Criminal Law II - Lecture notes 3

Code of criminal procedure (Karnataka State Law University)

KLE LAW ACADEMY BELAGAVI

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STUDY MATERIAL

for

CRIMINAL LAW II

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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MEANING OF PROCEDURE

Criminal law is one of the most important branches of law because it deals with the most serious offences and it helps to protect the society from falling into the state of anarchy. It consists of two branches- **procedural and substantive law**.

Procedural law provides machinery for the implementation of substantive criminal law. Substantive law provides a different kind of offences and the punishment which is imposed on the offenders. If there is no procedural law, the substantive laws are of no use because no one will be able to know the way how the offenders will be prosecuted and they will be let off. Thus, both the law are complementary with each other.

The main objective of criminal procedure is to provide a full and fair trial to the accused by taking into consideration the principles of natural justice.

FUNCTIONARIES UNDER THE CODE

There are various functionaries under the Code of Criminal Procedure,1973 who help to regulate the various provisions of the code. The functionaries are essential for the proper functioning of the code. The various functionaries mentioned under the code are as follows-

1. The Police

The Police Officer is an important authority who is the backbone of criminal law in India. They are responsible for maintaining the law and order of the country. The police officers have various powers and functions that help to prevent various crimes happening in our country. There is no definition of the term “Police” in the Code of Criminal Procedure but the term is defined in the Police Act of 1861.

2. Public Prosecutors

Section 24 of the Code of Criminal Procedure deals with the Public Prosecutor. The main function of the office of Public Prosecutor is to administer justice and to secure the public purpose entrusted with him. The Public Prosecutor is an independent statutory authority and is not a part of any investigating agency.

It is mandatory to appoint a Public Prosecutor in all the cases when the prosecution is against the State. The relationship between the Public Prosecutor and the Government is that of a counsel and a client. The Public Prosecutor shall never be partial to either the accused or prosecution.

There are various classes of Public Prosecutor like,

1. Public Prosecutors appointed by the State Government and the Central Government;
2. Additional Public Prosecutors appointed by the State Government;
3. Special Public Prosecutors appointed by the Central Government;
4. Special Public Prosecutors appointed by the State Government.

Public Prosecutors and additional public prosecutors for High Court

Section 24(1) of the Code of Criminal Procedure provides powers to the Central Government or State Government to appoint a Public Prosecutor for every High Court. They can also appoint one or more Additional Public Prosecutors. The appropriate Government can appoint the Public Prosecutors after consultation with the High Court. The eligibility of the person to be appointed as a Public Prosecutor is that he should be practising as an Advocate for not less than seven years.

Public Prosecutors and Additional Public Prosecutors for districts

Section 24 provides various rules regarding the appointment of Public Prosecutors and Additional Public Prosecutors for districts. The Central Government can appoint one or more Public Prosecutors for conducting cases in any district or local area. The State Government can also appoint one or more Additional Public Prosecutors for the district. The Public

Prosecutor or Additional Public Prosecutor appointed for a district can also be appointed for another district in certain cases. The District Magistrate will prepare a panel of names of persons who are eligible to be appointed as a Public Prosecutor or Additional Public Prosecutor. This list is prepared after consulting the Sessions Judge.

Assistant Public Prosecutors

Section 25 of the Code of Criminal Procedure deals with the appointment of Assistant Public Prosecutors. The State Government has to appoint one or more Assistant Public Prosecutors for conducting prosecutions in different districts. The Assistant Public Prosecutors have no right to practise as advocates or defend the accused in criminal cases. Their only work is to conduct prosecutions on behalf of the State. The Assistant Public Prosecutors are full-time Government servants.

Role of the Prosecutors

The Public Prosecutors are appointed to conduct any prosecution, appeal or any other proceedings on behalf of the Central Government or State Government. The Public Prosecutor is bound to satisfy himself that there is a justification to seek an order of remand to judicial custody and to assist the Court.

3. Court

The Courts are another important functionary under the Code of Criminal Procedure. There are various classes of Criminal Court like,

- Courts of Session;
- Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
- Judicial Magistrates of the second class; and
- Executive Magistrates.

The Code of Criminal Procedure has clearly differentiated the various functions of the court and has dedicated various powers to various classes of Courts in Chapter three of the Code of

Criminal Procedure. Section 26 of this code mentions that the High Court, the Court of Session or any other Court as specified in the First Schedule of the Code of Criminal Procedure is eligible to try offences provided under the Indian Penal Code. Section 28, Section 29 and Section 30 deals with the various kinds of sentences that can be passed by different Courts which helps the procedure of trial and also the powers between the Courts get distributed properly. The Courts govern the entire process of trial and acts as a regulating authority.

4. The Defence Counsel

Section 303 of the Criminal Procedure Code provides this right to appoint a defence counsel of their choice. The right guaranteed under this Section is indispensable as it guarantees a fair trial.

FIRST INFORMATION REPORT

The term 'First Information Report' has not been defined in the Code of Criminal Procedure. The report first recorded by the police relating to the commission of a cognizable case is the First Information Report giving information on the cognizable crime.

This is the information on the basis of which investigation begins. The FIR must be in writing.

Object

The main objective of filing F.I.R. is to set the criminal law in motion and also to enable the police officer to start the investigation of the crime committed and collect all the possible pieces of evidence as soon as possible.

Essential Conditions of F.I.R.

In Moni Mohan v. Emperor AIR 1931 Cal, it was decided that the essential conditions of F.I.R. are:

1. It must be a piece of information.
2. It must be in writing. If given in writing, should be reduced into writing by the concerned police officer.
3. The main act or crime should be cognizable in nature, not the ones subsequent to the main act.

The F.I.R. must be in the nature of complaint or accusation with the object of getting the law in motion.

Information in Cognizable Cases [S.154]

Since the information received u/s 154 is termed as FIR, it is important to know the provisions relating to the procedure for recording information in respect of cognizable cases u/s/ 154.

- If the information is given orally to an officer in charge of a police station, it has to be reduced in writing by the concerned police officer. It should be then read over to the informant, and then signed by him. The information thus received has to be recorded in a book authorised by the state government regarding the same.
- A copy of the information recorded is to be given to the informant, free of cost.
- If the officer in charge refuses to record the information, the person may send such information, the aggrieved person may send, the substance of such information to the Superintendent of Police and the Superintendent of Police if satisfied about the commission of the cognizable offence, shall either investigate the case himself or direct an investigation to be made by the subordinate police officer. Such police officer shall exercise all the powers of an officer in charge of the police station in the concerning offence.

When the information is given by a woman against whom any of the offences under sections 326 – A, 326-B, 354, 354-A to 354-D, 376, 376-A to 376-E or 509 IPC is alleged to have been committed or attempted, such statement shall be recorded by a woman police officer or any woman officer.

What Information is Considered in an F.I.R?

Only information relating to the commission of a cognizable offence can be termed as an FIR. It is not necessary that the information must set out every detail of the case. It need not state the name of the accused also. What is necessary is that it must disclose information regarding the commission of a cognizable offence.

Information received in the following cases is not considered as FIR:

1. Information received after commencement of the investigation.

2. Telephonic information, unless it has been given by a known person who discloses his identity and the message contains all the necessary facts which constitute an offence and such a message is reduced to writing by S.H.O.
3. Information of mere assemblage of some persons.
4. Indefinite, Vague and unauthorized information.

Evidentiary Value of FIR

An FIR is not a substantive piece of evidence. That is, it cannot be considered as evidence of facts stated therein. However, FIR may be used for the following purposes:

1. It can be used to corroborate an informant witness u/s 157 of Evidence Act. But it cannot be used to contradict or discredit other witnesses.
2. It can be used to contradict an informant witness u/s 145 of Evidence Act.
3. FIR can be used by the defence to impeach the credit of the maker under sec. 155(3) of the Evidence Act.
4. A non-confessional FIR given by an accused can be used as an admission against him u/s 21 of Evidence Act.
5. FIR can be used as a dying declaration as substantive evidence If it relates to the cause or occasion or circumstances and facts which resulted in the informant's death. within the meaning of section 32(1) of the Evidence Act.

If the accused himself lodges the FIR, it cannot be used for corroboration or contradiction because the accused cannot be a prosecution witness, and he would very rarely offer himself to be a defence witness u/s 315 of the Code.

Delay in Filing FIR

The object of early filing of F.I.R. to the police as soon as possible, in respect of the commission of the offence is to obtain and receive fresh information regarding the circumstances and facts which tend to result in the commission of the offence. The FIR shall have better corroborative value if it is recorded and taken before the informant's memory fades and before he starts to forget the facts. Thus, if there is a delay in lodging FIR and the delay is unreasonable and unexplained, it is likely to create scope for suspicion or

introduction of a concocted story by the prosecution. It is the duty of the prosecution to explain the delay in lodging FIR. If satisfactorily explained, it does not lose its evidentiary value. However, mere delay in lodging FIR is not fatal to the prosecution case.

CONFESSION

Scope and relevance of statements under section 164 of CrPC

Confession means a formal statement admitting that one is guilty of a crime. Confession is not defined in the Evidence Act. Confession includes admission, but an admission is not confession. A confession either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. If a statement falls short of such a plenary acknowledgment of guilt, it would not be a confession even though the statement is of some incriminating fact which taken along with other evidence tends to prove the guilt of the accused. Such a statement is only an admission but not a confession. The person making it states something against himself, therefore, it should be made in surroundings, which are free from suspicion. Otherwise, it violates the constitutional guarantee under Article 20(3) so that person accused of an offence shall be compelled to be a witness against himself. A direct acknowledgement of guilt should be regarded as confession.

In case of Pakala Narayana Swami Vs emperor AIR 1939 P.C. 47 the question before the court was whether statements from which the guilt of an accused can be inferred amounts to a confession or not. it was held that "A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not in itself a confession, for example, an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused death with no explanation of any other man's possession"

Types of confessions: Inculpatory and Exculpatory confessions

The confession to something wrong or which involves the accused of the guilt is inculpatory confession. And, the confession which absolves the accused of any guilt is exculpatory confession.

From of confession

A confession may occur in any form it may be made to the court itself, when it will be known as judicial confession or to anybody outside the court, in which case it is called an extra judicial confession. It may even consist of conservation to oneself, which may be produced in evidence of overheard by another. In Pakala Narayan Swami v. Emperor, where the accused admitted his guilt before the police and, later on, refused to identify accused before Magistrate and during trial, the court held that it won't amount to confession as there was no direct admission of guilt by him.

In case Sahoo Vs state of UP AIR 1966 SC 40 the accused who was charged with the murder of his daughter in law with whom he was always quarrelling was seen on the day of murder going out of the home, saying words to the effect "I have finished her and with her the daily quarrels." the statement was held to be a confession relevant in evidence, for it is not necessary for the relevancy of a confession that it should be communicated to some other person.

Who can record confession statements?

Section 164 of the code gives power to the Metropolitan Magistrate or judicial magistrate to record confession and statements during the course of investigation under chapter 12 or under any law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial. The magistrate may record confession or statement made to him. But before doing so he is enjoined by sub section (2) thereto to explain to the person making it that he is not bound to make confession and that, if he does so it may be used as evidence against him.

In case Kartar Singh Vs state of Punjab, 1994 Crl.L.J. 3139 it was observed what section 164(2) of the code requires as amplified by rule 32 of Criminal Rules of Practice, is that as soon as the accused intending to make confession is produced and before he is told he would be allowed time for reflection, the magistrate should explain him that it is not intended to make him an approver and that, he is not bound to make confession and warn him that, if he does so, anything said by him will be taken down and thereafter be used as evidence against him as evidence in relation to his complicity in the offence at the trial, that is to follow. Compliance of sub- section (2) being mandatory and imperative, its noncompliance renders the confession inadmissible in evidence. Such defect cannot be cured under section 463 of the CrPC.

