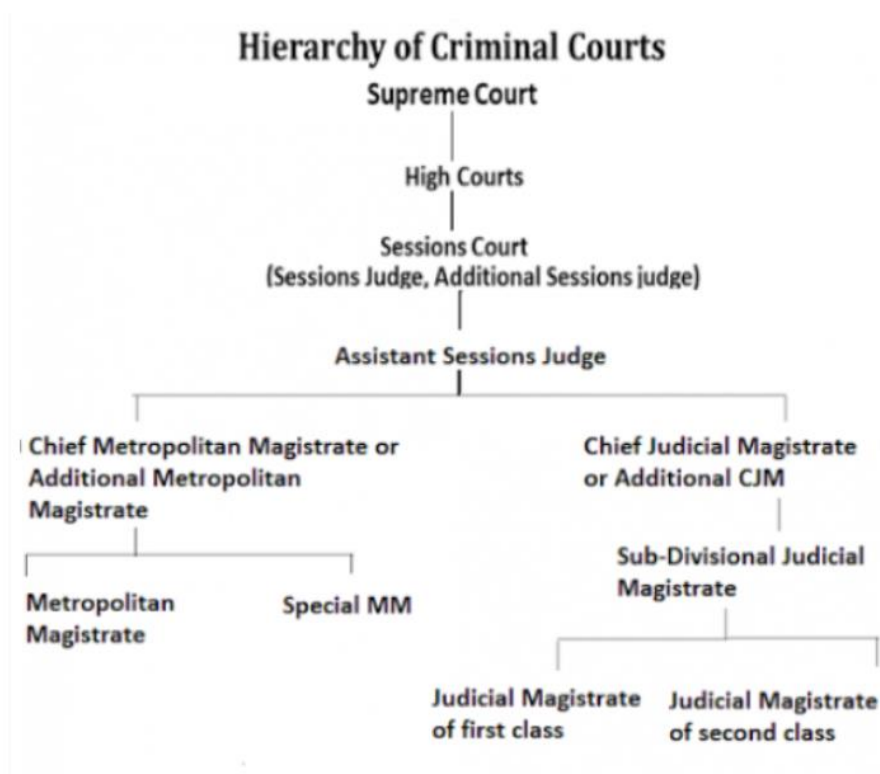
History Background of the Criminal Procedure Code

- 1) The first version of the Code of Criminal Process was enacted in 1861, following the passing of the Indian Penal Code in 1860. Act 10 of 1882 superseded the Code.
- 2) Sixteen statutes relating to the criminal procedure have been passed since 1882.
- 3) The Code of Criminal Procedure replaced it once more in 1898.
- 4) The Code of Criminal Process Amendment Act of 1923 then updated the 1898 statute.
- 5) In its 14th Report (1958), the First Law Commission presented significant suggestions for criminal justice reform.
- 6) The recommendations of the committee were taken into consideration, and the Code was changed.
- 7) Parliament passed the 1973 Code of Criminal Process in response to the recommendations of the Fifth Law Commission's Forty-First Report.

LAW: SUBSTANTIVE AND PROCEDURAL



HIERARCHY OF CRIMINAL COURTS UNDER THE CODE



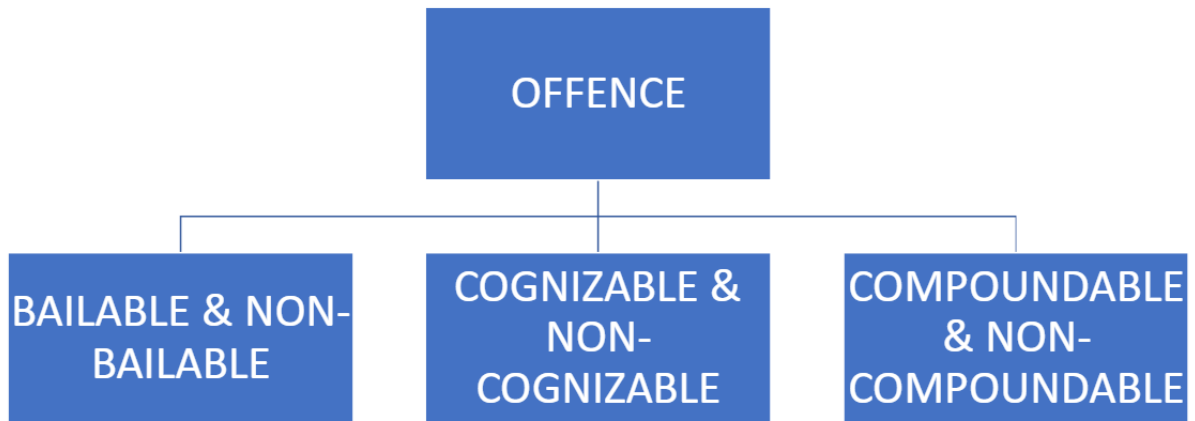
Following is the hierarchy of criminal courts in India, with **the Supreme Court being the highest Court**, and the powers of the respective Courts. The **duty of the Courts is to conduct a fair trial** as per criminal law in cases that come under its jurisdiction.

The hierarchy is as follows:

- 1) Supreme Court
- 2) High Courts
- 3) Courts of Session: It is the highest criminal court in the district. It is headed by the Sessions Judge, who is mostly the District Judge also. The Sessions Judge can pass any sentence authorized by law, but the death sentence passed has to be confirmed by the High Court.
- 4) Courts of Chief Judicial Magistrate (CJM)/ Courts of Chief Metropolitan Magistrate (CMM): The CJM can pass any sentence authorized by law except (i) death sentence or (ii) life imprisonment or (iii) imprisonment for a term not exceeding 7 years.
- 5) Courts of Judicial Magistrate of the First Class (JMFC) / Courts of Metropolitan Magistrates (MM) in Metropolitan Areas: A JMFC can pass a sentence of imprisonment not exceeding 3 years or a fine up to Rs.10,000.
- 6) Courts of Judicial Magistrates of Second Class: The Magistrate of this Court can pass a sentence of imprisonment up to 1 year and a fine of up to Rs.5000.

TYPES OF OFFENCES UNDER THE CODE

Offences under the code are of **three types**, they are:



- Bailable offences- they come under the 1st schedule of CrPC. It is a matter of legal right.
- Non-bailable offences- they are the cases in which usually bail is not given but under certain conditions it can be given.
- Cognizable offences- There can be arrest without warrant. It is there in the case of heinous offenses. There is no interference of magistrate or the court. Unfettered right of police is there.
- Non-cognizable offences- There can be no arrest without warrant.

Difference between:

Cognizable & non cognizable offence

Cognizable

- All serious offences are cognizable.
- Offences under laws other than the Indian Penal Code which are punishable with 3 years imprisonment or more.
- Murder, waging war against state.
- Police officer may arrest without warrant.
- Police is under legal duty to investigate without directions from magistrate.
- Cognizable offences are considered public wrongs & therefore prosecution of offender is left to the initiative and efforts of state.

Non-cognizable

- Non-cognizable offences are more trivial & less serious than cognizable ones.
- Those punishable with less than 3 yrs or with fine
- Absconding to avoid service of summons, giving false information to public officer
- Police has no authority to arrest without warrant.
- Police have neither duty nor power to investigate such offences without authority given by magistrate.
- Non-cognizable offences are considered private wrongs and therefore prosecution of offender is left to the initiative & efforts of private persons.

- Compoundable offences -Compromise can be done between the parties
- Non- Compoundable offences -serious offenses in which the compromise cannot be done

Difference between:

| Compoundable Offence | Non-Compoundable Offence |
|---|--|
| 1. A compoundable offence is punishable with imprisonment for two years or less as mentioned in Section 320 Cr.P.C. | 1. Offences other than those mentioned in Section 320 Cr.P.C. are non- compoundable. |
| 2. In these offences compromise can be made between the parties. | 2. No compromise is allowed in these offences. |
| 3. These are private in nature and damages may be recoverable in civil law. | 3. These offences are public in nature. |

IMPORTANT DEFINITION:

1) Charge 2(b)

Section 2(b) of the Criminal Procedure Code defines charge as any head of a charge when the charge contains more heads than one. Under the Code of Criminal Procedure, an accused should be informed of the offence of which he is charged. The basic purpose of the charge is to let the accused know of the offence that he is charged with so that he can prepare his defence. The accused should be informed of the charge against him at the very beginning. Every accused has the right to know what the prosecution has against him. The underlying principle of the criminal law on informing the accused of the charge against him is to provide an equal opportunity to each and every individual to prepare his defence and avail justice.

2) Complaint 2(d)

“complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, 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.

3) Investigation 2(h)

The term ‘investigation’ has been defined in Section 2(h) of the Code of Criminal procedure, 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. The investigation of an offence consists of:

Proceeding to the spot.

- Ascertainment of facts and circumstances of the case.
- Discovery and arrest of the suspect.
- Collection of evidence which may include:
 - Examination of persons concerned and reducing their statement to writing.
 - Search and seizure of places and things respectively considered necessary

4) Police Report 2(r)

S. 2(r) of CrPC talks about the expression ‘police report’, according to which a report is forwarded by a police officer to a Magistrate under Section 173(2). The

report should be in the manner that is prescribed by the State Government as per the particulars mentioned in clause (a) to (g) of sub-section(2) of Section 173. The police report submitted under this section is called the End Report. If this report constitutes an attempt of a crime by an accused person, that report is commonly called the “charge-sheet” or the “challan”.

The Magistrate cannot interfere in any of his judicial capacity and as a court until he receives the final report by the police officer as per Section 173. Also, there can be no occasion for the Magistrate to make any judicial order about the police investigation as stated in M.L. Sethi v. R.P. Kapur [AIR 1967 SC 528]. A Magistrate who has disposed of a police report is competent to revise his order and require the “charge-sheet”.

Types of Police Reports

Police reports are different according to the incidents. Types of police reports include:

I. Arrest reports

An arrest report often called an arrest record, describes allegations or charges against an individual. Following the arrest of a suspect, mostly by a representative of the judge who signed the arrest warrant, the arrest report contains a victim’s claims about a perpetrator and all the information of the suspected crime found in the initial report of the incident. Fingerprint details may also be included in the arrest reports and also included the bail amount if the judge establishes.

II. Investigative reports:

When a case is opened by filing a police report, an investigation process may be conducted by a police investigator or another investigating officer. While the Right to Information Act (RTI) makes certain police records accessible to the public, forensic reporting is not made available in public so as not to hinder the prosecution of an accused suspect. Parties outside the police service can conduct their own investigations, such as insurance companies and private investigators. However, these allegations are not subject to an inquiry by the police. Traffic reports A police traffic report states the violation made by a driver and offence accepted by him and includes his personal details, name, license number, tag number, and model number of the car.

III. Supplemental police reports

When a police report may be revised, an officer can request an additional report reflecting the new information by updating or rectifying it. For the initial report, the reporting officer can omit unintentionally any information or incorrectly write a typo in the report. In the case of an accident occurred at night, any photographs taken by the officer at that time do not clearly show the details of an accident. For this, the additional supplementary pages are added to the initial report and mark as original report and no alteration can be done to the initial report.

IV. Witness reports

In police interviews with traffic accidents or crime witnesses, police officers record statements on accounts of witnesses. Such witness accounts supplement the primary incident or injury report but are usually conducted in different ways. A big blank area of a witness form for handing out a report about a traffic accident or injury report is also included in the original witness report. Often, a witness will compose their account with a blank sheet of paper. In the case of an accident or injury, the witness reports shall be made after a subsequent interview with the victim.

V. Administrative reports

Police officers and organisations in the corporate business relationship sector must maintain such administrative records comparable with non-police businesses. Such reports can include statistical details on detention, duties, budget items, and other things every day. When a victim or some other member of the public asks for any details on the Right to Information Act (RTI), such requests will be reported in an administrative report and made available by a police department official.

