Criminal Procedure Code Sem 5 Third Year Law (LLB) Lecture Notes, e Book PDF Download 2

Llb (Kurukshetra University)

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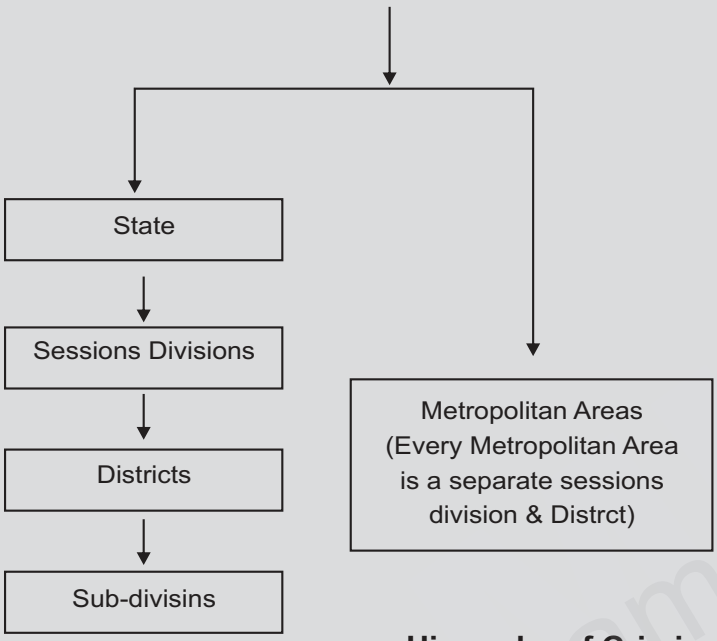

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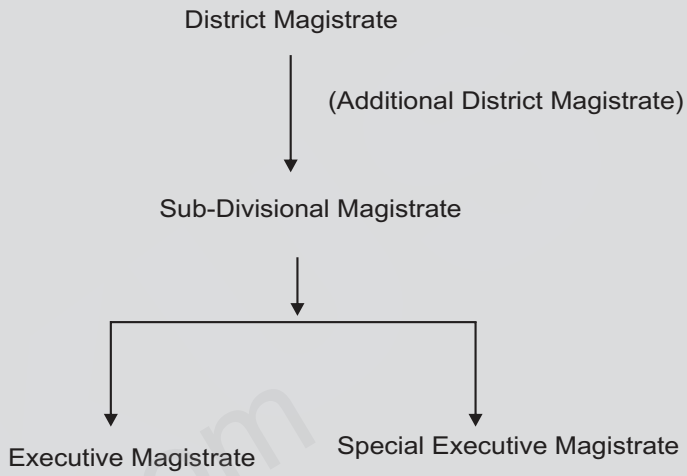
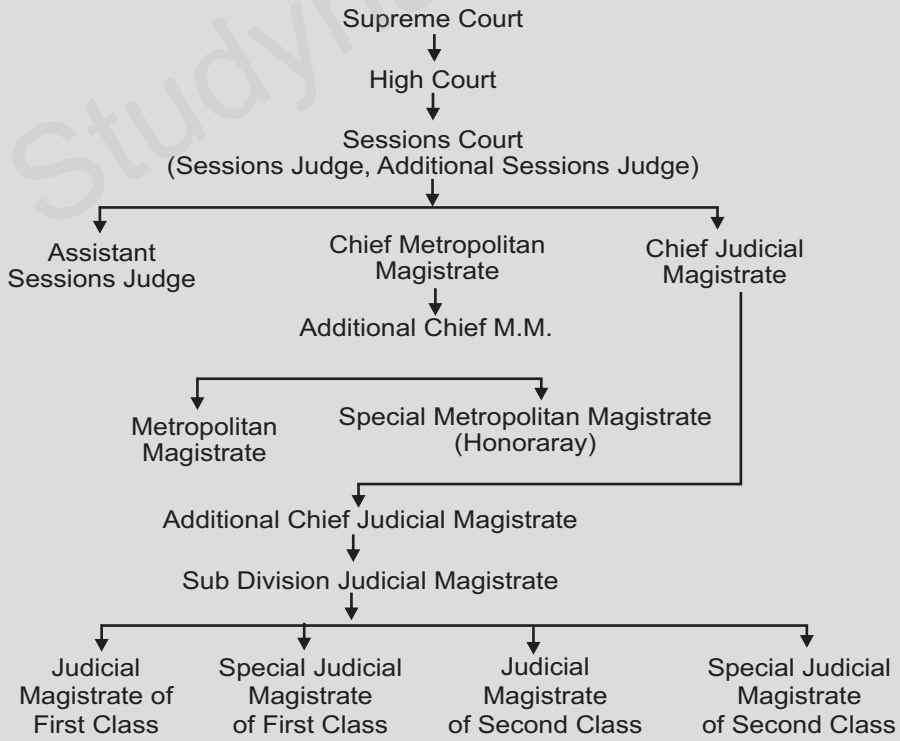


Hierarchy of Criminal Courts



CONSTITUTION OF CRIMINAL COURTS

Classes of Criminal Courts (Section-G): Besides the High Courts and the courts constituted under any law other than this code, there shall be, in every State, the following classes of criminal courts namely –

a) Courts of sessions
b) Judicial Magistrate of the first class and, in metropolitan area, Metropolitan Magistrate.
c) Judicial Magistrate of the second class, and
d) Executive Magistrates.

The courts constituted under any other law include courts like the Juvenile Courts, Nyaya Panchayats and Special Courts. Though the Executive Magistrate is one of the classes of courts, that does not mean where he functions administratively and not judicially he functions as a court.

Territorial Divisions/Metropolitan Areas (Section-7 to 8): The entire territory of India consists of states, and for the purpose of the code, the basic territorial divisions of a State are the districts and the sessions divisions. According to Section-7, every State shall be a sessions division or shall consist of sessions divisions, and every session division shall be a district or consist of districts. Further the State Government can alter the limits or the number of divisions, districts etc and can also divide any district into sub-divisions, after consultation with High Court.

The proviso to Section-7(1) lays down that every 'metropolitan area' shall be a separate sessions division and district.

Section-8 declares each of the Presidency-towns of Bombay, Calcutta and Madras, and the city of Ahmedabad as a metropolitan area, and further empowers the State Government to declare that any area in the State comprising a city or town whose population exceeds one million shall be a "metropolitan area" for the purpose of the code. However it is not obligatory on the State Government to declare such an area as metropolitan area.

The section also empowers to State to extend, reduce or alter the limits of such area but not so as to reduce the population of such area to less than one million. If the population of a metropolitan area in fact falls below one million, such an area shall cease to be a metropolitan area on the date specified in this behalf by the State Government concerned.

Court of Sessions (Section-g to 10) : For every sessions divisions the State shall establish a court of Sessions which shall be presided over by a judge to be appointed (this does not refer to the first appointment) by the High Court. The High Court may also appoint Additional/Assistant Sessions Judges to exercise jurisdiction in a Sessions Court. It also has the power of appointing Sessions Judge of one sessions division as Additional Sessions Judge of another division.
If in any particular case, the sessions court is of the opinion that it will be for the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions divisions, it may do so with the consent of the prosecution and the accused.

The Additional (on the Assistant) Sessions Judge exercise the power of a court of session, but is not an, dependent court of session. Section-10 (1) lays down that all Assistant Sessions Judges shall be inordinate

to the Sessions Judge in whose court they exercise jurisdiction.

A Civil Judge and C.J.M. while acting as in-charge Sessions Judge does not have powers of a Sessions Court appointed under Section-9 for granting bail in a serious case e.g., State of Karnata v Channabasappa[1].

Courts of Judicial Magistrates (Section-11 to 15): In every district (not being a metropolitan area), the courts of Judicial Magistrates of the First/Second class are to be established by the State Government after consultation with the High Court. The presiding officers of such courts are also appointed by the High Court. If necessary the High Court may confer the powers of a judicial magistrate on any member of judicial service of the State, functioning as a judge in a civil court. (Section-11)

In every district (not being a metropolitan area), a Judicial Magistrate of the First Class is appointed by the High Court as the CJM. He is the head of the Magistracy in the district. The High Court may also appoint Additional CJM and sub-Divisional Judicial Magistrate in any sub-division. (Section-12).

The High Court may confer upon any person who holds or has held any post under the Government and who possesses specified legal qualification, all or any powers of judicial magistrate in respect of particular case or cases generally. Such person is called 'Special Judicial Magistrate' (SJM) and he is appointed for a term not exceeding 1 year at a time. (Section-13)

Subject to the control of the High Court, the CJM may from time to time, define the local limits of the areas within which judicial magistrates may exercise their powers under the code. Unless otherwise specified; the jurisdiction and powers of every magistrate extends throughout the entire district. (Section-14)

Every CJM is subordinate to the Sessions Judge, and every other Judicial Magistrate (subject to the general control of the Sessions Judge) is subordinate to the CJM. The CJM makes rules for the distribution of business amongst the Judicial Magistrate subordinate to him. (Section-15)

Courts of Metropolitan Magistrates (Section-16 to 19): In every metropolitan area, there shall be established as many courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify. The presiding officers of such courts shall also be appointed by the High Court. The jurisdiction and powers of every Metropolitan Magistrate (M.M.) shall extend throughout the metropolitan area. (section-16)

In every metropolitan area, the High Court shall appoint a M.M. as Chief Metropolitan Magistrate. It may similarly appoint an Additional Chief M.M. and such magistrate shall have all or any of the powers of a Chief M.M. as the High Court may direct. (Section-17)

The Special Metropolitan Magistrate may also be appointed by the High Court for a term not exceeding one year at a time, if requested by the State or Central Government. (Section-18)

The Chief M.M./Addl. Chief M.M. shall be subordinate to the sessions Judge, and every other M.M. is subordinate to the Chief M.M. (Section-19)

Executive Magistrates (Section-20 to 23): Executive magistrates perform "police" or administrative functions. When he does so, he does not function as a court. But here Executive Magistrates are appointed for performing magisterial functions allotted to the Executive.