Object of recording 164 statements

A question may arise as to why there is need to record the statement under section 164 of the code in addition to statement recorded under section 162 of the Code. The object of recording of statements of witnesses under section 164 of the Code is twofold;

(1) to deter witnesses from changing their versions subsequently and

(2) to get over the immunity from the prosecution in regard to information given by the witnesses under section 162 of the code. The other reason of recording statement of witnesses under section 164 of 17 the code is to minimize the chances of changing the versions by the witnesses at the trial under the fear of being involved in perjury.

The object behind it that when during the course of investigation police records the statements under section 162 of the Code they cannot administer oath to the person making statement and cannot obtained his signature, but under section 164 of the Code, a magistrate recording statement of a person can administer oath to him and obtain his signature over the statement Certainly if a person makes and signs a statement then naturally he comes under moral obligation and chances of his turning hostile will be reduced. . But the evidence of witness whose statement is recorded under section 164 of the Code must be approached with caution.

Procedural safeguards

The Indian Constitution provides immunity to an accused against self-incrimination under Article 20(3) – '*No person accused of an offence shall be compelled to be a witness against himself*'. It is based on the legal maxim *"**nemo teneteur prodre accussare seipsum**",* which *means "No man is obliged to be a witness against himself."*

Confession is a self-incriminating statement and it has to be given voluntarily. Thus, section 164 contains various procedural safeguard to insure voluntary character of the confession.

The magistrate shall record the confession in the manner provided in section 281 for recording the examination of the accused persons. It shall not only be signed by Magistrate, but also by the accused himself. The magistrate shall also append a memorandum at the foot of the record as laid down in the sub section (4). if he has no jurisdiction to inquire or try the offence, he shall forward the confession so recorded to the magistrate by whom the case is to be inquired into or tried. The provisions of the section 164 of the criminal Procedural Code and rules and guidelines framed by the Honourable High Court in this behalf providing for procedural safeguards etc, must be complied with not only in form, but also in essence. When

a confession is not recorded by the magistrate in the manner prescribed by the section 164 of Criminal Procedure Code, then it is not admissible in evidence.

Evidentiary value of 164 statements

Evidentiary value of statement recorded under section 164 CrPC is that, the statement cannot be treated as substantive evidence when the maker does not depose of such facts on oath during trial. before acting on a confession made before a judicial magistrate in terms of section 164, the court must be satisfied first that the procedural requirements laid down in sub section (2) to (4) are complied with. These are salutary safeguards to ensure that the confession is made voluntarily by the accused after being apprised of the implications of making such confession. The endeavour of court should be to apply its mind to the question whether the accused was free from threat duress or inducement at the time of making confession. Parmananda Vs state of Assam (2004(2) ALD Crl 657

The confession would not be ordinarily considered the basic for conviction. However, it is admissible, and conviction may also be based upon it if it is found truthful and voluntary and in a given case some corroboration is necessary. Confession which is not retracted even at the stage of trial and even accepted by the accused in the statement under section 313 CrPC can be fully relied upon. So, the conviction based thereon together with other circumstantial evidence is sustainable. The accused in his statement under section 313 CrPC or during cross-examination never suggested that his statement under section 164 CrPC is false. Allegation of presence of police officers at the time of recording the confession was without any material. Requirement of section 164(2) CrPC have been complied with. Such a confession statement was fit to be accepted.

REMAND

Police custody

Police custody means that the physical custody of the accused is with the Police, the accused is lodged in a lock-up of a police station.

After an FIR is lodged for a cognizable offense (provides punishment for more than three years), the accused is arrested by the police to prevent the tampering of evidence or influencing the witnesses.

Under Section 57 CrPC the police officer cannot keep the accused for more than 24 hours, irrespective of whether the investigation is complete or not. The accused is produced before the concerned Magistrate within 24 hours of the arrest, the police seek his remand to police custody in order to complete the investigation expeditiously, the police decides for how long the accused must be kept in custody, which cannot exceed a period of 15 days.

Judicial Custody

Judicial custody is there in case of serious offenses, where the Court may accede on the request of the police to remand the accused in judicial custody after the police custody period expires, that is to prevent the tampering of evidence or witnesses.

It is mandatory in criminal cases to file a charge sheet within 90 days. If there is failure in the filing of a charge-sheet within 90 days, the bail is normally granted to the accused. But, in case if heinous offenses, like rape or murder, the accused is generally kept in a judicial

custody (that is kept in jail under the custody of the court) for a longer duration despite the filing of a charge sheet, in order to not influence the process of trial.

The judicial custody may be for a period of 60 days for all other crimes, if the Court finds it convincing that sufficient reason exists, following which the suspect or accused may be released on bail.

Section 167

Section 167 of CrPC governs the provisions for holding a person in custody for the purpose of proceeding further with the investigation. Section 167 of CrPC allows a person to be held in police custody on the orders of a Magistrate for a period of 15 days.

A Judicial Magistrate may remand a person for a period of 15 days to any form of custody. An executive Magistrate may order to extend the period of custody for up to 7 days.

A person may be held in police custody or judicial custody. Police custody may extend up to a period of 15 days from the date the custody begins, whereas the judicial custody may extend to a period of 90 days for the crimes which entails life imprisonment or death punishment or imprisonment for a term of not less than ten years and 60 days for crimes where the imprisonment is for less than ten years, if the Magistrate is convinced that there are sufficient existing reasons, following which the suspect or accused must be released on bail. The Magistrate has the authority to remand the person into police custody or judicial custody.

The detaining authority may be changed during the pendency of detention, provided that a total time period of custody does not exceed 15 days. If a person is transferred from police custody to judicial custody, then the number of days the person has served in police custody are deducted from the total time that is remanded to judicial custody.

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATE

Cognizance on Complainant and Issues of Process

The **Complaint is defined in Section 2(d)** of the Code as *any allegation made verbally or in writing to a Magistrate, to take action under this Criminal Procedure Code, that some person, whether known or unknown, has committed an offence, but it does not include a police report or statement.*

Meaning of Cognizance

The word 'Cognizance' has not been defined in the procedural law but the meaning of cognizance is derived from the number of precedents and judicial pronouncements. The dictionary meaning of cognizance is "taking account of ", "taking note of", "to gain knowledge about", "to have knowledge regarding something ". If we see the legal meaning of cognizance, it is the power or authority of the court or the "taking judicial notice by court of law having jurisdiction on an action, matter or a cause for the purpose of deciding whether there is any ground for the initiation of proceedings and deciding of the matter or cause judicially".

Section 190 of the Code of Criminal Procedure provides the condition to take cognizance of offences by magistrates.

According to this section, the Magistrate can take cognizance when:

1. After receiving a police complaint;

2. After receiving complaints of facts which constitutes any offence;
3. After receiving information from any person other than a police officer, or upon his own knowledge, that such offence has been committed;
4. The Chief Judicial Magistrate can empower any Magistrate of the second class to take cognizance of offences which are within his competence to conduct an inquiry or a trial.

The Magistrate can scrutinize the complaint and examine it completely before issuing a process.

Examination of Complainant

Section 200 of the Code of Criminal Procedure deals with the examination of the complainant. The magistrate after taking cognizance of an offence has to examine the complainant and witnesses present. This examination has to be done upon oath. The magistrate also has the duty to note down the relevant information found in such examination. The substance of such examination should be given in writing and that has to be signed by the complainant and the witnesses. The magistrate need not conduct this examination when:

1. If the complaint is made by a public servant who is acting or purporting to act in the discharge of his official duties or a Court;
2. If the Magistrate makes over the case for enquiry or trial to another Magistrate under Section 192.

Inquiry or Investigation for further scrutiny of the complainant

Section 202 of the act provides further scrutiny of the complainant. The issuance of the process can be postponed if the Magistrate feels there is a need for further investigation. The Magistrate will decide whether there is a proper ground for conducting the proceeding. The scope of enquiry under this section is restricted to the ascertainment of truth or falsehood made out in the complaint.

Dismissal of Complaint

Section 203 provides power to the Magistrate to dismiss a complaint. The Magistrate can dismiss the complaint if he is of the opinion that there are no sufficient grounds for conducting the proceedings. The Magistrate comes to this conclusion after conducting an appropriate inquiry or investigation under Section 202. The Magistrate can also dismiss the complaint if the processing fee is not paid properly and this ground of dismissal is mentioned in Section 204. In the case of *Chimanlal v Datar Singh* 1998 CrLJ 267, it was said that the dismissal of a complaint is not proper if the Magistrate has failed to examine material witness under Section 202. The Magistrate can dismiss the complaint or can refuse the issue of the process when:

1. The Magistrate finds out no offence has been committed after the complaint is reduced to writing according to Section 200;
2. If the Magistrate distrusts the statements made by the complainant;
3. If the Magistrate feels that there is a need to conduct further investigation, then he can delay the issue of process.

Issuing a summons or warrant

Section 204 of this act provides the Magistrate power to issue a process if it is found that there are sufficient grounds for carrying out the proceeding. The Magistrate can issue a summons if it's a summons case. A warrant is issued in case of a warrant case. The Magistrate can also issue summons to the accused in order to make him appear before the Magistrate concerned within a certain date.

No summons or warrants can be issued against the accused until a list of the prosecution witness has been provided. This section will not affect the provisions provided in Section 87 of the act. Section 87 enables the Magistrate to issue a warrant of arrest whenever it is necessary under this section.

Power to Dispense With the Personal Attendance Of The Accused

Section 205 provides the Magistrate powers to dispense the personal attendance of the accused in certain situations. The Magistrate can dispense the personal attendance of the accused and permit him to appear by his pleader if there are proper reasons. The Magistrate

can also direct the personal attendance of the accused in any stage of the investigation if it is necessary. The exemption from personal appearance cannot be claimed as a right but it is completely under the discretion of the court after applying relevant judicial principles. The Magistrate considers various factors to dispense attendance like:

1. Social status.
2. Customs and practice.
3. The distance at which the accused resides.
4. The necessity of personal attendance with regards to the offence and the stages of the trail.

Special Summons in Cases of Petty Offences

The Magistrate can issue some special summons in cases of petty offences according to Section 206 (2) For the purposes of this section," petty offence" means any offence punishable only with a fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 or under any other law which provides for convicting the accused person in his absence on a plea of guilty. When a Magistrate takes cognizance of petty offences the case can be summarily dismissed according to Section 260, but sometimes the Magistrate will send the summons for the person to appear in person or by pleader when it is needed. The reason for such a decision has to be recorded.

Supply to the accused of copies of statements and other documents

It is essential to supply relevant documents to the accused so that they can understand the procedure followed and the status of the case. The documents supplied might also be used for future reference whenever necessary. The main need behind providing such documents is to avoid prejudice during the trial. The non-supply of materials by the Magistrate that is provided in Section 207 can be successfully used for setting aside a conviction.

Where the proceeding is instituted on a police report
Section 207 provides that the Magistrate has to provide certain copies of documents to the person accused when the proceedings are instituted on a police report. The documents must be provided free of cost. The necessary documents that have to be provided are:

1. The police report;
2. The First Information Report (FIR) which is recorded under Section 154;
3. The statements which are recorded Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses;
4. The confessions and statements that are recorded under Section 164 if available;
5. Any other relevant document which is forwarded to the Magistrate with the police report.

Where the proceeding is in respect of an offence exclusively triable by the Court of Session

The court has to provide certain documents to the accused when the offence is triable exclusively by the Court of Session according to Section 208. These documents should be provided when the case is not instituted based on the police reports. The documents are:

1. The statements recorded under Section 200 or Section 202 after the investigation by Magistrates;
2. Any documents that are produced before the Magistrate on which the prosecution proposes to rely;
3. The statements and confessions that are recorded under Section 161 or Section 164 if available.

Commitment of the Case to Court of Session

Section 209 deals with the commitment of the case to the Court of Session. According to this section if a Magistrate feels that if the offence is triable exclusively by the Court of Session after instituting a case, then,

1. The Magistrate can commit the case to the Court of Session;
2. The accused can be remanded in custody until the proceedings are subject to the other provisions relating to bail;
3. The Magistrate can send evidence and other relevant evidence to the concerned court to carry out the proceedings;
4. The Magistrate can also notify the Public Prosecutor of the commitment of the case to the Court of Session.