I. Internal affairs reports

Law enforcement department's check-and-balance accountability, an officer is often required to submit an inquiry into internal affairs. Those inquiries are reported as complaints of misconduct on internal affairs reports. Every allegation returns one of four findings: sustained (the accusation is proven); unsustained (the accusation does not include sufficient proof to support or disprove it); unfounded (the event did not occur or was not based on facts uncovered by the investigation); or exonerated (the alleged incident did occur in fact, but the action of the officer was considered to be reasonable and lawful).

5) Inquiry [2(g)]

Inquiry is defined under **Section 2(g)** of the Code of Criminal Procedure, 1973 referring to any inquiry other than trial under this code, conducted by a Magistrate or a Court. A Trial in every case initiate when the inquiry ends. The work of the police officer under the Code of Criminal Procedure, 1973 cannot be termed as an inquiry but it is understood as investigation. Section 159 of CrPC (Code of Criminal Procedure, 1973) explains an order given by the magistrate or Court to make a preliminary inquiry in order to see whether the offence has been committed and if so, who are the people involved in the same.

6) Summons and warrants case [2(w), 2(x)]

“Summon” is a document that commands a person to whom it is served to appear before the court and to answer the complaint made against him. Summon is issued by the Magistrate to the accused under section 204(1) (a) of Cr.P.C, 1973. “Summon case” means a case relating to an offence, not being a warrant case.

“warrant-case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years

7) Victim 2(wa)

In CrPC, the term victim means a person who has suffered any loss or injury due to the action or omission of the accused, who is charged for the same. It also includes the said person’s guardian or legal heir.

FUNCTIONARIES UNDER THE CODE

The following are the general stakeholders and functionaries in the Criminal Justice Administration.

- State
- Judges
- Police
- Victim
- Accused
- Advocate
- Witness

1) Police:

- The CrPC does not define 'police' or mention its constitution. It rather operates assuming the existence of police and grants various powers and responsibilities to the police. The Police Act of 1861 defines police as all persons who shall be enrolled under the Act.
- The Director General of Police (DGP) heads the State Police Force, the Inspector General of Police (IGP) heads the Zone and the Superintendent of Police (SP) heads the Police District. The Inspector heads the Police Stations in urban areas, whereas the Sub-Inspector heads the Police Stations in rural areas. The powers of the police include the power to make an arrest, search and investigate. Section 2(s) of the Code defines a police station and section 2(o) defines the officer-in-charge of a police station.

2) Prosecutor:

- A criminal offence is a wrong against an individual as well as the society. The State represents the society and participates in a criminal trial. The State in such a trial is represented by the Public Prosecutor (PP) or Assistant Public Prosecutor (APP). It is to be noted that the PP and APP represent the State and not the accused.
- Section 2(u) of CrPC defines Public Prosecutor as any person appointed under Section 24 or any person acting under the directions of a Public Prosecutor. While section 24 specifies the criteria for appointment of the Public Prosecutor, Section 25 specifies the criteria for appointment of Assistant Public Prosecutors.

- 3) Defence Counsel: While the Prosecutor represents the State, the Defence Counsel represents the accused before the Court. Section 303 provides the accused the right to be defended by a pleader of his choice, and Section 304 provides that if the accused does not have means to hire a pleader, then the Court shall assign a pleader for the accused, at the expense of the State.
- 4) Prison Authorities: Similar to the police force, the CrPC presumes the existence of prisons and prison authorities. The Code does not have specific provisions for the creation or administration of prison authorities either. Instead, those are covered under the Prisons Act of 1894, the Prisoners Act of 1900 and the Probation of Offenders Act of 1958.

Arrest and right of an arrested person

As per the provisions of CRPC, persons who are authorised to arrest an offender are as follows:

- I. Arrest by police officer
- II. Arrest by private person
- III. Arrest by Magistrate

Arrest by police officer-

Section 41 of the code of criminal procedure, 1973 includes the circumstances when a police officer **may** arrest a person without warrant and without an order from a magistrate. There are certain conditions and any of the conditions must be satisfied while making arrest without warrant by a police officer. These conditions are:

- **Cognizable Offence-** If a person commits a cognizable offence in the presence of police. Cognizable offences are those offences which are enumerated as cognizable under first schedule of the CRPC such as Murder, Rape, Robbery etc; or
- **Information-** A person may be arrested without warrant against whom a credible information has been received, or complaint has been made, or reasonable suspicion exists that a person has committed a cognizable offence punishable with less than seven years imprisonment or imprisonment upto seven years. A police officer has authority to arrest a person without warrant on above mentioned conditions if –

The police officer has reason to believe that such person has committed an offence against whom information has been received or complaint has been made;

When the arrest is necessary: –

- To prevent such person from committing further offence; or
- For proper investigation of the offence; or
- To prevent such person for tempering and disappearing evidences of the offence; or
- To prevent such person from making any inducement, threat or promise to the person who is acquainted with the facts of the case; or
- The presence of such person is required in the court,
- It is the duty of the police officer to record a reason in writing while making arrest of any person.

- **Information of more serious offence-** A person may be arrested without an order of magistrate against whom a credible information has been received, or complaint has been made, or reasonable suspicion exists that a person has committed a cognizable offence punishable with more than seven years imprisonment, or with death sentence; or
- **Proclaimed offender-** A person who has been declared as an offender either under the provisions code of criminal procedure or by the order of the state government; or
- **Stolen Property-** A person in whose possession stolen property is found and he has reason to believe that the property is his possession is stolen property and suspicion exists that he has committed an offence with reference to such property; or
- **Obstruct-** When a person obstructs or resist a police officer while performing his official duty or such person escaped or attempt to escaped from lawful custody; or
- **Desert from army-** A person deserts from any of the Armed Forces of the Union; or
- **Extradition-** If a person commits an offence outside the India, then such offence shall be deemed to be committed in India and such person shall be liable to be prosecuted in India for that offence and such person can be arrested by the police officer in India; or
- **Released convict-** If a released convict commits to breach any of the conditions on which he has been released; or
- **Another police station-** If the order has been received whether in writing or oral, from another police station that such person is to be arrested and specify that he has committed such offence.

In **section 41 of CrPC, used the term ‘may’** instead of must or something obligatory term which clearly explains that police officer is not bound to make arrest under section 41.

In **Amarawati and Anr. Vs State of U.P.**, It was held by the honourable court that ‘may’ cannot be interpreted as ‘must’ or ‘shall’.

In **Arnesh Kumar Vs. State of Bihar and Anr.**, the supreme court clearly states that an accused arrested without warrant has fundamental right as guaranteed under **Article 22(2)** of the constitution of India and **section 57** of the code of criminal procedure to be produced within 24 hours of his arrest before the magistrate without any unnecessary delay and the police officer must satisfy the court why was the arrest necessary without warrant.

Arrest by Private person-

Section 43 of the code of criminal procedure, 1973, a private person is authorised to arrest another person if such person, in his presence, commits a non-bailable and cognizable offence or he is proclaimed offender and private person is bound to make over to arrested person to the nearest police station or a police officer without any unnecessary delay. The police officer shall re-arrest him under **section 41** of the code if he thinks fit to do so.

There are two conditions and any one of them must be fulfilled:

- A person commits a non-bailable offence and cognizable offence; or
- A person is a proclaimed offender.

Arrest by Magistrate-

The provision of arrest by magistrate contained under **section 44** of the code, if a person is committed any offence in the presence and local jurisdiction of executive or judicial magistrate, the magistrate may arrest such person himself or order any police officer to arrest the offender.

The above-mentioned section requires two conditions:

- An offence is committed in the presence of magistrate, and
- An offence is committed in his local jurisdiction.

Other provisions regarding arrest

- **Section 50 of CrPC** says that every police officer or any other person who is authorised to arrest a person without a warrant should inform the arrested person about the offence for which he is arrested and other grounds for such an arrest.
- It is the duty of the police officer and he cannot refuse it. **Section 50A of CrPC** obligates a person making an arrest to inform of the arrest to any of his friends or relative or any other person in his interest. The police officer should inform the arrested person that he has a right to information about his arrest to the nominated person as soon as he is put under custody.
- **Section 55 of CrPC** states that whenever a police officer has authorised his subordinate to arrest any person without a warrant, the subordinate officer needs to notify the person arrested of the substance of written order that is given, specifying the offence and other grounds of arrest.
- **Section 75 of CrPC** says that the police officer (or any other officer) executing the warrant should notify the substance to the person arrested and

show him a warrant if it required. **Article 22(1)** of the Constitution of India also states that no police officer should arrest any person without informing the ground of arrest.

The rights of an accused

1) Right to be produced before the Magistrate without unnecessary delay

- **Section 55 of CrPC** states that a police officer making an arrest **without a warrant should produce the arrested person without unnecessary delay before the Magistrate** having jurisdiction or a police officer in charge of the police station, subject to the conditions of the arrest.
- **Section 76 of CrPC** states that the police officer executing a warrant of arrest should produce the arrested person before the court before which he is required by law to produce the person. **It states that the person should be produced within 24 hours of arrest.**
- While calculating the time period of 24 hours, **it must exclude the time which is required for the journey** from the place of detaining to the Magistrate Court.
- **Article 22(2)** of the Constitution states that the police officer making an arrest should be produced before the Magistrate within 24 hours of arrest. **If the police officer fails to produce before the Magistrate within 24 hours, he will be liable for wrongful detention.**

2) Rights to be released on Bail

- **Sub section (2) of Section 50 of CrPC** states that when a police officer arrests any person without a warrant for an offence other than non-cognizable offence; **he shall inform him that he has a right to release on bail** and to make an arrangement for the sureties on his behalf.

3) Rights to a fair trial

- Any provision related to the right to a fair trial is not given in CrPC, but such rights can be derived from the Constitution and the various judgements.
- **Article 14** of the Constitution of states that” all persons are equal before the law”. It means that **all the parties to the dispute should be given equal treatment.**

4) Right to consult a lawyer

- **Section 41D of CrPC** states the right of the prisoners to consult his lawyer during interrogation.
- **Article 22(1)** of the constitution states that the arrested person has a right to appoint a lawyer and be defended by the pleader of his choice.
- **Section 303 of CrPC** states that when a person is alleged to have committed an offence before the criminal court or against whom proceedings have been initiated, has a right to be defended by a legal practitioner of his choice.

5) Right to free Legal Aid

- **Section 304** of CrPC states that when a trial is conducted before the Court of Session, and the accused is not represented by the legal practitioner, or when it appears that the accused has no sufficient means to appoint a pleader then, the court may appoint a pleader for his defence at the expense of the State.
- **Article 39A** obligates a state to provide free legal aid for the purpose of securing justice. This right has also been explicitly given in the case of **Khatri VS State of Bihar**.
- The court held that “to provide free legal aid to the indigent accused person”. It is also given at the time when the accused is produced before the Magistrate for the first time along with time commences.
- The right of the accused person **cannot be denied even when the accused fails to apply for it**. If the state fails to provide legal aid to the indigent accused person, then it will vitiate the whole trial as void.
- In the case of **Sukh Das vs Union Territory of Arunachal Pradesh**, the court held: - “The right of an indigent accused cannot be denied even when the accused fails to apply for it”. If the state fails to provide legal aid to the indigent accused person it will vitiate the whole trial as void.

6) Right to keep silence

- Right to keep silent is not recognized in any law but it can derive its authority from CrPC and the Indian Evidence Act. This **right is mainly related to the statement and confession made in the court**.
- Whenever a confession or a statement is made in the court, it is the **duty of the Magistrate to find** that such a **statement or the confession** was made **voluntarily or not**.
- No arrested person can be **compelled to speak** anything in the court.
- Article 20 (2) states that no person can be compelled to be a witness against himself. This is the principle of self- incrimination. This principle was reiterated by the case of **Nandini Satpathy vs P.L Dani**. It stated, **“No one can force any person to give any statement or to answer questions and the accused person has a right to keep silent during the process of interrogation”**.