In every district and in every metropolitan area, the State Government may appoint Executive Magistrates and shall appoint one of them to be the District Magistrate. The State Government may also appoint any Executive Magistrate to be Additional D.M. (Section-20)

The State Government may appoint 'Special Executive magistrate' for particular areas/functions, for such a term as it may think fit. (Section-21)

The District Magistrate may (subject to the State Government's control) define the local limits of the area of operation of Executive Magistrates. (Section-22)

All Executive Magistrates other than the Add!. D.M. shall be subordinate to the District Magistrate, and every Executive Magistrate in a sub-division shall also be subordinate to the sub-Division Magistrate. (Section-23)

Public Prosecutors (Section-24 to 25): A crime is a wrong not only against the individual victim but also against the society at large. It is so because the State, participates in a criminal trial as party against the person accused of crime if the crime is a cognizable offence. The Public Prosecutor or the Assistant Public Prosecutor is the counsel for the State in such trials. His duty is to conduct prosecutions on behalf of the State.

For every High Court, the Central/State Government shall after consultation with the High Court, appoint a person public prosecutors having a practice as an advocate for not less than seven years and an advocate who has been in practice for not less than ten years as a special P.P. and likewise, one or more Additional Public Prosecutor may also be appointed. (Section-24)

To appoint Public Prosecutor and Asst. Public Prosecutor for the districts. The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons who are, in his opinion, fit to be appointed and no one shall be appointed unless his name appears on such panel. However, where in a state there exists a regular cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or Asst. Public Prosecutor only from among such cards. But, if the State Government thinks that no suitable person is available in such cards than the Public Prosecutor or Asst. Public Prosecutor may be appointed from the panel. (Section-24)

The State Government shall appoint one or more Asst. P.P. for conducting prosecutions in every district before courts of Magistrates. They may also be appointed by the Central Government.

Normally, a police officer is not eligible for this post. However, if no Asst. P.P. is available, any person can be appointed by the D.M. But, even in such a case, a police officer cannot be so appointed- (i) if he has taken part in the investigation (ii) if he is below the rank of an inspector (Section-25).

It is to be noted that Public Prosecutor (including Addl. P.P. and Special P.P.) conduct prosecution in the Sessions Court/High Court, Asst. P.P. conduct in the Magistrate's Courts.

Power of Courts (Section-26 to 27): To deal with the power of Courts to take cognizance of offences, the offences are divided into two groups i.e. offences under the Indian Penal Code and offences under any other law.

The offences under I.P.C. are triable by the High Court, the Court of Session or any other court shown in the first schedule to this code and the offence under any other law, by the court mentioned in this behalf, if no court is mentioned by the High Court or the court shown in the first schedule. (Section-26)

A juvenile offender (a person below the age of 16 years) may be tried by the court of C.J.M. or by any other court specially empowered under the Children Act, or any other law for the time being in force relating to youthful offenders, if any offence (not punishable with death or life imprisonment) committed by him. The age of 16 years is taken into account on the date when he either appears or is brought before the court. (Section-27)

Sentence which may be passed by the Criminal Courts

Supreme Court or High Court.	Any Sentence authorised by law.
Sessions Judge or Additional Session Judge	Any Sentence authorised by law sentence of death is subject to confirmation by High Court.
Assistant Sessions Judge.	Imprisonment up to 10 years or/and fine.
Chief Judicial Magistrate or Chief Metropolitan Magistrate	Imprisonment upto 7 years or/and fine.
Judicial Magistrate of class-I, or Metropolitan Magistrate.	Imprisonment ul1l to 3 years or/and fine upto 10000/-
Judicial Magistrate of class-ll Imprisonment up to 1 year or/and fine up to 5000/-.	Imprisonment up to 1 year fine 5000/-

JURISDICTION OF CRIMINAL COURTS

According to Common Law, all crimes are local and justiciable by local courts only within whose jurisdiction they are committed. "Crime is purely local and the place of offence generally determines the venue." It is also a principle of international law that every person who commits a crime within a foreign State is subject to its laws. The same principle has also been adopted by our courts in granting anticipatory bail. The provisions of Section-177 to 189 are applicable to inquiries or trials of offences and not to chapters-VIII, IX and X.

Ordinary place of Inquiry and Trial (Section-177): Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

It is convenient both to the prosecution and to the defence that the trial took place in the vicinity of the crime i.e. court of the locality (saving of time/expenses/availability of witnesses, etc.). A Magistrate has no jurisdiction to take cognizance of a case which has wholly been committed outside his jurisdictional limits. The jurisdiction of the Magistrate does not come to an end by transfer of the locality, where the crime was committed to another district. *Sayeruddina v Pramanik*[2].

Place of inquiry of trial; (Section-178)

1) When it is uncertain in which of the several local areas an offence is committed;
2) Where an offence is committed partly in one local area and partly in another;
3) Where an offence is a continuing one, and continues to be committed in more local areas than one, and
4) Where an offence consists of several acts done in different local areas.

In any of the above cases, the offence may be inquired into or tried by a court having jurisdiction over any of such local areas.

Offence triable where act is done or consequence ensues (Section-179): When an act is an offence by reason of anything which has been done and a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued.

Ex.- A is wounded within the local limits of the jurisdiction of court X, and dies within the local limits of the jurisdiction of court Z. The offence of culpable homicide of A may be inquired into or tried either by X or Z.

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

Where an offence of cheating is committed by A by making a false representation to C at place X, and by inducing C to deliver any property to A's abettor, B at place Y, in such a case, A and B can be tried jointly by either of the court's with whose local jurisdiction place X or Y is situate. *(Satwant Singh v State of Punjabj)*[3]

Place of trial in case of certain offences (Section-181) :

1. The offence of being a thug, murder by a thug, dacoity with murder, being a member of gang dacoits, or escaping from custody, may be tried by the court within whose local jurisdiction the offence was committed or where the accused is found.

   These words were interpreted by the courts as meaning not only the place where the accused person is "found or discovered" but also a place where he is brought under arrest *(Emperor v Go vinda)*[4]

2. The offences of kidnapping or abduction may be tried by the court within whose jurisdiction the person was kidnapped/abducted or was conveyed/concealed/ detained.

   The world 'conveyed' does not include 'conveyance by police or magisterial authority after arrest.

3. The offence of theft, extortion or robbery may be tried by the court within whose jurisdiction the offence was committed, or where the stolen property (or any part thereof) was possessed, received or retained.

4. The offence of criminal misappropriation or criminal breach of trust can be tried by the court within whose jurisdiction the offence was committed, or where the property concerned (or any part of it) was received or retained or was required to be returned or accounted for by the accused.

In many cases of criminal breach of trust there may be doubts as to the exact manner, point of time and place where the dishonest misappropriation, conversion, etc was effected. Since -these matters are within the special knowledge of the accused, the complainant is unable to adopt the jurisdiction within which the offence has been committed, though no such doubts ordinarily arise in regard to the place or places where the property in question was received or retained by the accused *(Harjeet Singh Ahluwalia v State of Punjab)*[5]

5. Any offence which includes possession of stolen property can be tried by the court within whose jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it, knowing it to be stolen property.

Offences Committed by Letters, etc (Section-182):

1. Any offence which includes cheating may, if the deception is practised by means of letter or tele communication messages, be tried by the court having jurisdiction where such letters or messages, were sent or were received . And any offence of cheating and dishonestly inducing delivery of property can be tried by a court within whose jurisdiction the property was delivered by the person deceived, or was received by the accused.

2. The offence of bigamy (Section-494/495, IPC) can be tried by a court within whose jurisdiction the offence was committed or the offender last resided with his (or her) spouse by the first marriage or the wife by the first marriage has taken up permanent residence after the commission of the offence.

Offences committed on journey or voyage (Section-183): In an offence is committed by (or against) any person whilst in the course of performing a journey or on voyage, the offence can be tried by any court through or into whose local jurisdiction such person passed in the course of that journey/voyage. The same will be the case in respect of a thing (in respect of which the offence is committed) on journey/voyage.
Journey or voyage do not include a voyage on the high seas or in a foreign country.

Place of trial for offences triable together (Section-184): Where a person commits several offences for which he may be charged with and tried at one trial (Section-219 to 221), or where several persons commit offence or offences for which they may be charged with and tried together at one trial (Section-223), then the court which is competent to inquire into or try any of the offences can have jurisdiction.

Other provisions (Section-185 to 187):

1. Section-185 gives power to the State Government to order cases to be tried in different sessions divisions provided that such order does not suffer from vice of repugnancy in respect of order passed by the High Court or S.C.

2. Section-186 provides that if two or more courts have taken cognizance of the same offence, and a question arises as to which of them ought to inquire, the question is to be decided (a) if the courts are subordinate to the same High Court, by that High Court, (b) if the courts are not so subordinate, by the High Court within whose limits (appellate criminal jurisdiction) proceedings were first commenced.

3. Section-187 empowers a Magistrate of the first class to inquire into an offence committed outside the local limits of his jurisdiction (which may also be without India) by a person found within his jurisdiction,

to compel the person to appear before him and to send such person to the Magistrate having jurisdiction to inquire into or try such offence. Further, such Magistrate has the power to grant bail in respect of offences not punishable with death or life imprisonment. The power given to the Magistrate is available in respect of cognizable as well as non-cognizable offences.

Offences committed outside India (Section-188 to 189)

Section-188 lays that if an offence is committed outside India-

a) by a citizen of India, whether on the high seas or elsewhere, or

b) by a person who is not a citizen of India, on any ship or aircraft registered in India.

