

CRIMINAL PROCEDURE CODE

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**Class-room live lectures edited, enlarged
and updated**

CRIMINAL PROCEDURE CODE

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Text and Reference Books:

Ratanlal	: Cr. P. C.
Govt. of India Publication	: Bare Act 1973. :
Chitale D.D.	Cr. P.C Vols. 1 to 3.
Basu	: Cr. P.C. 1973.

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(Cr.P.C.1973

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SYLLABUS

Cr.P.C.1973 (Sns.1 to 484)

1. Definitions: Bailable and Non-bailable offences, Cognisable and Non-cognisable offences, Charge, Complaint, Inquiry, Investigation and trial, Offence, Summons Case, Warrant Case, Proclaimed Offender.
2. -Constitution of Criminal Courts and Offices.
3. Powers of the Court.
4. Superior Police Officers and Duties of Public.
5. Arrest of Persons: (i) Arrest without Warrant, (ii) Arrest by private persons, (iii) Arrest how made- Power to seize etc.
6. Processes: Summons; Warrant of Arrest; Proclamation and attachment.
7. Summons to produce documents or things. Search Warrants- Search how made-seizure.
8. Security for keeping the peace and' for good behavior.
9. Maintenance of Wife and Children (sn.125).
10. Maintenance of Public Order and Tranquility.
Sn. 144: Urgent Cases of Nuisance.
Sn.145: Disputes as to immovable property.
11. Preventive action by police.
12. Information to Police-powers to Investigate (Sn.154 to 176);
- 13 Confession (Sn. 164)
- 14 Jurisdiction of Criminal Courts in inquires
- 15 Trials. Complaints to Magistrates. Commencement of proceedings- before Magistrate.
16. 'Charge', 'Joinder of charges'.
17. (i) Sessions Trials (ii) Warrant Case Trial (iii) Summons Case Trial (iv) Summary Trial.
18. Commissions.
19. Appeal, reference and revision, Transfer of Criminal Cases.
20. Death Sentence, Imprisonment, Fine etc.
21. Bail and Bonds.

22. Irregular Proceedings.
23. Period of limitation to take Cognisance of some offences.
24. Trials before High Courts [First and Second Schedule.]

QUESTIONS BANK

1. Write explanatory notes on: .
 - (a) F.I.R. (b) Bailable and non-bailable offences (c) Cognisable and Non-cognisable offences (d) Complaint (e) Compoundable offences (f) Executive Magistrate (g) Public Prosecutor (h) Police Diary, (i) Irregular Proceedings.
2. Explain the provisions relating to the speedy remedy provided for, to claim maintenance by wife and children.
3. What is confession? How is it recorded?
4. Explain the concept of Double jeopardy with reference to Sn.300 Cr.P.C. Refer to exceptions.
5. What are the powers and duties of a Police Officer in charge of Police Station on receipt of information relating to the commission of a Cognisable offence or a Non-cognisable offence.
6. Explain:
 - (a) First Offenders (b) Habitual Offenders
 - (c) Write a note on Summons-case trial and Summary trial.
9. (a) What is a Search Warrant ? How is search made ?
 - (b) When can a Police Officer arrest without Warrant. How is arrest made ?
10. (a) How are urgent cases of Nuisance dealt with under Sn.144. Cr.P.C.
 - (b) Detail the measures contemplated by the Cr.P.C. with reference to disputes as to a right in respect of land or water. **(Sn.145)**.
11. (a) What is a bail ? How is a bail granted ?
 - (b) Can a bail be granted in non-bailable offences ?
 - (c) Explain Anticipatory bail.
 - (d) What is a Bond? Now is it executed?
12. What is a Charge ? What are its contents ? Explain "joinder of charges".
13. What is the significance in Cr.P.C. of the period of limitation?

14. Write short notes on:
- (a) Remand
 - (b) Death Sentence
 - (c) Revisional Powers of the High Court and the Session Court.
 - (d) Processes of Courts
 - (e) Security for good behaviour.
 - (f) Security for keeping the peace
 - (g) Accused as a defence witness
 - (h) Prosecution of public servant
 - (i) Prevention of Nuisance.
 - (h) Proclamation of attachment
 - (i) Appeal ,Revision and reference.
15. Distinguish between.
- (a) Summons Case and Warrant Case.
 - (b) Investigation, inquiry and trial.
 - (c) Discharge and Acquittal.
16. State the exceptions to the rule that any person may set the Criminal Law in motion. (Sns. 195 to 199).
- 17 Detail a Sessions Trial.
- 18.What is a Warrant Case? Detail its procedure.

CHAPTER 1 DEFINITIONS

Ch.1.1. First Information Report:

(i) Communication of information of a cognisable or a non-cognisable offence to the Police Officer in writing is called F.I.R. Infact, it is the information first in point of time which sets the Criminal Law in motion. Subsequent information received is not F.I.R.

(a) In non-cognisable offences, when the information is given to the Police Officer (Sub-Inspector), he should enter the substance of information in the "Police Diary" and refer the informant to the Magistrate.

(b) He should not start the investigation without the orders of the concerned Magistrate. But, on receiving such an order, he may exercise the same powers in investigating as in cognisable cases. However, he should not arrest or search without warrant. If the Police Officer makes an investigation without orders then his report itself will be construed as a complaint and the Police Officer is deemed to be the "Complainant".

(c) In Cognisable Offences, according to Sn.154 Cr.P.C, the F.I.R. is recorded by the Police Officer.

If it is oral, it is reduced to writing, read over to the informant and is signed by the informant. Information in writing is signed by the informant. The substance of the F.I.R. is recorded in the prescribed book (Police Diary).

A copy of the F.I.R. should be given to the informant.

A telephone message received by the Sub-Inspector and recorded by him in his Diary is a F.I.R.

(ii) If the Police officer refuses to record the F.I.R. the informant may send the substance of such information to the S.P. by post, who may take the necessary action; He may provide for investigation.

F.I.R. should be lodged at the earliest point of time. The object of F.I.R. is to receive information and to record the circumstances before the person forgets to establish the information.

(iii) Probative Value:- According to the Supreme Court F.I.R. is not a substantive evidence. It is used to contradict or to corroborate the informant.

Ch.1.2. Bailable and Non-Bailable Offences: Sn.2(a) Cr.P.C

The Cr.P.C. classifies offences into bailable and non-bailable. Schedule I to Cr.P.C. specifies in detail.

Eg.: Counterfeit of coin, Robbery, Murder etc., are non-bailable But Mischief, House trespass etc. are bailable.

In bailable offences bail is a matter of course. Police Officers, Courts, Magistrates, Sessions Judge, High Court may release a person on bail.

In non-bailable cases, bail is not allowed, but a person may be released on bail (Sn.437). In offences punishable with death or imprisonment for life there is no bail. In Murder, counterfeit, Sedition etc. no bail is granted.

The bail amount should not be excessive and should be fixed taking into consideration the circumstances of each case. The accused should execute a bond, with or without sureties as the case may be, thereupon he is released.

Exemption: In non-bailable offences, a person under 16, or any woman under any case or any sick or infirm person may be released on bail even if punishable with death or imprisonment for life.

Ch.1.3. Cognisable and Non-cognisable Offences : Sn.2(c) Cr.P.C.

Offences may be classified into Cognisable and Non-Cognisable. A Non-Cognisable offence is one in which a police officer may not arrest without warrant. In cognisable offences, he may arrest without warrant. The Cr.P.C. has mentioned these offences in the schedule. The Police Officers are guided by the above classification, and the I Schedule.

Sn.41 Cr.P.C. enumerates various categories under which the Police Officer may arrest without warrant, that is:

- (a) Cognisable Offences.
- (b) Proclaimed Offender.
- (c) Extraditable Offence.
- (d) Deserter of Army.
- (e) Released Convict.
- (f) Person with House-breaking tool or stolen property etc.

Ch. 1.4. Complaint: Sn.2(d) Cr.P.C.

A complaint is an allegation made by a person called the complainant, orally or in writing, to a Magistrate, with view to his taking action under Cr.P.C., that some person (known or unknown) has committed an offence.

In Cognisable offences, the police officer proceeds to directly investigate. But, in non-cognisable offences, he can investigate on the orders of the Magistrate. The New Cr.P.C. provides a remedy, where

the police officer has made an investigation in non-cognisable cases, without the orders of the magistrate. According to it, a police report made by a police officer, in a case which discloses, (after investigation) the commission of a non-cognisable offence, shall be deemed to be a complaint. Further, the police officer who prepared such a report is deemed to be the complainant.

A complaint is made to the Magistrate only. What is given to the Police is only a report. It is not necessary that the name of the alleged offender must have been mentioned. It may not clearly specify or even wrongly specify the nature of the offence.

On the basis of the complaint the Magistrate takes cognisance of the case and proceeds with the examination of the complainant.

Complaint by an idiot or lunatic:

In this case the complaint may be made by any other person called 'next friend', with the permission of the court. Hence though the lunatic cannot make a complaint, the next friend can make on his behalf.

Ch.1.5. Compoundable offences : Sn.320 Cr.P.C.

Offences are grouped into compoundable and non-compoundable. Compounding means 'making a compromise'. Compromise may be made (i) with the permission of the court or (ii) without the permission of the court.

Compounding is allowed because the complainant and the accused may make some compromise within themselves, i.e., they agree to settle their differences mutually.