7) Right to be Examined by the medical practitioner

- **Section 54** of CrPC states that when the arrested person alleges that examination of his body will lead to a fact which will disapprove the fact of commission of an offence by him, or which will lead to commission of an offence by any other person against his body, the court may order for medical examination of such accused person at the request of him (accused) unless the court is satisfied that such a request is made for the purpose of defeating the justice.
- In **D.K Basu vs State of West Bengal** and others, this case is a landmark judgement because it focuses “**on the rights of the arrested person and it also obligates the police officer to do certain activities**”. The court also states that if the police officer fails to perform his duty, then he will be liable for **contempt of court as well as for the departmental actions**. Such matter can be instituted in any High Court having the jurisdiction over the matter.
- In spite of various efforts in protecting the accused from the torture and inhuman treatment, there are still instances of custodial deaths and the police atrocities. So, the Supreme court issued **9 guidelines** for the protection of accused persons and the amendment of various sections of CrPC.

Processes to Compel Appearance in Court

Summons (Section 61 to 69)

Summons is a document issued by a Court of Justice calling upon the person to whom it is directed to attend before a judge or officer of the Court. It also means to notify a defendant that an action has been commenced against him in which he may file and answer or plead in some other fashion. **Summons should be clear and specified** because it is a milder form of process issued for enforcing the appearance of the accused or of witness and for the production of a document or thing.

According to **Section 61** of the code of criminal procedure, every summons issued by a court under this Code shall be **in writing, in duplicate, signed by the presiding officer of such Court, or by such other officer** as the High Court may, from time to time by rule direct and shall bear this seal of the Court.

According to Section 61 of the Code of Criminal Procedure 1973 summons may be sent to – (a) The accused (b) A witness (c) A person to show cause against some order, and (d) The person proceeded against under **section 125** of the Code.

Warrant (S.70-81)

Section 70 of the Criminal Procedure Code, 1973 (CrPC) outlines the essential elements of a warrant. A warrant is a written authorization issued by a Magistrate, and it must be embossed with the court's seal.

The key components of a warrant:

- **Form and Writing:** The warrant must be in writing, meaning it must be documented in a written format and not merely verbal.
- **Signature of a Magistrate:** The warrant must be signed by a Magistrate, who is a judicial officer with the authority to issue such orders.
- **Seal of the Court:** The warrant should bear the official seal of the court from which it is issued. The court seal serves as a mark of authenticity and authority.

As per CrPC, the content of a warrant must include essential information such as the identification of the person to be arrested or subjected to the warrant's action, specifying the offence or purpose for which the warrant is issued to ensure a clear legal basis for the person's apprehension or action.

There are four major types of warrants issued by courts:

- Arrest Warrant

- Search Warrant
- Bench Warrant
- Execution Warrant

Proclamation and Attachment (Section 82 to 86)

Proclamation for person absconding (Section 82)

This section states that if in the opinion of the court, a person against whom a warrant has been issued, [has absconded or is concealing himself](#) so that the warrant cannot be executed, then the court can publish a [written proclamation mandating such person to appear at a specified place & time](#). Such specified time [cannot be less than 30 days](#) from the date of the issuance of the proclamation.

This proclamation has to be:

- (i) [Publicly read](#) in the town or village where the person against whom the proclamation has been issued resides.
- (ii) [Affixed on some visible part](#) of the house or village where such person resides ordinarily.
- (iii) Affixed at some [visible part of the courthouse](#). In its discretion, the court can even direct a copy of the proclamation to be published in a daily newspaper that circulates in the area where such a person resides.

In cases where a proclamation has been issued against a person who is accused of an offence punishable [under Section 302, 304, 367, 382, 392 to 400, 402, 436, 449, 459 or 460 of the IPC](#) and the said person does not appear on the date & time specified in the proclamation, then the court can pronounce him as a [proclaimed offender](#).

In the case of [M.S.R. Gundappa v. State of Karnataka](#), it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant.

Attachment of property of person absconding (Section 83)

The court can order attachment of the property of the person against whom a proclamation has been issued under Section 82. Such attachment can be made even [simultaneously with the issuance of proclamation under Section 82](#) if the court is of the view that such a person is about to dispose of his property. This section mentions the procedure for such attachment in detail, with respect to the [movable as well as the immovable property](#).

PROCESS TO COMPEL THE PRODUCTION OF THINGS (SECTION 91-1050)

Summons to produce

Section 91 of the Criminal Procedure Code (CrPC) of India deals with the [powers of a court to issue summons or warrant for the production of a document or electronic record](#).

According to this section, if a court is satisfied that any document produced before it is relevant, it can require the production of [any other document from any person](#) which is in his possession or power. The court can either issue a summons or a warrant for the production of such document or electronic record. The summons or warrant can be issued for the [purpose of evidence or for any other substantial reason](#).

Judgements:

- **State of Punjab v. Baldev Singh**; The Supreme Court of India held that the court has the power to call for any document under Section 91 of the CrPC. The court further held that the provision gives the court the power to call for documents or electronic records even if they are in the possession of a third party.
- **Babu Bhai v. State of Gujarat**: This case dealt with the scope of Section 91 of the CrPC and the power of the court to summon a third party to produce documents or electronic records. The court held that the power of the court under Section 91 is not restricted to documents or electronic records that are in the possession of the person to whom the summons or warrant is issued.

Search warrants (section 93-98)

Section 93 of CrPC provides that where any document or thing is required by the court which is necessary for the investigation or other proceedings, the court may issue a search warrant for the same if:

- Despite having been summoned under sections 91 or 92, the person in whose possession the document or thing is placed refuses to produce it.
- Where the court does not know who has possession of such thing or documents.
- Where the court considers that purpose will only be served by general inspection.

Section 94: Where any District Magistrate, Sub-divisional District Magistrate or Magistrate of the first class has reason to believe that any place is used for the

sale or deposit of any stolen property or other objectionable articles, then he may authorise any police officer by way of the warrant to enter such place and conduct a search therein.

Section 95: Under section 95 of CrPC, the Magistrate may issue a search warrant authorising the police officer to search any premises where any newspaper or book, or any document, whose publication is punishable by the offence 'sedition' of the Indian Penal Code and such matter is declared by the state government to be forfeited.

Section 97: Section 97 of CrPC empowers the District Magistrate, Sub-divisional Magistrate and Magistrate of the first class to issue a search warrant if in case he has reason to believe that any person is confined, and such confinement is unlawful.

Section 98: Section 98 of CrPC empowers the District Magistrate, Sub-divisional Magistrate, and Magistrate of first-class to make an order for immediate restoration of a woman or a female child to her lawful guardian and to compel the compliance of the order by using such force as may be necessary.

INFORMATION TO THE POLICE AND THEIR POWER TO INVESTIGATE

First information report (FIR)

Section 154

- The term FIR is not defined in the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), 1973, or in any other law.
- First Information Report (FIR) is a [written document prepared by the police](#) when they receive information about the commission of a cognizable offence.
- It is generally a complaint lodged with the police [by the victim of a cognizable offence or by someone on his/her behalf](#). Anyone can report the commission of a cognizable offence [either orally or in writing](#). If given orally it should be reduced to writing by the concerned police officer.
- If such an information is given [by a woman against whom sexual offences](#) have been alleged to have been [committed or attempted](#), then such information needs to be recorded by a [woman police officer or any other woman officer](#).
- Under Section 154(3) CrPC, if any person is aggrieved by the [refusal](#) on the part of the officer in charge of a police station [to register an FIR](#), she can send the [complaint to the Superintendent of Police/DCP concerned](#).
- If no FIR is registered, the aggrieved persons can file a complaint under **Section 156(3) CrPC** before a [concerned court](#) which, if satisfied that a cognizable offence is made out from the complaint, will direct the police to [register an FIR and conduct an investigation](#).

Power to investigate

Powers of Police with Respect to Non-Cognizable Offence

Section 155

- Under [non-cognizable offences](#), the police are [not permitted to make arrests without a warrant](#) and [initiate an independent investigation](#) without the magistrate's approval.
- As per **section 155(2)**, the police officer must obtain the magistrate's permission before proceeding. The police officer must document the complaint and direct the complainant to approach the magistrate with jurisdiction. The investigation can proceed once the magistrate grants permission.

Powers of the Police with Respect to Cognizable Offence

Section 156

- When an FIR is filed at the police station, and the offence is [cognizable](#), the police can proceed with an [arrest without waiting for a court warrant](#).
- As soon as the arrest is made, an investigation can begin, and it is only allowed to look at the area under that police station's local jurisdiction.
- If the information discloses [a cognizable offence](#), the police are [obligated to file an FIR](#). If the crime scene is outside the police station's jurisdiction, the concerned officer must register the report and send it to the police station with jurisdiction.

Procedure for Investigation

Section 157

- When a police officer in charge of a police station has grounds to believe that a [cognizable offence](#) has been committed based on the FIR or any other information so received, [the investigation of a cognizable case begins](#).
- As soon as the police officer receives information or has reason to suspect the commission of any cognizable offence, [he is required to notify the magistrate, who has jurisdiction over such cases](#).
- The police officer can [delegate some subordinate officer](#) to investigate on the spot. And if there is [no sufficient reason](#) to investigate the case, he shall [not investigate it](#). And shall state in its report the reasons for not investigating, as well as notify the informant that investigation is halted.

Sending a Police Report to the Magistrate

Section 159

- A report is sent to the magistrate, which is called the police report. A superior police officer sends it to notify the magistrate that a police officer is investigating a specific case.
- The report must be delivered to the magistrate, without any delay.

Search by Police Officer

Section 165

- A police officer conducting an investigation has the authority to search any place [within the local limits of the police station](#) of which he is in charge of.
- The officer conducting the investigation is obliged to [conduct the search in person](#), but if that is not possible, they [can give written permission](#) to any

subordinate officer to do so by stating the object for which the search is necessary as well as the location of the search.

Attendance and examination of witness

Section 160

- As per Section 160 of Criminal Procedure Code Police officers investigating the case has the power to require attendance of witnesses of a case.
- Any police officer making an investigation, require the attendance of any person being within the limits of his own or any adjoining station who, before himself from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case.
- Provided that no male person 1[under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

Section 161

- Any police officer making an investigation, by general or special order, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
- Such person shall be bound to answer truly all questions relating to such case put to him by such officer, but not such questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
- The police officer may reduce into writing any statement made to him in the course of an examination under this section. He shall make a separate and true record of the statement of each such person whose statement he records.

Statements and Confessions

Section 164

- Irrespective of the fact whether they have jurisdiction or not, a confession or a statement can be recorded by a Metropolitan Magistrate or by a Judicial Magistrate.
- Section 164 of the Criminal Procedure Code provides that the police officer is not competent to record confessions.

When can a Confession or Statement be Recorded by the Magistrate?

- (i) either in the course of the investigation.

(ii) or anytime afterwards but before the commencement of inquiry or trial.

Manner of Recording a Confession under CrPC

Before recording a confession, the magistrate has to explain to the person confessing that:

- he is not bound to make such confession
- and if he makes such a confession, it can be used against him as evidence.

This section of the Criminal Procedure Code act as a [safety valve to prohibit involuntary confession](#).

To ensure that the confession is made voluntarily following directions are to be followed by the magistrate:

- a) The magistrate should [provide adequate time](#) to the accused to think so that he is free from police influence.
- b) The accused will be [asked about the treatment that he received in custody](#).
- c) If there are [any marks or injuries on the accused person's body, he will be asked how he received them](#). [His handcuffs](#) will also be ordered to be [removed](#), if they are on.
- d) If the accused [expresses his unwillingness to make a confession](#), then he will [not be remanded](#) to police custody.
- e) Accused will be [asked the reason](#) as to why he is making such a statement which is against his self-interest.
- f) The magistrate has to [apply his judicial mind](#) to ascertain that the accused confessing is not under any kind of influence, threat or promise.
- g) The court [can reject a confession](#) if it is not found to be perfectly voluntary.
- h) If the prisoner [knows how to write](#), he may be asked to give his [confession in writing](#) to derive the real version from the prisoner himself.
- i) The magistrate can explain to him [his right to consult a lawyer](#) before recording his confession under **[Article 22\(1\)](#)** of the Constitution.