Such a person may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. The previous sanction of the Central Government in, however, required for the inquiry and trial of such offences.

Section-189 provides for a special rule of evidence and enables a court dealing with a case under section-188 to receive copies of depositions before a judicial officer in the concerned foreign country as evidence in such a case.

Security for keeping the peace and good behaviour: The provisions of this chapter are preventive in their scope and object, and are aimed at persons who are a danger to the public by reason of the commission by them of certain offences. A person against whom allegations have been made in a proceedings under this chapter is not an accused. The provisions are essentially to maintain public order and in the interest of the general public. However, a Magistrate must, in all cases, exercise this preventive jurisdiction with cautions and watchful case, so as to ensure that the administration of this branch of criminal law does not become harsh and oppressive.

Security for keeping the peace on Conviction (Section-106); When a person is convicted either by Court of Sessions or by a Court of first class Magistrate of offences specified below, or of abetting any such offence and the court is of the opinion that it is necessary to take security from such a person for keeping the peace, at the time of passing the sentence, it may order him to execute a bond (with or without sureties) for keeping the peace for such period not exceeding three years.
The offences are-

a) Any offence punishable under chapter VIII of the I.P.C., 1860, other than an offence punishable under Section-153 A/B or Section-154 thereof.

b) any offence which consists of or includes, assault or using criminal force or committing mischief.

c) any offence of criminal intimidation.

d) any other offence which caused, or was intended as known to be likely to cause a breach of peace.

There is no question of bail to the person proceeded against under this chapter because bail is only for continued appearance of a person and not to prevent him from committing certain acts. *(Madhu Umaye v D.M. Morzhyr)*[6]

Security for keeping the peace in other cases (Section-107):

1. When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or do any wrongful act that may probably occasion a breach of the peace, etc and he is of the opinion that there is sufficient ground for proceeding, he may require such person to show cause why he should not be ordered to execute a bond (with or without sureties), for keeping the peace for a period up to one year.

2. The person informed against or the place where the breach of the peace is apprehended should be within the jurisdiction of the Magistrate.

There must be satisfactory evidence that the person proceeded against has done something, or taken some step that indicates an intention to break the peace or that he is likely to occasion a breach of the peace. (Babua)[7]

Proceedings for Disseminating Seditious Matters (Section-108) :

1. The proceedings can be taken against a person who- (i) intentionally disseminates (or attempts or abets) any matter the publication of which is punishable under section-124A (redition) /Section-153A (promoting enmity between classes, etc)/ Section-295A (insulting the religious beliefs) of the I.P.C., 1860, or any matter concerning a judge which amounts to criminal intimidation/defamation under the I.P.C.(ii) makes, produces, publishes, etc. any obscene matter referred to in Section-292, I.PC. (intention is immaterial)

2. No proceedings shall be taken against the editor, proprietor, printer/publisher except by the order or under the authority of the State Government.
   The Magistrate may require such person to show cause why he shall not be ordered to execute a bond (with or without sureties) for his good behaviour for such period, not exceeding one year.

Security for good behaviour: Section-107 to 110 specify the persons from whom security can be demanded for good behaviour and the proceedings can be initiated either by the police or by private individuals. They are vitally connected with the preservation of the public peace and the maintenance of law and order.

Proceedings against suspected criminals (Section-109): When a person takes precautions to conceal his presence with a view to committing a cognizable offence within the local limits of the jurisdiction of an Executive Magistrate. The Magistrate may require such person to show cause why he should not be ordered to execute a bond (with or without sureties) for good behaviour for a period not exceeding one year.

The expression 'concealing his presence' would also cover a case where a man conceals his appearance, as, by wearing a mask or covering his face or disguising himself by a uniform, etc. (Abdul Gafoor)[8]

Proceedings against habitual offenders (Section-110) : This provision is against the habitual offenders which means- (i) habitual robber, house-breaker, thief/forger, (ii) habitual receiver of stolen property, (iii) habitual protector/harbourer of thieves or habitual abettor in the concealment/disposal of stolen property (iv) habitual kidnapper, abductor, extortioner, cheat or a person habitually committing mischief, offences relating to coin, stamps, etc. (v) habitual offender/abettor of a breach of the peace (vi) habitual offender

committing/attempting to commit or abetting the commission of offences under the Acts, namely Drugs and Cosmetics Act, 1940, FERA, 1973, Employees Provident Fund Acts 1952 etc.

An Executive Magistrate receiving information about such person within his local jurisdiction, may require him to show cause why he should be ordered to execute a bond (with sureties) for his good behaviour for such period not exceeding three years.

Other provisions relating to security (Section-111 to 124): A Magistrate while acting under section-107 to 110, if require any person to show cause, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the member, character and class of sureties (if any) required (Section-111).

If such person is present in court, the order shall be read over to him or, if he desires, the substance thereof shall be explained to him (Section-112).

If such person is not present, a summon shall be issued requiring him to appear, or if in custody, a warrant directing the officer to bring him before the court (Section-113).

Every summons or warrant issued under section-113 shall be accompanied by a copy of order made under section-111 and delivered to the person (Section-114).

On seeing sufficient cause, the Magistrate may dispense with the personal attendance and may permit him to appear by a pleader (Section-115).

After a notice and order are served either under section-112 or 113, an inquiry is conducted to ascertain the truth of the information upon which action has been taken and to take such further evidence as may appear necessary. (Section-116)

If the result of the inquiry is against the person, he is called upon to execute the bond and furnish sureties (if needed) (Section-117).

If the result is in favour, the person is allowed to depart, or is discharged if he is in custody. (Section-118) If the person against whom an order requiring security is made, is in custody, the period of security shall commence on the expiration of such sentence. In other cases, it shall commence on the date of order or on a later date fixed by the Magistrate. (Section-119).

Being ordered to execute a bond shall bind him and in the later case the commission or attempt to commit, or the abetment of any offence punishable with imprisonment is a breach of the bond. (Section-120).

A bond is broken when the person does some act which is likely in the consequences to provoke a breach of the peace.

A Magistrate may refuse to accept any surety which is offered, or may reject any surety previously accepted by him or his predecessor on the ground that such surety is an unfit person for the purpose of the bond. (Section-121)

Where a person fails to give security he shall be committed to prison (or if he is already in prison, be detained in prison) until such security period expires or until within such period he gives the security.

(Section-122)

The District Magistrate (for order under section-117) and the Chief Judicial Magistrate (in any other case) has power to release persons jailed for failure to give security if he thinks that it can be done without hazard to the community. It is open to the High Court/Session Court, or the District Magistrate or CJM to reduce the amount of security or number of sureties, or shorten the period of security. (Section-123)

When a person for whose appearance a summons or warrant has been issued in certain cases appears or is brought before the Magistrate/Court, the Magistrate/Court must cancel the bond, and order the person to give a fresh security for the unexpired period of the term of the bond. (Section-124)

This Section applies when a Magistrate rejects a previously accepted surety or when a surety applies for his discharge.

This is a second branch of the preventive provisions of the code and has been divided into four parts-

MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY

This is a second branch of the preventive provisions of the code and has been divided into four parts-

a) **Dispersal of unlawful assembles (Section-129 to 132):** Any unlawful assembly (Section-141, I.P.C.) or any assembly of five or more persons likely to cause a breach of the peace may be commanded to disperse either by an Executive Magistrate or an officer-in-charge of a police station or in his absence by any police officer not below the sub-inspector. If, upon being so commanded the assembly does not disperse, force may be employed and the assistance of a male person may be taken, and, if necessary the persons who form part of it may be punished. (Section-129)

   If such assembly cannot be otherwise dispersed, and if necessary the Executive Magistrate of the highest rank may cause it be dispersed by the armed forces. The military may use minimum force and cause minimum injury to person and property. (Section-130)

   In cases of emergency, a commissioned or gazetted Army officer can act on his own initiative in the absence of such Magistrate, but this should be communicated to the nearest Magistrate at the earliest opportunity. The officer has also power to take into custody any offender. (Section-131)

   No prosecution can be instituted in any criminal court against any Magistrate/police officer or person for any act purporting to have been done under the above section, except with the sanction of the Central/State Government as the case may be. (Section-132)

b) **Removal of public nuisance (Section-133 to 143):** The District Magistrate, Sub-divisional Magistrate or any other Executive Magistrate may make such conditional order for removal of nuisance on receiving the report of a police officer or other information (including complaint made by a citizen) and taking such evidence as he thinks fit. The public nuisances which can be redressed fall under six categories:-

   i. the unlawful obstruction or nuisance to any public place or to any way, river or channel lawfully used by the public.

ii. the conduct of any trade or occupation, or the keeping of any goods or merchandise, injurious to the health or physical comfort of the community.

iii. the construction of any building, or the disposal of any substance, that is likely to occasion conflagration or explosion.

iv. a building, tent or structure, or a tree as is likely to fall and cause injury to persons.

v. an unfenced tank, well or excavation, near a public way or place, and

vi. a dangerous animal requiring destruction, confinement or disposal.

The expression 'public place' includes also property belonging to the State, camping grounds and ground left unoccupied for sanitary or recreative purposes. (Section-133)

The order to remove the nuisance shall be served to the person or notified by proclamation or publication. (Section-134)

The person to whom order is addressed may obey the order or show cause against the same (Section-135).

On failing to do above act, he shall be liable to be punished under section-188 of I.P.C. and the order shall be made absolute (Section-136).

When existence of public right (in respect of use of any way, river, channel or place) is denied by the nuisance maker and he produces some reliable evidence to support of the denial, the Magistrate being satisfied shall stay the proceeding until the matter of the existence of such right has been decided by competent court. (Section-137)

If the Magistrate is not so satisfied, no further proceedings shall be taken in the case (Section-138).