Compromise once made cannot be withdrawn. It can be made at any time before the sentence is pronounced by the court.

The Cr.P.C. has provided the table mentioning the offences which are to be compounded with the permission of the court.

Ex.: (i) Theft (value below Rs.250/-)

(ii) Cheating.

(iii) Cheating by personation.

(iv) Bigamy.

(v) Insulting the modesty of a woman etc.

The composition is as good as the acquittal of the accused.

Compounding without the permission of Court:

In cases of hurt, assault, Cr. trespass, defamation etc., mentioned in the Cr.P.C. the offences are compoundable without the permission of the Court. The new Cr.P.C. has added a few more offences to the above list.

Ch.1.6. Police Station, Police Report, Police Diary:

Police Station: Means any place (or post) declared generally or specifically by the State Government to be a Police Station and includes any local area specified by the State Govt. in this behalf.

Police Report: This is report forwarded by a Police Officer to a Magistrate under Sn. 173(2).

Under Sn.173, investigation is to be completed without any delay. On completion he prepares a report containing:

- (i) Name of the parties.
- (ii) Nature of information.
- (iii) Names of Prosecution Witnesses(PWs.)
- (iv) Whether any offence is committed and if so by whom.
- (v) Whether the accused is arrested etc.

He also forwards:

- (i) All documents and all exhibits.
- (ii) Statements of witnesses etc.

With the submission of completion report, the duty of the Police Officer ends, and, the duty of the Magistrate begins.

Police Diary: Every investigation Police Officer should maintain a Diary (Station House Diary or Police Diary). He should enter his day to day proceedings in it. He shall mention the time of receipt of information, when investigation started and when closed, places visited etc. and a statement of circumstances.

The diary may be called for, by the Criminal Courts. This is not used as evidence.

The accused has no right to get into the diary. The Police Officer may use it as aid to memory (Aide memorie), in such a case, the accused has a right to get into the diary.

CHAPTER 2

CRIMINAL COURTS

Ch.2.1. Classes of Criminal Courts: Sn.6. Cr.P.C.

Below the High Court, the following Criminal Courts are constituted.

- (i) Sessions Court
- (ii) I class Judicial Magistrate,
- (iii) II Class Judicial Magistrate
- (iv) Executive Magistrate.

The III class Magistrates have been abolished.

The Judicial Magistrates and Executive Magistrates are given different and distinct functions and powers under the Cr.P.C.

Ch.2.2. Executive Magistrates:

The State Government may appoint Executive Magistrates in each district and one of them as District Magistrate and if need be another as Additional District Magistrate. A Commissioner of Police may be vested with the powers of an Executive Magistrate.

Executive Magistrates have jurisdiction in various cases: (i) Sn.107 Order to execute bond for keeping peace, (ii) Sn. 129 Dispersal of assembly by use of Civil force, (iii) Sn.144 Urgent cases of Nuisance etc. (iv) Sn.145 Disputes as to Possession of immovable property.

Ch.2.3. Public Prosecutor and A.P.P.

The State Government has the power under Cr.P.C. to appoint Public Prosecutors at the High Court level and at district level is consultation with the High Court and the Sessions Court.

The District Magistrate prepares a panel of names who are fit to be appointed as Public Prosecutors.

The minimum qualifications is at least 7 years practice as an Advocate. The Public Prosecutor is a public servant.

Asst. Public Prosecutors are appointed by State Govt. in each district for conducting prosecution in Magistrates Courts. No Public Officer below the rank of a Police Inspector and who has made investigation in the case can be appointed as A.P.P.

Office of the A.P.P. is the creation of the new Cr.P.C. A.P.P. may appear before Magistrates court. He is not under the control of the Police Department.

CHAPTER 3

MAINTENANCE OF WIFE AND CHILDREN

Ch.3. Maintenance of Wife, Children and Parents:

Sn.125 Cr.P.C. deals with the provisions relating to maintenance of wife, children and parents. One essential duty of the husband is to maintain his wife and children if they are not in a position to maintain themselves. The Cr.P.C. provides for a speedy remedy. The details are provided for in Sn.125 Cr.P.C.

Changes made in the Cr.P.C.1973:

The Joint Committee appointed by the Parliament had made certain observations. On the basis of these, some changes have been introduced in Sn.125 Cr.P.C.

(i) The Magistrate may make an order if the wife is unable to maintain herself.

(ii) The benefit is available to the parents also.

(iii) The benefit is available to a divorced wife so long as she does not remarry. This secures social justice to women.

(iv) In respect of children, maintenance benefit is available up to 18 years. After that there is maintenance, only if the child is under a physical or mental abnormality or injury unable to maintain itself.

A husband having sufficient means, may neglect to maintain his wife and children and parents. The Children may be legitimate or illegitimate. The wife and children and father and mother if they are unable to maintain themselves may move an application before the concerned Magistrate. If the Magistrate is satisfied about negligence or refusal of the husband to maintain his wife, children or parents he may make an order against the husband for payment of a monthly allowance. Such amount shall not exceed Rs.500/- per month. The Magistrate may order the payment to the applicant.

The amount becomes payable from the date of the order or from the date of the application by the wife. This is decided by the Magistrate.

Enforcement of the Order:

The Magistrate, if he finds that the husband though he had sufficient means has failed to comply with the order, without any reason, may for every such breach, issue a warrant and may sentence the person to imprisonment for a month or until the amount is paid. The husband may offer to maintain his wife, if she is willing to live with him. But if the wife refuses on the ground that the husband has married another wife or has kept a mistress then it is a valid ground for her to refuse to live with him and to live separately.

Limitations:

i) The amount should be claimed by the wife within a year from the date of the order of the Magistrate.

ii) The wife is not entitled to receive maintenance if she is living in adultery.

iii) She cannot get maintenance if, without proper reason, she refuses to live with the husband.

iv) She cannot get maintenance if she is living separately with mutual consent.

If the above grounds are shown, the Magistrate may cancel the order of the maintenance.

Recording of Evidence:

The Magistrate shall record the evidence in the presence of the husband or his advocate. He shall follow the procedure of a summons case trial. He can also proceed Ex-parte (absence of the husband) if the husband wilfully neglects to attend the court. The ex-parte order can be cancelled within three months if there is a strong reason.

Scope of the Order:

The monthly allowance may be increased if there are sufficient reasons. However the maximum is Rs.500/- per month. The Magistrate shall give a copy of the order to the wife and such an order may be enforced by any Magistrate in any place in India where the husband may live. Such Magistrate has the same powers to enforce the order, as the Magistrate who made the order for maintenance.

CHAPTER 4 CONFESSION

Confession: Sn.164 Cr.P.C.

Confession means admission by the accused of his guilt. The Magistrate may record a statement of confession made:

i) In the course of investigation OR

ii) At any time before the commencement of the trial. No confession can be recorded by the Police Officer. If recorded it is not admissible.

The Magistrate records the confession in the same manner as he records evidence.

In the Evidence Act Sn.27 and 28 deal with confession. Accordingly, confession must be recorded by the Magistrate only. Accused 'A' makes a statement. 'I have thrown the dagger in a well. I have killed 'D' with it' Here, if in pursuance of the statement, the Police Officer discovers, the dagger, the fact that it was discovered is admissible in evidence. But the statement I have killed 'D' with it, is not allowed.

Confession is not to be used as substantive evidence.

Procedure:

Before recording the confession, the Magistrate explains to the person making it that he is not bound to make it and that it may be used as evidence against him. The Magistrate records only if the statement is made by the person voluntarily. He must be fully convinced about the truth or the veracity of the statement. Even if there is an iota of suspicion about the truth, the Magistrate may refuse to record the confession.

Recording:

When recording, he makes a memorandum, explains to the accused that:

The accused is not bound to make a Confession, that if. made, his statement may be used against him as evidence. He must certify that the statement was voluntary, that it was done in his presence and hearing, that it was read over to him and admitted by him to be correct and that it contained a full and true account of the statement made by him.

At the foot of the memorandum, the Magistrate shall sign, seal and put the date.

Contents of the Memorandum:

The contents should be to the following effect:

"I have explained to the accused Sri that he is

not bound to make a confession; If he does so, same may be sued against him I further certify that the confession was voluntary, it was taken in his presence and hearing, that I read it over to him, that he admitted as correct that is was a full and true account of the confession made"

Signature of Magistrate with Seal and Date.

Evidentary Value:

In Ram Kishan V. Harmit Kaur, the Supreme Court has held that the confession statement is not 'substantive evidence'. It can be used to corroborate the evidence of a witness or to contradict him.

A Magistrate who has no jurisdiction is also empowered to record the confession but then the records are to be sent to the Magistrate who conducts the trial. (Brij Bhushan V.King).

In order to ensure that the confession is voluntary, it prohibits the detention of the accused in police custody, (when he is unwilling to make a confession before the Magistrate).

CHAPTERS DOUBLE

JEOPARDY

Ch. 5 Double Jeopardy : Sn.300 Cr.P.C.

One fundamental principle of Criminal Law is that no person who has been accused of an offence should be prosecuted and punished for the same offence more than once. This principle is contained in Art.20(2) of the Constitution and also in S.300 Cr.P.C.

The origin of this is in the English Law 'Nemo debet Bis Vexari' (no one shall be vexed twice). This has two cardinal rules, namely:

- (a) Autre fois acquit (previous acquittal)
- (b) Autre fois convict (previous conviction)

According to this if a person has been prosecuted and either convicted or acquitted, then the accused should not be tried again by any Court in India, for the same offence.