Consolidation of Cases

Section 210 deals with the procedures to be followed when there is a consolidation of cases instituted on a police report and on a complaint. The Magistrate can stay the proceedings of any inquiry or trial and call for a report on the matter from the police officer conducting the investigation if it is done in the same subject of inquiry. If the police report does not relate to any accused in the case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, according to other provisions in the code. If a report is made by the investigating police officer according to Section 173 and based on such report cognizance of any offence is taken by the Magistrate against any person who is accused, then the Magistrate shall inquire into or try together both the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

TRIAL UNDER CRPC

The trial is the pivotal point of a Criminal case. Sec 190 of the CrPC provides for the conditions that need to be fulfilled before proceedings can be initiated by the Magistrate (it specifically empowers a Magistrate to take cognizance of a case). It is the exclusive power of the Magistrate under Sec 204 of the CrPC to refer or reject a case from entering the stage of trial. 'Trial' is the judicial adjudication of a person's guilt or innocence. Under the CrPC, criminal trials have been categorized into four divisions having different procedures, called Session, warrant, summons and summary trials.

Sec 225-237 deal with warrant cases by a court of Session.

Sec 238-250 deal with warrant cases by magistrates.

Sections 251-259 provides procedure for trial of summons cases by magistrates.

Sections 260-265 make provisions relating to summary trials.

Warrant Case: A warrant case relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The CrPC provides for two types of procedure for the trial of warrant cases triable by a magistrate, viz., those instituted upon a police report and those instituted upon complaint or on own information of magistrate.

In respect of cases instituted on police report, it provides for the magistrate to discharge the accused upon consideration of the police report and documents sent with it. In respect of the cases instituted otherwise than on police report, the magistrate hears the prosecution and

takes the evidence. If there is no case, the accused is discharged. If the accused is not discharged, the magistrate holds regular trial after framing the charge, etc.

Sessions case: In respect of offences punishable with death, life imprisonment or imprisonment for a term exceeding seven years, the trial is conducted in a Sessions court after being committed or forwarded to the court by a magistrate.

Summons case: A summons case consists of all cases relating to offences punishable with imprisonment not exceeding two years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice", to the accused when the person appears in pursuance to the summons. The court has the power to convert a summons case into a warrant case, if the magistrate thinks that it is in the interest of justice.

Summary case: The high court may empower magistrates of first class to try certain offences in a summary way. Second class magistrates can summarily try an offence only if punishable only with a fine or imprisonment for a term not exceeding six months. In a summary trial, no sentence of imprisonment for a term exceeding three months can be passed in any conviction. The particulars of the summary trial are entered in the record of the court. In every case tried summarily in which the accused does not plead guilty, the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

FEATURES OF FAIR TRIAL

The Indian Judiciary has explained the need and importance of the concept of Fair Trial in a number of cases. In the landmark case of *Zahira Habibullah Sheikh and ors vs. State of Gujarat,* the Supreme Court has defined fair trial as a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. The SC said that a denial of a fair trial is as much injustice to the accused as is to the victim and the society.

Following are the principles of a fair trial-

1. Presumption of innocence
2. Independent, impartial and competent judge
3. Expeditious trial

4. Hearing should be in open court
5. Knowledge of accusation and adequate opportunity
6. Trial in presence of accused
7. Evidence to be taken in presence of accused
8. Cross-examination of prosecution witnesses
9. Prohibition of double jeopardy
10. Legal aid

Presumption of Innocence

This is the cardinal importance of the Indian Criminal Justice System. Under this principle each and every accused is presumed to be innocent unless proved guilty of a crime beyond reasonable doubts. The burden of proving the accused guilty is on the prosecution. It came from a Latin maxim ***'eiincumbit probation qui dicit, non qui negate'*** which means the burden of proof is one that who asserts, and not on the one who denies.

Independent, Impartial and Competent Judge

Impartiality refers to the conduct of the Judges who are supposed to conduct the trial and give the decision of acquittal or conviction without any biases towards the accused or the victim. Section 479 of the Code of Criminal Procedure, 1973 prohibits the trial of a criminal case by a judge who is either party to the suit or is personally interested in the case.

The apex court in the case of *Shyam Singh v. State of Rajasthan* has held that the real test is whether there exists any circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case and not that a bias has actually affected the judgment.

Expeditious Trial

'Justice delayed is Justice denied' is popularly used in many of the courtroom dramas, which is actually a well-settled principle of criminal jurisprudence. Expeditious trial refers to the right of speedy trial of an accused. This principle was considered under the concept of a fair trial to avoid unnecessary harassment of the accused. The apex court in the landmark case of *Husianara Khatoon v. State of Bihar, 1979* held that speedy trial is an essential ingredient of Article 21 of the Constitution of India and it is the constitutional duty of the state to set up such procedure which would ensure speedy trial of the accused.

Section 309(1) of Cr.PC has provided that all the trials and the proceedings shall be held as expeditiously as possible unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Hearing Should be in Open Court

The Right to open court is another principle of a fair trial. It is said openness of a court brings more fairness to the trial. The right to open court is not just of the accused but is also a right of the public. Sec-327(1) of Cr.PC provides for a trial in an open court. According to this section open court refers to a place to which the general public may have access. This section also gives the presiding judge discretion to deny the conduct of a criminal trial in an open court.

Knowledge of Accusation and Providing Adequate Opportunity to Accused

One of the vital principles of a fair trial is that one should be given an adequate opportunity to defend himself. It is possible only if the accused is aware of the charges framed against him. Therefore sec-211 of the Cr.PC provides for the right of the accused to have a precise and specific accusation.

Trial in Presence of the Accused

One of the principles of a fair trial is that the criminal courts shall not proceed *ex parte* against the accused person. The presence of the accused is necessary for assisting him to prepare his defence. A criminal trial in the absence of the accused is not supported by the principles of natural justice.

Evidence to be Taken in Presence of Accused

Sec-273 of Cr.PC provides that all evidence to be taken in the presence of the accused or his pleader when he is represented by one. Also, the court does not provide for the mandatory attendance of the accused as sec-317 of the code provides the Magistrate with the power to dispense the attendance of the accused if his personal attendance is not mandatory in the interest of justice.

Cross-Examination of Prosecution Witnesses

In order to check the credibility of the witnesses, their cross-examination is necessary. The prosecution should inform the court in advance of the witnesses he intends to bring. This is based on the underlying principle of giving equal and fair chance to both the parties by means of interrogation of witnesses. The accused should not be denied to examine the prosecution of witnesses.

In the landmark case of *Badri v. State of Rajasthan, 1976* the apex court held that where a prosecution witness was not allowed to be cross-examined on a material point with reference to his earlier statement made before the police, his evidence stands untested by cross-examination and cannot be accepted as validating his previous statement.

Prohibition of Double Jeopardy

This concept of double jeopardy is based on the doctrine of autrefois acquit and autrefios convict which means that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts for any other offence. The prohibition against jeopardy is also a Constitutional right recognized under Article 20(2) of the Indian Constitution which provides that no person shall be prosecuted and punished for the same offence more than once.

Sec-300 of Cr.PC is also embodied with the rule that once a person is convicted or acquitted with an offence he should not be tried with the same offence or with the same facts for any other offence.

Legal Aid

Every single person whether innocent or accused has the right to legal aid. This right is also a constitutional right embodied in Article 22(1) of the Indian Constitution. The right to counsel is one of the fundamental rights according to the supreme law in India. In the case of Khatri v. State of Bihar, it was held that the accused is entitled to free legal counsel not only at the stage of trial but also when he is first produced before the Magistrate and also when remanded.

Article 39A has also been introduced by the 42nd Amendment in 1976 in Indian Constitution to provide free legal aid to the persons who cannot afford a lawyer for his defence. Sections 303 and 304 of Cr.PC also provide for the right to legal aid through a counsel to every accused.

ARREST

Arrest is an act of taking a person into custody as he/she may be suspected of a crime or an offence. It is done because a person is apprehended for doing something wrong. After arresting a person further procedure like interrogation and investigation is done. It is part of the Criminal Justice System. In an action of arrest, the person is physically detained by the concerned authority.

Types of Arrest

The term Arrest has been defined neither in the CrPC nor IPC (Indian Penal Code,1860). The definition has not been provided even in any enactments dealing with Criminal Offences. The only indication of what does an arrest constitute can be made out of Section 46 of CrPC which deals with 'How an arrest is made'.

If broadly characterized arrest is of two types-

1. Arrest made in pursuance with a warrant issued by the magistrate.
2. Arrest made without any warrant but within the established legal provisions.

Another type of arrest is Private Arrest in which a person is arrested by another person. But it is allowed only in case a person commits a non-bailable offence in another person's presence or is apprehended of committing a crime against a person or his property.

Arrest by Warrant

The police cannot make such kind of arrest without a warrant. The warrant is issued by a Judge or a Magistrate on behalf of the state. An arrest warrant authorizes the arrest or detention of the person or capture or seizure of an individual's property. Section 41(1) of CrPC 1973 explains when can a person be arrested without any warrant. Section 41(2) of CrPC 1973 states that subject to the condition in Section 42, a person cannot be arrested without a warrant and an order of the magistrate in case of non-cognizable offence and where a complaint is made. The procedures to be followed while arresting a person find its mention in Section 46 of the Code.

Arrest Without Warrant

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 reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

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

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

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

Arrest on Refusal to Give Name and Residence

Section 42 of CrPC states the course of action in case of arrest on refusal to give name and residence.

Section 42(1) provides that when a person has committed a non-cognizable offence refuses to give his name or address or gives a false name and address on the demand of the officer, he may be arrested by such officer to ascertain his correct name or residence.

Procedure of Arrest by a Private Person

The procedure of arrest by a private person is expressly provided in Section 43 of the Criminal Procedural Code.

Section 43(1) states that a private person can arrest another person who commits a non-bailable offence or any proclaimed offender and without wasting any unnecessary time can be taken to a police officer and in the absence of the officer the accused has to be taken to the nearest police station.

Arrest by Magistrate

Magistrate here includes both an executive or judicial Magistrate. According to Section 44(1) of CrPC when an offence is committed in the presence of a magistrate within his local jurisdiction, he has the power to arrest that person himself or order any person for arrest and subject to the conditions relating to bail, commit the accused to custody.

Procedure of Arrest

There is no complete code which provides the procedure as a whole. Still, Section 46 explains how arrest is made.

It is the only place that gives the meaning of arrest. Section 46(1) provides that in an action of arrest the police officer or the person making the arrest shall actually touch or confine the body of the person arrested. In the case of women, her submission to the custody of an oral intimation of arrest shall be presumed and unless the police officer is female, she shall not be touched by the police officer at the time of time. But in exceptional situations, contrary to what is mentioned can be done.

According to Section 46(2), the police are authorised to use reasonable amount or means of force to effect the arrest in cases where the person being arrested forcibly resists or attempts to evade arrest.

Section 46(3) does not give the right to cause the death of the person who is not accused of an offence. The punishment in such cases is death or imprisonment for life.

Section 46(4) says that except in certain conditions a woman cannot be arrested after sunset and before sunrise and where such exceptional conditions exist, the woman police officer by making a written report can obtain the prior permission of the Judicial Magistrate with the local jurisdiction to make an arrest.

Additional powers for effecting arrest search of place

Section 47 of CrPC provides for the search of place entered by place sought to be entered. It further provides that the person having the warrant has the duty to enter the premises of the person being arrested. If the person is not able to easily ingress the premises or is not allowed to enter, then they have the authority to break open the door. It is done to take the person by surprise.

But if there is any female occupying the premises then the person arrested has to give notice to that female to withdraw and shall afford every reasonable facility for withdrawing and they may break the apartment.

Pursuit of offenders

Pursuit is the action of pursuing someone or something. In this case, it basically talks about the offenders. Section 48 authorizes the police officers to pursue offenders in any place in India whom he is authorised to do so without a warrant.

Power, on escape, to pursue and retake

Section 60 of CrPC– If there is a person who is in the lawful custody of the police tries to escape or is rescued, may be immediately pursued and arrested in any place in India.