To assist the inquiry under sections-13 and 138, the Magistrate may direct a local investigation to, ascertain facts or summon expert witnesses. (Section-139):

Failure to comply with a final/absolute order (under section-136 or 138) within the specified time attracts the penalty provided by Section-188 I.P.C. (Section-141).

If measures are necessary to prevent imminent danger or serious injury to the public, the court may issue injunction pending an inquiry (Section-142).

A Magistrate is also empowered to prohibit repetition Of continuance of a public nuisance as defined in the I.PC. or any special/local law (Section-143)

c) **Urgent Cases of nuisance or apprehended danger (Section-144):** It confers an omnibus power on senior Magistrates to issue orders in urgent cases of nuisance or apprehended danger. The nuisance referred to is public nuisance, and the danger apprehended is disturbance of the public tranquility, or riot, or affray. The direction can be given only in the three cases specified in Section-144(1), namely to prevent (i) obstruction, annoyance or injury to any person lawfully employed, (ii) danger to human life,

health or safety, or (iii) disturbance of the public tranquility or a riot or an affray.

The Magistrate is only to entitled doing an act. He cannot make a mandatory order directing a person to do some act. (R.B. Patel v N.H. Sethna)[9]

An order may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when visiting a particular area or place (Section-144)

d) **Disputes as to immovable property (Section-145 to 148):** Since disputes over land and water, crops and other produce of land and rights of user in respect of immovable property often result in breach of the peace, violence and bloodshed, the dispute's do hot affect the public or community at large, but between the disputants they are fraught with Consequences dangerous in themselves. The .object of this section is to enable, a Magistrate to intervene and pass a temporary order in regard to the possession of property in dispute, the order to have effect until the actual right (title) of. the parties is determined by a competent civil court.

The action to be taken is quasi-executive and the inquiry is to be done by an Executive Magistrate. If upon a report of a police officer or upon other information, he is satisfied that a dispute concerning any land or water exists within his jurisdiction and that it is likely to cause a breach of the peace, he shall make an order in writing requiring the parties concerned to attend to his court on a specified date and time and to put in written statements of their claims regarding the fact of actual possession of the subject of dispute.

The expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents and profits of any such property.

The Magistrate shall state the grounds for his satisfaction, otherwise the order is liable to be set aside *(Mathuralal v Bhanwarlal)*[10]

The inquiry by the Magistrate is limited to the question of actual possession on the relevant date and is not concerned with the claims and merits of the parties in regard to the right to posses the subject of dispute *(R.H. Bhutani)*[11]

There is no bar to filing criminal proceeding under section-145 over the same disputed immovable property for which civil proceeding are pending *(Prakash Chand Sachdeva v State)*[12]

If the Magistrate finds that the parties were in joint possession of the disputed property, wherein one of the parties claimed exclusive possession while the other claimed joint possession, he must drop the proceeding. If he finds one of them to be in exclusive possession thereof he shall have to pass an order. *(Urvashi v State)*[13]

If any party to the proceeding, or any other person interested, shows that no dispute exists or has existed, and the Magistrate, after hearing is satisfied about that, he shall cancel his earlier order, and all further proceeding upon such order shall be stayed. (Section-145)

After making a preliminary order the Magistrate can attach the subject of dispute (i) if he considers the case to be one of emergency or (ii) if he decides that none of the parties was in possession, or (iii) if he cannot decide which of them was in possession. The order of attachment remains in force until a

competent court decides the rights of the parties or until the Magistrate, being satisfied that there is no longer any likelihood of breach of peace, withdraws it.

When the Magistrate attaches such property, he may also make such arrangements as he considers proper, for looking after the property, or if he thinks fit, he may appoint a receiver in respect of such property (when no receiver has been appointed by civil court). If any receiver is appointed by civil court subsequently, then the Magistrate will order handing over of the subject of dispute by his receiver to him and pass incidental or consequential order. (Section-146)

The procedure at the inquiry is the same as that provided by Section-145. If the inquiry shows that the right exists the Magistrate may make an order prohibiting any interference with the exercise of the right, including in a proper case an order for removal of any obstruction to such user. (Section-147)

Whenever a local inquiry is necessary for the purpose of Section-145-147, the District Sub-div. Magistrate may depute any subordinate Magistrate to make an inquiry, furnish him with the necessary written instructions for his guidance, and declare by whom the whole or any part of the necessary expenses are to be paid. The report of the person so deputed can be read as evidence in the case. (Section-148)

IMPORTANT QUESTIONS

Q.1 Discuss the security for keeping the peace on conviction. What is its main purpose?

Q.2. Discuss the procedure of arrest by a private person and police officer. Can a Magistrate arrest a person or order any person to arrest him?

Q.3. Define cognizable and non cognizable offences.

Q.4. Discuss the law relating to keeping peace and security.

Q.5. Discuss the process to compel the appearance of the accused in the court.

Q.6. What circumstances would justify a Magistrate to require a person to show cause as to why he should not be ordered to execute a bond with or without security for his good behaviour?

References:

1. 1998 Cri LJ 95 (Kant HC)
2. (1938) 2 (Cal) 357
3. AIR 1960 SC 266.
4. 12 Cri LJ 113 (Punjab CC)
5. 1986 Cri LJ 2070 (P&H HC)
6. AIR 1971 SC 2436.
7. (1883) 6 All 132.
8. AIR 1943 All 367.

9. 191 Cri J 435 (Guj)
10. 1980 SCC (Cri) 9
11. AIR 1968 SC 1414
12. AIR 1994 SC 1736
13. 1989 Crl J NOC 147 (J & K)

UNIT – II

MAINTENANCE OF WIVES, CHILDREN AND PARENTS

Section-125 to 128 (Chapter-IX) provide for speedy, effective and inexpensive remedy against persons who neglect or refuse to maintain their 'dependent' wives, children and parents. These provisions are aimed at preventing starvation and vagrancy relating to the commission of crime.

These provisions are applicable to persons belonging to all religi6ns and have no relationship with the personal law of the parties, or nationality or domicile of the parties. If a person gets any maintenance under his/her personal law, the magistrate may take into consideration while fixing the amount. So the provisions of the Cr.P.C. are the secular provisions. Thus, a Shia wife under muta marriage is entitled to maintenance under this section-125, although she may not enjoy the right under Muslim Law.

Persons Entitled to Claim, Maintenance:

1. Wife (Section 125(1) a)

2. Minor child, illegitimate/legitimate, married/ unmarried (excepted a married daughter whose husband is capable to maintain her (Section-125b)

3. Major child, legitimate or illegitimate (not a married daughter) who by reason of any physical! mental abnormality or injury unable to maintain itself (Section-125c).

4. Father/Mother unable to maintain himself (Section-125d).

Wife [Section-125(1)(a)]: The wife (minor/major), unable to maintain herself, is entitled to maintenance. Wife includes a woman who has been divorced by, or has obtained divorce from her husband and has not remarried. So, a woman divorced by her husband under Hindu Law continues to enjoy the status of wife for maintenance only.

Wife means only legally wedded wife and therefore any marriage proved illegal cannot give a wife any right to get maintenance. The second wife cannot be entitled to be maintained. The legality of marriage is proved by the personal law of the parties and a woman living as wife is not the wife.

A strict proof of marriage is not sine qua non in considering relief under section-125 but this does not mean that if parties were living together as husband and wife that she has a right to claim of maintenance.
Husband's remarriage gives a right of maintenance to the first wife - The Supreme Court held that the first wife could claim maintenance while living separately even though the second marriage was valid' their personal laws permit them. The court further held that either he had remarried or had kept a mistress, the first wife was entitled to maintenance and offer by husband to take her back could not 03 considered bonafide. The first wife is entitled even if she consented to the remarriage of his husband.

Child [Section-125(1)(b)(c): A minor child whether legitimate/illegitimate, married/unmarried, is entitled to claim maintenance.

Minor means - a person who has not completed the age of 18 years according to the Indian Majority Act, 1875. According to proviso of section-125(1) if the husband of minor female child is not possessed of sufficient means, the father of such child is required to maintain herself untill her majority.

It is immaterial in which custody the child is, either in mother's custody under Muslim Law or in a guardian's appointed by the court; the father still has the obligation to maintain.

The basis of an application for the maintenances of a child is paternity of the child either legitimate/ illegitimate. It is also immaterial whether the child is natural born or adopted.

Even after attaining majority, a legitimate/illegitimate child (except a married daughter) is entitled to claim maintenance if he is unable to maintain itself because of any physical or mental abnormality or injury. Section-125(1)(c) a minor child could claim maintenance from father living abroad *(Priyal v. Dr. Pradeep K. Kamboj 2000).*

Father or Mother [Section-125(1)(d)] : A father or daughter or mother, unable to maintain himself or herself, is entitled to claim maintenance from his or her son. The Supreme Court held that apart from any law, the Indian society casts a duty on the children to maintain the parents and this social obligation equally applies to a daughter *(Vijaya Manohar Arbat v. Kashirao 1989 SC).* Mother includes adoptive mother but not step mother. The Supreme Court had that a childless stepmother may claim maintenance from her step son provided she is widow or her husband, if living is unable to support and maintain her *(Kirtikant v. State of Gujrat 1996 SC)*. A claim may be asked with a legitimate child only.

Basis of the Claim of Maintenance:

1. **Sufficient Means to Maintain:** Means the capability of earning and the health rattler than visible means such as real property or definite employment. So the unemployment in debt, insolvent, professional beggar or monk are not considerable ground. The burden of proof is on him that by reason of some ailment/infirmity or accident he is unable to maintain.

2. **Neglect or Refusal to Maintain:** The term neglected is used in a wider sense so as to include disregard to duty whether willful or intentional. Similarly, refusal to maintain need not to be express and it may be implied from the conduct. Burden of proving neglect is on the claimant. Change of religion does not relieved a person of his obligation to maintain *(M.A. Rahman v. Venkata Ramamma, 1980 A.P.).*

   Maintenance means appropriate food, clothing and lodging and it must include the minimum amount of a child's education.