In Venkata Raman Vs. Union of India, Venkataraman was subjected to a departmental inquiry and was dismissed from Central Government services on grounds of bribery. The police arrested him under 161 IPC. for bribery. He contended that he should not be tried again. The Supreme Court held that the departmental proceedings was not a prosecution and therefore he cannot get the benefit.

In Maqbul Hussain Vs. State of Bombay-M was subject to an inquiry by the custom authorities who confiscated gold from him and also fined him. Held Custom proceedings were not prosecutions.

According to the Supreme Court, prosecution and punishment must be read in a conjunctive sense. That is, if a person is prosecuted and punished, he should not be tried again. Hence if a person is prosecuted and acquitted, the Constitution is silent about this. But Sn.300 Cr.P.C. provides that if a person is prosecuted and convicted or acquitted he should not be tried again for the same offence.

Exceptions:

Sn.300 provides for the following exceptions:

(i) If the lower court has no jurisdiction at all, then the rule does not apply. The accused can be tried again.

(ii) If a person is tried for a distinct and separate offence, then the rule does not apply and, with the consent of the State Government he may be tried for a separate charge which he could have been tried in the former trial.

Ex. (a) Servant 'A' is tried on a charge of theft and is acquitted. He cannot be tried again for theft or criminal breach of trust.

(b) A is tried on a charge of murder and acquitted. It appears

that there was robbery also before murder. A may be tried for robbery.

(iii) If a person is tried for an offence but subsequently if it turns out that the consequences of the act resulted in a different offence a together, the person may be tried.

Ex. (a) A causes grievous hurt and is convicted. The injured person dies in the hospital. A may be tried for culpable homicide.

(b) A is tried for culpable homicide and convicted. HE cannot be tried again on the same facts for murder.

Scope:

Double jeopardy benefit does not apply to execution proceedings.

(i) What is barred is the second prosecution for the same offence on the same facts. (Sn.221)

CHAPTER 6

INVESTIGATION

Ch16.1. Investigation, Inquiry and Trial:

Sn.2(h): "Investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or person authorised by the Magistrate.

Sn.2 (g): Inquiry means every inquiry, other than a trial, conducted by a Magistrate or Court under Cr.P.C.

Investigation, inquiry and trial denote the three successive stages in the Criminal proceedings.

(i) **Investigation:** is conducted by the Police Officer. The objective is to collect evidence in respect of the case on hand. It starts with the F.I.R.

It includes: Proceeding to the spot, getting the facts and circumstances, collecting all the evidence available, examining persons, arresting the accused, making the search, seizing materials etc He submits a report to the Magistrate in the **prescribe form**.

(ii) **Inquiry :** The end of investigation is the beginning of the inquiry. This is a proceeding of the Magistrate or Court prior to trial. The objective is to find the truth or falsity of the facts to proceed further, to take action.

If there is any truth, there will be a trial otherwise the accused is discharged. Enquiry may be judicial, non-judicial, local or preliminary. Examples are: proceedings for maintenance of wife a children, enquiring for keeping the peace. Proceeding under Sn.145 Cr.P.C. is an inquiry.

(iii) **Trial:** The essence of this is that the Proceeding ends in conviction or acquittal. An inquiry is not a trial. The sessions trial and the warrant case trial are examples. (In a summons case, there is no formal charge or inquiry).

Ch.6.2. Powers and duties of a Police Officer on receipt of F.I.R.: Sns.154 to 175 Cr.P.C.

Information:

Information relating to cognisable offence, may be given by any person to the Police Officer. It may be oral or in writing. If it is oral it is reduced to writing, read over to the informant, signed by him. The substance of it is entered in the Police Diary. If the information is in writing it is signed by the informant and the substance is entered in the police diary. This information is F.I.R. A copy of this shall be given free of cost to the informant.

If the information is in respect of a non-cognisable offence, the police officer cannot directly investigate. He refers the information to the Magistrate. If the Magistrate orders, then only the Sub-Inspector may investigate.

If the officer refuses to record in cognisable case, the informant may by post send the substance of information to the S.P. concerned, *ivho* may direct investigation in suitable cases.

Spot Investigation:

The Police Officer informs the Magistrate and proceeds to the spot for investigation and for collecting the facts and circumstances of the case. He also takes steps to arrest the accused.

On arriving he calls a few respectable persons of the locality and in their presence he conducts the Mahazar. These persons are panchanamas (witnesses), he will draw up a report. In case of murder, he examines the bruises, wounds etc. Weapons, if any, are seized and sealed. Blood, stained clothes and other things found are sealed as 'Exhibits'. The dead body is then sent to postmortem. The Police Officer draws up the report and it is signed by the panchanamas. This is called the mahazar report

The Police Officer may require the attendance of persons acquainted with the circumstances of the case. **Male below 15, and a female of any age** may not be called to the Police Station. He examines them orally.

Statements made during investigation may be reduced to writing. They need not be signed. He should not use force or induce them. Such a statement may not be used in a trial. He is empowered to 'Search' (Sn.165).

The accused may be arrested without warrant in cognisable cases. He must be produced before the Magistrate within 24 hours of the arrest. He may be kept in custody under the order of the Magis-

trate. The maximum period is 15 days (Remand). But according to the new Act, this may be extended if the Magistrate is satisfied that there are adequate grounds. The maximum period of detention shall be 60 days. Thereafter, he shall be released on bail. Remand should be made, only after the accused is produced before the Magistrate. The Magistrate shall record the reasons for Remanding.

Police Diary

The Police Officer should maintain a diary and record.

- (i) The time of reception of F.I.R.
- (ii) The time of beginning and closing of investigation.
- (iii) Place visited,

(iv) A statement of circumstances. The Criminal Courts may call for the diary. The accused cannot call on it, except when it is used by the Police Officer to refresh his memory.

The Police Officer submits a **final report** to the Magistrate setting forth:

- (i) The names of the parties.
- (ii) Nature of information.
- (iii) Names of persons concerned with the case.
- (iv) The accused- whether he is in custody or not.
- (v) Post Mortem Report, etc.

With the final report the investigation comes to an end.

CHAPTER - 7

OFFENDERS

Ch.7.1. Approver: Sn.306 Cr. P.C.

An associate in a crime is called an accomplice. No doubt he is a guilty associate, but pardon is granted to him. He is called the 'Approver'. He is granted pardon:

(i) To obtain evidence relating to the case and

(ii) To use evidence against the other accused. To this end, he is given an assurance by the Magistrate, that no action will be taken against him. He is examined as a witness for the prosecution. Pardon may be granted in the following offences:

(a) Cases triable by Sessions Court,

(b) Offences punishable with 7 years imprisonment or more.

Pardon

Pardon may be granted by the District Magistrate, 1 Class Magistrate at any stage from investigation upto trial, but before judgement. Pardon may also be granted by Court of Sessions and High Court.

The pardon is granted on condition that as a return for the pardon, the approver should make a full and true disclosure of the circumstances known to him.

The Magistrate shall record his reasons for granting pardon.

Pardon is given because there will be no other better evidence available in the absence of the approver's disclosure.

Ex.:- In Belur Srinivas Iyengar Murder Case, Bangalore, Channa became an approver and assisted the prosecution to arrest Krishna, Muniswamy and Govinda Reddy. Channa had made a complete disclosure of the conspiracy and the other circumstances of the case.

Breach of promise

If the approver does not disclose fully and truly, the circumstances and the facts of the case, then, he has committed a breach of his promise. In such a case, the Magistrate may try him for so much of the offence as is disclosed by him to the court.

Protection

The approver gets full protection only when he has fully and truly disclosed all the relevant facts necessary for investigation.

The evidence given by the approver is admissible, but the universal practice of **the courts is not to convict the accused on**

the uncorroborated evidence of the Approver.

The reason is that the Approver is 'Participes Criminis' (participate in the crime) He will have a motive to put the blame on the accused or to shift the guilt from himself. (Sn. 133 Evidence Act).

Ch.7.2. First Offenders:- Sn. 360 Cr.P.C.

Provisions are made in Cr.P.C. for those who commit offences for the first time. This is a benevolent legislation. It enables the court to release the accused instead of sending him to the prison. The release is on probation of good conduct.

The object is to avoid the sending of first offender to the prison and of running the risk of turning him into a regular criminal.

When a person above 21 is convicted for 7 years or with fine only or when a person below 21, or a woman is convicted for less than life imprisonment, and no previous conviction is there, the court having regard to the age, character or antecedents and circumstances, may release him on bond, instead of sentencing him.

He must appeal within 3 years when called upon, and, in the meantime he must keep the peace and be of good behaviour.

Scope:

This section applies to the accused who is convicted of theft, dishonest misappropriation, cheating or any offence punishable with 2 years imprisonment or with fine only.

There must be **no previous conviction** against the accused.

The court will take into consideration the age, character, antecedents or any extenuating circumstances and instead of sentencing him, releases him on admonition.

The Sessions Court, or any Appellate Court or the High Court may pass an order under this provision.

If the accused fails to observe the conditions imposed by the Court, he may be arrested and sentenced by the Court.

The order issued under this section is in substitution of the punishment,

Ch. 7.3. Habitual Offender: Sn. 110 Cr.P.C.

According to the Cr.P.C. special provisions are made in respect of habitual offenders and desperate characters. The object is to prevent the commission of an offence by such persons, and of securing future good behaviour from them.