Post arrest procedures

Firstly, according to Section 50(1) of CrPC, it is the duty of the police officer or any person arrested without warrant to inform the person arrested about the grounds of the offence for the arrest.

Secondly, in the case where the arrest is made under a warrant, the police officer under Section 75 CrPC is required to inform the person arrested about the substance of arrest and if required to show the order. If it is not done the arrest will become unlawful.

Thirdly, when an arrest is made without a warrant by a police officer, it is his duty to show before the magistrate without unnecessary delay (usually within 24 hours). It is also mentioned that the person arrested cannot be taken to any place other than the police station

before presenting before the magistrate. This is provided in Article 22 with Section 56 and Section 76 of the CrPC.

Apart from this, the police officer always has to bear the clear, visible and proper identification of his name which may facilitate his easy identification. As soon as the arrest is made a memo should be prepared which is to be attested by at least one witness and countersigned by the person arrested.

The arrested person also has the right to consult an advocate of his choice during interrogation under section 41D and Section 303 of CrPC. Apart from these, there are many other rights and procedures mentioned in the further part of the article.

Medical examination of accused

Section 52(1) provides that when a person who is arrested for a charge of the offence of such a nature that there are reasonable grounds for believing that such examination will produce evidence related to the commission of the offence. It is lawful for a registered medical practitioner under the request of the police officer, not below the rank of sub-inspector to carry about an examination with the use of reasonable force. But this force cannot be too much.

Section 52(2) provides that when the examination is done of a female, it should only be done by a female or under the supervision of a female registered medical practitioner.

Section 53A discusses the method of medical examination of a person accused of rape.

RIGHTS OF AN ARRESTED PERSON

The Constitution of India has laid down some basic rights for the accused at the time of the arrest. Rights like Right to be informed, right to be presented before a magistrate within 24 hours, right to consult a legal practitioner of choice finds a place in Article 22 as well in CrPC.

Right to be informed of the grounds of arrest

Article 22 of the Constitution expressly provides Protection to an accused against arrest and detention

Article 22(1) says that no person who has been arrested shall be detained in custody without being informed of the grounds of arrest and nor shall be denied the right to be consulted and defended by a lawyer of choice.

Section 50(1) CrPC also mentions that every police officer or any other person arrested without a warrant has the duty to inform all the particulars of the offence to the accused forthwith (immediately).

The rules originating from the decisions such as Joginder Singh v. State of U.P. and D.K. Basu v. State of West Bengal have been enacted in Section 50-A making it obligatory on the part of the police officer not only to inform the friend or relative of the arrested person about his arrest etc. but also to make an entry in a register maintained by the police in the police station. The magistrate who is observing such arrest is also under an obligation to satisfy himself about the compliance of the police of all the procedures in this regard.

Right to be released on bail

Section 50(2) CrPC provides that "where a police officer arrests any person other than a person accused of a non-bailable offence without warrant, he has the duty to inform the arrested person that he is entitled to be released on bail and he may arrange for sureties on his behalf."

Right to be produced before a magistrate

Article 22(2) of the Constitution provides that every person who is arrested should be presented before the nearest Magistrate within 24 hours of such arrest, excluding the time of journey from the place of arrest to the place of magistrate. No person will be detained in custody of the police beyond the said period without the authority of the magistrate.

Section 56 and 57 of CrPC also provides for the same. If the person arrested is not presented before the Magistrate within the reasonable time and without a just reason, the arrest will be unlawful.

Protection against arrest and detention

Article 22(1) talks about the duty to inform the accused of the grounds of arrest and to consult a lawyer of choice. Article 22(2) makes it mandatory for the police officer to present the person arrested before a magistrate within twenty-four hours and cannot be detained beyond the said period.

Article 22(4) provides that no person can be detained beyond the period of three months except on the recommendation of the Advisory Board. The person detained should be communicated the reason for detention as soon as possible and give him the earliest opportunity to make a representation against the order.

Right to consult a legal practitioner

Article 22(1) and Section 41D CrPC gives the accused the right to be consulted and defended by a legal practitioner of choice.

Right to free legal aid

Article 39A (Directive Principles of State Policy) provides that it is the duty of the state to provide justice on easily accessible terms so that every citizen can easily approach the courts to enforce their rights. It ensures to provide justice based on equal opportunity through free legal aid or legislation favouring people who cannot access justice because of economic conditions or any other difficulty. For this, institutions like Legal Service Authorities are established at National, state and district levels.

Hussainara Khatoon v. State of Bihar

In the case of Hussainara Khatoon vs. State of Bihar, a Public Interest Litigation (PIL) was filed in the name of Hussainara Khatoon, a prisoner in a jail in the Supreme Court. The Court held that if an accused is not able to afford the legal services he has the right to free legal aid at the cost of the state. It is one of the duties of the state to provide a legal system which promotes justice on the basis of equal opportunity for all citizens who are denied access to justice because of economic conditions or other disabilities. Therefore, they must arrange for free legal services for the individuals.

Right to be examined by a medical practitioner

Section 54(1) CrPC gives a right to the accused to proceed with a medical examination of his full body in case this examination will afford evidence which can disprove the commission of an offence or crime on him or prove the commission by any other person at the time when he is presented before the magistrate or at any time during the detention. It can happen with the

permission of the magistrate but if he thinks it is done just to cause a delay, he has the power to cancel it.

Joginder Kumar v. State of UP

A petition was filed under Article 32 by a young lawyer. The Supreme Court held that it is the right of an accused to be informed of the grounds of his offence, informed someone of his arrest and to consult a lawyer are inherent in Article 21 and Article 22 of the Constitution. It was also held that a police officer cannot arrest just because he has the power to do so. It should exhibit a clear justification for every arrest. Since there is some amount of harm caused to the reputation of a person when he is put behind bars. Therefore, every arrest should happen after reasonable satisfaction and the minimum level of investigation as to the genuineness and bona fides of a complaint. Apart from these certain guidelines, were also provided that needed to be necessarily followed at the time of the arrest. This case law is taken into consideration for looking for rules apart from those mentioned in CrPC.

PROCESS TO COMPEL APPEARANCE

The process to compel the appearance

The basic requirement for the progress of the trial in crime is the appearance of the accused that have been defined under Chapter VI of The Criminal Procedure Code that deals with aspects of the process.

Summons

The most basic and mildest form of the process is the summons which may be issued in order to make the document or a thing appear. Summons are issued in duplicate under the seal of the court that is required to be solved by the police officer of the court or any public servant to someone personally.

Summons include the clear and specific title of the suit and place and includes date and time whenever a search appearance of a person or a thing is required.

A brief description of the charged offences is provided in the summons.

The power to issue a summons in the hands of the police which directs a person to be present for some investigations. Whenever corporation services are to be served, a summon is presented to the secretary or principal officer of that corporation address to the chief officer of the company. Summons can also be issued on banking sectors.

Whenever it happens that a person summoned on a specific day or not found the person's adult family male member are served the summons again who is required to sign the receipt whenever that person is found. but in cases where summons cannot be served according to the above-mentioned procedure the person serving the summon shall appoint one of the summonses to be a part of the house.

Whenever a person to be given to someone is in any government service the court is required to send someone to the head of the office under which such person has been employed. Whenever the court does not have a jurisdiction to send the summon it may send it to the magistrate under whose jurisdiction the summon can be sent to the person where he ordinarily resides.

Whenever someone is sent to the witness it must be sent by registered post.

Warrant

Whenever a person fails to appear for or whenever you think feels to appear before the court on the said date through the issue of summons they may be issued a warrant of arrest directly.

Unless and until the court which issues such warrant cancels it or unless the warrant has been executed the warrant of arrest shall remain in force.

The essential requirements of a valid warrant are:

- The warrant should be in a prescribed form and in writing.
- It should include the name and designation of the person who is executing it.

- It must provide the full name and description of the person to be arrested.
- It must include the offences that are charged against the person to whom the warrant is issued.
- It must be sealed.
- It must be signed by the officer of the court.

A bailable warrant may be issued to a person where there is the involvement of offence related to a minor case.

A warrant should always be directed to the person in charge of a police station. It can also be directed by the court if there has been furnished mint of sufficient surety and security by the person that his attendance may be taken and he may be released on bail. Such warrants are called bailable warrants.

Execution of warrant can happen at any place in India by the way of a court which can send the warrant to the superintendent of the police residing in that area and having jurisdiction over that area.

Whenever there are reasons to believe that a person against whom the warrant has been issued is concealing himself, proclamation can be issued by the court which can be published in the manner which has been directed by the court including in the newspapers and other direct attachment of property. A receiver office property can also be appointed by the court. Whenever a proclaimed person appears the attachment can be cancelled and if the court has few reasons to believe the abscondment of the person or the person has not obeyed or will not obey their summons the warrant of arrest may be issued.

The controlling officers of the area where the police have sent the summons or warrant are required to know the position of the summons and warrants.

The process to compel the production of things

For the purpose of investigation and prosecution, the process of comparing the production of documents or a thing is necessary. it is because unless and until the document or a thing that is required to be presented before the court is presented the trial may be delayed.

Whenever a requirement is thereby the court or any officer in charge of the police station of the production of any document of thing that is necessary for the investigation trial enquiry or any other proceedings of the quote then someone may be issued or written order by an officer may be directed towards a person in whose position the document writing lies and require him to be present with the document or produced it any which ways.

Another important mechanism in the Criminal Procedure Code for production of things or documents is the search warrant. This warrant is issued only when there are reasonable grounds for the court to believe that the person to whom it is to be issued will not or may not produce a particular document or thing. These warrants include a particular place or a part to be searched.

According to Section 97 of Criminal Procedure Code, the court has the power to direct the search of the places where suspension regarding stolen property and forged documents are present and prove that process if any persons are found to be wrongfully seizing documents for a thing he may be called upon by the court.

The power to seize property is also in the hands of the police officer. The property has to be a list or suspected to have been stolen or suspicious of some offences. Magistrate under the jurisdiction has to be informed of such seizure.

Proclamation of offender and attachment of properties

Whenever a warrant has been issued against a person who has been absconding or concealing himself, and because of that search warrant cannot be executed or written notice can be published by the court for the person to appear at a specified place and within a specified time that is not less than 30 days from the date of publishing such notice. After the issuance of such proclamation if the person again fails to be present at the specified place and time and he is avoiding himself from being arrested the court can issue an order to attach his properties in order to compel the appearance of the person.

The warrant in lieu of summons

Whenever any summons is issued to a person he is bound by the bond to appear before the court. Even after this if it does not appear the presiding officer can issue a warrant for the person to be arrested and to be produced before the court.

LIMITATION ON TAKING COGNIZANCE

Introduction

Provisions relating to limitations for taking the cognizance of an offence are prescribed in Chapter XXXVI (from Section 467 to 473) of the Code.

Limits to Take the Cognizance of Offences

It is well-established fact that the power vested on Magistrate to take the Cognizance of offence is not an absolute power and is subjected to the limitations which have been provided in the Chapter XXXVI (section 467 to 473) of the Act itself.

Section 467

This section is inserted with the purpose of determining the limitations and scope that exists with regard to the specified period of taking cognizance of an offence as provided under Section 468.

For the purpose of this chapter, "period of limitation" is prescribed as the period specified for taking the cognizance of offence as specified in Section 468 unless the context otherwise requires.

Section 468: Bar to take the Cognizance of an offence

- No Court shall take the cognizance of an offence after the expiry of the prescribed period as specified in subsection (2)
- The period of limitation shall be:

Offence punishable with	**Period of Limitation**
Fine only	6 months
Imprisonment not exceeding 1 year	1 year
Imprisonment: Minimum of 1 year Maximum of 3 years	3 years

In computing the period of limitation for the offence when two offences are tried together; the period of limitation shall be determined in pursuance of the offence which is punishable with the more severe punishment or the most severe punishment.