Complaints to magistrate

Taking cognizance is the first and foremost steps towards the trial. The judicial officer will have to take cognizance of the offence before he could proceed to conduct or trial.

Section 200-203 talks about complaint to magistrate. Once the complaint is made to the Magistrate, a further process that is meant to be followed by the Magistrate is mentioned in the prescribed sections of **Chapter XV of CrPC**.

Examination Of Complaint Section 200:

A Magistrate with whom complaint filed, shall examine the [complainant and also witnesses on oath](#). The contents in the complaint shall also examined and [reduced in writing in a report](#). The report shall have [signature of complainant, witnesses and also the Magistrate](#).

The complaint has to be filed with the magistrate who [has the jurisdiction to try the offence](#) complained of. However, in cases where the complaint is accidentally filed with the [magistrate not having the jurisdiction, the magistrate is duty bound to return the complaint](#) to be presented to the appropriate magistrate by stating the necessary details thereof.

The complaint may be made orally or in writing. However, it is always better to furnish it in writing.

- Unlike the filing of the FIR, where after the police straightaway proceed to investigate the offence complained of and arrest the suspects, in case of the complaint the magistrate will not proceed with it without examining the complainant and witnesses.
- Thereafter the magistrate will make a written report of the examination and sign it himself as well as get it signed by the complainant and the witnesses.
- Thereafter if the magistrate is satisfied that the complaint coupled with the examination discloses an offence, he shall proceed with taking cognizance of the offence (which simply means that he would summon the accused suspects for the purpose of trial)
- However, if the magistrate is not satisfied that the complaint (and examination) discloses any offence, he may take one of the two options available to him: he may either dismiss the complaint or he may order the police to undertake some further investigation under Section 202 of the Code.
- After the police officer reports back to the magistrate his findings the magistrate may proceed with either of the steps stated above.

Section 203 provides that if after due consideration of the statements made by the witnesses and the complainant on oath, the [Magistrate believes that there is no point for further proceedings, he shall dismiss the complaint](#) and in such a case he [shall mention the reasons](#) for such actions in brief.

Powers of courts and their functions

Section 26-35

1. Section 26

Subject to the other provisions of this Code, -

Any offence under the Indian Penal Code may be tried by-

- the High Court, or the Court of Session, or any other Court by which such offence is shown in the First Schedule to be triable;
- Provided that any offence under [section 376, section 376A, section2 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E1 of the Indian Penal Code](#) shall be tried as far as practicable by a Court [presided over by a woman.](#)
- 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 the High Court, or any other Court.

2. Section 27

- Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court [is under the age of sixteen years](#), may be tried by [the Court of a Chief Judicial Magistrate,](#)
- [or by any Court specially empowered under the Children Act, 1960 \(60 of 1960\),](#) or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

3. Section 28

- A [High Court may pass any sentence](#) authorised by law.
- A Sessions Judge or Additional Sessions Judge may pass [any sentence](#) authorised by law; but [any sentence of death passed by any such Judge shall](#) be subject to [confirmation](#) by the High Court.
- An Assistant Sessions Judge may pass [any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.](#)

4. Section 29

- The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.
- The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or both.
- The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.
- The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

5. Section 31

- When a person is convicted at one trial of two or more offences, the Court may, 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 the 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.

6. **Section 32:** Mode of conferring powers.

7. **Section 33:** Powers of officers appointed

8. **Section 34:** Withdrawal of powers

9. **Section 35:** Powers exercisable by successors of office

Charge

Charge is dealt with in **Chapter XVII**, from **section 211 to section 224**. The **form of charges** is dealt with in **Sections 211- 217**.

The **Joinder of Charges** is dealt with in **Sections 218-224 of the CrPC**. When more than one accused is tried for the same crime, the term "**joinder of charges**" is used.

SECTION 211 of CrPC- Content of Charges

- The offense with which the accused is charged must be stated in every charge brought under this Code. This states that whenever an accused commits an offense, he must be charged with that offense under this Code.
- If the statute that defines the offense gives it a specific name, the charge may only use that word to characterize the offense.
- The charge must include the statute and part of the law that the offense is stated to have been committed against.
- The charge must be worded in the Court's language.
- If the accused was previously convicted of any offense, he would be subject to enhanced punishment, or punishment of a different kind, for a subsequent offence of similar nature.
- It is, however, required to prove the previous conviction for the purpose of impacting the punishment which the Court might think would work to award for the subsequent offense.
- The fact date and place of the previous conviction should be stated in the charge in the further sentence which the Court might pass.

Illustration: A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300.

Section 212 - Particulars of Time, Person and Date

Section 212 deal with the charge and its details such as the date, time and place. For example, in case of murder date and time of the murder, the details such as name of the accused and the deceased are required to be mentioned.

Section 213- Manner of Offence

When the nature of the case is such that the particulars indicated in sections 211 and 212 do not provide the accused with adequate notice of the allegations with

which he is charged, the charge must also include such details of the alleged offence's commission as would provide for that purpose i.e., [how the crime is committed](#).

Illustration: A is accused of cheating B at a given time and place. The charge must be set out the manner in which A cheated B.

Section 216 – Alteration of the charge by the court

- A charge can be [changed or added](#) by any Court at any moment [before a judgement](#) is given.
- Every [change and addition](#) must be [explained to the accused](#).
- If an alteration or addition to a charge is such that proceeding of the trial immediately would prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may [either order a new trial or delay the trial](#) for the time it deems required.
- If the offence described is the amended or additional charge which requires prior sanction is added, the case would not be dealt with until the sanction is acquired.

Section 217 CrPC- Recalling of Witness When Charge Is Altered

[The prosecutor and the accused are allowed to recall the witness or summoned after the Court alters or adds to a charge when the trial has already begun](#): By recording the reasons in writing, unless the Court desires to recall or re-examine the witness for the purpose of vexation or delay or defeating the ends of justice. The Court can call any further witness whom it considers to be material.

Section 218 CrPC- Separate Charges for Distinct Offences

There should be a [separate charge for each unique offence](#) for which the individual is accused, and each charge shall be tried separately. However, if the accused person requests in writing for the trial of all the charges together and the Magistrate believes that the accused person would not be prejudiced, the Magistrate may try all or any number of the allegations brought against him together.

Illustration: A is accused of a cheating on one occasion, and of causing hurt on another occasion. A must be separately charged and separately tried for both the offences.

Section 219 of CrPC- 3 Offenses Same in kind may be charged together if occurred within a year.

- When a person is suspected of committing more than one offence of the same during a twelve-month period, regardless of whether or not the crimes were committed against the same person, he may be charged and prosecuted them not exceeding three.
- When two or more offences are punished by the same amount of penalty under the same provision of the Indian Penal Code or other special or local legislation, they are said to be of the same kind.

Section 220 OF CrPC- Trial for More Than One Offense

- If the same individual commits more than one offence in a series of acts so interrelated as to form the same transaction, he may be charged with and prosecuted for all of them at the same time.
- If the claimed activities come under two or more independent definitions of any legislation that exists at the time the accused may be charged with and prosecuted for each of the offences in a single trial.

Section 223 OF CrPC- provisions relating to joinder of charges -

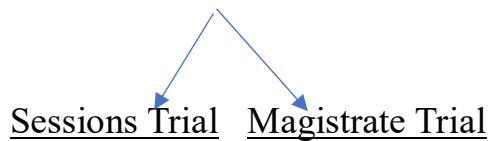
- Persons accused of the same offence committed in the same transaction;
- Persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- Persons accused of more than one offence of the same kind, committed by them jointly within the period of twelve months;
- Persons accused of different offences committed in the same transaction; Persons accused of theft, extortion, cheating, or criminal misappropriation, and of receiving or retaining, or assisting in the disposal or concealment of property allegedly transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence.

Section 224

- When a charge containing more than one offense is framed against the same person,
- and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent, of the Court, withdraw the remaining charge or charges, or the Court on its own may stay the inquiry, trial of such charge or charges and such withdrawal will mean acquittal of the charges.

TRIALS

A. Criminal trial



- I. Trial before a Court of Session
- II. Trial of Warrants Case by a Magistrate
- III. Trial of Summons Case by Magistrate

B. Summary trials

Trial before a Court of Session

Section 225-234

The process of the trial is as follows:

- 1) In Sessions Trial, the accused can hire a counsel of his choice and in case he is unable to hire a lawyer, he will be assigned an attorney at the expense of the State. The accused must be provided with the copies of FIR, police report, etc. Before the commencement of trial
- 2) The prosecutor begins the trial and presents the accusations before the Judge. It is the duty of the prosecutor to present the evidence by which he wants to prove the accused guilty.
- 3) After the parties present their cases before the judge and if the court is of the opinion that the evidence is not sufficient to prove the accused guilty or to proceed with the case, the Court discharges the accused and states the reason for same.
- 4) After both the parties present their case before the Judge and if the court is of the opinion that the accused might have committed the offence, then, a written charge is framed, if the Sessions Court has exclusive jurisdiction. If the Session Court does not have exclusive jurisdiction over the case, the charge is framed and the case is transferred to the Chief Judicial Magistrate.
- 5) The accused has to be informed about the charges framed against him so that he can plead guilty or be tried.
- 6) If the accused pleads guilty, he can be convicted for the same; In case the accused does not plead guilty then the case goes in for trial.

- 7) The Judge examines prosecution's evidence. The Judge can examine or cross examine any witness.
- 8) After the cross examination is complete, a memorandum of oral arguments is submitted and the opposite party is supplied with a copy.
- 9) The accused is provided with a chance to defend (audi alterum partem)
- 10) After trial, if the evidence & witnesses are not sufficient, the Judge can acquit the accused.
- 11) The defence is called upon to submit evidence & witnesses in case the accused is not acquitted.
- 12) After the prosecution, the defence defends. However, the prosecutor can challenge any point made by the defence.
- 13) The court on basis of evidence procured & statements recorded delivers the judgement.
- 14) In case the accused is previously convicted for an offence and he denies the same, then it is the duty of Judge to come to final conclusion regarding the previous conviction and pass the enhanced punishment; if any.
- 15) Any offence tried under Section 199(2) of CrPC by the Sessions Court shall be tried with the same procedure as of warrant cases. Trials under this section should be held before camera (only if court permits).
- 16) In case of discharge or acquittal of accused by the court, the Judge can order direct the petitioner in this case to compensate the accused. Such an order can be appealed.

LANDMARK JUDGEMENTS

Bachan Singh vs. State of Punjab

- The Court ruled in this case, that the accused person has right to be heard before his sentence even though his words may not be relevant or connected to the case.
- It was a landmark judgement in developing jurisprudence relating to death penalty.

Trial of Warrants Case by a Magistrate

Section 238-250

Trials are classified into two types:

Trial instituted under police report

Trial instituted other than on police report

A. PROCEDURE OF TRIAL INSTITUTED BY POLICE REPORT

- 1) Before the beginning of the trial, the Magistrate makes sure that the accused is supplied with copies of FIR, Police Report, witness statement and all necessary documents that are stated under Section 207 of the Code of Criminal Procedure.
- 2) If after examining the accused & witnesses if the Magistrate is of the opinion that the charges framed against the accused are futile and there is no sufficient ground for proceeding further with the trial then the Magistrate can discharge the accused.
- 3) After examination of documents & reading the police report the Magistrate frames charges against the accused and the charges are read and explained to the accused and given an opportunity whether he wants to plead guilty
- 4) In case the accused does not plead guilty and the Magistrate proceeds with the trial, the Magistrate fixes a date to examine the prosecution's evidence & witnesses and can call witnesses to trial by the issue of summons.
- 5) Under Section 313 of the Code of Criminal Procedure, the Magistrate records the statement of the accused. After recording the statement of the accused, the defence is called upon to produce his evidence.
- 6) After completion of the argument, the magistrate decides upon the acquittal or conviction of the accused on basis of evidence & arguments.