Habitual offender means

- (i) Habitual robber, house breaker, thief or forgerer.
- (ii) Habitual receiver of stolen property or harbourer of thieves,
- (iii) Habitual Kidnapper, extortioner abductor or cheat or peace violator
- (iv) Habitual violator committing offences under
 - (a) Drugs & Cosmetics Act. (b) Foreign Exchange Regulations Act. (c) Food Adulteration Act. (d) Custom Act etc.
 - (v) Habitual offender of hoarding, profiteering and adulteration and
 - (vi) A person so dangerous and desperate to be a hazard to the community.

The I Class Magistrate, who receives information about such a person, is within his jurisdiction, may require him to execute a bond (with sureties) for his good behaviour for a period not above 3 years.

The Magistrate must give a show cause notice giving all details about the information, value of the bond etc.

Ch.7.4. Juvenile Offenders: Sn.27 Cr.P.C.

Certain benevolent provisions have been made in the Cr.P.C. to meet the Juvenile (Youthful) offenders.

A person under the age of 16 (as on the date he is produced before the Court), accused of an offence not punishable with death or imprisonment for life is a ' juvenile' and he may be tried by the Chief Judicial Magistrate or by a Court empowered under the Children Act 1960 or under any law, which provides for treatment, training and rehabilitation.

The objective is to save juvenile offenders from the company of convicted criminals in the jail, and also to give them suitable training and to rehabilitate them.

Ch.7.5. Proclaimed Offender: Sns.40(2), 82 and 83.

He is any person proclaimed by the court as an offender who is.

accused of an offence punishable under Sns.302 (murder) 304 (Culpable Homicide), 392 (Robbery) etc. as stated in the Or.P.C

The court must have issued a warrant against him.

He must have absconded or concealed himself.

The proclamation in writing is to be published requiring him to appear within 30 days.

Publication means reading publicity in some conspicuous place, affixing a copy to some conspicuous part of the house of the accused and the court. It may be published in newspapers.

Attachment of property: After issuing the Proclamation the

Court may proceed to attach his property. If the proclaimed offender appears within 30 days, the court may make an order releasing the

property. If he does not appear, the property shall be at the disposal of the government. It may sell after six months.

If the offender has not absconded and if he did not know the Proclamation he may appear before the Court within 2years.

CHAPTER 8
SEARCH & ARREST

Ch.8.1. Search Warrant: How search is to be made:

A search-warrant, is a warrant (order) issued by the Magistrate to the Police Officer to search a particular place or places and to seize the thing or things or to discover persons who are wrongfully confined (The II schedule to Cr.P.C. has given the pro forma of the search warrants).

A Search-Warrant may be issued for :- (i)

The production of a document or thing.

(ii) Search of a place suspected to contain any stolen property, forged documents etc.

(iii) Seizure of any forfeited publications and

(iv) To discover any person who has been wrongfully confined.

The Search Warrant authorises Police Officer to enter and search the place to seize any article, thing, document which is required under the Warrant, to convey that to the Magistrate. It also authorises him to arrest and produce before the Magistrate any person found therein who is privy to the offence. In case of a confined person, after search and discovery, the person must be produced before the Magistrate.

PROFORMA

Form No.II (Sn.94 Cr.P.C.)

To

The Police Officer.....

Station.....

Whereas information has been laid before me.....that the house no address

is used as a place for the deposit of..... goods
(stolen property etc).

This is to authorise and require you to enter the said place.....and to use, if necessary reasonable force for that purpose and to search every part of the said place and to seize or take possession of any property (which the case requires), and to forthwith bring before this court returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Date

Seal of the Court

Signature of the Magistrate.

Ch.8.2. Search how made:

The Police Officer who is duly authorised to make the search may enter the place or places concerned, and the persons in charge of the place or house or closed place (godown etc), must allow free ingress and egress to him.

The Police Officer must conduct a mahajar. He must call 2 or more respectable persons of the locality, make the search in their presence prepare a list of items seized.

If the person is a woman, search shall be made by a lady police or any woman with strict regard to decency.

The Panchanamas shall sign the Mahajar. The Police Officer produces the items seized and the Mahajar-report before the Magistrate.

The person arrested (or discovered) is also produced before the Magistrate. He also submits his report, thereof, to the Magistrate.

Ch.8.3 Arrest without Warrant:Sri. 41.

A Police Officer may arrest a person without a Warrant in the following circumstances:

- (i) Person concerned with a cognisable offence.
- (ii) A proclaimed offender.
- (iii) A person concerned with an extraditable crime.
- (iv) Deserter of Army.
- (v) Released convict.
- (vi) Person with house-breaking tool or with stolen property.
- (vii) (i) Habitual Offender.
- (ii) Any person who commits a non-cognisable offence before the Police Officer and who refuses to give his name, address etc.
- (iii) Any person who is designing to commit a cognisable offence.

Ch.8.4. Arrest by a Private Person:

A Private person may arrest a person who is committing in his presence, a non-bailable and cognisable offence or a proclaimed offender. But, without delay, he must make him over to the Police Officer.

Ch.8.5. Arrest how made: Sn 46

The Police Officer is empowered to arrest in cognisable cases. But, he may arrest with a Warrant in non-cognisable cases. In so arresting he may touch or confine the accused unless he submits to the arrest.

He may use force if the accused forcibly resists or attempts to evade the arrest.

He has no powers to kill except in extreme cases of escape and if accused of offences punishable with death or life imprisonment.

He is entitled to free ingress or egress and hence may break open any closed door or window. But, he should not enter a zanana but should give due notice of his entry. Decency is expected of the officer in such cases.

The accused after arrest should not be put to unnecessary restraint.

The Police Officer **should inform him the grounds of his arrest** and to bail him in case of bailable offences.

He should search the person and seize all articles, except wearing apparel.

The search of a woman must be made by a woman police or by another woman.

Amendment 2005 Sub-section (4) has been added to prohibit arrest of a woman after sunset and before sunrise except in exceptional circumstances and where such circumstances exist the prior permission of the Judicial Magistrate of the first class is to be obtained

Weapons if any are also seized.

The arrested person and exhibits are to be produced before the Magistrate, with a report thereof.

CHAPTER 9

PREVENTIVE PROVISIONS

Ch.9.1. Urgent cases of Nuisance: Sn.144.

One of the preventive measures provided for by the Cr.P.C. to meet emergent cases, is to **dispense with the usual formalities** followed by the Magistrate and, to empower him to take measures by making ex parte order, if need be.

The details are provided in Sn.144.

Conditions and Procedure:

(i) The Magistrate must be satisfied that there is sufficient ground to proceed under this section, and that a speedy remedy is desirable.

(ii) He may issue a written order stating the facts of the case. It must be served as a Summons.

(iii) The order must direct.

(a) to abstain a person from doing an act.

(b) to take the order with certain property under his management or possession.

(iv) The objective of the order is to

(a) Prevent obstruction, annoyance or injury to any lawfully employed person.

(b) Prevent danger to human life, health or safety.

(c) Prevent disturbance of public tranquility, riot or an affray.

(v) If the situation warrants, the order may be made ex parte. This means, it may be directed against any particular individual, or to a group residing in a specific area, or to the public generally, in a particular place.

(vi) **The order may be altered suo motu by** the Magistrate. It may be rescinded. Any person aggrieved may make an application to the Magistrate who shall hear and direct suitably.

(vii) **The maximum duration of the order is 2 months from the date of making it.**

Order: (Examples):

(1) To abstain from interfering with a temple or its properties.

(2) To abstain from interfering with a natural Easement right of way in a village-are examples.

(3) In cases of apprehended danger or riot, an order to the public of a locality not to assemble in groups of 4 or more persons is an order under this section.

(4) The duration should also be specified.

Ch.9.2. Disputes as to land or water: Sn.145 Cr.P.C.

One of the preventive measures provided for by the Cr.P.C is with reference to disputes as to land or water.

The object is to prevent any **breach of the peace relating to** any land or right to water, but taking the subject out of the hands of the disputants and to make one of them the custodians. (Any other person may be made the custodian).

The disputes may not affect the public at large, but are fraught with dangerous consequences.

Hence, **the preventive relief under Sn.145.**

Conditions and Procedures:

(i) There should be a dispute regarding possession or right of use or of land or water or its boundaries. This include buildings, markets, fisheries, crops and rents and profits of such property.

(ii) The dispute must be of such a nature as is likely to cause a breach of the peace.

(iii) Initiation:

On police report or other information.

The Magistrate must be satisfied about the above two conditions. He may summon the parties to the court to submit in writing their claims in respect of possession

of the subject matter. One copy of the summons shall be affixed in some prominent place of the subject matter.

(iv) **Inquiry:**

The Magistrate must peruse their statements, hear them and receive all other evidence available and shall decide who was in possession of the property.

If he finds that one party ' A', has wrongfully dispossessed 'B' and taken possession within 2 months next before receipt of information, he may treat 'B' as in possession and proceed. This order is final unless there is any evidence to prove possession until evicted in due course of law.

(v) **Perishables:**

If the subject matter of dispute is any crop or other produce of property and is subject to speedy decay, he may make an order for proper custody and sale and make suitable orders.

(vi) **Title:**

The Magistrate does not enquire into the merits or to the title of the parties.

This is to be decided by the Civil Court. It is only when the Civil Court decides the title that the Magistrate may revise his order if need be.