Non- Applicability of Section 468

Section 469: Beginning of period of limitation

The period of limitation commences from the following points:

1. On the day when the offence was committed
2. When the person aggrieved by the act had no knowledge regarding the commission the offence or the police officer; it begins on the day when it comes to the knowledge of the aggrieved party or police making an investigation into the case whichever is earlier.
3. When the person who has committed an act is unknown or not being identified, the first date on which the accused was known either to the aggrieved person or to the police officer making an investigation into the case whichever is earlier.

Section 470: Exclusion of Time in certain cases

This section provides the period which shall not be included in computing the period of limitation.

The period of limitation that is to be excluded in computing the period of limitation is explained below:

- The time during which such person is prosecuting another prosecution with due diligence whether it is a court of Appeal, or in the Court of the first instance against the offender.

In the case where the institution of proceeding is stayed by the order or injunction, the time shall exclude:

1. The period during the continuance of such order or injunction.
2. The day on which it was made or was issued.
3. The day on which it was withdrawn.

In a case where the notice of prosecution of offence is given or the previous consent or the sanction of the Government is mandatory under this law or any other law for the time being in force the time during which: -

1. The period of notice or;

2. The period for obtaining the consent or sanction of the Government shall be excluded.
3. It also specifies that the time which is required for taking the sanction or the permission from the Government or any other authority -The date on which the application was made for taking the consent or sanction and;

The date on which the permission or the consent was granted shall be excluded.

- In computing the period of limitation such period is to be excluded

1. The time during which the offender is absent from India or from any territory which is outside from India but is under the administration of Central Government.
2. The time during which the offender has avoided arrest either by concealing himself or either by absconding.

Section 471: Exclusion of date on which court is closed:

The day when the Court is closed is excluded from being accredited to the specified period of limitation.

It is a rule that in the case when the period of limitation expires on the day of the closure of court proceedings the cognizance of an offence is taken when the court reopens.

When the court closes on normal working hours for a particular period it is presumed that the Court has been closed for the same day.

Section 472: When the offence continues:

When the offences continue or are in the process of happening; fresh limitation begins to run at every moment, the offence is replicated throughout the full term that it continues.

FRAMING OF CHARGES

Purpose of Charge Framing

The initial requirement under the code for a free and fair trial is to inform the accused precisely and accurately, of the offence he is charged him so as to give him a fair opportunity to prepare his defence.

Contents of Charge

Section 211 and 212 of the Code prescribe the forms and contents of the charge. However, when the nature of the case is such that the offence in question cannot be described properly by the particulars as mentioned in the aforesaid sections, so as to give the accused sufficient

notice of the offence with which he is charged, then the manner in which the offence was committed by the accused shall also be contained in the particulars of the charge.

According to Section 211 of the Criminal Procedure Code, every charge under the code shall include the following:

- The offence with which the accused is charged;
- If any law gives the offence any specific name, then the description of that charge by that name only;
- The definition of the offence, under the law that does not give any specific name to the offence, so as to give notice of the matter to the accused of which he is charged;
- The law and the section of the law against which the offence is said to have been committed.

Particulars as to Time, Place and Person

According to Section 212 of the Code, in order to give sufficient notice of the matter to the accused of which he is charged, then the charge shall contain the following components:

- Time and place of the alleged offence;
- The person (if any) against whom the offence was committed;
- The thing (if any) in respect of which the offence was committed by the accused.

It should be noted that in case an offence is committed which is of the nature of the criminal breach of trust or dishonest misappropriation when the exact amount in question cannot be determined, then, in the said charge it shall be sufficient to specify the gross sum of money or movable property, as the case may be, in respect of which the offence was committed.

Effect of Error

According to Section 215 of the Code, any error in stating the offence or any error in stating the particulars required to be mentioned in the charge shall not be material at any stage of the case. In addition, any omission to state such offence or the particulars of the charge shall be

immaterial. However, if such error or such omission has misled the accused or if it has occasioned the failure of justice, then such error or omission shall be considered material.

In order to understand the provisions in case of an error in charge Section 215 and 216 must be read with Section 464 of the Code.

When Court Can Alter or Amend Charge

Section 216 states the conditions under which the Court can alter or amend or add to any charge:

- Before the judgement is pronounced, the Court can alter or amend any charge;
- Such alteration or addition has to be read and explained to the accused;
- If in the opinion of the Court, the addition or alteration to the charge does not prejudice the accused in his defence or the prosecutor in the conduct of his case, then the Court may alter or amend the charge and proceed with the trial according to its discretion;
- But if the Court is of the opinion that the alteration or addition to the charge is likely to prejudice the accused or the prosecutor as aforesaid, then following the alteration or amendment, the Court may, at its discretion either direct a new trial or adjourn the trial for such period as it may consider necessary;
- If the previous sanction is necessary to be obtained for the prosecution of the offence stated in the altered or added charge, then the Court shall not proceed with the case until such sanction is obtained.

Basic Rule as to Charge and Trial of Charge

Section 218 to Section 224 of the Code deal with the Joinder of charges (which means that in certain cases more than one accused may be tried for the charge of the same offence).

Section 218 of the Code deals with the basic rule as to the trial of the accused. Sections 219, 220, 221 and 223 of the Code deals with the exceptions to the basic rule. Section 222 provides for the circumstances under which the accused can be convicted of an offence

he was not charged with at the beginning of the trial. Section 224 deals with the withdrawal of remaining charges when one of the several charges has received a conviction.

Section 218 of the Code states that for every offence the person is accused of, there shall be a separate charge and each of that charges shall be tried by the Magistrate separately. However, if the accused person desires and requests the Magistrate in writing and the Magistrate is of the opinion that such a person would not be prejudiced in the case, the Magistrate may try together all the charges or any number of charges as he may deem fit.

Exceptions to the Basic Rule

Trial of Three Offences of the Same Kind Within a Year

Section 219 of the Code states that when a person has committed more than one offence of the same kind within a span of twelve months from the first to the last offence, whether in respect of the same person or not, he may be charged with or tried at one trial for any number of offences, which shall not exceed three.

Trial for More Than One Offence

- According to Section 220 of the Code, when the series of acts are such that they are so connected that they form part of the same transaction and more than one offence is committed by such series of acts, then the accused may be charged with and tried for every such offence in one trial.;
- In case the person is charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219 of the Code, and when the person is accused of committing one or more offences of falsification of accounts for the purpose of facilitating or concealing the commission of that offence, then he may

be charged with every such offence and may be tried for all such charges at one trial;

- If the acts mentioned above constitute an offence falling within two or more separate definitions of any law for the time being in force then the accused person may be charged with such offences and tried for them at one trial;
- In case of several acts when either one act by itself or more than one of those acts by themselves constituting an offence, combine together to constitute a separate offence, then the person accused of them may be charged with the offence constituted by such acts combined or for any offence constituted by one of those acts or more than one of those acts.

When it is Doubtful What Offence has been Committed

Section 221 of the Code states that if a single act or series of acts is of such a nature that it is doubtful which of several offences such acts shall constitute, the accused may be charged with all or any of such offences and any number of those charges may be tried at once.

If such a case arises when the accused is charged with one offence but the evidence shows that he committed a different offence for which he might be charged with under the provisions of sub-section (1), then he may be convicted of the charge of offence of which the evidence shows to have been committed, even though he was not charged with it at the beginning of the trial.

Persons Who may be Charged Jointly

Section 223 of the Code provides a list of persons who may be charged jointly. It includes the persons accused of:

- The same offence committed in the course of the same transaction;
- An offence of abetment of, or attempt to commit an offence;
- More than one offence within the meaning of Section 219;
- Different offences committed in the course of the same transaction;

- an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;
- An offence under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by such offence;
- any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

However, when a number of persons are charged with separate charges and they do not fall within the categories of any persons mentioned in section 223, they may apply in writing to the Magistrate or the Court of Sessions, as the case may be, and the Magistrate or the Court of Sessions upon satisfaction that the case would not be prejudiced may try all such persons together.

The provisions regarding the exceptions to the basic rule as mentioned in Section 219, 220, 221 and 223 are only enabling in nature. It is the discretion of the court whether to apply these exceptions and try the charges jointly or not.

JUDGMENT

Object and Scope

Chapter XXVII of the CrPC, 1973, deals with Judgement. However, there is no definition of "judgement" present in the Code, but it is to be understood as the final order of the Court.

Form and contents of the judgment under Section 353

1. **Section 353** The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial.
2. Notice of the judgement should be given by-
    (a) by delivering the whole of the judgment; or
    (b) by reading out the whole of the judgment; or
    (c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.
3. Then the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page of the judgment as soon as it is made ready, and write on the judgment the date of the delivery of the judgment in the open court.
4. After the judgment is pronounced the whole judgment or a copy shall be immediately made available for the perusal of the parties or their pleaders free of cost.
5. If the accused is in custody, he shall be brought up to hear the judgment pronounced.
6. If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted.
7. No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

Language and contents of judgment

1. Under Section 354, of CrPC, it is stated that every judgement should be:
    a. In the language of the Court.
    b. Shall contain the points of determination and the reason for the same.

2. The offence should be specified and the reason for the same should be given for the same. The offence so committed must be mentioned in the IPC or any other law under which the crime is committed and the punishment is given.
3. If the offender is acquitted, the offence for which he was acquitted, the reason for the same and it must be specified that a person is now a free man.

4. If the judgment is passed under the IPC and the judge is not certain as to under which Section the offence is committed or under which part of the Section, the judge should specify the same in the judgement and should pass orders in both the alternate situations.
5. The judgement shall furnish a proper reason for the conviction if it is a sentence for a term of life imprisonment and in case of death sentence the special reason has to be given.

VICTIM COMPENSATION

Under Section 357A of the CrPC, every State Government has to coordinate with the Central Government and prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and also require rehabilitation.

Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority will decide the quantum of compensation to be awarded under the scheme.

The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

Moreover, under Section 357B The compensation payable by the State Government under Section 357A shall be in addition to the fine to the victim under Section 326A, 376AB, 376D, 376DA, 376DB of the IPC.

In Section 357C, all hospitals, private or public, whether run by the Central Government, State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence mentioned under Section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the IPC, and shall immediately inform the police regarding the incident.

MAINTENANCE

Introduction

The term maintenance has not been defined by the Code of Criminal Procedure, 1973. Section 125 to Section 128 of the Code has made provisions for maintenance of wives, children and parents.

Section 125 is a substantive provision conferring a right of maintenance on certain persons even though the Code is a procedural law.

Nature and Scope

1. According to Section 125 if any person having sufficient means neglects or refuses to maintain his wife, children or parents who are unable to maintain themselves, a Judicial Magistrate First Class may order such person to pay maintenance to them.
2. Section 125 serves a social purpose preventing starvation, destitution and vagrancy of dependants.
3. The word maintenance has liberal interpretation and includes appropriate food clothing and shelter and other basic necessities.
4. Under section 125, the Magistrate is conferred with preventive Jurisdiction and not punitive or penal.

Constitutional basis of the provisions relating to maintenance

i. Article 15(3) of the Constitution states that nothing shall prevent state from making laws for women and children and therefore section 125 is enacted.
ii. According to Article 39 of the Constitution, men and women equally have the right to an adequate-livelihood.
iii. Section 125 safeguards the rights of women and children and parents which are weaker sections of the society and therefore cannot be said to be arbitrary to Article 14.

Who may claim maintenance?

Under Section 125 following persons can claim maintenance :

1.Wife

i. Any person's wife who is unable to maintain herself can claim maintenance from such person even if she is a minor.
ii. Only a legally married wife can get maintenance and second wife or mistress cannot get maintenance.
iii. A wife who has been divorced and has not remarried is entitled to maintenance.

2.Children

i. Legitimate or illegitimate minor child, whether married or not, unable to maintain itself can claim maintenance under Section 125. A minor is a person who has not attained the age of majority under the Indian Majority Act.
ii. The liability of a father will continue to maintain his married minor daughter till she attains the age of majority, if her husband is a minor too.
iv. A child is not entitled to claim maintenance after attaining majority unless it is unable to maintain itself by reason of any physical or mental disability. If the child is a married daughter, it is her husband's responsibility to maintain her.
v. Right of the child to claim maintenance from the father is independent from the right of the mother. Therefore, a child is entitled to claim maintenance even if the mother is not entitled.