B. PROCEDURE OF TRIAL IN ABSENCE OF POLICE REPORT

- A warrant case in absence of a police report is filed straight to the Magistrate.
 - After filing a complaint, the accused is brought before the Magistrate and a trial is initiated. Section 244-247 of the Code of Criminal Procedure lays down the procedure for trial instituted in absence of a police report.
- 1) The trial in warrant cases instituted otherwise than on a police report begin with the prosecution producing their evidences & witnesses. The evidences must be according Section 138 of Indian Evidence Act.

- 2) Hearing the Prosecution's case is the initial step for beginning the trial. After the accused is produced, the Magistrate examines the accusations and decides whether a case can be made out or not.
- 3) In case the Magistrate decides that a case cannot be instituted against the accused, he can order discharge of the accused.
- 4) If after examining evidence, the magistrate is of the opinion that there exists a sufficient ground for accusations, then the Magistrate frames charge against the accused and trial is conducted thereon.
- 5) The accused must have full information about the accusations filed against him and he shall be supplied with copies of the same. The accused should also be asked that whether or not he wants to plead guilty.
- 6) If the accused pleads guilty in front of court, then it is the authority of Magistrate to decide the punishment. In case the accused does not plead guilty, trial will commence. After the prosecution presents its evidence, defence begins.
- 7) On the basis of the evidence provided & witnesses presented, the magistrate can order acquittal or conviction.

Trial of Summons Case by Magistrate

Section 251-259

Procedure of trial of a summons case

- 1) In a summons case the accused must be explained his charge and asked whether he wants to plead guilty, it is not necessary to frame a charge.
- 2) If the accused pleads guilty, then he will be convicted by the magistrate.
- 3) In case the accused is not convicted, then the Magistrate proceeds for trial and evidences of prosecution & defence will be recorded.
- 4) After examining evidence & witnesses from both sides, the Magistrate on basis of suitable grounds decides on the conviction or acquittal of the accused.
- 5) Non-appearance or death of complainant: In cases where a summons case is instituted on basis of a complaint and the complainant is absent on the hearing date then the magistrate can acquit the accused or he can adjourn the case till next date. The magistrate may proceed further with the trial where the presence of the complainant is not necessary.
- 6) In case a complaint is withdrawn with the permission of the Magistrate before the final order is passed, the accused will be acquitted.

- 7) Power of court to convert summon case into warrant: When a summons case is punishable with imprisonment of more than six months then it can be converted to a warrant case if it is in the best interest of justice
- 8) In cases where there is no sufficient ground for accusation, then the accused can be acquitted or discharged. The Magistrate can issue an order of compensation to the accused.

Summary trials

Section 260 to 265

Summary trials are typically used for cases involving **petty offences**, where the **maximum punishment is up to two years of imprisonment**, or cases that are deemed to be of a summary nature by law.

No sentence of imprisonment for a term **exceeding three months shall be passed** in the case of any conviction. However, **no limit** to the amount of **fine** that can be imposed.

The following offences can be tried in a summary way:

- offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
- theft, under section 379, section 380 or section 381 of the Indian Penal Code, where the value of the property stolen does not exceed two hundred rupees;
- receiving or retaining stolen property, under section 411 of the Indian Penal Code, where the value of the property does not exceed two hundred rupees;
- assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code, where the value of such property does not exceed two hundred rupees;
- offences under sections 454 and 456 of the Indian Penal Code
- insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the Indian Penal Code
- abetment of any of the foregoing offences;
- an attempt to commit any of the foregoing offences, when such attempt is an offence;

Who can try? According to Section 260 (1) of the Code, the

- Chief Judicial Magistrate;
- Metropolitan Magistrate;
- Magistrate of the first class specially empowered in this behalf by the High Court.
- can try summarily.

PLEA BARGAINING

A new chapter XXI-A from **section 265A-265L** has been introduced by the 2005 amendment. It deals with plea bargaining. Plea bargaining is also referred to as 'charge bargaining' or 'sentence bargaining'.

It refers to a person charged with a criminal offence (accused) negotiating with the prosecution for a lesser punishment than what is provided in law by pleading guilty to a less serious offence. It may involve bargaining on the charge or in the quantum of sentence.

Cases for which the plea bargaining is allowed are limited.

Only someone who has been charged for an offence that does not attract the death sentence, life sentence or a prison term above seven years can make use of this scheme.

To qualify for plea bargaining, the accused **must not fall** under the following cases: -

- The maximum sentence of the offence is above seven years.
- The crime has been committed contrary to a woman or a child below 14 years.
- The accused was earlier convicted for the same offence.
- An offence that affects the socio-economic situation of the country.

When a case is instituted on a police report, the court shall issue a notice to the Public Prosecutor, the Police Officer/Investigating Officer who has investigated the case, the accused, and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case.

The court shall award the compensation to the victim according to the disposition and hear the parties on the quantum of punishment, if possible. Then the benefit will be given to the accused under the provisions of Probation of Offender's Act, 1958.

After hearing the parties when the court finds that minimum punishment has been provided under the law for the offence committed by the accused, the court may sentence the accused to half of such minimum punishment.

After hearing the parties when the court finds that the offence committed by the accused is not having the minimum punishment, then the 1/4th of the maximum punishment of the offence may be provided to the accused.

MAINTENANCE UNDER CrPC

Section 125 of the Criminal Procedure Code, 1973, provides maintenance for the wife, children, and parents.

Section 125 of CrPC is secular in nature. It does not apply to any particular religion or sect but to all individuals equally irrespective of their religion.

A Magistrate of first-class may pass an order for maintenance to a person to give a monthly allowance to his wife or child or parents.

The amount for the allowance is not fixed. It may be any sum. The Magistrate, after considering the family status and conditions, orders for maintenance to such person.

The order for maintenance is given when the person refuses or denies to maintain his dependants like wife, children, or parents.

The dependants who are liable to be maintained by a person are:

- Wife
- Minor Child
- Major Child
- Parents

Maintenance to Wife

1. Wife of a person who is not able to maintain herself.
2. The term wife also includes a divorced wife who has not re-married.
3. If the wife is earning and earns sufficiently, then she cannot claim maintenance.
4. A wife shall not be entitled to maintenance from her husband if she lives in adultery or refuses to reside (live) with her husband, or if she is living separately with the mutual consent of both of them.
5. If a relationship is in the nature of marriage and essential characteristics of marriage are found out, then a woman in a live-in relationship can also claim maintenance.
6. If in case the wife surrenders her right of maintenance, the Magistrate shall cancel the order of maintenance from the date of surrender.

In, Kalyan Dey Chaudhary vs. Rita Day: The Supreme Court, in this case, said that the quantum of maintenance is not pre-fixed but shall be decided as per the status of the parties. It shall always be decided upon the basis of facts and

circumstances around. [It can never be too excessive nor too restricted](#). The order for maintenance must always be [justifiable](#) for both parties.

In, [Shailja vs. Khobbanna](#): In this case, the court said that a wife [capable of earning and a wife actually earning are two different things](#). They can't be put under the same frame. The earnings of women must be voluntarily earning and not be out of force.

If the survival of a wife is on begging or doing material work, it does not mean that she is capable to maintain herself. The job of a wife must be such, which in turn can satisfy the needs of the wife for sustenance.

But the court also needs to do the [scrutiny of such circumstances](#) where the wife [deliberately stops working or leaves work](#) in order to seek maintenance from the husband. In such a case, [maintenance shall not be allowed](#) by the court to a wife.

Maintenance to Minor

1. A person is a minor when he is under eighteen years of age.
2. A person is liable to maintain his minor children, whether legitimate or illegitimate.
3. The concurrent responsibility of the father still persists when the husband of a minor girl is also minor and does not have sufficient means to maintain her.

Maintenance to Major Child

1. A person is liable to maintain his major daughter not being married.
2. After marriage, the husband is the guardian of a wife. But till marriage, the father is the guardian and caretaker of a major girl.
3. The father is liable for the maintenance of his major son only when he is mentally or physically abnormal or in such a condition when he is unable to maintain himself. For example, if he is paralyzed, then he is deemed to be unable to maintain himself.

Maintenance to Parents

1. It is the liability and duty of a person to maintain his father or mother if they are unable to maintain themselves.
2. [Maintenance and Welfare of Parents and Senior Citizens Act, 2007](#) emphasizes upon the maintenance of old age parents who because of any reason, are not capable of maintaining themselves.

If the person to whom an order for maintenance is issued fails to give maintenance, then the court may issue a warrant against such person for the imprisonment of one month. The provision for punishing a person does not waive off the liability of a person to maintain. It is a method to compel and levy the amount of maintenance from such a person.

DOUBLE JEOPARDY

Article 20 of the Indian constitution mentions about double jeopardy and its implication in the legal system. It states that:

- No person shall be convicted of any offence **except for violation of the law in force at the time of the commission** of the act charged as an offence
 - No person shall be **prosecuted and punished for the same offence more than once.**
 - No person accused of any offence shall be **compelled to be a witness against himself.**
- Thus, double jeopardy can be understood as the protection for a person against trying him for the same offence more than once if, he has been convicted or acquitted for the same.
- If the person is again charged for the same offence, then evidence shall be placed before the court, which shall then be decided accordingly.
- Double jeopardy in India ensures partial protection of a person, that is, it follows the principle of **autrefois convict**. This means that the person convicted of an offence, only he is protected under article 20 of the constitution, not the person acquitted. **Autrefois acquit**, is a statutory right not a fundamental right, hence it is ensured by the code of criminal procedure.
- Double jeopardy **protects a person from conviction of a same offence twice**, but it does not apply to cases where there is commission of two offences of two different ingredients, that is, two offences of different natures.
- The broad spectrum of the concept is however mentioned in S. 300 of CrPC which widens the ambit of the provision in India.
- The position of double Jeopardy laws under Criminal procedure code is much wider than what is given in constitution. The concept is defined under **S. 300** of CrPC and give a detail analysis by giving provisions on what will form a part of double jeopardy and what all are the exceptions made under it.
- One of the major points of emphasis is under CrPC, **double jeopardy** laws deal with **both the issues of autrefois convict and autrefois acquit**. Therefore, double jeopardy is applicable to all those who can are either acquit or convict of the offence.

The [doctrine of double jeopardy](#) is found under **S. 300 of CrPC**. There are six sub clauses under this section which aims to provide an exhaustive view on the concept. All the sub clause is explained below.

- 1) **S 300(1) of CrPC** provides that if any person is tried under the court of competent jurisdiction and found acquitted or convicted for an offense committed, and when such acquittal or conviction remains in force cannot be tried again for the same offence twice. Second trial cannot be made on that person for the same set of facts and same offence and nor he\she shall be tried again for the same set of facts for different charges made against him
- 2) Some other essentials to this section include that '[acquittal](#)' for the purpose of this section [does not include dismissal of a complaint](#) nor does it include [discharge of accused](#). The case in its first trial should be tried under the court of competent jurisdiction. The section also requires that fall under this concept, the facts of the case should be identical. This means a person will one be barred under this section from second trial if the facts of the case under second trial is identical to the facts of first trial.
- 3) If a person has committed several offences but he was not tried for all such offences in the first trial then he **cannot** be prosecuted for other charges in the second trial. This means that when a person is acquitted or convicted for any offence and then he is charged with another offence separately then he cannot be charged for another offence under second trial as it is an abuse in itself. A person cannot be always made under prosecution for different charges separately. So, to provide a check against this abuse, **section 300(2)** makes it obligatory to [obtain consent of state government before a new prosecution](#) is launched against any person for any distinct offence for which a separate charge might have been made against the person at the former trial.
- 4) **Clause (3)** of the section permits for the second trial of the convict only in the cases where some [new facts came into existence](#) as a consequence of already existing offence. Firstly, this section is [only](#) applicable to the convicts of the offence and not to the acquits of the offence. The second element of this clause is that a person can only be [re-tried](#) in the cases [where some facts relating to the offence were not came into the notice of the courts](#). It mandates that the new facts or consequences must have occurred since the [conviction or acquittal of first trail](#) was going and these [were not brought in the notice of the court](#).
- 5) If the court under which first trial was made was [not competent](#) enough to try the [second offence](#) which was [the consequence of the first offence](#) can be

tried in other competent court and the first trial will not act as a bar on second trial.