(vii) **No Revision:** The High Court has no Revisional power .

CHAPTER 10
BAIL AND BOND

Ch. 10.1 Bail

Bail is basically a security for the appearance of the accused before the court as and when called upon. There is the release of the accused from legal custody, but, it presupposes that he is in custody. Hence, if his conduct is prejudicial to a fair trial, he forfeits his right and he may be arrested and sent to custody.

If the accused binds himself it is a personal bond, but if a surety guarantees the securing of the person before the court it is a bail.

BOND

I, having been arrested under a cognisable offence by the Police Officer of..... Police Station and brought before the..... Magistrate, charged with the offence under Snand required to give security for my attendance before the court on condition that I shall attend the court on the days of trial and in case of my default, I bind myself to forfeit to the Govt. a sum of Rupees.....

Date

Signature of Accused.

BAIL

Ihereby declare myself surety for the accused,.....that he shall attend the court etc.....and that in case of his making default I hereby bind myself to forfeit to the Govt. a sum of Rupees.....

Date

Signature of Surety.

If the accused does not appear before the court, the surety forfeits the bail amount and a warrant may be issued to arrest the accused.

Ch.10.2 Bail in Non-bailable cases:

(i) Add Ch.1-2 material of this e-book.

(ii) If the Police Officer during investigation and the Court in a trial of a non-bailable case, finds that there are no reasonable grounds to believe that the accused has committed a non-bailable offence, he may be released on bail. Reasons are to be recorded.

(iii) In case of:

(a) Offence punishable with imprisonment for 7 years or more.

(b) Offence against State etc.

(c) Abatement of the above offence etc.

-the accused may be released on bail by imposing conditions to ensure his attendance and of not committing similar offence or in the interests of justice.

(iv) If the trial of non-bailable offence is not concluded in 60 days from the first day of hearing, the accused may be released on bail.

Ch.10.3. Anticipatory Bail: Sn 438

Accepting the Law Commission Report, a new provision was made for 'Anticipatory bail' in the Cr.P.C. 1973.

The condition for bail according to the courts is that the accused must be in legal custody. Hence, if a person is not in custody but is implicated under false cases, he cannot get a bail at all. To meet this situation, the '**Anticipatory bail**' was invented.

The Law Commission stated that if some influential people implicit false charges against their rival 'A', with a view to disgracing him and getting him put in jail, then-'A' must have a way out.

If 'A' is not likely to abscond or misuse his liberty, there is no justification why he should be arrested, detained and then released on bail.

Hence, looking to his character, his antecedents the courts may grant in advance an anticipatory bail. Sn.438 provides for such a bail.

Conditions and Procedure:

(i) The bail may be granted by the High Court or the Sessions Court.

(ii) The person must apply to the court stating that he apprehends that he may be arrested on accusation of a non-bailable offence; he, must request the court to direct that in such an event of an arrest, he may be released.

(iii) The court, may give directions imposing conditions as it thinks fit.

(a) That he must be available for police interrogation.

(b) That he should not interfere with or use any threat, promise or inducement to any person giving evidence.

(c) That he should not leave India without permission.

(d) Any other condition of ordinary bails as the court thinks fit.

(iv)-**Utility:**

If such a person is arrested on such accusation, the Police Officer as per the above direction should release the person on bail.

If any Warrant is to be issued, the Magistrate must issueailable warrant.

CHAPTER 11

CHARGE

Ch.11.1. Charge:

(i) Sn. 2(b) defines Charge. It includes any head of charge when the charge contains more heads than one.

(ii) Every charge should state the offence, should be clear and specific, refer to the Specific Sections of the I.P.C. (or any other law) or any part of the section, and should be in the language of the Court.

Previous convictions if any must be set out.. The reason is to make him liable for enhanced punishment.

CHARGE

I, Magistrate, hereby charge you
.....(the accused) as follows:

That you on at committed Culpable homicide not amounting to murder causing the death of and thereby committed an offence under Sn.304 I.P.C. and within the cognisance of this Court.

(Hi) The charge should give sufficient notice of the nature of the offence charged. The manner of committing the same need not be given except when the charge is insufficient to give the meaning of the offence charged.

e.g.: A is accused of theft of a radio on 1-1-97 at Mysore. The charge need not state the manner of commission of theft.

(iv) Alteration: Any charge may be altered or changed by the Court at any time before judgment is pronounced.

Ch.11.2. Joinder of Charges:

(i) Separate charge:

The rule is that there must be a separate and distinct charge for every offence and that there should be a separate trial.

e.g.: A is accused of theft on one occasion and of causing grievous hurt an occasion. A must be separately charged and separately tried.

(ii) Three offences together:

A maximum of three offences of the same kind committed within one year may be tried together. He may be tried separately for other offences.

In Subramanya Aiyers Case, the accused had been charged with

41 offences spread over 2 years. The Privy Council held that this was prohibited.

(iii) In one series of acts so connected as to form the same transaction, two or more offences are committed by the same person, he may be charged and tried in one trial.

A has committed House trespass. Lurking house trespass and grievous hurt in one transaction. He may be charged together.

(iv) When the offence comes within the definition of two or more Acts, he may be tried together.

A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with and convicted of offences under Sn.323. Voluntarily causing hurt, Sn.392; Robbery and Sn.394 causing hurt voluntarily while committing robbery.

CHAPTER 12

TRIALS

Ch.12.1 The trials provided for in the Cr.P.C. are:

- (i) Sessions Trial,
- (ii) Warrant Case Trial,
- (iii) Summons Case Trial,
- (iv) Summary Trial.

Ch.12.2 Sessions Trial: Sn.225 to 237 Cr.P.C.

(i) **Sessions Court:**

The Sessions Court is the highest court in the District and has jurisdiction to conduct trials of offences including murder (302), culpable Homicide not amounting to murder Sn.304 etc. as per the First Schedule to Cr.P.C. These offences specified therein [in the Schedule] are triable exclusively by the Sessions Court.

(ii) **Committing the accused:**

In a case initiated on a police report, if the offence is one triable by the Sessions,

the Magistrate.

(a) Should commit the accused to the Sessions (No elaborate preliminary enquiry is necessary).

(b) He may remand him to custody or release him on bail.

(c) He should send all the record and documents and exhibits to that court.

(d) He should notify the Public Prosecutor of the commitment of the case to the Sessions. All the necessary documents (copies) are to be given to the accused.

(iii) **Opening of Sessions:**

The trial is conducted by the Public Prosecutor. He opens the case by reading out the charge and stating by what evidence he proposes to prove the guilt of the accused. The Judge, on consideration of the records and documents and hearing the prosecutor and the accused, may discharge if there are no sufficient grounds. He records his reasons for the discharge.

(iv) **Framing of charges:**

If he finds that there are sufficient grounds he frames the charges, reads and explains to the accused and asks him whether he pleads guilty or claims a trial. If he pleads guilty, he may be convicted.

(v) **Examination of witnesses:**

If he does not please guilty or refuses to plead, the Judge fixes a date for examination of witnesses. The witnesses may be examined in chief and cross-examined. Their depositions are recorded. If after the prosecution evidence, examination of the accused and hearing the prosecution and the defence, the Judge considers that there is no evidence, he records his reasons and acquits him.

(vi) **Defence:**

If not acquitted as above, he calls on the accused to enter his defence. The Judge files the written statement, if any, put forward by the accused. He issues summons to his witnesses etc. The witnesses are examined and cross examined. Their depositions are recorded.

(vii) **Arguments:**

The public Prosecutor sums up his case and the defence gives its reply. If the defence put forward any point of law, the prosecutor answers with the permission of the court.

(viii) **Judgment:**

After hearing the arguments, and the points of law, the Judge delivers the judgement.

In case of conviction , he hears the accused on the sentence and passes the sentence on him.

(ix) **Appeal:**

Appeals are allowed from the sessions to the High Court, within the period of limitation. In case of death penalty: 30 days ; in case of any other penalty: 60 days.

Ch.12.3. Warrant Case Trial:

Warrant case means a case relating to an offence punishable with death/imprisonment for life or imprisonment for a term exceeding 2 years

. The schedule to Cr.P.C. has specified these.

Trial:

Case may be instituted on a Police Report

(or may be instituted otherwise than on police Report by complaint).

In a case instituted on a Police Report the following procedure is followed:

(i) The Magistrate must satisfy himself that the documents of the case have been furnished to the accused. If, after considering the above documents, and after hearing the prosecution and the accused, he finds that the charge is groundless, he shall discharge him.

(ii) If the Magistrate forms the opinion that the accused has committed an offence, he shall frame a charge. The charge shall be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried,

If the accused pleads guilty, the Magistrate shall record the plea and convict him.

(iii) If he refuses to plead or claims to be tried, the Magistrate shall fix a date for the examination of the witnesses. He shall take the evidence produced by the Prosecution. The Prosecutor may examine his witnesses. The defence counsel may cross-examine the witnesses of prosecution. The prosecutor may re-examine them.-He sums up his arguments.

(iv) The accused now enters on his defence and produces his evidence. His witnesses are examined; they may be cross-examined by the prosecutor.(They may be re-examined by the defence counsel).

(v) The Defence Counsel sums up his argument. The prosecutor may reply. If the Magistrate finds that the accused is not guilty he shall acquit him. If he finds him guilty, he shall pass sentence according to law i.e., he shall convict him.