3.Parents

i. A person has to maintain his father or mother, unable to maintain himself or herself.
ii.Such parents include step-father and step-mother or adoptive mother.
iii. A married daughter may also be held responsible for maintaining her parents. Married daughter can also be liable to maintain her parents.

Conditions

i. For being entitled for maintenance under section 125, the applicant must be unable to maintain himself/herself.
ii. The respondent against whom maintenance is claimed must have sufficient means to maintain the applicant.

iii. A wife claiming maintenance:

a. must not be living in adultery

b. must not have refused to live with her husband without sufficient reasons.

c. must not be living separately by mutual consent.

Procedure: S.126

1. Proceedings may be initiated against a person in any district based on:

i. his residence

ii. his or his wife's residence

iii. where he last resided with mother of illegitimate child

2. Evidence has to be recorded by the Magistrate in the presence of bot the parties or in the presence of their pleaders.

3. According to proviso of section 126, if a person is willingly avoiding service or willingly neglecting to attend the court then the Magistrate can pass an *ex-parte* order.

4. Such an *ex-parte* order can be challenged within 3 months by showing good cause for not appearing.

Amount of Maintenance

1. Prior to the Amendment Act of 2001, amount of maintenance was fixed at Rs. 500 but such limit was subsequently removed.

2. Considering the facts and circumstances of the case the Magistrate may grant any amount of Maintenance.

3. The amount of maintenance may be calculated from wither the date of the order or from the date of maintenance.

4. The Magistrate may pass an order for granting interim maintenance.

Alteration and Cancellation S.127

i. Maintenance once granted may be altered or cancelled according to the facts and circumstances of each case. Few grounds of alteration and cancellation are as follows-

a. wife is living adultery

b. wife refuses to live with husband without sufficient cause

c. mutual consent

d. divorce

e. remarriage, etc.

Enforcement S.128

Order of maintenance, against whom it is granted, may be supplied with a copy thereof free of cost. Such an order may be enforced by a Magistrate anywhere in India where the person against whom such an order is made resides.

Mode of enforcement

1. Warrant for levying amount:

A Magistrate may issue warrant for levying such dues of maintenance as if it were a fine and can sentence such a person to imprisonment which may be up to one month. Property of a person may be attached by a Magistrate in case of non-payment.

2. Limitation

An application to issue warrant must be made within one year from the date on which maintenance became due.

SECURITY FOR KEEPING PEACE AND GOOD BEHAVIOUR

Chapter 8 of the criminal procedure code discusses the provisions related to the security for keeping the peace and for good behaviour. In the essence of the code, here security refers to

furnishing guarantee to the satisfaction of the Court that a certain conduct is mandatory to be maintained for a certain period by a certain person concerning a certain thing. This procedure takes place in the shape of a bond to be executed by such person from whom security is demanded. It may occur with sureties or without sureties.

A) **Section 106**– Security for keeping the peace on conviction.

B) **Section 107**– Security for keeping the peace in other cases.

C) **Section 108**-Security for good behaviour from persons disseminating seditious matters.

D) **Section 109**– Security for good behaviour from suspected persons.

E) **Section 110**– Security for good behaviour from habitual offenders.

A) Section 106: Security for keeping the Peace on Conviction:

1. Section 106 of the Code of Criminal Procedure provides that a Court of sessions or a Magistrate of the First Class may, at the time of passing sentence on a person convicted of certain specified offences, order him to execute a bond for keeping the peace for any period not exceeding three years. It differs from Sections 107 to 110, as the order must be passed at the same time when there is a conviction and passing of a sentence. The court may order the bond to be executed with or without sureties.

2. The offences in connection with which security can be taken under the section are:-

a. Except an offence punishable under section 153 A or section 153 B or section 154, any offence punishable under chapter VIII of the Indian Penal Code,

b. Offences consisting of, or including assault or using criminal force or committing mischief;

c. Offences of criminal intimidation

d. Any other offence which caused or was intended or known to be likely to cause a breach of peace.

Section 107 OF CrPC – Security for keeping the peace in other cases

(1). An Executive Magistrate who is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturbance of the public tranquillity, may, under-Sub-

Section (1) of Section 107 of the Code of Criminal Procedure require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for a period not exceeding one year.

(2) (a) Section 107 is thus an effective means for preventing breaches of the peace or disturbances of public tranquillity in connection with religious processions, festivals, fairs, elections, political movements or other disputes between factions. It is not essential in every case that there should be two parties against each other. It must however, be clear that a breach

Section 108 of CrPC Security for good behaviour from persons disseminating seditious matters:

1) When any Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction -

(i) In any case either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of-

> (a) Any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code (45 of 1860), or
>
> (b) Any matter concerning a Judge who acts or purports to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code.

(ii) In any case is making, producing, publishing or keeping for sale, imports, exports, conveying, selling, letting to hire, distributing, publicly exhibiting or in any other manner is putting in circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code (45 of 1860), and the magistrate opines that there is sufficient ground for proceeding, then he may, in the manner provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, with regard to his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

Section 109 of CrPC– Security for good behaviour from suspected persons:

In cases where any Executive Magistrate receives information that within his local jurisdiction there is a person taking precautions to conceal his presence and that there are reasons to believe that it is being done by him with a view to committing a cognizable offence, the Magistrate, in such case may in the prescribed manner, may require such person to prove and show cause that why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

SECTION 110 of CrPC – Security for good behaviour from habitual offenders:

Security cases under section 110 of the Code of Criminal Procedure against local habituals should be built up on details recorded in the Station Crime History as the result of careful watching by the Police. It should be very exceptional for a local criminal for whom a History Sheet has not been opened, to be put up under these sections.

The section requires that the person proceeded against should be within the local limits of the Magistrate's jurisdiction (Executive Magistrate) at the time when proceedings are taken against him. Otherwise, the Magistrate cannot take action under this section. Temporary presence within the limits of the Magistrate's jurisdiction is sufficient. But then the presence must be at the time when the proceedings are initiated.

The object of this section also is preventive and not punitive, and action under it is not intended as a punishment for past offences. It is aimed at protecting society from dangerous characters against the perpetration of crimes by placing them under such substantial but not excessive security as would prevent them from resorting to evil courses.

TRANSFER OF CASES UNDER CRPC

The procedure to be mandatorily followed while pursuing a case is briefly dealt with under the Code of Criminal Procedure, 1973. Chapter XXXI of the Code contains the provisions related to the transfer of the criminal cases from Section 406 to 411. The main reason behind the incorporation of transfer of cases is that of delivering justice to people and to achieve the same, the provisions regarding the right to appeal is also provided. The overburden of pending cases and appeals results in delayed justice thus, it creates unrest in judicial processes. So, to address this problem, certain provisions have been brought to transfer the criminal cases from one court to another. The right of appeal in the Supreme Court is available only in exceptional cases. As per the Code of Criminal Procedure, the original court of criminal appeal in the High Court.

Transfer of cases and appeals by SC

Section 406 of the Code of Criminal Procedure confers the power upon the Supreme Court to transfer cases and appeals. The Code grants the widest discretionary powers to the Supreme Court to transfer any case or appeal lying before the High Court to any other High Court of any state in the country in order to meet the ends of justice and fulfil the principle of natural justice. The application requesting the transfer of any case or appeal pending before the High Court can be moved to the Supreme Court by any of the following persons:

- Who is under the apprehension of unfair trial by the court; or
- Who is unable to find any proper justice being served to himself; or
- Attorney General or Advocate General of India.

The application under Section 406 of the Code is made by the interested party should always be in the form of motion supported by an affidavit or affirmation, except in the cases where the applicant is the advocate general or attorney general of the country.

The power of the Supreme Court to transfer the cases and appeals also extends to the transfer the cases from any subordinate court in the country where any matter is pending. However, the court where the case is pending can ensure that the Supreme Court, while transferring the case is taking all the measures to uphold fairness and principles of natural justice. The parties in any suit are always guaranteed the opportunity to bring to the notice of any court with

appropriate jurisdiction that there are reasonable grounds which uphold the apprehension in the mind of the person that certain factors inhibit his right to a fair trial.

Grounds for transfer of appeal and cases

- To uphold the spirit of justice
- Recommendations made by the superior judicial officers
- Upon request by the trial court
- Lack of complete jurisdiction
- Differences between the party and the judicial officer
- Infringement of principles of natural justice

The very purpose of Criminal law is the free and fair dispersal of justice which is not influenced by any extraneous considerations. Section 407 of the Code of Criminal Procedures enables the party to seek for transfer of case anywhere within the state while Section 406 of the Code enables the party to seek transfer of the case anywhere in the country.

Transfer of cases and appeals by HC

Section 407 of the Code of Criminal Procedure empowers the High Courts to transfer cases and appeals.
The High Court has the authority to transfer the cases when it is satisfied that:

- The right to a fair and impartial trial which is guaranteed under Article 21 of the Indian Constitution cannot be exercised by any of the party to the suit if the case is tried by any of the courts which is subordinate to it;
- Certain questions pertaining to the present matter in the court are of unusual difficulty;
- The transfer of the appeal or the case is made inevitable by any of the provisions under the Code;
- The order of transfer will be in the interest of the general convenience of the parties or witnesses involved in the suit.

Orders that the High Court can pass

The High Court on being satisfied with the presence of the above-mentioned grounds can order any of the following:

- The offence which is inquired into or tried by any Court subordinate to it be inquired by any other court which is inclusively under both Section 177 and Section 185 of the Code is not qualified but is otherwise competent to inquire into or try offences like the ones which are in question;
- Where a particular case or appeal is pending before any criminal court which is subordinate to it to any other criminal court which is having equal or superior jurisdiction in comparison to the High Court;
- The particular case be laid down before the court of Sessions for hearing;
- The particular case or appeal be laid down before the High Court itself.

At whose instance the powers of transfer are exercised

The High Court exercises its power of transfer of cases at the following instances:

- When the lower court submits the report for transfer of an appeal or case to the High Court;
- Where the interested party lays before the High Court, an application requesting the transfer of a case or appeal;
- The High Court in its own discretion can transfer a case or appeal if it is satisfied with the fact that it would be in the best interest of the parties to the suit.

Stay of proceeding to the subordinate court

Section 407(6) of the Code contains provisions relating to the stay of proceedings which are going on in any subordinate court. The provision states that where the application for the transfer of cases from any subordinate court is lying before the High Court. The High Court, may if it deems fit in the interest of justice, stay the proceedings in the subordinate court on such terms which it finds appropriate. However, if such an order is made by the High Court,

it should not have any impact on the sessions court's power to remand which is guaranteed to it by Section 309 of the Code.

Where the application is dismissed by the High Court

Subsection 7 of Section 407 of the Code contains provisions regarding the cases where the High Court dismisses the application made to it under subsection 2 of Section 407 of the Code. If the High Court finds that the application for the transfer of appeal or case was vexatious and frivolous, it may order the applicant to pay a compensation of an amount not exceeding one thousand rupees to any person who had opposed the application made by the applicant. The court in such cases decided the compensation keeping in view, the facts and circumstances of the case.

Transfer of cases and appeals by the sessions judge

The Sessions judges are also conferred with the power to transfer cases and appeals by the Code under Section 408.

- Section 408(1) provides that whenever a Sessions Judge finds it expedient to transfer a case to meet the ends of justice. He has the authority of transferring such cases from one criminal court to another criminal court within his session's division;
- Section 408(2) provides the instances on which the Sessions court can transfer the cases. The Section provides that the authority to transfer the cases with the Sessions Court can be exercised by it at the instance of the report in this regard submitted to it by the lower court, application in this regard submitted by the interested party or the court may exercise the power at its own discretion;

Withdrawal of cases and appeals by Sessions Judges

Section 409 of the Code of Criminal Procedure contains provisions regarding the power of the Sessions Court to withdraw the cases and appeals.