- 6) The last clause of **S. 300** which provides that nothing in this S 300 of CrPC shall affect the provisions of **S 26 of General Clause ACT, 1897**. S 26 provides for an acts or omission constituting an offence under two or more enactments. This means that if the offence which is committed by the accused falls under two or more enactments, then that accused shall be charged with either of the two enactments. The emphasis is made on the ingredients of the two offences with which the accused is charged.

JUDGEMENTS:

Kalawati v. State of Himachal Pradesh

The Supreme Court held that the appeal is a continuation of the prior trial rather than a new trial for the same offence, and that the appeal against the acquittal judgement would not be subject to Article 20(2) as there was no penalty in the earlier trial. Thus, an appeal against an acquittal order in a murder trial would not violate Article 20(2) of the Constitution.

Thomas Dana v. State of Punjab, 1959

The Supreme Court decided that in order to request protection under Article 20 (2), the following requirements must be met.

- 1) That there was a previous prosecution.
- 2) As a result of this the accused was punished.
- 3) That the punishment was for the same offence.

ACCOMPLICE

Section 306-308

Accomplice is a witness to the crime, who is connected with the crime by any unlawful act or omission, with his active or inactive participation to the crime some way or the other and he/she admits his/her active involvement in the crime.

Section 133 of the Indian Evidence Act, 1872 talks about accomplice witness. According to it, an accomplice is a competent witness against an accused person. The word 'accomplice', which is used in u/S. 133 of the Evidence Act, includes a principal, an accessory, abettor, a person in some way connected with the offence. An accomplice, who is tendered pardon and gives evidence in

favour of the prosecution against other participants in the commission of the crime, is popularly called an 'approver', though that term, too, is not used in the section-306."

The section does not use the word accomplice, but describes the various categories of person to whom pardon may be tendered. They are:

- (i) A person who directly participated in the commission of the offence to which the (investigation or) inquiry or trial relates.
- (ii) A person who was indirectly concerned in the commission of the offence, e.g., as abettor.
- (iii) A person who was privy to the commission of the offence. Under English law, a person, who, though not a participant in the principal offence, aided it subsequently, e.g., as a receiver of stolen property, on a charge of theft against the accused.

Pardon may be given as follows:

(1) To obtain the evidence of any person who may be have been directly or indirectly concerned to an offence, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, may tender pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence

(2) This Section (306) applies to-

- any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952
- any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub- section (1) shall record-

- his reasons for so doing,
- whether the tender was or was not accepted by the person to whom it was made; and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)-

- shall be **examined as a witness** in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;
- shall, **be detained in custody** until the termination of the trial, unless he is already on bail.

(5) Where a person has accepted a tender of pardon and has been examined, the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case commit it for trial.

Section 307 of CrPC: Power to direct tender of pardon

At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

PROVISIONS RELATED TO ACCUSED BEING OF UNSOUND MIND

The Code provides that if the accused is of unsound mind at the time of the inquiry or trial, and therefore, incapable of making his defence, the Magistrate or the Court (as the case may be), must ascertain on evidence, including medical evidence, whether, in fact, the accused is of unsound mind. If he is satisfied about the same, a finding to that effect is to be recorded, and further proceedings in the case are to be postponed.

If the accused is thus found to be of unsound mind, even if the case is non-bailable, he may be released on sufficient security being given that he shall be properly taken care of, and that he shall be prevented from doing injury to himself or to any other person, and for his appearance before the Court, whenever necessary. If, however, the Magistrate feels that bail should not be taken in the particular case, or if sufficient security is not given, he must order the accused to be detained in custody, and the action taken is to be reported to the State Government. If such an order is for the detention of the accused in a lunatic asylum, the order must comply with the Rules made by the State Government under the Indian Lunacy Act, 1912.

The Bombay High Court has held that failure to put to trial the basic issues of the accused would vitiate the trial. (Balu

Acquittal on ground of unsoundness of mind

If the accused appears to be of sound mind at the time of the inquiry or trial, but the Magistrate is satisfied that at the time when the act (constituting the offence) was committed, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that it was wrong or contrary to law, the Magistrate must proceed with the case. If the accused is finally acquitted on this ground, the finding must specifically state as to whether he committed the act or not.

If such finding states that the accused committed the act which would have constituted an offence, but for the incapacity of the accused, —

- (a) the Court may order such a person to be detained in safe custody in such place and in such manner as it may think fit; or
- (b) the Court may order the person to be delivered to any friend or relative of such person.

If the Court passes an order under clause (a) above, it cannot order

JUDGEMENT

Section 353-365

Section 353 provides that judgment in every trial from a court having competent jurisdiction needs to be **pronounced in the open court by the presiding officer** at the **end of the trial** or at **any future time** for which notice needs to be given.

The judgement needs to be given:

1. by delivering the whole of the judgment;
 2. or by reading out the whole of the judgment;
 3. or 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.
- If the accused is in custody, he shall be brought up to hear the judgment pronounced.
 - 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.
 - No judgment delivered by any Criminal Court shall be invalid by reason only of the absence of any party or his pleader on the day or from the place notified 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.
 - The language of the court:
 - shall be written in the language of the Court;
 - shall contain the point or points for determination, the decision thereon and the reasons for the decision;
 - shall specify the offence of which, and the section of the Indian Penal or other law under which, the accused is convicted and the punishment to which he is sentenced;
 - 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.
 - When the conviction is under the Indian Penal Code 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.
 - When the conviction is for an offence punishable with death or, 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.

- When the conviction is for an offence punishable with imprisonment for a term of one year or 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, or can be tried summarily.
- When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

➤ LANDMARK JUDGEMENT:

Balwant Singh case (AIR 1976 S.C. 230): The SC in this case held that reasons for awarding a particular sentence needs to be mentioned in writing which is a general rule by now. This is especially true while passing death sentence.

- Instead of recording a judgment in the manner hereinbefore provided, a Metropolitan Magistrate shall record the following particulars, namely:
 - the serial number of the case;
 - the date of the commission of the offence;
 - the name of the complainant (if any);
 - the name of the accused person, and his parentage and residence;
 - the offence complained of or proved;
 - the plea of the accused and his examination (if any);
 - the final order;
 - the date of such order;
- When a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine to be recovered.
- Whenever any person is arrested by a police officer, if it appears to the Magistrate that there was no sufficient ground of causing such arrest, the Magistrate may award compensation, up to one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter.
- Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, in addition to the penalty-imposed order him to pay to the complainant, the cost incurred by him in the prosecution, and in default of payment, the accused shall suffer simple imprisonment for a period thirty days and such costs may be.

- 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.

APPEALS

The term appeal means the right of carrying a case from an inferior court to a superior court with a view to ascertain that the judgement given by the lower court is sustainable.

Appeal exists only when such a right is conferred by the statute. Provisions of appeals in this code are scattered, although primarily dealt from [section 372 to 394](#).

[Section 372](#) says that no appeal will lie from any judgement or order of a criminal court except provided by CrPC or any other statute.

Types of appeal under CrPC:

1) Appeal in Court of Session

[Section 373](#)

An appeal may lie to the Court of Session against the order under:

- Where a person has been ordered to give [security for keeping the peace or for good behaviour](#) (Section 117).
- Where a person has been aggrieved by any order [refusing to accept or reject a surety](#) (Section 121)

2) Appeal From Convictions

[Section 374](#)

- While exercising [extraordinary original criminal jurisdiction, if High Court](#) passes an order of [conviction](#), an [appeal](#) shall lie [to Supreme Court](#).
- If Court of [Session or Additional Court of Session](#) passes the order of [conviction](#) during the trial, an [appeal](#) shall lie [to High Court](#).
- If Court of [Session or Additional Court of Session](#) gives punishment of [more than seven years](#), the [appeal](#) shall lie [to High Court](#).
- Where a person is [convicted by Assistant Court of Session, Metropolitan Magistrate Judicial Magistrate I, Judicial Magistrate II](#), an appeal shall lie to [Court of Session](#).
- A person aggrieved under [section 325, 360](#) of the Criminal Procedure Code can [appeal to the Court of Session](#).

3) Exception to Section 374 CrPC

Section 375 and section 376 of the Criminal Procedure Code are exceptions to sections 374 of the Criminal Procedure Code, elaborated as follows.

Section 375 : No Appeal in Certain Cases Where the Accused Pleads Guilty

- If the accused pleads guilty at High Court and the court takes the plea on record and convicts the person, then no appeal shall lie.
- Where the accused pleads guilty at a court other than High Court, an appeal for the sentence is allowed.

Section 376 : No Appeal in Case of Petty Cases

No appeal shall lie in the case of petty cases. Petty cases differ from court to court. Following are considered petty cases:

- In case of High Court, imprisonment up to 6 months, fine of Rs 1000 or both.
- In case of Court of Session, imprisonment up to 3 months, fine of Rs 200 or both.
- In case of Metropolitan Magistrate, imprisonment up to 3 months, fine of Rs 200 or both.
- In case of Judicial Magistrate I, fine of Rs 100.
- In case of Magistrate empowered under section 260 of the Criminal Procedure Code, fine up to Rs 200.

4) State Appeals

Appeals by the State Government are of two types:

Section 377: Appeal Against Sentence

The section empowers the State Government to file an appeal through a Public Prosecutor at the Court of Session or High Court on the grounds of insufficiency of the sentence

- If an order of sentence is given by Magistrate, then appeal to lie to Court of Session.
- If an order of sentence is given by any other court, then appeal to lie to High Court.
- The direction will be given to the Public Prosecutor by the central government if the investigation is done by Delhi Special Police Establishment or any other central agency.

- When such [appeal or order for enhancement of punishment](#) is filed, such order will [not be passed](#) until [a reasonable opportunity of being heard](#) is given to the accused.

Section 378: Appeal in Case of Acquittal

- In this section, District Magistrate is empowered to direct the Public Prosecutor to [file an appeal to the Court of Session](#) for the order of acquittal done by any [Magistrate](#) in a matter of [cognizable and non-bailable offence](#).
- The State is also empowered to direct the Public Prosecutor to file an appeal for the [order acquittal](#) done by any court [other than High Court for appeal or revision](#).
- If the investigation is done by Delhi Special Police Establishment or any central agency, the direction to file an appeal will be given by the Central Government.
- It is to be noted that [prior permission of the High Court](#) will be taken before filing an [appeal at the High Court](#).
- If an order of acquittal is given in a matter of [case instituted on complaint](#), and [High Court grants special permission](#) to present the appeal, then such appeal can be presented by the complaint.
- If the [complainant is a government servant](#), then the application can be moved [within six months](#) from the [order of acquittal](#).
- If the complainant is [not a government servant](#), then the application can be moved within [60 days from the order of acquittal](#).
- If such appeal is [rejected, no appeal](#) from an order of acquittal shall lie.

5) Appeal Against Conviction by High Court in Certain Cases

Section 379

If the High Court [reversed an order of acquittal](#) of a person and [convicted him and sentenced him to death, life imprisonment, or imprisonment for a period of ten years or more](#), the accused has the [right to make an appeal](#) to the [Supreme Court](#).

6) Special Right of Appeal in Certain Cases

Section 380: Under this section, an accused has a [right of appeal](#) in an [unappealable sentence if his co-accused](#) has been [given an appealable sentence](#).

REFERENCE AND REVISION

Chapter XXX: Sections 395 to 405

Section 395 and section 396 deal with reference. And sections 397 to 405 discuss revision.