[If a previous conviction is charged and the accused does not admit, the Magistrate may take evidence in respect of previous conviction and shall record his finding].

Ch.12.4 Summons Case Trial: Sns. 251 to 259.

A 'Summons Case' means a case relating to an offence punishable with a term less than 2 years.

In summons case, the accused appears before the magistrate or is brought before him. The Magistrate tells him the accusation and asks whether he is guilty or desires to defend.

No formal charge is framed.

If he pleads guilty, it is recorded in the same words as possible, and the Magistrate may, convict him, in his discretion.

If he refuses to plead or claims to be tried, the Magistrate shall fix a date for the examination of the witnesses.

He shall take the evidence produced by the Prosecution. The Prosecutor may examine his witnesses. The defence counsel may cross-examine the witnesses of prosecution. The prosecutor may re-examine them. He sums up his arguments.

The accused now enters on his defence and produces his evidence. His witnesses are examined; they may be cross-examined by the prosecutor.(They may be re-examined by the defence counsel)

(v) The Defence Counsel sums up his argument. The prosecutor may reply. If the Magistrate finds that the accused is not guilty he shall acquit him. If he finds him guilty, he shall pass sentence according to law i.e., he shall convict him.

Ch.12.5.Summary Trials: Sn.260 to 265.

(i) **Summary trials aim at a speedy disposal of cases.**

The detailed procedures of other trials are dispensed with in view of the petty nature or lesser gravity of the offence.

In these trials only a record, sufficient for the purpose of justice, is made and summons case procedure is followed.

No charge is framed.

(ii) The First Class Magistrate; the Chief Judicial Magistrate may try the case.

(iii) Offences : These are enumerated in Sn.260.

e.g.: (a) Theft of property worth less than Rs.250.

(b) Receiving stolen property of worth less than Rs.250.

(c) Offences under Cattle Trespass Act.

To the accused, the Magistrate tells the accusation and asks him whether he is guilty or not. If he pleads guilty he is convicted. If not he hears the prosecution and its evidence, and then the accused and his evidence. If he finds not guilty he acquits, otherwise he convicts him.

(iv) **Special features:**

(a) The sentence should not exceed 3 months.

(b) Record:

He records the serial number of the case, date of its commission, date of report or commission, date of report or complaint, name of complainant, name parentage and residence of the accused, the offence complained and proved if any

. A summary of the plea of the accused and his examination.

The Magistrate records his findings and the order and the date of termination of the trial.

(c) Only the substance of the evidence is recorded.

(d) The judgment contains briefly the reasons.

Ch.12.6. Irregular Proceedings:

The Cr.P.C. has divided Irregular Proceedings into two classes

.(i) those which vitiate proceedings and

(ii) those which do not vitiate proceedings.

(i) A Magistrate, not empowered, may do any of the specified things erroneously but in good faith.

Eg.: Issuing a Search-Warrant, issuing orders to investigate, transfer of a case etc.

In such a case though there is technically an irregularity, the order of the Magistrate is not to be set aside.

(ii) A magistrate, if **not so empowered** to do certain things, does them, the proceedings are void and hence set aside on appeal.

(a) Demanding security to keep the peace.

(b) Demands security for good behaviour.

(c) Tries an offender summarily etc.

Error, omission or irregularity in framing charge, by itself will not be set aside unless this results in grave injustice to the accused.

Ch.12.7. Do Novo Trial:

There is no provision for this in the Cr.P.C. 1973.

De Novo Trial means the new trial.

When a Magistrate who, in an inquiry or trial, party conducts it and then is transferred to a different place or assigned to exercise a different jurisdiction, the new Magistrate (Successor) will take over.

Such a Successor could act on the evidence already recorded by his predecessor.

This is subjected to an exception.

If the Magistrate is of the opinion that the evidence of any person already recorded is necessary in the interest of justice, he may re-summon such witness and examine him on oath.

De Novo Trial gives right to the Magistrate and to the accused. Hence the accused may ask for the De Novo Trial. '

The Cr.P.C. 1973 has omitted this Provision.

Ch.12.8 Summons Case and Warrant Case:

These are defined in Sn .2 Cr.P.C.

A Warrant case is a case relating to an offence punishable with death, life imprisonment or imprisonment exceeding two years.

A case relating to an offence punishable for a term below two years is a Summons Case. The distinction is based on punishment.

Summons Case	Warrant Case
(a) It is initiated on a Complaint	(a) It is initiated on Police report of complaint.
(b) No formal charge is necessary.	(b) Charge is essential.
(c) The complainant may withdraw the case. The accused is released.	(c) The Magistrate must proceed when he finds some elements of offence. He may either discharge, acquit or convict The accused.

Ch.12.9.Dscharge and Acquittal distinguished:

A; person is said to have been discharged when he is relieved from proceedings, by an order of the court. The order is not a judgment.

There may be discharge, after a preliminary enquiry. If there is no prima facie case against the accused, and if he has not been called *to defend himself he is to be discharged*

A person discharged may be again subject to proceedings if there is evidence

A person acquitted is protected under Sn. 300 and, he cannot be tried again for the same offence.

An acquittal is the judgment of the person charged, that is he must be either acquitted or convicted .There is no discharge of the accused.

CHAPTER 13
LIMITATION

Ch.13.Period of Limitation:

(i) This is an innovation. Certain offences are not to be taken cognisance after the lapse of a prescribed period by the criminal court and the case is to be dismissed.

Offence	Period	Period when starts
(a) Punishable with fine	6 months	Date of the offence, only.
(b) Punishable for 1 year	1 year	Date of commission or Date when it became known to the police officer.
(c) Punishable upto 3 years	3 years	-do-

(ii) The period of limitation is not to be calculated in the following:-

- (a) Prosecuting in another court in good faith.
- (b) Period of stay of prosecution , if any.
- (c) Offender's absence from India.
- (d) Period of sanction wherever necessary.
- (e) Period when the accused is absconding or concealing himself.

(iii) If there is a valid reason for the delay and if the court feels that in the interest of justice, the case is to be taken up, the time may be extended by the Court.

CHAPTER 14

ADDITIONAL TOPICS

Ch. 14.1. Exceptions to the rule that any person may set criminal law in motion:

One of the general principles of Criminal Law is, that any person, who **has the knowledge of the commission of an offence, may set the criminal law in motion**, by making a complaint, even though, he is not personally interested in the case.

The objective is to bring the offenders to book.

This rule, though general, is subject to certain exceptions as provided for in Sns.195 to 199 of Cr.P.C.

In these circumstances, the criminal courts will not take cognisance of an offence, unless the complaint is initiated by the public servant, or the court or the affected person or with the previous sanction of the Central or State Government as the case may be.

The reason is to prevent private individuals from wreaking vengeance by misusing the machinery of the administration of justice.

For examples in cases where the allegations are inspired by vengeance, against a judge or a magistrate, for acts done in the discharge of his official functions, the previous sanction of the Govt. is essential.

The prestige and the dignity of the courts should not be left to the whimsies or passions of private individuals.

Scope of Exceptions:

The exceptions apply to particular offences specified in Sns.195 to 199 Cr.P.C. and do not apply to others.

For example, no sanction is required when a public servant is to be prosecuted for bribery under Sn.161 (I.P.C.)

Exceptions:

(i) In respect of offences relating to contempt of legal authority (Sns. 172 to 188 I.P.C. example, obstructing a public servant Sn.186, or abatement or conspiracy thereof) no court should take cognisance of the case, **unless the complaint is made in writing by the concerned public servant or his superior.**

(ii) In respect of offences against public justice punishable under I.P.C. (giving false evidence, fabricating false evidence etc.) (193-196, 199, 200, 205-211 & 228, I.P.C.) the complaint must be from the concerned court.

(iii) In respect of offences concerning documents given in evidence (Sn. 463, Forgery etc.) the complaint must be from the concerned court. (Court includes civil, criminal, revenue court or tribunal).

(iv) In respect of offences, against the State, Sns 153 A & B, 295 A or 505 (spreading rumours to disturb public peace), or for criminal conspiracy, (120 B) the sanction of the State Government is necessary.

(v) In respect of offences committed by (a) Judge, (b) Magistrate (c) Public servant, acting in the official capacity, the previous sanction of the Central or State Government as the case may be, is necessary for instituting a case against them.

(vi) In respect of offences committed by Armed Forces, purporting to be done in the discharge of official duties, the sanction of the Central Government is necessary.

(vii) In respect of offences, relating to marriage (Bigamy Sn.494 Adultery Sn.497 etc.), the complaint must be by the aggrieved person.

Where the wife is the aggrieved party as in Bigamy, she may make a complaint, or on her behalf, her father, mother, brother, sister, son, daughter or her father's son mother's sister or brother may file a complaint.

In adultery, the husband may file a complaint or with the permission of the court, any person who had the care of the woman may file a complaint.

(viii) For offences of defamation:

The aggrieved person may file a complaint. But if he is an idiot, lunatic, pardanishan lady or under 18 years of age, any person, with the permission of the court may file a case on his behalf.

(ix) Defamation of public servant (Sn.199) Where a person commits an offence of defamation against the President, Vice-President, Governor, Administrator, a Minister or any public servant the sessions court may take cognisance of a complaint made by the public prosecutor. But, the previous sanction of the Central or State Government is necessary before filing a complaint. The period of limitation is 6 months to file the complaint. (The defamed person may himself complain to the magistrate),.