   A wife's claim of maintenance may be defeated section-125(4)-

   a. If she is living in adultery and it must be a continuous course and not an isolated act.

   b. If she refused to live with her husband without any sufficient reason. However if a husband contracted other marriage or keeps a mistress, it is considered a good ground for refusal to live with him.

c. If the parties are living separately by mutual consent. While living separately she can not be characterized as wife but children living with her can claim.

Claimant must be unable to Maintain himself/herself: Inability of wife to maintain herself is a condition precedent to grant maintenance under Section-125 and it is not specifically necessary to plead that she is unable to maintain herself. If the wife is able to earn but refused, this does no affect her right to claim but she would be disentitled to get full amount of maintenance.

The phrase 'unable to maintain itself in the context of a child means unable to earn a livelihood for itself.

A father is also entitled if unable to maintain himself. This is a statutory obligation and the claim cannot be defeated that the father had failed to fulfill his parental obligation towards the children during their minority.

Quantum of Maintenance: No maximum limit is fixed and the Magistrate may order such monthly amount as he thinks fit according to the merits of each case (e.g. status of the family) and the separate income and means of the person claiming maintenance are to be taken into account. The monthly amount which is fixed, if necessary can be altered from time to time under section-127.

Each claimant should be awarded separately, a joint award of maintenance to wife and child is not within the contemplation of section-125(1).

Interim Maintenance [Section-125(2)]: The Magistrate can order the payment of maintenance allowance (or interim maintenance and expenses of the proceedings) from the date of the order or from the date of the application.
To grant interim maintenance is the court's inherent power (Savitri v. Govind 1986).

Now interim maintenance has been incorporated in Cr.P.C. (II, proviso section 125 (1). The Magistrate may during the pendency of proceeding, order to make a monthly allowance for the interim maintenance of his wife or such child, father or mother and the expense of such proceeding.

An application of the interim maintenance, as far as possible, be disposed of within 60 days of the service of notice of the application to such person.

Remedies for the Enforcement of Order of Maintenance [Section-125 (3)] : Two modes of execution of maintenance order-

a) Issue a warrant for levying fines.

b) Sentence such person to imprisonment for a term which may extend to one month or unite payment if sooner made, if after the execution of warrant the whole/any part of the amount of maintenance remains unpaid.

A warrant shall be issued after the application is made within one year from the date on which such amount became due [I proviso section-125 (3)].

The court is bound to enquire into the reasons for non-payment of maintenance amount. Sending to jail does not absolve a person's liability to pay maintenance and it could be satisfied only by making actual

payment.

Alteration and Cancellation of Maintenance Order (Section-127): The Magistrate has the power t alter or cancel the maintenance order according to the change in circumstances of the party paying or receiving the allowance. The amount may be increased or decreased, if the person paying the amount has retired or ailing in a hospital or the claimant got a job.

The Magistrate should vary his order accordingly to the decision of a competent civil court [section-127(2)].

The Magistrate shall cancel the order made in the favour of a wife if she is living in adultery or that without sufficient reason she refuses to live with her husband or that they are living separately by mutual consent [section-125 (4)].

The order made in the favour of a divorced wife may be cancelled [section-127 (3)]-

a. When she remarries (from the date of marriage).
b. When she has received whether before/after the date of maintenance order, the whole of the sum which under any customary or personal law applicable to the parties, may be payable on such divorce.
c. When she has voluntarily surrendered her right to maintenance after her divorce.

An order once passed remains in force until it is either cancelled or modified by the court.

Jurisdiction (Section 126): A wife can sue her husband for maintenance -

a) Where the person works for gain, or
b) Where he resides, or
c) Where his wife resides, or
d) Where he last resided with-
   i) his wife; or
   ii) the mother of the illegitimate child.

Parents can petition for maintenance at place where their children reside. *(N.B. Bhkshu v. State, 1993 A.P)* or where they reside themselves.

INFORMATION TO THE POLICE AND THEIR POWER TO INVESTIGATE

The principal agency for carrying out the investigations of offences is the police, and to make this agency an effective and efficient instrument for criminal investigations, wide powers have been given to the police officers. Investigation starts by two ways either by making a F.I.R. to a police officer or by making a complaint to a Magistrate.

First Information Report (Section-154) : The term F.IR. has no where been defined under Cr.P.C. but the first information given to any police officer and reduced to writing of any cognizable offence is considered as F.IR. The information so received shall be recorded in such a form and manner as provided-

1. The substance of the information shall be entered by the police officer in a book (C.D.) to be kept by such an officer in the form prescribed by the State Government.

2. A copy of the information as recorded shall be given forthwith, free of cost, to the informant.

3. If the officer-in-charge refuses to record the information, the aggrieved person may send, in writing and by post, the substance of such information to the Superintendent of Police. On being satisfied about the commission of a cognizable offence, S.P. shall either investigate the case himself or direct an investigation to be made by a subordinate police officer.

The principal object of R.I.F. is to set the criminal law in motion.

When a statement amounts to F.I.R.: It has been held that first information is that information which is given to the police first in point of time (on the basis of which the investigation has been commenced) not that which the police may select and record as first information (*Bhutnath)*[1]

When a person reported to the police officer that he had seen a certain woman with her throat cut, and the officer had not made a record of that fact, but subsequently treated an information lodged by the man's father as first information in the case, held that the unrecorded information was in fact the information, and not that given by the woman's father. *(Patit Subba Reddy)*[2] .

It is worthwhile to emphasise here that an information to have the status of first information report under tion-154 must be an information relating to the commission of a cognizable offence and it must not vague but definite enough to enable the police to start investigation. *(Hasib v State of Bihar)*[3]

Where an anonymous telephonic message did not disclose the names of the accused nor did it disclose the commission of a cognizable offence, it was held that such a telephonic message could not held as F.IR. *(Tapinder Singh v Stater)*[4]

It is not necessary that the offender or the witness should be named ..

Where F.I.R. is lodged: The general rule is that ordinarily the information about the offence committed 's to be given to the police station having territorial jurisdiction where the offence has been committed. But it does not mean that it cannot be lodged elsewhere.

In *State of A.p. v Punati Ramube*[5] the police constable refused to record the complaint on the ground at the said police station had no territorial jurisdiction over the place of crime. It was held by Supreme Court that refusing to record the complaint was a dereliction of duty on the part of the constable because any lack of territorial jurisdiction could not have prevented the constable from recording information about the cognizable offence and forwarding the same to the police station having jurisdiction our the area in which the crime was said to have been committed.

Object of F.I.R.: The object of insisting upon prompt lodging of the report to the police in respect of mission of an offence is to obtain early information regarding the circumstances in which the crime was committed. Delay results in embellishment and the report gets bereft of the advantage of spontaneity. There is also danger of introduction of a coloured version, exaggerated account or concocted stray as a result of deliberation and consultation. *(Thulia Kali v State of Tamil Nadu)*[6]

Tough the importance of FIR made promptly cannot be minimised the mere fact that it was immediately made after the incident cannot rule out any embellishment in the version about the incident given by the prosecution. *(Tarachand v State of Haryana)*[7]

Where FIR was found to have been written after inquest report was prepared it was held to have lost its authenticity. *(Balaka Singh v State of Punjab)*[8]
Where oral complaint disclosing commission of a cognizable offence has been made and police investigation has started on its basis and later on a second report is made in writing it has been held that written report has to be considered as statement under section-161 and not as FIR. It cannot be for corroboration of evidence of informant. ***(Golla Jalla Reddy v State of A.P')***[9]

Omissions in the F.I.R. whether justified: The word information means something in the nature of a complaint or accusation, or at least information of a crime. The FI.R. should contain information regarding the circumstances of the crime, the names of actual culprits and the part played by them as well as the names of eye-witnesses.

Sometimes witnesses do not think it proper to get some facts mentioned in the FI.R. but the omission of important facts in an FI.R. lodged by a witness to the occurrence must be taken serious note of and would affect the veracity of the prosecution case. (Shyamaghana v State)[10]
.
FI.R. is required to contain basic features of the prosecution case, since it sets law into motion.

Importance of F.I.R.: F.I.R. is important from many point of views. It is a statement made soon after the occurrence, hence the memory of the informant is fresh and it is also unlikely that he had opportunities of fabrication delay in giving information is, therefore, viewed with grave suspicion. *(In Re Madivalappa)*[11]

Evidentiary value of F.I.R.: The FIR can be put in evidence (usually by the prosecution) when the informant is examined, if it desirable to do so. However, FI.R. is not a piece of substantive evidence (evidence of facts stated therein) and it cannot be preferred to the evidence given by the witness in court *(George)*[12]

It can be used only for limited purposes, like corroborating (Section-157 Evidence Act) or contradicting (cross examination Section-143 Evidence Act).

Obviously, the FI.R. cannot be used for the purposes of corroborating or contradicting or discrediting any witness other than the one lodging the FI.R. *(George v State of Keralaj)*[13]

The value of FI.R. will vary accordingly as it is based on information given by the complainant or eye-witness to the crime or a mere stranger. However, its importance was not minimized just because it was lodged by an unconcerned person.

Delay in filing F.I.R.: Criminal court attaches great importance to the lodging of prompt FI.R. However, the mere fact that it has been lodged early does not rule out embellishment or falsehood in every case. *(Tara Chand)*[14]

Information in respect of non-cognizable offences (Section-155): When any information in respect of non-cognizable offence is given to an officer-in:-charge of a police station, he must enter the substance of the information in a book prescribed for this purpose, and refer the information to the Magistrate.

The primary rule is that no police officer shall investigate a non-cognizable case without the order of a competent Magistrate. On receiving the order he may exercise the same power as in a cognizable case (except to arrest without warrant). Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case.