- Section 409(1) provides that the Sessions Judge, not only has the power to withdraw any case or appeal but also has the power to recall any case or appeal which he had earlier transferred to any Additional Sessions Judge or Chief Judicial Magistrate who is subordinate to him;
- Section 409(2) provides that the power of recalling the cases by the Sessions Judge from any Additional Sessions Judge can be exercised by him at any time before the commencement of the trial of the case or hearing of the appeal before the court of Additional Sessions Judge;
- Section 409(3) provides the course of action which can be followed by the Sessions Court if it exercises the power vested on it by Subsection 1 and 2 of Section 409. Accordingly, after the recall of an appeal is made by the Sessions Judge, he may either try the case or hear the appeal on his own, or again transfer the case or the appeal to some other court in accordance with the provisions of the Code.

Withdrawal of cases by Judicial Magistrates

Section 410 of the Code of Criminal Procedure contains provisions regarding the withdrawal of cases by Judicial Magistrate. According to the Section:

- Section 410 (1) of the Code grants the powers to the Chief Judicial Magistrate to transfer any case from any Magistrate subordinate to him as well as the power to recall any case which he had earlier transferred to any Magistrate subordinate to him. When the Chief Judicial Magistrate recalls a case, he has the authority to himself hear and try such case or he may refer the case to any other Magistrate who is competent to hear and try the case;
- Any Judicial Magistrate has the authority to recall any case which he had transferred to any other Magistrate under Section 192 of the Code and may inquire into the case on his own.

Making over or withdrawal of cases by Executive Magistrates

Section 411 of the Code contains provisions about the withdrawal of cases by the Executive Magistrate. The Section provides that any District Magistrate or Sub-divisional Magistrate has the authority to:

- Withdraw any proceedings which started before the court to any Magistrate who is subordinate to it for the disposal of the case;
- Withdraw or recall any case which he had earlier transferred to any Magistrate subordinate to it and dispose of the proceedings of the case himself or refer the same for disposal to any other competent magistrate.

SUSPENSION AND REMISSION OF SENTENCES

Remission in basic terms means to reduce the duration of the term of the sentence. Suspension, on the other hand, means to postpone the sentence without changing its duration. The above two do not interfere with the nature of the sentence. Commutation, in contrast, changes the nature of the punishment and turns it into a less severe one.

Constitutional provisions

Under Article 72, the President has the power to pardons, reprieves, respites or remission of punishment or to suspend remit or commute the sentence of any person convicted of any offence:

- In cases where the punishment is given by the court-martial. The Governor's power to remit, suspend or commute the sentence under the laws of the State, shall be given precedence.
- In cases where the power of executive extends.
- In cases where the punishment is a death sentence.

Similarly, under Article 161 of the Constitution of India, these powers are conferred on the Governor of the States. The Governor can pardon, reprieve, respite a punishment or suspend, remit or commute the sentence, which is given on the basis of the laws prevalent in the State, to which the executive power of the State extends.

Suspension or remission of sentences

The suspension is the stay or postponement of the execution of the sentence. In remission, the duration of the sentence is reduced, without changing the nature of the sentence. Remission and suspension differ to a large extent. In remission, the nature of the sentence is remained untouched, while the duration is reduced *i.e*. the rest of the sentence need not be undergone.

For example, a person sentenced for a term of two years, his sentence is now reduced to one year. The effect of the remission is that the prisoner is given a certain date on which he shall be released and the eyes of the law he would be a free man. However, in case of breach of any of the condition of remission, it will be cancelled and the offender has to serve the entire term for which he was originally sentenced.

The procedure followed is given under Section 432 of CrPC. The government would ask the opinion of the court which gave such a sentence. The court would revert with proper records. The government can grant or reject the application for remission and suspension if in its view all the conditions necessary for such a grant are not fulfilled. the offender may if at large, be arrested by any police officer without a warrant and is to undergo the unexpired portion of the sentence. The power of remission is wholly an executive action. There is no law as such to question the legality of this action, but the government should use this power fairly and not in an arbitrary manner. However, the court must consider the limitation provided under Section 433A of the CrPC, 1973. The power of remission and suspension should not in any way interfere with the conviction of the court, it should affect the execution of the sentence.

Commutation of sentence

In contrast to Suspension and Remission, which only affect the duration of the punishment without interfering with the nature of the punishment, Commutation, on the other hand, changes the nature of the punishment and converts it into a less severe form of punishment.

There is nothing to restrict the government to commutate a sentence, even if it is as low as a fine. Under Section 433 of the CrPC, the appropriate government gets the power to commutate the sentence in an appropriate case. Various sentences are eligible for commutation, one of them is death sentence *i.e.* mercy plea.

- Death sentence to any other punishment provided in the IPC.
- Imprisonment for life to any other imprisonment not exceeding fourteen years or fine.
- Sentence of rigorous imprisonment for simpler imprisonment which the person has been sentenced or a fine.
- Sentence for a simple sentence to a fine.

Section 433 of the CrPC gives the power to the government to commutate the death sentence to a simpler sentence.

Restriction on powers of remission or commutation in certain cases

Section 433A of the CrPC puts a restriction on the power of the President and the Governor that they can't commutate the death sentence to less than 14 years of life imprisonment. In absence of any order under Section 51 of the IPC or Section 433A of the CrPC, the convicts are not released even after the expiry of 14 years of imprisonment.

Moreover, remission can be granted under Section 432 of the CrPC in case of a definite term of sentence. The power is to grant "additional" term of imprisonment which is over and above the remission granted to convict under the jail manual or statutory rules. In case of an indefinite sentence, like that of life imprisonment, may remit or suspend the sentence of the person but not on the basis that such imprisonment is arbitrary or on the assumption that it is for twenty years.

PLEA BARGANING

Plea Bargaining in India

Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code deals with the concept of Plea Bargaining. It was inserted into the Criminal Law (Amendment) Act, 2005. It allows plea bargaining for cases:

1. Where the maximum punishment is imprisonment for 7 years;
2. Where the offenses don't affect the socio-economic condition of the country;
3. When the offenses are not committed against a woman or a child below 14 are excluded

Section 265-A (Application of Chapter) the plea bargaining shall be available to the accused who is charged with any offense other than offenses punishable with death or imprisonment or for life or of an imprisonment for a term exceeding to seven years.

Section 265-B (Application for Plea Bargaining)

A person accused of an offense may file the application of plea bargaining in trails which are pending.

The application for plea bargaining is to be filed by the accused containing brief details about the case relating to which such application is filed. It includes the offences to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred the application, the plea bargaining the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case that he has not previously been convicted by a court in a case in which he had been charged with the same offence.

The court will thereafter issue the notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused of the date fixed for the plea bargaining.

When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.

Section 265-C (Guidelines for Mutually satisfactory disposition) It lays down the procedure to be followed by the court in mutually satisfactory disposition. In a case instituted on a police report, the court shall issue the notice to the public prosecutor concerned, investigating officer of the case, and the victim of the case and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Court shall issue a notice to the accused and the victim of the case.

Section 265-D (Report of the mutually satisfactory disposition) This provision talks about the preparation of the report of mutually satisfactory disposition and submission of the same. Two situations may arise here namely

If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the report of such disposition is to be prepared by the court. It shall be signed by the presiding officer of the Courts and all other persons who participated in the meeting.

If no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.

Section 265-E (Disposal of the case) prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under Section 265-D, by preparing a report signed by the presiding officer of the Court and parties in the meeting, the Court has to hear the parties on the quantum of the punishment or accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of Section 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force or punish the accused, passing the sentence. While punishing the accused,

the Court, at its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offenses committed by the accused or if such minimum punishment is not provided, can pass a sentence of one-fourth of the punishment provided for such offense."

Section 265-F (Judgment of the Court) talks about the pronouncement of judgment in terms of mutually satisfactory disposition.

Section 265-G (Finality of Judgment) says that no appeal shall be against such judgment but Special Leave Petition (Article 136) or writ petition (under Article 226 or 227) can be filed.

Section 265-I (Period of detention undergone by the accused to be set off against the sentence of imprisonment) says that Section 428 of CrPC is applicable for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this chapter.

Benefits of Plea Bargaining

1. Fast disposal of cases
2. Less serious offenses on one's record
3. A hassle-free approach
4. It avoids publicity

COMPOUNDING OF OFFENCES

To compound means *"to settle a matter by a money payment, in lieu of other liability."* In criminal law, the power to compound the offence is at the discretion of the victim. Object of Section 320 of the Code is to promote friendliness between the parties so that peace between them is restored.

Compounding of Offences means to establish a compromise between two parties, where the complainant agrees to have the charges dropped against the accused. **On this basis offences are divided into 2 categories:**

- **Compoundable Offences**
- **Non-Compoundable Offences**

Compoundable offences

These are less serious in nature and are of two different types as mentioned under S. 320 in two different tables:

1. Compounding without the permission of the Court– Examples of these offences include adultery, causing hurt, defamation criminal trespass.

2. Court permission is required before compounding – Examples of such offences are theft, voluntarily causing grievous hurt, assault on a woman with intention to outrage her modesty, dishonest misappropriation of property amongst others, criminal breach of trust.

Compounding without the permission of the Court:

Few examples of such offences are:

Offence	**Section of the**	**Person by whom offence may be**

	I.P.C. applicable	**compounded**
1. Uttering words, etc. with deliberate intent to wound the religious feelings of person	298	The person whose religious feelings are intended to be wounded
2. Causing hurt	323, 334	The person to whom the hurt is caused
3. Wrongfully restraining confining any person	341, 342	The person restrained or confined
4. Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used
5. Mischief, when the only loss or damage caused is loss or damage to a private person	426, 427	The person to whom the loss or damage is caused
6. Criminal trespass	447	The person in possession of the property trespassed upon
7. House-trespass	448	The person in possession of the property trespassed upon

Court permission is required before compounding –

Few examples of such offences are:

Offence	**Section of the I.P.C.**	**Person by whom offence may be compounded**

	applicable	
1. Voluntarily causing grievous hurt	325	The person to whom hurt is caused
2. Voluntarily causing grievous hurt on grave and sudden provocation	335	The person to whom hurt is caused
3. Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others	337	The person to whom hurt is caused
4. Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others	338	The person to whom hurt is caused
5. Wrongfully confining a person for three days or more	343	The person confined
6. Wrongfully confining for ten or more days	344	The person confined
7. Wrongfully confining a person in secret	346	The person confined
8. Assault or criminal force to woman with intent to outrage her modesty	354	The woman assaulted to whom the criminal force was used

Other provision governing Compounding of Offences

The general rule embodied under sub section (3) provides that when any offence is compoundable under Section 320 of the Code, 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.

As per Sub Section (5) of Section 320, 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. Application for compounding the offence shall be made before the same court before which the trial is proceeding.

Sub Section (6) provides that 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 Section 320 of the Code.

Sub section (7) provides for a limitation to compounding of offences. It says that 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.

Effect of Compounding of an Offence

Sub Section (8) prescribes that a compounding of offence under section 320 shall have the effect of acquittal of the accused with whom such offence has been compounded.

Prohibition Regarding Compounding Of Offences

Sub section (9) bars any contravention from the provisions of Section 320. It prescribes that no offence shall be compounded except as provided by Section 320 of the Code.

REHABILITATION OF JUVENILES

Introduction

Juvenile or Children are a conflict with law referred to children under the age of 18 years and suspected or accused of committing a crime or be part of illegal activity. Children in conflict with law cannot be arrested by a police officer and can only be apprehended. Only minors between the age of 16-18 years committed heinous crimes can be treated and tried as adults.
The child in conflict with law cannot be tried in criminal courts and should be produced before the Juvenile Justice Board Chaired by a Magistrate and two social worker members.

While the juveniles held accountable for their violation of the law and kept in juvenile homes or other relevant correctional facilities for public safety, the primary aim is to rehabilitate them. The rehabilitative process includes psychological assessment of the crime committed by the juvenile and the environment, causing it to happen, therapeutic guidance, skill development, involving them in yoga and other mind developing activities.