Ch.14.2 Remand (S.167):

The Cr.P.C. deals with Remand to police custody in Sn.167 and remand to jail custody in Sn.309.

Remand to Police Custody:

When a person is arrested and detained by a police officer and if the officer finds that investigation cannot be completed within 24 hours, and that the information is well founded then he should produce the accused before the magistrate, within 24 hours of the arrest. He must, also submit a copy of his diary to the Magistrate.

The Magistrate whether he has jurisdiction or not may remand the accused to the police custody for a period not exceeding 15 days in the whole, recording his reasons.

The Magistrate who has jurisdiction may authorise the detention of the accused beyond 15 days, in jail custody for a maximum period of 60 days from the date of arrest.

After this period, the accused is entitled to be released on bail. But, if the accused refuses the bail, or is unable to furnish bail, the detention will continue under a fresh remand order.

Jail Custody:

When the investigation is completed and the police report is submitted, the magistrate takes cognisance of the case against the accused.

If the accused is in custody, then the magistrate may, by a warrant addressed to the jail superintendent, remand the accused to jail custody recording his reasons, for a period not exceeding 15 days at a time.

The Supreme Court has laid down that 'once the inquiry or trial begins, it is not proper to let the accused remain under police influence. He is an under trial prisoner.

Ch.14.3 Security for keeping the peace and for good behavior:

Chapter VIII of the Cr.P.C. deals with the preventive provisions to prevent breach of the peace or tranquility.

The objective is to prevent any potential danger to the public.

Security for keeping the peace, and security for good behavior are inter alia two such provisions which are made in public interest to preserve public order.

Security for keeping the peace:

There are two provisions:

- (i) On conviction: (Sn. 106) If the sessions court, or the first

class magistrate is of the opinion, that the convicted accused should execute a bond for keeping the peace, it may, at any time of passing sentence, order him to execute such a bond. This may be with or without sureties.

The maximum duration is 3 years. But, if the conviction is set aside, the bond becomes void.

The offences for which the accused is convicted may be:

- i) Those affecting the public tranquility
- ii) Assault
- iii) Criminal intimidation
- iv) breach of the peace or
- v) abatement of these offences.

ii) **In other cases (Sn.107):**

When the executive magistrate is informed that any person is likely to commit a breach of the peace or public tranquility or any wrongful act, to that end such magistrate may issue a show cause notice to such a person, as to why he should not be ordered to execute a bond. The maximum period of the bond is one year.

The order must be in writing setting forth the substance of the information, amount of bond, the period and the nature of sureties required.

The magistrate inquires into the truth of the information as in summons cases. This must be completed within 6 months.

If he finds proof he orders to execute a bond, he asks the order to do so. If he finds no evidence, he may discharge the accused.

If after executing the bond, for keeping good behavior, the person commits an offence or attempts or abets, then there is a breach of the bond.

The magistrate, on holding an enquiry may refuse to accept the sureties and demand for new sureties or commit the person to prison.

ii) Security for good behavior (Sn. 108, 109 & 110)

The security for the good behavior of a person can be taken from the following classes of persons:

a) Sn.108:

Persons disseminating seditious matter, (Sn.124A, I.P.C.), promoting enmity between classes (SN. 153A, IPC), outraging religious feelings (Sn.295, I.P.C) etc.,

b) Sn. 109:

Suspected person who is trying to conceal himself.

c) Sn.110:

Habitual robber, house-breaker, thief, forger, receiver of stolen property, habitual offender under any law relating to offences in adulteration of Drugs, profiteering, hoarding etc.,

or a person who is desperate and dangerous to the community.

The magistrate may issue an order to show cause why he should not be ordered to execute a bond with or without sureties.

The period of the bond is one year under Sns.108 & 109 and it is 3 years under Sn.110.

The order must be in writing, and must set forth the substance of the information, the amount of bond, the nature of the sureties etc.

The magistrate conducts an inquiry, and, if he finds proof, he may order the accused person to execute the bond. If there is no proof he discharges the accused.

Bond for keeping the peace or for good behavior:

Whereas I,..... residing at..... have been called upon to enter into a bond to keep the peace or be of good behavior to Govt. and all the citizens of Indian for a term of year/s.

I hereby bind myself to be of good behavior/to keep the peace and on making default, I bind myself to forfeit Rs..... to the Govt.

Date:

Place:

Signature

Ch.14.4 Death Sentence:

i) Confirmation:

According to Cr.P.C. when the session judge passes a sentence of death, he should submit the proceedings to the High Court. The sessions judge should not execute his sentence unless it is confirmed by the High Court. He should commit the convicted person to jail custody under a warrant.

ii) Inquiry:

On such a reference, the High Court may, in its discretion, make

an inquiry on any point bearing on the guilt or innocence of the convicted person. It may direct the Sessions Court to conduct the enquiry if it so decides. The presence of the accused is not necessary in such an enquiry, if the High Court so decides.

(iii) High Court's powers:

The High Court, may confirm the sentence passed by the Sessions Court, or any other sentence or may annul the conviction; and pass any other sentence; it may acquit the accused.

When, it confirms, the officer of the High Court shall send a copy of the order to the Sessions Court, duly attested and sealed.

This procedure of confirmation (Sn.306) will not apply, when the convicted person himself prefers an appeal or revision to the High Court from the Sessions Court.

(iv) Execution:

When the Sessions Court receives the order of confirmation, or order of sentence of death, it should execute the same by issuing a warrant. If the convicted person prefers an appeal to the Supreme Court, the execution shall be stayed until the case is disposed of by that Court.

Ch.14.5 Reference (Sn.395):

When any court, (subordinated to the High Court) is satisfied that a case before it involves a question of the validity of any Act, Ordinance or Regulation, and that there is necessity it may refer the same to the High Court.

The lower Court must be of the opinion that the said Act, Ordinance etc. is invalid, but not so declared by the High Court or by the Supreme Court, The court must set out its opinion and the reasons thereof in its reference to the court. During, this period, the

accused may be remanded to jail custody or bailed out as the case may be.

The High Court shall pass such order as it thinks fit, and shall send a copy of the order to the referring court.

Ch.14.6. Revision (Sn.397 Cr.P.C.)

This is the exclusive power of the High Court to call for and to examine the record of any proceeding before any court lower to it. This is to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order; the court may direct the Lower Court to suspend the execution of any sentence.

This power does not apply to interlocutory orders passed in any appeal, enquiry, trial or other proceeding.

On examining the records, the court may direct any Magistrate to make or direct a "further enquiry"; into any complaint, dismissed already.

Restrictions: i) No order should be made without giving an opportunity to the accused of being heard.

ii) A finding of acquittal cannot be converted into one of conviction.

iii) Where appeal is available, revision jurisdiction cannot be exercised.

vi) In suitable cases, the High Court may treat revision petition as an appeal.

Ch.14.7. Accused as a defence witness (Sn.315):

According to Cr.P.C. (Sn.315), the accused is a competent witness for his defence and like any other witness; he is entitled to give evidence on oath. He may give evidence to disprove the charges against himself or any co-accused.

Limitations:

1) The accused cannot be called as a witness, unless he requests in writing.

2) His failure to give evidence should not be used to draw any adverse inference against him.

3) This section applies to cases, specified in Cr.P.C. in Sn.315.

4) No influence, promise or threat should be used against the accused, to induce him to disclose or withhold any matter.

THE END

REFERENCE SECTION

SELECTED SECTIONS

Criminal Procedure Code 1973

Sn 39. Public to give information of certain offences.

(1) Every person, aware of the Commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the [Indian Penal Code](#) (45 of 1860), namely :-

(i) [sections 121](#) to 126, both inclusive, and [section 130](#) (that is to say offences against the State specified in Chapter VI of the said Code);

(ii) [sections 143, 144, 145, 147](#) and [148](#) (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) [sections 161 to 165A](#), both inclusive (that is to say, offences relating to illegal gratification);

(iv). [sections 272 to 278](#), both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);

(v) [sections 302, 303](#) and [304](#) (that is to say, offences affecting life);

¹[\[\(va\) section 364A](#) (that is to say, offence relating to kidnapping for ransom, etc);]

(vi) [section 382](#) (that is to say., offence of theft after preparation made for causing, death, hurt or restraint in order to the committing of the theft);

(Vii) [sections 392](#) to 399, both inclusive, and [section 402](#) (that is to say, offences of robbery and dacoity);

(viii) [section 409](#) (that is to say, offence relating to criminal breach of trust by public servant, etc.);

(ix) [sections 431](#) to [439](#), both inclusive (that is to say, offence of mischief against property);

(x) [sections 449](#) and [450](#) (that is to say, offence of house-trespass);

(xi) [sections 456](#) to [460](#), both inclusive (that is to say, offences of lurking house trespass); and

(xii) [sections 489A](#) to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes).

Shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such Commission or intention; 2) For the purposes of this section, the term "offence" includes any act committed at any place out of India, which would constitute an offence if committed in India.

41. When police may arrest without warrant.

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

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

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

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

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

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

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

(h) who, being a released convict, commits a breach of any rule made under subsection (5) of [section 356](#); or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the

requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

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

42. Arrest on refusal to give name and residence.

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

43. Arrest by private person and procedure on such arrest.

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

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

44. Arrests by Magistrate.

(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

46. Arrest how made. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

1[(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.]