If a Magistrate, who is not empowered, erroneously orders in good faith an investigation under section-155(2), the proceedings shall not be set aside merely on the ground of his not being so empowered. (Section-460(1)(b)

Police officer's power to investigate cognizable case (Section-156): The police is empowered to investigate into a cognizable offence without order of a Magistrate or without a formal first information report. If the police do not investigate the Magistrate can order the investigation. *(Abhayanand Jha v Dinesh Chandra)*[15]

But if the police investigate, the magistrate cannot prevent them from investigation. ***(S.N. Sharma v Bipin Kumar Tiwari)***[16]

If, however, the FIR or other relevant materials donot prima facie disclose any cognizable offence, the police in that case have no authority to investigate. In such a case the High Court, in the exercise of its inherent powers under section-482 or in the exercise of powers under section-226 of the constitution can stop and quash such an investigation. **(State of WB. v Swapan Kumar Guha)**[17]

When a complaint is filed before a magistrate, the magistrate instead of taking cognizance of the offence, may simply order investigation by police under section-156(3)

One can briefly conclude that the process of investigation may start -

a) Where FIR is given under section-154.
b) Where police officer has otherwise reason to suspect the commission of a cognizable offence [Section-157(1), Section-156(1)]

c) Where a competent Magistrate orders the police to investigate -
   i) a non cognizable offence [Section-155(2)]

   ii) by sending a complaint to the police under section-156(3) without taking cognizance of the offence on a complaint under section-200.

   iii) after taking cognizance of the offence on a complaint for the purpose of deciding as to the issue of process against the accused Section-202(1) and Section-203.

Procedure for investigation (Section-157): This section provides the manner in which investigation is to be conducted where the commission of a cognizable offence is suspected and authorizes an officer-in-charge of a police station not to investigate if he considers that there is no sufficient ground for such investigation. Further, this section requires that immediate intimation of every complaint/information of the commission of cognizable offence shall be sent to the Magistrate having jurisdiction. *(Om Prakash v State)*[18]

Magistrate's power to hold investigation on preliminary inquiry (Section-159): The Magistrate on

receiving a police report, may direct investigation, or if he thinks fit, himself proceed or depute a Magistrate subordinate to him to proceed, to hold a preliminary inquiry into the case.

Section-159 does not confer upon the Magistrate a general power to direct investigation, that power is to be used when it appears from the police report under section-157 that the police are neglecting their duties or are desisting from investigation on insufficient grounds.19

Police officer's power to require attendance of witnesses (Section-160): While investigating into an offence, the police will ordinarily go to the persons who are acquainted with the facts and circumstances of the case. But in certain cases the police may by a written order require the attendance of such person either within the limits of his police station or adjoining police station.

But no male person under the age of 15 years or woman shall be required to attend at any place other than their residence.

Where such person intentionally omits to attend, he is liable to be punished under section-174, IPC.

Any State Government, if it so desires, may make rules and provide for the payment by the police officer of the reasonable expenses to every person attending as required at any place other than such person's residence.

Examination of witnesses by police (Section-161): A police officer making investigation can examine the witnesses and reduce them to writing if he wishes. This section does not authorise beating or confining a person with a view to induce him to make a statement.

Such a person is required to answer truly all questions relating to the case put to him by the police officer. However he is not bound to answer such questions, the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. If a person refuses to answer, he can be punished under section-179, IPC and on a false answer under section-193 IPC. Statement recorded by the investigating officer under section-161 cannot be used as substantive evidence before court. ***(Jadumani Khanda v State)***[20]

Statements to police not to be signed: Use of statements in evidence (Section-162): No statement made by any person to a police officer during investigation be signed by the person making it, nor be used for any purpose, except when any witness is called for the prosecution in such inquiry or trial to contradict such witness in the manner provided by Section-145 of the Indian Evidence Act (1872)

A statement to a third person in the presence of a police officer is not within this section. *(Satya Narayan v Emperor)*[21]

No inducement to be offered (Section-163): This section prohibits a police officer or a person in authority from offering or making any inducement, threat or promise as is mentioned in Section-24 of the Evidence Act. But he shall not prevent, by any caution or otherwise, any person from making any statement which he may be disposed to make of his own free will.

Recording of Confessions and Statements by Magistrate (Section-164): The F.I.R. recorded under section-154 is of great importance, regarding the commission of a cognizable offence before there is time to forget, fabricate or embellish. Similarly, the commission or statement made by an accused person to the

police soon after the occurrence would be highly valuable in evidence. However, according to Section-25 of the Evidence Act and Section-162 of the code virtually disallows the use of any confessional statement, made to a police officer during investigation. By and large, the police are not as yet considered trustworthy. Therefore, Section-164 provides a special procedure for the recording of confession by competent magistrates (M.M./J.M.) after ensuring that the confessions are being made freely and voluntarily, and are not made under any pressure or influence. No confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred.

The magistrate is bound to ask the person making the confession that he is not bound to make, if he does, it may be used as evidence against him. And, if he is not willing to make it, the magistrate shall not authorise his detention in police custody.

Search by police officer (Section-165): A police officer is authorised to make a search without warrant if these conditions are exist-

1. Search is necessary for investigation.
2. The offence is cognizable.
3. Reasonable grounds are exist for believing that the thing required will be found in a place.
4. There would be undue delay in getting the thing in any other way.

Search within the limits of another police station (Section-166): This Section authorises an officer in charge of a police station to have a search made within the limits of another station (whether in the same district or not) through the officer-in-charge of that station.

In emergent cases, a search may be made by a police officer himself to a place within the limits of another station, as if such place were within the limits of his own police station, if there is reason to believe that delay might result in evidence of the commission of an offence being concealed or destroyed.
Procedure on non-completion of investigation within 24 hours (Section-167): If any police officer ants the custody of the accused for a longer period (more than 24 hours) for the purpose of investigation, e can do so only after obtaining a special order of a magistrate under section-167.

The Judicial magistrate to whom an accused person is so forwarded may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused person in such custody as the magistrate thinks fit, for a term not exceeding 15 days on the whole. If he has no jurisdiction to try the case, and considers further detention unnecessary, he may order the accused to be forwarded to a judicial magistrate having jurisdiction. If after 15 days, the detention is necessary, the detention shall be in custody other than that of the police, and that the total period of detention including e period of 15 days shall not exceed-

1) 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and

2) 60 days, where the investigation relates to any other offence.

In the absence of judicial magistrate, an accused is forwarded to an executive magistrate who is authorised to grant the custody not exceeding 7 days.

Report of investigation by subordinate police officers (Section-168): Any subordinate officer making

investigation, shall report the result of such investigation to the officer-in-charge of the police station.

Release of accused when evidence deficient (Section-169): If upon an investigation, it appears to e officer-in-charge of the police station that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the a9cused to a 'magistrate, he must release such person from custody after executing a bond (with or without sureties) as the officer may direct, to appear before a magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Cases to be sent to magistrate when evidence is sufficient (Section-170): If upon investigation sufficient evidence exists, the accused shall be forwarded to a competent magistrate. If the offence is available and he is ready to furnish, he should be released on bail.

Diary of proceedings in investigation (Section-172): This Section deals with what is known as a lice diary or a special diary, or case diary or a station house report. Every police officer making an investigation shall enter his daily proceedings in a diary.

Report of police on completion of investigation (Section-173): Every investigation is required '0 be completed without unnecessary delay. As soon as it is completed, a report is to be submitted to the magistrate empowered to take cognizance of the offence on a police report, in the form prescribed by the State Government. The police report submitted is called Final Report. If the report alleges the commission of a crime by an accused person, the report is commonly called the charge-sheet or the challan.

ARREST

The code contemplates two types of arrests-

i) arrest made in pursuance of a warrant issued by a magistrate, and

ii) arrest made without such a warrant but made in accordance with some, legal provision permitting such an arrest.

Arrest without warrant by police (Section-41): There might be circumstances where prompt and immediate arrest is necessary and there is no time to approach a magistrate to obtain a warrant. Cases where a police officer may arrest such persons are specified in Schedule-I of the code, and Section-41 also enumerates nine categories -

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 in this regard.

b) who is found in possession of any implement of house-breaking without any "lawful excuse

c) who has been proclaimed as an offender, either under the code or by order of the State Government.

d) who is found in possession of property reasonably suspected to he stolen, and who may be reasonably suspected of having committed an offence with reference to such property.

e) who obstructs a police officer in the discharge of his duties or who has escaped or attempts to escape from lawful custody.

f) who is reasonably suspected of-being a deserted from any of the Armed Forces of the Union.

g) who has been concerned or reasonably suspected to be concerned in any act committed at a place outside India which if committed in India would be punishable as an offence for which he would be liable to be apprehended or detained in custody in India.

h) who is a released convict committing a breach of any rule made under section-356(5) of the code.

i) for whose arrest any requisition (written or oral) is received from another police officer competent to arrest that person without a warrant, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made.

In addition, a police officer in charge of a police station may, as a preventive measure, arrest without warrant any person belonging to one or more of the categories of persons specified in Section-109 or Section-110.

Arrest on refusal to give name and address (Section-42): A police officer may arrest without a warrant any person who, in the presence of such an officer, has committed or has been accused of committing a non-cognizable offence and either refuses to give his name and address or gives false information. After ascertaining her right name and address the arrestee shall be released after executing a bond (with/without sureties) before a magistrate if so required.

Arrest by private persons (Section-43): A private person can arrest any person, who has in his presence, committed a non-bailable and cognizable offence, or any person who is a proclaimed offender. e must, without unnecessary delay, make over such person to a police officer/nearest police station.