Reference:

- 1) No specific definition given in CrPC. Reference is a matter between two courts where the lower court seeks the opinion of the High Court regarding an act, ordinance or regulation.
- 2) Before sending a case for reference to the High Court, the lower court shall satisfy itself that:
 - The case pending before it involves the question as to the validity of an Act, ordinance or regulation or any provision contained in any Act, ordinance or regulation.
 - The determination of such a question is necessary for the disposal of the case.
 - The lower court is of the opinion that such Act, ordinance, regulation or provision is invalid or inoperative by the High Court or Supreme Court.
 - Then the lower court shall state its opinion and reason for the same and refer the same to High Court for its decision.
- 3) Section 395 of the Criminal Procedure Code states that the Court of Session or Metropolitan Magistrate may refer for the decision of High Court on any question of law arising in a case pending before it.
- 4) Where a question has been referred to High Court, the High Court shall pass order thereon. The copies of such order shall be then sent to the lower court by whom reference was made.
- 5) Such lower court shall then dispose of the case in the light of the reference order given by the High Court.
- 6) When the case is pending for reference in the High Court, the court may either commit the accused to jail or release him on bail.
- 7) The High Court may direct by whom the cost of reference will be paid.

Revision

Under **section 397**, the High Court and Court of Session have the power to call for and examine the records of any proceeding so as to verify:

(a) Correctness, legality or propriety (correctness) of any finding, sentence or order recorded or passed.

(b) Regularity of any proceeding of an inferior court.

They have the power to direct the execution of any sentence or suspend or stay the lower court's order during the pendency of revision or during the examination of record. The court may also direct to release the accused on bail by executing the bonds if the accused is in custody.

Revision is not maintainable against:

- orders which are appealable.
- Interlocutory order: The order which is temporary in nature and does not determine the substantial rights and liabilities of the parties.

Power to Order Inquiry

- Section 398 of the Criminal Procedure Code provides for an order of inquiry that can be made after examination of record as given under section 397 of CrPC or otherwise.
- The Revisional Court shall order Chief Judicial Magistrate to inquire himself or through subordinate to make a further inquiry regarding:
 - dismissal of a complaint under section 203, 204(4) of the Criminal Procedure Code.
 - discharge of accused. Here, no order of further inquiry should be passed without giving an opportunity to the accused to showcase why a further inquiry should not be directed.

Section 399: Power of Session Court of Revision

When the Court of Session transfers a case to an additional session judge, the same powers can be exercised as given to the Court of Session under section 400 of the Criminal Procedure Code.

Section 401: High Court's Power of Revision

- According to section 401(1) of the Criminal Procedure Code, High Court has all the powers which are conferred to the court of appeal under sections 386, 389, 390, 391 of the Criminal Procedure Code.
- High Court also has the power that Court of Session has under section 307 of Criminal Procedure Code, that is, power to pardon.

- According to section 401(2) of the Criminal Procedure Code, the reasonable opportunity of being heard will be given to the person against whom the hearing of revision is filed.
- According to section 401(3) of the Criminal Procedure Code, the court exercising revisional power is not authorised to convert a finding of acquittal into one of conviction.
- According to section 401(4) of the Criminal Procedure Code, where an order is appealable, no proceeding by way of revision shall be entertained.
- According to section 401(5) of the Criminal Procedure Code,
 - Where a person had a right to appeal, but by genuine mistake, an application of revision has been made to the High Court.
 - And the High Court is satisfied that such application was made under the error.
 - If High Court thinks it is in the interest of justice, the revision application shall be treated as a petition of appeal and dealt with accordingly.

Section 402: Power of High Court to Withdraw or Transfer Revision Case

- When one or more person are convicted in the same trial, and one person files an application for revision to the Court of Session and the other at the High Court, then the High Court in such circumstances should decide as to which of the two courts should deal with the matter, keeping in mind the general convenience of parties and severity/importance of questions involved.
- When the High Court decides to hear the revision itself, the high court shall deal with the same as if the application was duly made to High Court itself.
- When the High Court decides to transfer application to the Court of Session, the judge shall deal with it as if the application was duly made to it.
- When revision is transferred to Court of Session, no further application shall lie to High Court or any other Court, whose application was dispersed by Court of Session.

BAIL

The Indian Constitution under Article 21 guarantees the right to life and personal liberty to every individual. A person is assumed to be innocent unless proved guilty. Hence, an accused shall not be deprived of personal liberty unless prescribed by a fair and just procedure.

Bail Provisions Under CrPC

The term bail is not defined Code. Bail provisions have been defined in CrPC under **sections 436-450**. The first schedule of CrPC also defines which offences areailable and which are not.

Bail in Bailable Offence: **Section 436** deals with provisions for bail in bailable offences. This provision is mandatory in nature, and the police or the court has no discretion over it.

Bail in Non-Bailable Offence: **Section 437** deals with provisions for bails regarding non-bailable offences. It is based purely on the discretion of the court.

The following may be the criteria of bail:

- The gravity of the crime; for example, if the offence is serious and punished by death or life in prison, the chances of securing bail are lower.
- The nature of the charge, such as whether it is serious, trustworthy, or frivolous;
- The penalty's harshness, the duration of the term, and the possibility of the death penalty.
- The credibility of the evidence, whether it is reliable or not;
- The risk of the accused fleeing or running away if freed;
- Prolonged trials that go above and beyond what is required;
- Allowing the petitioner to prepare his defence;
- The accused's health, age, and gender; for example, a person under the age of 16, a woman, or someone who is ill or infirm may be freed.
- The nature and gravity of the circumstances surrounding the crime;
- The accused's position and social standing in regard to the witnesses, particularly if the accused will have the capacity to manipulate witnesses after release;
- The public's interest and the possibility of continued criminal action following dissemination.

In, **Kalyan Chandra Sarkar vs Rajesh Ranjan**, the apex court observed that the detention of the accused in non-bailable offences could not be questioned as being violative of Article 21 of the Constitution.

Stages or Types of Bail

1. Anticipatory Bail

Anticipatory bail is filed before the arrest is made. In other terms, it is also known as pre-arrest bail. The accused apprehending arrest can approach the High Court of the concerned state for anticipatory bail application under **section 438** of CrPC.

Anticipatory bail can be granted or rejected after taking into consideration following factors:

- Nature and gravity of the accusation
- Antecedents of the applicant
- The possibility of the applicant fleeing from justice
- Whether the accusation has been made with the object of injuring or humiliating the applicant by having him arrested.

In **Balchand Jain case** the SC laid down the following points:

- The power of anticipatory bail is extraordinary in nature and must be used sparingly
- This power is not unguided, must be read with the limitations mentioned in the act.
- The petitioner must make out a special case as to why this provision is to be granted to him.

2. Bail on Arrest

This is filed after the arrest of the accused person. Under **Section 437** of CrPC, the arrested person can approach the court for bail.

3. Bail for Convict

This is filed post-conviction by the court, and an appeal lies against the same. When the accused has been convicted by the court and has preferred an appeal, the accused can apply to the appellate court for bail.

4. Interim Bail

Interim bail is nowhere defined in CrPC. The concept of interim bail was started by the Hon'ble Supreme Court in 2009, stating that interim bail be granted

pending disposal of bail application because arrest and detention of a person may cause irreparable loss.

Interim bail has the following characteristics:

- It is offered only temporarily or for a short period.
- It is issued while an application for an anticipatory bail or regular bail is pending in Court.
- Once the bail term expires, the offender will be arrested without a warrant.
- There is no set procedure for cancelling Interim Bail.

Rukmani Mahato vs the State of Jharkhand : Here, the misuse of interim bail came to the Supreme Court's notice. The apex court had expressed extreme displeasure over granting regular bail based on the pre-arrest/interim bail of the superior court.

In **Parminder Singh and Ors. v. the State of Punjab** : the Hon'ble Delhi High Court stated that interim bail should be granted in the following circumstances:

- When there is no chance that the accused will escape prosecution; and
- When there is no chance that the defendant will tamper with the evidence.
- When there is no justification for constrained questioning, and
- When the anticipatory bail hearing must be rescheduled.

Cancellation of Bail

Bail can be cancelled anytime under **section 437 (5)** of CrPC if the accused violates any of the conditions prescribed by the court. The petition for cancellation of bail can be filed by the state or the party aggrieved in the court.

The following are the general grounds for bail cancellation:

- The accused abuses his freedom by engaging in similar illegal action,
- Obstructs the investigation's progress,
- Tampering with evidence or witnesses.
- Threatens witnesses or engages in similar acts that might impede an efficient investigation,
- The possibility of his escaping to another nation exists.
- Tries to avoid detection by going underground or being inaccessible to the investigating agency.
- Tries to put himself outside the reach of his surety, and so on.

DISPOSAL OF PROPERTY

Section 451 to 459

Chapter 34 of CrPC deals with disposal of 4 kinds of properties. This includes:

- Properties or documents which have been used in committing an offence.
- Properties or documents on which an offence has been committed.
- Properties or documents which have been produced before the court.
- Properties or documents which are in the custody of Police or Court.

These properties can be categorised as:

- Articles found when arresting a person;
- Those found under suspicious circumstances with regards to the commission of a crime;
- Those which have been allegedly stolen.

Section 451 of the Code deals with the disposal of property before the conclusion of the case. Thus, this section deals with **interim disposal** of the property. According to this, when a property is produced before any Criminal Court **during** any inquiry or trial and according to the Court it is fit for it to be **placed in proper custody** before the trial or inquiry is concluded it can give an order for the same. Also, if the property is **subject to speedy and natural decay**, the Court may **record necessary evidence** and **order it to be sold or disposed** of.

The Section also clearly defines the property which can be disposed of with this regard as:

- Property produced during inquiry or trial;
- Property in regards to which an offence has occurred or which has been used for committing an offence.

As per Section 452, the Court may order for the disposal of property when a trial or inquiry into a Criminal Court has been concluded. This disposal may be by destruction, confiscation or delivery to any person who claims to be entitled to possess a property or document produced before the Court.

IRREGULARITIES IN PROCEEDING

The provisions related to irregular proceedings are contained in **Chapter XXXV** CrPC, 1973 containing **sections 460-466**. **Section 460 CrPC** deals with curable irregularities and **section 461 CrPC** deals with incurable irregularities.

A. **Section 460** CrPC is referred to cure nine kinds of irregularities provided they are caused erroneously and in good faith. A further qualification is implied in this section that the irregularity should not cause a failure of justice.

If a magistrate who's not empowered by law on this behalf does any of the following things:

- Issuing a search- warrant under section 94;
- to order, under section 155, the police to investigate an offence;
- to hold an inquest under section 176;
- 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;
- to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;
- to make over a case under sub- section (2) of section 192; to tender a pardon under section 306;
- to recall a case and try it himself under section 410;
- or 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.

B. **Section 461** CrPC lists 17 kinds of irregularities, which if committed by any Magistrate, would result in vitiating (spoiling) the proceedings. No question of good faith arises here. To put it another way, these are illegalities which vitiate the proceedings. Legally, such proceedings have no existence.

If the magistrate not having the power to do any of the following things, namely,

- attaches and sells property under section 83;
- issues a search- warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
- demands security to keep the peace;

- demands security for good behaviour;
- discharges a person lawfully bound to be of good behaviour;
- cancels a bond to keep the peace;
- makes an order for maintenance;
- makes an order under section 133 as to a local nuisance;
- prohibits, under section 143, the repetition or continuance of a public nuisance; makes an order under Part C or Part D of Chapter X;
- takes cognizance of an offence under clause (c) of sub- section (1) of section 190 tries an offender;
- tries an offender summarily;
- passes a sentence, under section 325, on proceedings recorded by another Magistrate;
- decides an appeal;
- calls, under section 397, for proceedings;
- revises an order passed under section 446,

his proceedings shall be void.

PROBATION OF OFFENDERS' ACT, 1958

The Probation of Offenders Act, 1958 and S.360 of the Code of Criminal Procedure, 1973 exclude the application of the Code where the Act is applied. The Code also gives way to state legislation wherever they have been enacted.