47. Search of place entered by person sought to be arrested.

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him such free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other

person, if after notification of his authority and purposes, and demand of admittance duly made, he cannot otherwise obtain admittance

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

49. No unnecessary restraint.

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

50. Person arrested to be informed of grounds of arrest and of right to bail.

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

50A. Obligation of person making arrest to inform about the arrest, etc. to a nominated person.

(1) Every police officer or other person making any under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest

of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the magistrate before whom such arrested person is produced to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

51. Search of arrested persons.

(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to, furnish bail.

The officer making the arrests or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe Custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2). Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency

52. Power to seize offensive weapons.

The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

53. Examination of accused by medical practitioner at the request of police officer.

1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting, at the request of a police officer not below the rank of sub-inspector, and for- any person acting in good faith in his aid and -under his direction, to make such all examination of the person arrested as is reasonably necessary in

order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

1[Explanation (a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

53A. Examination of person accused of rape by medical practitioner.

53 A. Examination of person accused of rape by medical practitioner. – (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of this person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and”.

(v) other material particulars in reasonable detail. (3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in [section 173](#) as part of the documents referred to in clause (a) of sub-section (5) of that section.]

57. Person arrested not to be detained more than twenty-four hours

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court

125. Order for maintenance of wives, children and parents,

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

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

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in

clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means

Explanation—For the purposes of this Chapter—

(a) "**minor**" means a person who, under the provisions of the Indian Majority Act, 1875

(9 of 1875) is deemed not to have attained his majority;

(b) "**wife**" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach

of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this

section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living

with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing

Explanation—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order

126. Procedure

(1) Proceedings under section 125 may be taken against any person in any district—

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the

date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just

127. Alteration in allowance

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit:

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from

the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether

before or after the date of the said order, the whole of the sum which, under any

customary or personal law applicable to the parties, was payable on such divorce, cancel such order—

(i) in the case where such sum was paid before such order, from the date on which

such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which

maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily

surrendered her rights to maintenance after her divorce, cancel the order from the date

thereof

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order

128. Enforcement of order of maintenance

A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the nonpayment of the allowance due.

Public Nuisance

133. Conditional order for removal of nuisance -

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive

Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public;

or
(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,
such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—
(i) to remove such obstruction or nuisance; or
(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or
(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or
(v) to fence such tank, well or excavation; or
(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court

Explanation—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes

134. Service or notification of order -

(1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person

135. Person to whom order is addressed to obey or show cause

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The person against whom such order is made shall—
(a) perform, within the time and in the manner specified in the order, the act directed thereby; or
(b) appear in accordance with such order and show cause against the same

URGENT CASES

144. Power to issue order in urgent cases of nuisance or apprehended danger

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area

(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office

(6) The State Government may, either on its own motion or on the

application of any person aggrieved, rescind or alter any order made by it under the proviso to subsection

(7) Where an application under sub-section (5), or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

145. Procedure where dispute concerning land or water is likely to cause breach of peace

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of

Dispute (2) For the purposes of this section, the expression "land or water" includes

buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property

(3) A copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and

wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)

(5) Nothing in this section shall preclude any party so required to

attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection

(4) be treated as being, in such possession of the said subject, he shall issue an order

declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3)

(7) When any party to any such proceeding dies, the Magistrate may cause the legal

representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale proceeds thereof, as he thinks fit

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107

Investigation

162. Statements to police not to be signed: Use of statements in evidence

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in

respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial

whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872

(1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination

(2) Nothing in this section shall be deemed to apply to any statement falling within the

provisions of clause (1) of section 32 of the Indian Evidence Act,

164. Recording of confessions and statements

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made It was taken in my presence and

hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him

(Signed) AB
Magistrate"

(5) Any statement (other than a confession) made under subsection (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried

167. Procedure when investigation cannot be completed in twenty-four hours

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the

investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) **ninety days**, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less

than ten years;
(ii) **sixty days**, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be to released under the provisions of Chapter XXXIII for the purposes of that Chapter;
(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;
(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police

Explanation I—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail

Explanation II—If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2): Provided that before the expiry of the period aforesaid, the Executive Magistrate shall

transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be (3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing (4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate (5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary (6) Where any order stopping further investigation into an offence has been made under subsection (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

Suicide

174. Police to inquire and report on suicide, etc

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be

forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate

(3) When—

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any

circumstances raising a reasonable suspicion that some other person committed an

offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate

or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate

175. Power to summon persons

(1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so

summoned shall be bound to attend and to answer truly all questions other than questions the answers to which have a tendency to expose him to a criminal charge or to a forfeiture

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's

176. Inquiry by Magistrate into cause of death – [Custody

death](1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he

would have in holding an inquiry into an offence

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry

Explanation—In this section, the expression "relative" means parents, children brothers, sisters and spouse

197. Prosecution of Judges and public servants –

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—

(a) in the case of a person who is employed or, as the case may be, was at the time of

commission of the alleged offence employed, in connection with the affairs of the Union,
of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of

commission of the alleged offence employed, in connection with the affairs of a State, of
the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will

apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted
prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held

Complaints

200. Examination of complainant -

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a

Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter

Magistrate need not re-examine them

203. Dismissal of complaint -

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing

THE CHARGE

211. Contents of charge –

(1) Every charge under this Code shall state the offence with which the accused is charged

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only

(3) If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged

- (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge
- (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case
- (6) The charge shall be written in the language of the Court
- (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed

Illustrations

- (a) 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, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it
- (b) A is charged under section 326 of the Indian Penal Code (45 of 1860) with voluntarily causing grievous hurt to B by means of an instrument for shooting This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it
- (c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definition, of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge

212. Particulars as to time, place and person -

- (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged
- (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, described the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been

committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year

213. When manner of committing offence must be stated -

When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place The charge need not set out the manner in which the theft was effected

(b) 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

(c) A is accused of giving false evidence at a given time and place The charge must set out that portion of the evidence given by A which is alleged to be false

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place The charge must set out the manner in which A obstructed B in the discharge of his functions

(e) A is accused of the murder of B at a given time and place The charge need not state the manner in which A murdered B

SUMMARY TRIALS

260. Power to try summarily -

(1) Notwithstanding anything contained in this Code—

(a) any Chief Judicial Magistrate;

(b) any Metropolitan Magistrate;

(c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:—

(i) offences not punishable with death, imprisonment for life or imprisonment for

a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code

(45 of 1860), where the value of the property stolen does not exceed two hundred

rupees;

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal

Code (45 of 1860), where the value of the property does not exceed two hundred rupees;

(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860) where the value of such property does not exceed two hundred rupees;

(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation, under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

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

(ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871(1 of 1871).

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

261. Summary trial by Magistrate of the second class -

The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

262. Procedure for summary trials -

(1) In trial under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

263. Record in summary trials -

In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:—

- (a) the serial number of the case;
- (b) the date of the commission of the offence;

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

264. Judgment in cases tried summarily -

In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

265. Language of record and judgment -

(1) Every such record and judgment shall be written in the language of the Court.

Double Jeopardy

300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under subsection (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the

Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within sub-section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

301. Appearance by public prosecutors.

(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public

Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

306. Tender of pardon to accomplice. APPROVER

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any, stage of the inquiry or trial, may tender a 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 and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) 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 (46 of 1952).

(b) 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—

(a) his reasons for so doing;

(b) 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)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the

trial.(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case.—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if

the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment

Act 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

Comments

(i) Once an accused is granted pardon under section 306 he ceases to be an accused and becomes

a witness for the prosecution; State (Delhi Admn.) v. Jagjit Singh, 1989 Cr LJ 980: AIR 1989 SC 989.

(ii) Section 306 (4) clearly reveals that the person accepting a tender of pardon should be examined as a witness first in the Court of Magistrate and subsequently in the trial Court; Murlidharan v. State of Tamil Nadu, (1997) 1 Crimes 515 (Mad).

307. 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.

308. Trial of person not complying with conditions of pardon.

(1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully

concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false

evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made, in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial the Court shall—

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate before the evidence of the witnesses for the

prosecution is taken, ask the accused whether he pleads that he has complied with the

conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall notwithstanding anything contained in this Code, pass judgment of acquittal.

320. Compounding of offences.

(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:—

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4)(a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence. (5) When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

((7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this

section

321. Withdrawal from prosecution.

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,—

(a) If it is made before a charge has been framed, the accused shall be discharged in

respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is

required he shall be acquitted in respect of such offence or offences:

Provided that where such offence—

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi

Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property

belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the

prosecution and the Court shall, before according consent, direct the Prosecutor to

produce before it the permission granted by the Central Government to withdraw

from the prosecution.

368. Power of High Court to confirm sentence or annul conviction.

In any case submitted under section 366, the High Court—

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this

section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

369. Confirmation or new sentence to be signed by two Judges.

In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it

may think fit, including—

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

460. Irregularities which do not vitiate proceedings.

If any Magistrate not empowered by law to do any of the following things, namely:—

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

461. Irregularities which vitiate proceedings.

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

- (a) attaches and sells property under section 83;
- (b) issues a search-warrant for a document, parcel or other thing in

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

LIMITATION

468. Bar to taking cognizance after lapse of the period of limitation.

- (1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
- (2) The period of limitation shall be—
 - (a) **six months**, if the offence is punishable with fine only;
 - (b) **one year**, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) **three years**, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
- (3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

THE END