Arrest by magistrate (Section-44): Any magistrate (Executive/Judicial) may arrest a person without a arrant. When any offence is committed in his presence, within his jurisdiction, he may arrest or order any person to arrest the offender and also to commit him to custody (subject to bail provisions).

A magistrate arresting a person should not try the case himself.

Protection of members of the armed forces from arrest (Section-45): Notwithstanding anything contained in Sections-41 to 44 (both inclusive), no member of the armed forces of the Union shall be arrested for any thing done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

Arrest how made (Sections-46 to 49, 55 and 60): This section describes the mode in which arrest is o be made (whether with/without a warrant). In making an arrest the police officer/other person making the same actually touches or confines the body of the person to be arrested unless by a submission to custody by word or action. The person making an arrest may use all means necessary to make the arrest if the person to be arrested resists or attempts to evade the arrest. The person to use necessary force for making an arrest shall not extend to causing the death of a person who is not accused of an offence punishable with death or imprisonment for life.

Where fire was opened to disperse an unlawful assembly and death of an innocent person was caused, Section-46 could not be invoked for the protection of the police officer. *(Karan Singh v Haradayal Singh)*[22]

In occupier of a house/place is under a legal duty to afford to the police, and to any person acting under a warrant of arrest, all reasonable facilities to search the house/place for the purpose of making arrests ingress to such a place cannot be easily obtained, the police officer (or other person executing a arrant) can also break and open any door or window of such house/place for the purpose of entering the same and search therein. If any apartment is in the actual occupancy of a pardanashin lady, the lice officer must before entering the apartment give notice to the lady to withdraw therefrom, and only - thereafter, he can break open the apartment and enter it.

Pursuit of offenders into other jurisdiction (Section-48): A police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, persue such a person to any ace in India.

No unnecessary restraint (Section-49): The person arrested shall not be Subjected to more restraint an is necessary to prevent his escape.

Power to require subordinate officer to arrest (Section-55): Where any officer-in-charge of a police station or any police officer investigating requires on officer subordinate to him to arrest without a warrant any person, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence/other cause for which the arrest is to be made.

Power on escape, to pursue and retake (Section-GO): If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

After Arrest procedures (Sections-51 to 53, 58 to 59) : Whenever a person who is arrested cannot legally be admitted to bail, or is unable to furnish bail, the police officer making the arrest may search such a person and place in safe custody all articles, other than necessary wearing-apparel, found upon him. A receipt showing the articles so seized shall be given to such a person.

Seizure of offensive weapons (Section-52): The police officer or other person making an arrest may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the arrested person is to be produced.

Medical examination of accused (Section-53): If the offence with which the accused person is charged is of such a nature and is alleged to have been committed under such circumstances that the evidence as to the commission of the offence would be afforded by the medical examination of such an arrested person, then at the instance of a police officer (not below the rank of a sub-inspector) an examination could be made by a registered medical practitioner in order to ascertain the facts that might afford such evidence. If the person to be examined is a woman the examination shall be made by, or under the supervision of a registered lady medical practitioner.

It may include testing of blood, hair, sputum, semen, urine etc. and taking of X-Ray or ECG depending upon the nature of the case.

Police to report apprehensions (Section-58): Every officer in charge of a police station is required to report to the D.M. the cases of all persons arrested without warrant, within the limits of his station whether such persons have been admitted to bailor otherwise.

Discharge of person apprehended (Section-59): Any person who has been arrested by a police officer shall be discharged only on his own bond, or on bail, or under the special order of a magistrate.

Rights of arrested person: The police have been given various powers for facilitating the making of arrests, the powers are subject to certain restraints. These restraints are primarily provided for the protection of the interests of the person to be arrested and also the society at large. The Constitution of India also recognizes the rights of arrested person under the Fundamental Rights.

a) **Right to know the grounds of arrest (Section-50):** The first and foremost requirement of lawful arrest is the notification of the reasons of arrest along with the charges. The person arrested without any warrant should forthwith be intimated the full particulars of the offence and the grounds for his arrest by the polic6 officer or other person making the arrest, and where the offence is a bailable one, of his right to be released on bail.

   It may be noted that when a person is arrested with a warrant, the police officer executing the warrant of arrest shall notify the substance thereof (Section-75).

   Further, when a subordinate officer is deputed by a senior police officer to arrest a person, such subordinate police officer shall before making the arrest, notify to the person to be arrested the substance of the written order given by the senior police officer specifying the offence or other cause for which the arrest is to be made.

   Apart from these provisions the constitution also provides that no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest. [Artic'le-22(1)]

   The information enables him to move the proper court for bail on in appropriate circumstances for a writ of habeas, or to make expeditious arrangements for his defence. It appears reasonable to expect that the grounds of arrest should be communicated to the arrested person in the language understood by him, otherwise it would not amount to sufficient compliance with the constitutional requirement *(Harikishan v State of Maharashtra)*[23]

b) **Right to be taken before a magistrate without delay:** Whether the arrest is made without warrant by a police officer, as whether the arrest is made under a warrant by any person, the person making the arrest must bring the arrested person before a judicial officer: without unnecessary delay. It is also provided that the arrested person should not be confined in any place other than a police station before he is taken to the magistrate. (Sections-56, 76)

c) **Right of not being detained for more than 24 hours without judicial scrutiny (Section-57):** A person (arrested without warrant) detained in custody must be presented before the nearest magistrate within twenty four hours of his arrest under section-167 of the code. The period of 24 hours does not include the time necessary for the journey from the place of arrest to the magistrate's court.

   If a police officer fails to produce an arrested person before a magistrate within 24 hours of the arrest, he shall be held guilty of wrongful detention. Sharifbal v Abdul Razak[24]

d) Examination by medical practitioner (Section-54) : The arrestee has a right to be medically examined to enable him to defend and protect himself property when he is produced before a magistrate or at any

time when he is under custody, with a view to enabling him to establish-that the offence with which he is charged was not committed by him or that any other person committed any offence against his body. The magistrate may reject the request of the arrested person if he considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

The arrested accused person must be informed by the magistrate about his right to be medically examined. (Sheela Barse v State of Maharashtra)[25]

e) **Right to consult a legal practitioner:** The constitution as well as the code recognizes the right of every arrested person to consult a legal practitioner of his choice (Article-22(1), Section-303). The right begins from the moment of arrest *(Moti Bai v State)*[26]

The consultation with the lawyer may be in the presence of police officer but not within his hearing.

BAIL

The object of arrest and detention of the accused person is primarily to secure his appearance at e time of trial and to ensure that in case he is found guilty he is available to receive the sentence. If is presence at the trial could be reasonably ensured otherwise than by his arrest and detention, it would be unjust and unfair to deprive him of his liberty during the pendency of criminal proceedings against him.

Bail is one of the cherished rights, claims or privileges of an accused person. It is one of the most dignified institutions in any civilized society in which human values, such as faith and trust, take precedence ever everything else.

Definition: Bail has not been defined under the code though bailable and non bailable offence have been defined. It is defined in the Law Lexicon as security for the appearance of the accused person on giving which, he is released pending trial or investigation. Bail is to procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court. The Supreme Court has held that bail covers both release on one's own bond, with as without sureties. Moti Ram v State of M.P[27]

If a person accused of a bailable offence is arrested or detained without warrant he has a right to be released on bail. But if the offence is non bailable that does not mean that the person accused of such offence shall not be released on bail, but here in such a case bail is not a matter of right, but only a privilege to be granted at the discretion of the court.

In what cases bail to be taken (436): This Section makes provisions for bail of a person who is accused of any offence other than non-bailable offence. A person shall be released on bail if-

1. he has been arrested or detained without warrant by an officer-in-charge of a police station; or
2. he appears or is brought before a court, and
3. he must be prepared at any time while in the custody of such officer or at any stage of the proceeding before court to give bail.

An indigent person may be discharged on executing a bond without sureties. The power of magistrate to grant bail does not depend upon his competence to try the case but on the punishment prescribed for the offence. Aftab Ahmad v State of U.P28

It is a mandatory provision and magistr3te is bound to release the person on bail. Bail means release of a person from legal custody.

An executive magistrate has no jurisdiction to grant bail except in respect of offences punishable with fine or imprisonment up to three months.

Other mandatory bail provisions:

1. Where the accused has completed 60 or 90 days in detention and there is no formal charge sheet framed against him, he can be released on bail. (Section-167(2)

2. If there is no reasonable grounds for believing that the accused is guilty of a non-bailable offence but there is sufficient ground for further inquiry. (Section-437(2)

3. If the trial of a non-bailable offence is not concluded within a period of 60 days from the first date fixed for taking evidence in the case and such person is in custody during the whole of the period. [Section-436(6)].

4. If at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgement is delivered, the court is of opinion that these are reasonable grounds for believing that the accused is not guilty of any such offence.

Cases of non-bailable offence (Section-437): When any person accused of or suspected of the commission of any non-bailable offence is arrested on detained/or appears or is brought before a court (other than the High Court/Court of Session), he may be released on bail, but-

a. such person shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or life imprisonment;

b. if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, life imprisonment or imprisonment for 7 years or more, or he had been previously convicted on two or more occasions of a non bailable and cognizable offence.

But a person (i) under the age of 16 years or (ii) a woman, or (iii) a sick (iv) infirm person may be released on bail even if the offence charged is punishable with death on imprisonment for life or the accused is previously convicted.

Grant of bail with condition:

a. where the offence is punishable with imprisonment (7 years or more);
b. where the offence is against the State, human body, or property (I.P.C.)
c. where the offence is one of the abetment of, or conspiracy to or attempt to commit any such offence as mentioned.

Guidelines while granting bail:

1) nature and seriousness of the offence;

2) the character of the accused;
3) circumstances which are peculiar to the accused;
4) a reasonable possibility of the presence;
5) reasonable apprehension of witnesses being tampered with;
6) the large interest of the public or the state.