The object of **S.360 CrPC** is to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of more mature years who for the first time may have committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens. It is not intended that this section should be applied to experienced men of the world who deliberately flout the law and commit offences.

The Supreme Court in **Jugal Kishore Prasad v. State of Bihar**, explained the rationale of the provision:

“The object of the provision is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail.”

Salient features of the act:

1. The Probation of Offenders Act of 1958 is aimed at modifying first time prisoners by rehabilitating them in the society and to not them convert into juvenile offenders into obdurate criminals under environmental control by locking them in prison with hardened criminals.
2. This seeks to release first offenders, following proper admonition or notice with advice/warning who are suspected to have committed an offence punishable under Section 379, Section 380, Section 381, Section 404 or Section 420 of the Indian Penal Code and even in case of any crime punishable with incarceration for not more than two years, or with fine, or both.
3. The Act demands that the Court can order such compensation and the costs of the prosecution for reimbursement by the accused as it finds fair for the damage or injury to the victim.
4. This Act empowers the Court to free those prisoners on probation in good behaviour if the crime supposedly perpetrated and is not punishable by death or imprisonment for life. Such a person will be kept under supervision.

5. The Act gives the Judge the right to modify the terms of the bail after a prisoner is placed on probation with good behaviour and to prolong the probation period not to exceed three years from the date of the initial order.
6. The Act offers extra protection for people under the age of twenty-one to prevent sentencing him to prison. However, a person found guilty of a crime punishable by life imprisonment cannot avail probation.
7. The Act empowers the Court to grant a warrant of arrest or summons to him and his guarantees compelling them to appear before the Court on the date and time stated in the summons if the defendant placed on bail refuses to comply with the terms of the bond.
8. Under the terms of this Act, the Act empowers the Judge to try and sentence the defendant to jail. The High Court or any other Court may even make such an order when the case is put before it on appeal or in revision.
9. The Act offers a significant function for probation officers to support the Court and oversee the probationers under its supervision and to guide and support them in seeking appropriate work.

The provisions of Probation of Offenders Act, 1958 normally cannot be applied to: -

- ACB cases
- Section 304 of the Indian Penal Code,
- NDPS Cases
- Section 304-A
- Section 325 of the Indian Penal Code
- Sections 409, 467, 471 of the Indian Penal Code
- Kidnap and abduction
- Habitual offenders

The powers and functions of the court under the act:

The powers and functions of the court under the act are dealt in **sections 3 and 4**.

Admonition

Section 3 of the Probation of the Offenders Act, 1958 deals with the power of court to release the offender after admonition. An Admonition, in literal terms, means a firm warning or reprimand. Section 3 says how the offender is benefited on the basis of admonition after satisfying the following conditions:

1. When any person is found guilty of committing an offence under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code, 1860 or
2. any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law and
3. An offender should not previously be convicted for the same offence.
4. The Court considers the nature of the offence and the character of the offender.
5. The Court may release the offender on probation of good conduct applying Section 4 of the Act, instead of sentencing him. And,
6. The Court may release the offender after due admonition, instead of sentencing him.

Case laws

1. **Keshav Sitaram Sali v. The State of Maharashtra, AIR 1983 SC 291** – In this case, the appellant was an employee of the. He abetted the execution of a theft crime, the case before the Special Judicial Magistrate First Class (Railways), Bhusawal, on the charges of charcoal stealing. The learned Magistrate acquitted the appellant of that crime, and the State Government filed an appeal before the Bombay High Court against the acquittal judgment passed by the learned Magistrate. He was charged with a fine of Rs. 500 and in default of payment, rigorous imprisonment for two months. The subject matter of theft was a quantity of coal valued at Rs. 8. The Supreme Court held that in case of minor thefts, the High Court should extend the [benefit of Section 3 or Section 4 of the Probation of Offenders Act, 1958](#) or [Section 360 of the Code of Criminal Procedure, 1973](#) rather than imposing fines.
2. **Basikesan v. The State of Orissa, AIR 1967 Ori 4** – In this case, a 20-year-old was found guilty of an offence under [Section 380 of the Indian Penal Code, 1860](#). It was held that the youth had [committed the offence not deliberately](#) and so the case must be applied for [Section 3 of the Probation Act and be released after admonition](#).

Probation on good conduct

Section 4 Act talks about the release of the offender [on the basis of good conduct](#). It is a crucial section of the Act. The important points that must be remembered for the application of this Section are:

1. **Section 4** of the Act is not applicable if the offender is found guilty of an offence with death or imprisonment for life.
2. The Court has to consider the circumstances of the case including the nature of the offence and the character of the offender.
3. The court may pass a supervision order to release the offender on probation of good conduct. The supervisory period is not to be shorter than one year. The probation officer must supervise the individual for such a span in such a situation. In the supervisory order, the name of the probation officer should be listed.
4. The Court can direct the offender to execute a bond, with or without sureties, to appear and receive sentence when called upon during such period which should not exceed a period of three years. The court may release the offender on good behaviour.
5. The Court may put appropriate conditions in the supervision order and the court making a supervision order explain to the offender the terms and conditions of the order. Such supervision order should forthwith be furnished to the offender.
6. Probation officer's report is not compulsory to enforce this rule, but if the information is required on record, the Court shall take into account the probation officer's information before granting a probation order for good behaviour.

Case laws

1. **Smt. Devki v. The State of Haryana, AIR 1979 SC 1948** – In this case, it was observed that Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forcing her to sexual submission with a commercial motive.
2. **Phul Singh v. the State of Haryana, AIR 1980 SC 249** – In this case, the court held that the provision of Section 4 should not be mistaken and applied easily in undeserving cases where a person in early twenties commits rape. The court, thus, refused the application of probation on such heinous nature of crime and convicted the person.

Duties of A Probation Officer

Section 14

The duties are as follows

A probation officer shall, subject to such conditions and restrictions, as may be prescribed -

1. enquire into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court in accordance with any directions of a court,
2. supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;
3. advise and assist offenders in the payment of compensation or costs ordered by the Court;
4. advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4;
5. perform such other duties as may be prescribed.

JUVENILE JUSTICE ACT, 2015

Important definitions:

1. **"Abandoned child"** means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry;
2. **"aftercare"** means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society;
3. **"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, 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;
4. **"child"** means a person who has not completed eighteen years of age;
5. **"child in conflict with law"** means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;
6. **"Child in need of care and protection"** means a child—
 - (i) who is found without any home
 - (ii) who is found working in contravention of labour laws or is found begging, or living on the street; or
 - (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
 - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
 - (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
 - (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
 - (vii) who is missing or run-away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
 - (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
 - (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
 - (x) who is being or is likely to be abused for unconscionable gains; or
 - (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
 - (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;
7. **"Children's Home"** means a Children's Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50;
8. **"juvenile"** means a child below the age of eighteen years;
9. **"Observation home"** means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered

Section 3

General principles to be followed in administration of Act.

The **Central Government, the State Governments**, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely: —

- (i) **Principle of presumption of innocence:** Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- (ii) **Principle of dignity and worth:** All human beings shall be treated with equal dignity and rights.

(iii) **Principle of participation:** Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) **Principle of best interest:** All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) **Principle of family responsibility:** The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) **Principle of safety:** All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) **Positive measures:** All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) **Principle of non-stigmatising semantics:** Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) **Principle of non-waiver of rights:** No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) **Principle of equality and non-discrimination:** There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) **Principle of right to privacy and confidentiality:** Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) **Principle of institutionalisation as a measure of last resort:** A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) **Principle of repatriation and restoration:** Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest

and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) **Principle of fresh start:** All past records of any child under the Juvenile Justice system should be erased except in special circumstances..

(xv) **Principle of diversion:** Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) **Principles of natural justice:** Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

Section 4

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall, constitute for every district, one or more **Juvenile Justice Boards** for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Board shall consist of a **Metropolitan Magistrate or a Judicial Magistrate of First Class** with at least three years' experience and **two social workers** selected in such manner as may be prescribed, 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, 1973 (2 of 1974)** on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(3) No **social worker shall be appointed as a member of the Board** unless such person has been actively involved in health, education, or welfare activities pertaining to children for **at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law**.

(4) No person shall be eligible for selection as a member of the Board, if he--

(i) has any **past record of violation** of human rights or child rights;

(ii) has been convicted of an offence **involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon** in respect of such offence;

(iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;

(iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

(5) The State Government shall ensure that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

(6) 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.

(7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he--

(i) has been found guilty of misuse of power vested under this Act; or

(ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or

(iii) fails to attend 1 [minimum] three-fourths of the sittings in a year; or

(iv) becomes ineligible during his term as a member.

Powers of the board:

The Board constituted for any district shall have the power to deal exclusively with the proceedings under the Act:

✚ In the area of jurisdiction of the Board,

✚ In matters relating to children in conflict with the law.

Functions of the board

The functions and responsibilities of the Board shall include--

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions;

- (d) wherever necessary the Board shall provide an [interpreter or translator](#), having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;
- (e) [directing the Probation Officer](#), or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;
- (f) [adjudicate and dispose of cases of children in conflict with law](#) in accordance with the process of inquiry specified in section 14;
- (g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;
- (h) [disposing of the matter and passing a final order](#) that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;
- (i) [conducting inquiry](#) for declaring fit persons regarding care of children in conflict with law;
- (j) conducting at least [one inspection visit every month](#) of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (k) order the [police for registration of first information report for offences committed against any child in need of care and protection](#), under this Act or any other law for the time being in force, on a written complaint by a committee in this regard;
- (l) [conducting regular inspection of jails](#) meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of and
- (m) any other function as may be prescribed.

Child Welfare Committee

The Child Welfare Committee is an autonomous body declared as a competent authority to deal with children in need of care and protection. **Section 27 of Chapter V** of the Juvenile Justice (Care and Protection of Children) Act, 2015 talks about the Child Welfare Committee.

The powers of the Child Welfare Committee are laid down in **Section 29** Act:

- ✚ The Committee has the [full authority of disposing of cases](#) for the care, protection and treatment of the children.
- ✚ The Committee can also [dispose of cases that are for the development, rehabilitation and protection of children](#) that are in need, and also to provide for the basic need and protection that is needed by the children.
- ✚ When a committee is constituted for any particular area, then it has the power to [exclusively deal](#) with all proceedings that are being held under the provisions of this Act that are related to children in terms of need of care and protection.
- ✚ While exercising the given powers curtailed under this Act, the Committee is barred from performing any act which would go against anything contained in any other law that is in force at that time.

Functions and Responsibilities

Section 30

1. Cognizance of children that are produced before it.
2. Conducting inquiry on issues relating to and affecting the safety and well-being of the children under this Act.
3. To direct the Child Welfare Officers, District Child Protection Unit and Non-Governmental organizations for social investigation and also to submit a report before the Committee.
4. To conduct an inquiry for the declaration of fit persons for the care of children in need of care and protection.
5. To direct placing of a child in a foster care facility.
6. To ensure care, protection, restoration and appropriate rehabilitation of those children that are in need of care and protection. This is based on that child's individual care plan.
7. To select a registered institution for the placement of every child that requires support which is based on that child's gender, age, disability and needs.

8. To certify the performance of the surrender deed by the parents and to make sure that they are given time to think about their decision as well as to make a reconsideration to keep the family together.
9. To make sure that all the efforts are made for the restoration of the lost or abandoned children to their families by following due process which is prescribed by the Act.
10. To declare children legally free for adoption after due inquiry who are orphans, abandoned and surrendered.
11. To take Suo moto cognizance of cases and also to reach out to the children who are in need of care and protection.
12. To take action against the rehabilitation of children who are abused sexually and are reported as children in need of protection and care from the Committee, by the Special Juvenile Police Unit or the local police as the case may be.
13. To coordinate with various departments that are involved in the care and protection of children. These departments include the police, the labour department and other agencies.
14. To conduct an inquiry and give directions to the police or the District Child Protection Unit in case of a complaint of abuse of a child.
15. To access appropriate legal services for the children.