The Juvenile Justice Act provides for the rehabilitation of the to begin as soon as the child's transfer to the care home or other correctional facilities. The social reintegration of the child in conflict with law can be done by-

Aftercare care organisations

These are transitional homes where the child is kept before totally reintegrated into society. Aftercare organisations are special homes registered under the governmental nodal agency functions for the welfare of delinquent children.
At the aftercare organisations, the Juveniles were given,

1. Vocational training
2. Therapeutic training to improve psychological behaviour
3. Continuing education
4. Consensus about social values

5. Economical ability to support themselves
6. Activities for physical and mental fitness

After-Care Organisations are set to achieve the principal objective of allowing children as well as juveniles to adapt to society. At the after-care organizations, the children and juveniles are motivated to stay in mainstream society from their past life in the institutional homes.

In the aftercare program children and juveniles are also provided access to social, legal and medical services and also with appropriate financial support. Regular educational and vocational training opportunities are provided to children and juveniles at the aftercare organization for helping them to become financially independent and in turn, to generate their income.

Sponsorship

It is the financial help given for child care organisations, foster families, individuals or individual groups to meet the expenses of the juveniles' rehabilitation programs. It may be a government aid or by a non -governmental organisation (NGO) or by individuals.

Foster care

It is one of the non-institutional care provided for the juveniles. Based on *Section 42 of the Juvenile Justice Act of 2000,* the child may be placed with a foster family so he/she may be surrounded in a family environment and parental care which cannot be possible in normal institutional rehabilitation. The child is provided with education as well as family care. The foster family is paid for their service, and it is voluntary in nature.

A child may be placed in foster care if the natural parents are

- sentenced,
- suffering from deadly diseases
- being abroad
- Incapacitated by other mean

Adoption

Adoption benefits the orphans, homeless children and destitute youngsters as well as childless couples. Adoption makes life meaningful for lone single adults too as they gain a parent-child relationship.

Prevention, dealing, treatment, rehabilitation and reintegration of juvenile delinquents

Prevention

It is the first step towards the curbing delinquency. Delinquency is an evolutionary process as the child starts his delinquent acts at an early stage which is evident in the form of petty stealing, neglecting studies and gradually developing other notorious tendencies. Observing such behaviours, teachers and family members should counsel such children.

Also, the prevention of delinquency includes averting delinquent behaviour by taking action in terms of individual and environmental adjustments. It includes curing the factors responsible for juvenile delinquency like improving family bonds, the better adjustment in schools, provision of educational and recreational activities.

Dealing

Police and Courts are the two major components of the criminal justice system. Police have a more significant role to play in cases related to juveniles delinquents. Even the statutory provisions provide for the active participation of police in cases concerning juveniles. For these juvenile police units with special training must be set up who will help in discovering delinquents and pre-delinquents.

Treatment

Modification of delinquent behaviour is one of the basic purposes of correctional institutions. The Juvenile Justice (Care and Protection for Children) Act, 2000 gives special attention to the children who are in a situation of social maladjustment. The Act provides for the constitution of the Board.

The State Government has been authorized to constitute for a district or a group of districts one or more Juvenile Boards for exercising the powers and discharging the duties, conferred or imposed on such Boards in relation to Juveniles in conflict with the law under this act. The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman;

In case of the child in need of care and protection, the State Governments have been empowered to constitute a Child Welfare Committees (Section 29, the Juvenile Justice (Care and Protection of Children) Act, 2000) for every district. The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development, and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

Rehabilitation and Reintegration

Social reintegration of children shall be carried out alternatively by adoption, foster care, sponsorship, and sending the child to an after-care organization (Section 40, the Juvenile Justice (Care and Protection of Children) Act, 2000). The foster care may be used for temporary placement of those infants who are ultimately to be given for adoption. After-care organisations (Section 44, the Juvenile Justice (Care and Protection of Children) Act, 2000) are set up for the purpose of taking care of juveniles or the children after they leave special homes, children homes and for the purpose of enabling them to lead an honest, industrious and useful life.

PROBATION OFFICER

Introduction

The Probation of Offenders Act of 1958 builds on the premise that juvenile offenders should be stopped by counselling and rehabilitation rather than thrown into jail by being regular offenders. The probation officer focuses on the offender's concern or desire, and tries to solve his concern and aims to make the offender a productive member of the community. Within the criminal justice system, the probation officer plays a critical or important role. He is at the forefront of the rehabilitation of the prisoners, he helps confess and rehabilitates the prisoners as a decent citizen in society.

Who is a Probation Officer

A probation official is a court officer who regularly meets people sentenced to a supervised probation period. Generally, these people are perpetrators and lower-level criminals. The majority of the offenders placed on probation are first time offenders. Many that are on probation live in our neighbourhoods, stay home, are working or participating in an educational program, and raise their children.

Responsibilities of Probation Officer

A probation officer will need to meet, on a monthly or sometimes weekly basis, their client. Based on an assessment of risk/needs, the probation officer may decide the degree of supervision that a person requires (minimum, medium or maximum). It helps to determine how much assistance a person requires.

Duties of Probation Officer

Pursuant to the Offenders Probation Act 1958 – Section 14 Gives details concerning the duties of probation officers which are as follows-

1. Investigate the circumstances or domestic environment of any person accused of an offence with the intention, in accordance with any direction of the Court, to help the Court to determine and report the most appropriately advised approach to his dealing with it;
2. Supervising probationers and other persons under his supervision and seeking suitable employment where necessary;
3. Counselling and supporting victims in the payment by the Court of penalties or costs;
4. Advice and assist persons released pursuant to Section 4 in such situations and manner as may be prescribed;
5. Perform the other duties prescribed as may be.

Analysis and monitoring

To obtain information about his mistakes or achievements, a detailed review of the life history and background history of the delinquent is needed. In case the criminal refuses to respond favourably to the reform procedures, a proper enquiry would require further limitations on the rights of the criminal. To extract as much information as possible about his antecedents, the probationer must be approached psychologically, with the result that information is so obtained that it is possible to assess the chances that the offender is reformed through the probationary process.

Supervision and counselling

Continuous monitoring of the work of the probationer is not necessary or feasible. Supervision of probation can therefore only be carried out through field visits and intermittent contacts. The Probation Officer will fully understand and prescribe steps to resolve issues that can hinder the re-adjustment in a society of the offender. He must actively support the probationer in the process of his rehabilitation. The probationer does not feel continuously pressured or controlled.

The probation officer must establish a relationship with the offender and create faith in him in the mind of the offender during the probationary period. He must also construct and give him the confidence in the offender in deciding his own course. The probation officer must stand

by him in order to provide him with appropriate guidance and suggestions and information, which will enable him in cooperating with the probation officer to carry out rehabilitation programs.

Link to the Court

Another major function of the probation officer is to act as a link between the probation and the Court, as the prime duty of the probationer under his charge is the defence of the interest. The court may require that the terms of the probation order differ or that the probationary bond be exercised. When he finds that the progress of the probationer is adequate in adapting to regular life in society.

Decision making

Whilst deciding on the probationer under his responsibility, the probation officer should remember that his decisions are of great importance not only for the offender but also for the safety of the community.

Probationer rehabilitation and after care

(1) In order that the probationary officer does not resort to violence, he shall assist with social rehabilitation. The probation officer will try to secure the probationer for this purpose:

1. Facilities of training,
2. Opportunities for jobs,
3. Any financial support needed, and
4. Contacts and groups such as Boy Scouts and Girl Guides, youth programs and civic initiatives for regular citizens and co-organizations.

Appointment of Probation Officer

Section 13 of the Probation of Offenders Act states about the appointment of Probation Officer:

1. A person appointed by or recognized as a probation officer by the Government of the State.
2. A person to whom a company recognized on behalf of the State Government has made provision for this reason.
3. Any other person who, according to a court, is fit to act, under the particular circumstances of the case, as a probation officer in an exceptional case.

CHILD WELFARE COMMITTEE

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

It is mandatory to form one or more Child Welfare Committees in every district for exercising power and to discharge the duties conferred in relation to children in need of care and protection. This committee consists of a Chairperson and other four members who according to the State Government are fit to be appointed, at least one of whom should be a woman and the other should preferably be an expert on matters that are concerning the children.

The Child Welfare Committee functions as a bench guided by the powers that are conferred in the Code of Criminal Procedure, 1973.

Powers

The powers of the Child Welfare Committee are laid down in Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2015:

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

Functions and Responsibilities

The Functions and Responsibilities of the Child Welfare Committee are mentioned in Section 30 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Few functions and responsibilities are listed below:

- Cognizance of children that are produced before it. Children who are neglected can be produced before this committee.
- Conducting inquiry on issues relating to and affecting the safety and wellbeing of the children under this Act.
- To direct the Child Welfare Officers, District Child Protection Unit and Non-Governmental organizations for social investigation and also to submit a report before the Committee.
- To conduct an inquiry for the declaration of fit persons for the care of children in need of care and protection.
- To direct placing of a child in a foster care facility.
- To ensure care, protection, restoration and appropriate rehabilitation of those children that are in need of care and protection. This is based on that child's individual care plan. It also includes the passing of necessary directions to parents or guardians or the people who are fit or children's homes or fit facilities in this regard.
- To select a registered institution for the placement of every child that requires support which is based on that child's gender, age, disability and needs. This should be done by keeping in mind the available capacity of the institution.
- To recommend action that is for the improvement in the quality of services provided to the District Child Protection Unit and the Government of a State.
- To certify the performance of the surrender deed by the parents and to make sure that they are given time to think about their decision as well as to make a reconsideration to keep the family together.
- To make sure that all the efforts are made for the restoration of the lost or abandoned children to their families by following due process which is prescribed by the Act.
- To declare children legally free for adoption after due inquiry who are orphans, abandoned and surrendered.

- To take suo moto cognizance of cases and also to reach out to the children who are in need of care and protection.
- To take action against the rehabilitation of children who are abused sexually and are reported as children in need of protection and care from the Committee, by the Special Juvenile Police Unit or the local police as the case may be.
- To deal with cases referred by the Board under sub-section (2) of 17 of this Act.
- To coordinate with various departments that are involved in the care and protection of children. These departments include the police, the labour department and other agencies.
- To conduct an inquiry and give directions to the police or the District Child Protection Unit in case of a complaint of abuse of a child.
- To access appropriate legal services for the children.
- To perform such other functions and responsibilities as may be prescribed.

JUVENILE JUSTICE BOARD

The Juvenile Justice Board is an institutional body constituted under Section 4 of the JJ Act, 2015. One or more than one Juvenile Justice Board(s) are established by the State Government for each district. The Board exercises its powers and discharges functions relating to the 'child in conflict with law' as has been defined under Section 2(13) of this Act.

Constitution

The constitution of the Board has been defined in Section 4(2) of the Act.

Composition of Bench under Juvenile Justice Act, 2015

1. Metropolitan Magistrate or Judicial Magistrate First Class (Principal Magistrate herein) [not being Chief Metropolitan Magistrate or Chief Judicial Magistrate]
-Experience Required: 3 years.
2. Two social workers (one being a woman)
-Experience Required: Active involvement for 7 years in health, education or welfare activities pertaining to children; OR
-A practising professional with a degree in child psychology, psychiatry, sociology or law.

Powers granted to Juvenile Justice Board

The Bench shall have all the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or a Judicial Magistrate First Class.

Eligibility Criteria for Selection as Member of Juvenile Justice Board

Under Section 4(4) of the Act, the eligibility criteria for selection as a Board member has been listed down. It has been defined in a negative manner.

The person will not be eligible if they:

- Have any past record of violation of human rights or child rights;
- Were convicted of an offence which involved the ground of moral turpitude + such conviction has not been reversed or has not been granted pardon;
- Were removed or dismissed from the services of:

- Either the Central Government or the State Government
- An undertaking/ corporation owned or controlled by the Central Government or the State Government

- Have ever indulged in the acts of:

- Child abuse
- Child labour
- Any other violation of human rights or immoral act

Functions

Children who are alleged or found to be in conflict with law are produced before a Juvenile Justice Board. On the basis of nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Juvenile Justice Board may:

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home.