

INDEX

	INTRODUCTION	2-3
CHAPTER I	PRELIMINARY	4-11
CHAPTER II	CONSTITUTION OF CRIMINAL COURTS AND OFFICES	12-23
CHAPTER III	POWER OF COURTS	24-27
CHAPTER IV	ARREST OF PERSONS	28-39
CHAPTER V	PROCEDURE TO SECURE PRESENCE OF THE ACCUSED	40-50
CHAPTER VI	SEARCH, SEIZURE AND PRODUCTION OF THE MATERIAL	51-60
CHAPTER VII	SECURITY FOR KEEPING PEACE FOR GOOD BEHAVIOUR	61-69
CHAPTER VIII	MAINTENANCE	70-79
CHAPTER IX	MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY	80-89
CHAPTER X	INFORMATION TO POLICE AND POWER TO INVESTIGATION	90-116
CHAPTER XI	JURISDICTION OF CRIMINAL COURTS	117-120
CHAPTER XII	COGNIZANCE OF AN OFFENCE BY MAGISTRATE	121-130
CHAPTER XIII	COMPLAINT PROCEEDINGS	131-140
CHAPTER XIV	CHARGE	141-148
CHAPTER XV	TRAIL	149-167
CHAPTER XVI	ATTENDANCE OF PERSONS CONFINED OR DETAINED IN PRISONS	168-170
CHAPTER XVII	EVIDENCE IN INQUIRIES AND TRIALS	171-179
CHAPTER XVIII	GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS	180-195
CHAPTER XIX	PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND	196-199
CHAPTER XX	PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE	200-203
CHAPTER XXI	THE JUDGMENT	204-219
CHAPTER XXII	APPEAL, REFERENCE AND REVISION	220-228
CHAPTER XXIII	EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES	229-234
CHAPTER XXIV	PROVISIONS AS TO BAIL AND BONDS	235-246
CHAPTER XXV	IRREGULAR PROCEEDINGS	247-250
CHAPTER XXVI	LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES	251-261

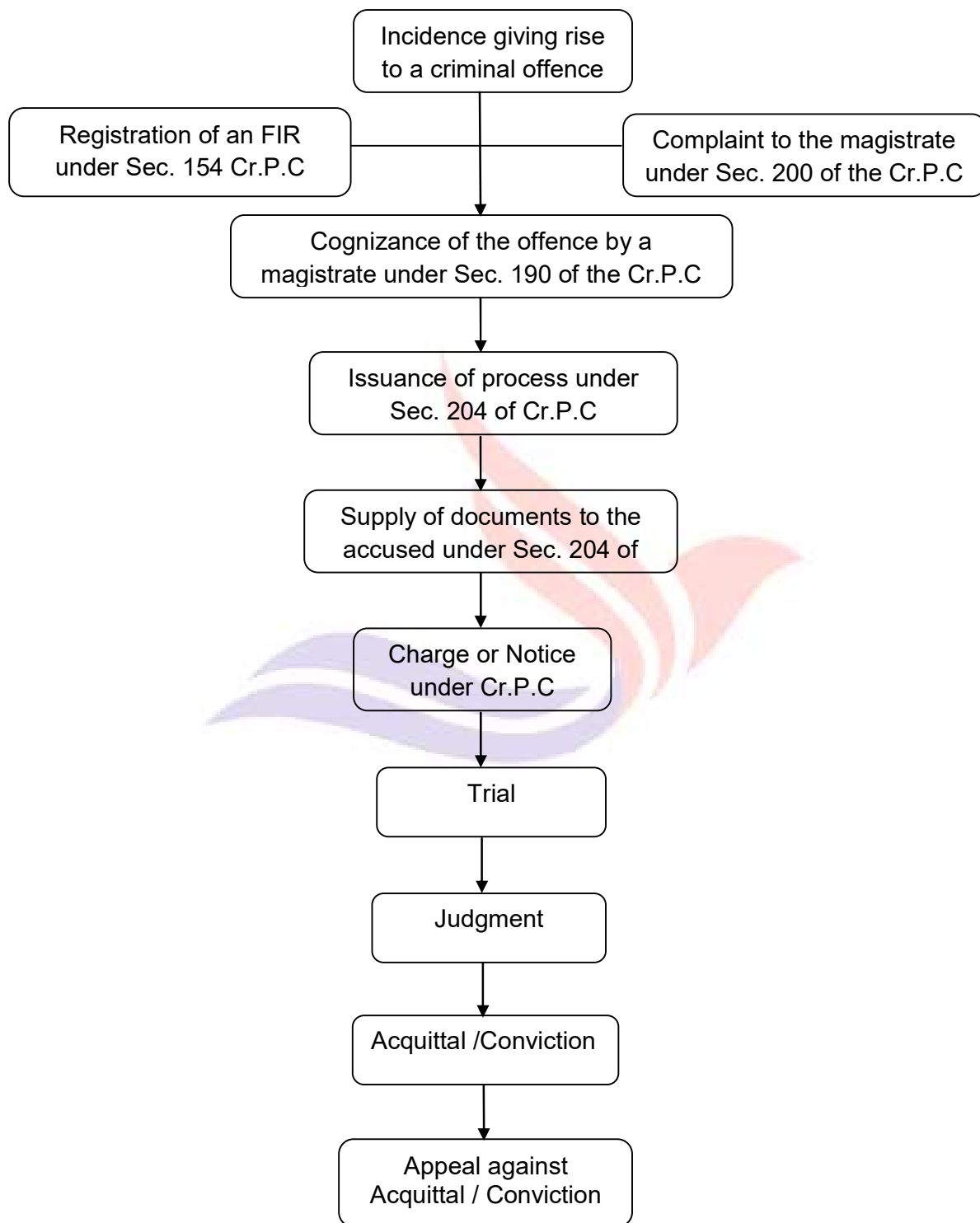
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INTRODUCTION

PROCEDURE IN CRIMINAL LAW



JURISPRUDENTIAL ESSENCE OF CRIMINAL PROCEDURE CODE

From the beginning of the human civilization the human society has prescribed a code of conduct for its members. Any act or anti-social behavior which violates the code of conduct and will reduce human happiness is considered as crime. But violations are bound to occur and crime is inevitable. It is the responsibility of the state to protect the members of the society from any antisocial behaviour and hence the state makes criminal laws with the object to protect the society from the criminals. The Criminal law occupies a predominant place among the agencies of social control. But when a person commits a crime he is not automatically punished or he himself will not come and confess that he has committed a crime and accept punishment. There must be a procedure to enforce the criminal law. The offender must be brought before the court and his guilt must be proved. For this process the procedural criminal law is necessary. The Criminal Procedure Code is designed to look after the process of the administration and enforcement of the Criminal law. The Criminal procedure is an inseparable part of the penal law. Without the Criminal procedure code the substantive criminal law will become worthless and meaningless.

HISTORICAL BACKGROUND

Criminal law is the most important branch of law, because it closely touches and concerns man in his day-to-day affairs. The Code of Criminal Procedure commonly called Criminal Procedure Code (CrPC) is the main legislation on procedure for administration of substantive criminal law in India. The code of criminal procedure, 1898 (cr. P.c.) was repealed by the code of 1973 enacted by parliament on 25th January, 1974 and made effective from 1.4.1974 so as to consolidate and amend the law relating to criminal procedure. It is an act to consolidate and amend the law relating to the procedure to be followed in apprehending the criminals, investigating the criminal cases and their trial before the criminal courts. It also deals with public nuisance, prevention of offences and maintenance of wife, child and parents. It is an adjective law but also contains provisions of substantive nature (e.g. chapters viii, ix, x and xi). Its object is to provide a machinery for determining the guilt of and imposing punishment on offenders under the substantive criminal law, for example, the Indian penal code. The two codes are to be read together. The code provides machinery for punishment of offences under other Acts also. At present, the act contains 484 sections, 2 schedules and 56 forms. The sections are divided into 37 chapters. The Criminal Procedure code was enacted many years ago. It has undergone many changes. The Code of Criminal Procedure is complete code with respect to matters provided under it, thus the code must be deemed to be exhaustive.

CHAPTER I

PRELIMINARY

Short title, extent and commencement

This Act is called the Code of Criminal Procedure, 1973. It extends to the whole of India. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019). Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply to the State of Nagaland, to the tribal areas.

But the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

The Supreme Court in case of Srinivas Gopal v. UT of Arunachal Pradesh, (1988) 4 SCC 36

The Supreme Court has reiterated that the inapplicability of the provisions of the Cr PC in the above areas is of little consequence because in the context of Nagaland it has been held that even though the provisions of the Cr PC are not applicable in certain districts of the State of Nagaland, it only means that the rules of the Cr PC would not apply but the authorities would be governed by the substance of these rules." It has also to satisfy the standard of fairness as is implicit in Article 21 of the Constitution.

IMPORTANT DEFINITIONS – SECTION 2.

- **Bailable offence Section 2(a) of CrPC-** Bailable offences means the offence that has been shown in the First Schedule as bailable or which is made bailable by any other law for the time being in force. The first schedule of the CrPC is divided into two parts wherein the first part deals with the offences given under IPC and the second part deals with the offences under other laws. As per the last item of the First Schedule, an offence in order to be bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only.

For example- Simple Hurt (Section 337; IPC), Bribery (Section 171E; IPC), Public Nuisance (Section 290; IPC), Death by Rash or Negligent Act (Section 304A; IPC).

In the case of Rasik Lal v Kishore (2009) 4 SCC 446, Supreme Court held that, in case a person is arrested for any bailable offence, his right to claim bail is absolute and indefeasible and if the person accused is ready, the court or the police as the case may be will be bound to release him on bail.

- **Non-Bailable Offence Section 2(a) of CrPC**

Non-bailable offence includes all those offences which are not included in bailable offence in the First Schedule. Further, the First Schedule in its Second part at its end has defined non-bailable offence as the offences which are punishable with death, imprisonment of life or imprisonment for more than seven years. A person accused of a non-bailable offence doesn't have right to be released on bail but the bail can be granted at the discretion of the court.

- **Cognizable offence Section 2(c) of CrPC**

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

Thus cognizable offence is an offence in which the police officer as per the first schedule or under any other law for the time being in force, can arrest the convict without a warrant and can start an investigation without the permission of the court. Cognizable offences are generally heinous or serious in nature such as murder, rape, kidnapping, theft, dowry death etc. The first information report (FIR) is registered only in cognizable crimes.

- **Non- Cognizable offence Section 2(l) of CrPC**

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

Thus In case of a non-cognizable offence, the police cannot arrest the accused without a warrant as well as cannot start an investigation without the permission of the court. The crimes of forgery, cheating, defamation, public nuisance, etc., fall in the category of non-cognizable crimes.

- **CHARGE Section 2(b) of CrPC**

Charge includes any head of charge when the charge contains more heads than one;

Thus charge simply means an accusation. A charge is a formal recognition of concrete accusation by magistrate or a court based upon a complaint or information against the accused. In *V C Shukla Vs State 1979 AIR 962*- The Court held that the purpose of framing of charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.