Anticipatory bail (Section-438) : The term anticipatory bail implies a direction to release a person on bail issued even before the person is arrested, though in fact it is a misnomer. Manifestly there is no question of release on bail unless a person is arrested, and therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest.

The rationale behind anticipatory bail is that individual liberty must not be put in jeopardy on the instance of irresponsible persons. This section lays down-

1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the H.C./Court of Session for a direction and that court, if it thinks fit, direct that in the event of such arrest, be released on bail.

2) The court makes direction subject to condition-

   1. the person shall make himself available for police interrogation as and when required.

   2. the shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court/police officer.

   3. the person shall not leave India without court's permission.

3) If such person is thereafter arrested without warrant on such accusation, a1ld is prepared either at the time of arrest or at any time while in the custody of police to give bail, he shall be released.

Anticipatory bail cannot usually be granted during the pendency of investigation.

Special powers of High Court or Court of Session regarding bail (Section-439): The High Court or Court of Session can issue a direction that any person accused of an offence and in custody should be released on bail. If the offence is of the nature specified in 437(3), it can direct that any condition imposed by a magistrate when releasing any person on bail be set aside or modified.

Cancellation of bail: The power to cancel bail has been given to the court and not to a police officer. Secondly, the court which granted the bail can alone cancel it. The bail granted by a police officer cannot be cancelled by the court of a magistrate. For cancellation of the bail in such a situation, the powers of the High Court or Court of Session will have to be invoked.

At the present stage of civilization, it has been universally accepted as a human value that a person accused of any offence should not be punished unless he has been given a fair trial and his guilt has been proved in such trial. The major attributes of fair criminal trial are enshrined in Article-10 and 11 of the Universal Declaration of Human Rights.

PRINCIPAL FEATURES OF FAIR TRAIL

1. **Adversary system:** In this system the prosecutor representing the State (or the people) accuses the defendant (the accused person) of the commission of some crime, and the law requires him to prove his case beyond reasonable doubt. The law also provides fair opportunity to the accused person to defend himself. The judge, more or less, is to work as an umpire between the two contestants.

2. **Independent, impartial and competent judges:** In order to insure independent functioning of the judiciary in criminal matters, the code has brought about the separation of the judiciary. Because of the separation, no judge or judicial magistrate would be in any way connected with the prosecution. All trial must be in open court to check against judicial caprice or vagaries. No man ought to be a judge in a case in which he is personally interested. For fair trial it is of prime importance that the judges and magistrates should be persons of integrity and character with the necessary ability and sound knowledge of law.

3. **Parties to be represented by competent lawyers:** Crime is a wrong done more to the society than to the individual victim of the crime. Therefore, in a criminal trial the State representing the society comes before the criminal courts and seeks punishment to the accused person suspected of having committed the crime. In the case of a non-cognizable offence, the offence being in the nature of a private wrong, the aggrieved party or the complainant, and not the State, is the prosecuting party. Even in such a case, the State, through its P.P. or A.P.P. can step in and take charge of the prosecution.

   Article-22(1) of the Constitution, provides that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. Section-303 also provides the same rule.

4. **Venue of the trial:** The place of inquiry or trial, are contained in Section-177-189. It shall be determined according to the above mentioned provision and competency of Magistrates.

5. **Presumption of innocence and burden of proof:** The adversary system of trial that we have adopted is based on the causational method and the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the court cannot record a finding of the guilt of the accused. Every criminal trial begins with the presumption of innocence in favour of the accused.

6. **Rights of accused persons at the trial:** A fair trial implies that it should be fair to the prosecution as well as the accused person. In order to enable the accused to make preparations for his defence, it is essential that he be informed of the accusations against him. The personal presence of the accused throughout his trial would enable him to understand properly the prosecution case as it is unfolded in the court and all evidence taken in the course of the trial or other proceeding shall be taken in his presence. There is an important right for the purpose of defence to cross examination of prosecution witnesses. If a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence.

7. **Expeditious Trial:** In every inquiry or trial the proceedings shall be held as expeditiously as possible.

IMPORTANT QUESTIONS

Q.1. Who may claim under Section 125 of this Act? Enumerate the situation in which a wife will not be entitled to receive an allowance from her husband.

Q.2. Discuss the procedure with regard the alternation in allowances under Section 127 of Cr.P.C.

Q.3. Define and distinguish between the following-

a) FIR and complaint

b) Investigation, inquiry and trial. Also discuss the interalia effect of the delay in FIR.

Q.4. Discuss the propose of 'charge'. State the details given in the charge. Can the (;ourt alter the charge? If so, how and when. Discuss.

Q.5. For each offence there must be a separate 'charge'? Discuss this statement along with its extensions.

Q.6. Are the statements of witness and accused persons recorded by a Police Officer during the course of investigation admissible in the evidence? If so how can they be used in a criminal proceeding?

Q.7. What are the circumstances under which persons committing different offences may be tried together?

References:

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2. 37, CrlJ 357
3. (1972) 4 SCC 773
4. (1970) 2 SCC 113.
5. 1993 CrlJ 3684 (SC)
6. AIR 1975 SC 501
7. AIR 1971 SC 1821
8. AIR 1975 SC 1962
9. 2007, cd LJ, 3193 (SC)
10. 1987, Crl J 952 (Ori)
11. AIR 1966 Mys 142
12. Al 1960 Ker 142
13. 1998 Cr LJ 2034 (SC)
14. AIR 1981 SC 361
15. AIR 1968 SC 196
16. AIR 1970 SC 786
17. 1982 SCC (Cri) 283
18. AIR 1974 SC 1983

19. 41st Report, Law Commission of India.
20. 1993, Cr LJ 2701 (Orissa)
21. AIR 1944 Pat 67
22. 1979 Cr LJ 1211 (Punj)
23. AIR 1962 SC 911
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25. 1983 SCC (Cri) 353
26. AIR 1954 Raj 241
27. (1978) 4 SCC 47
28. 1990 Cr LJ 1663 (All)

UNIT – III

COGNIZANCE OF OFFENCE

After the stage of investigation is completed and the final report is forwarded by the police to a competent magistrate, the second important stage of giving fair trial to the accused person begins, in which me preliminary steps are- (i) to take cognizance of the offence (ii) to ascertain whether any prima facie case exists against the accused, and in case it does so exist, then (iii) to issue process against e accused in order to secure his presence at the time of his trial. (iv) to supply to the accused e copies of police statements (v) if the case is exclusively triable by a court of session, to commit e case to that court.

Meaning: Taking cognizance of an offence is the first and foremost step towards trial which literally means knowledge or notice or becoming aware of the alleged commission of an offence. So that the judicial officer could proceed to conduct a trial. A court can take cognizance only once. When a magistrate applies his mind for taking action of some other kind, e.g. ordering investigation under section-156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

By whom:

1. Any magistrate of the first class. '
2. Any magistrate of the second class, if specially so empowered by the Chief Judicial Magistrate.

3. Except as otherwise expressly provided by the code (Section-199) or by any other law, a court of session is not to take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a magistrate.

Cognizance when taken: According to Section '190:

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

The word "may" take cognizance means "must" take cognizance. The magistrate has no discretion in e matter, otherwise the section will be violative of Article-14 of the Constitution. *(Sampat Singh v State f Harayana)*[1]
Ordinarily, a private citizen intending to initiate criminal proceedings in respect of an offence has two courses open to him. He may give information to the police if the offence is a cognizable one, or he may go to magistrate and file a complaint irrespective of whether the offence is cognizable or non-cognizable. But in either case the matter will be ultimately before the magistrate for taking cognizance of the offence.

Transfer of case: On taking cognizance of an offence upon his own knowledge or information, the accused must be informed under section-191 before the taking of any evidence that be is entitled to have the case inquired into or tried by another magistrate, and if the accused is willing, the case with have to be transferred to such other magistrate as may be specified by the C.J.M. Failure to till the accused of his right to be tried by another magistrate vitiates the trial.

Dulichand v State[2] and this illegality would not be cured by Section-465. Further, the refusal of the accused person's request for transfer in such a case would by illegal.

COMPLAINTS TO MAGISTRATE

Section-200-203 have been enacted for weeding out false, frivolous and vexatious complaints aimed at harassing the accused person. However these Section are exclusively applicable in cases where the cognizance is taken on a complaint. Such special procedure is not needed in cases where cognizance has been taken on a police report.

Examination of Complaint (Section-200-201): Section-200 provides that a magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses present, if any, and that the substance of such examination shall be reduced to writing and signed by the complainant and the witnesses, and the Magistrate.

The object of such examination is to ascertain whether there is a prima facie case against the accused person. The provision are mandatory and not discretionary. The magistrate must examine the complainant even though the facts are fully set out in the written complaint. He must give the complainant or his pleader an opportunity of being heard.

Fan; Bhushan Banerjee v Kemp[3]

If the complaint is made to a magistrate who is not competent to take cognizance of the offence, he shall-

a) if the complaint is in writing, return it for presentation to the proper court, with an endorsement to that effect.

b) if it is not in writing, direct the. complainant to the proper court. (Section-201)

Where the court acquitted the accused on the ground that it had no jurisdiction to take cognizance of the complaint, such an order would be illegal as the court ought to have returned the complaint for presentation to the proper court. *(Rajendra Singh v State)*[4]

Inquiry for further scrutiny of the complaint (Section-202): The duly of a magistrate receiving a complaint is that on receipt of a complaint, he may postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer/any other person, for the purpose of deciding whether or not there is sufficient ground for proceeding in the matter.

The object is of three fold-

a) to ascertain the facts constituting the offence;

b) to prevent abuse of process resulting in wastage of time of the court and harassment to the accused.
c) to help the magistrate to judge if there is sufficient ground calling for investigation and for proceeding with the case.

The function of the magistrate holding a preliminary inquiry is only to be satisfied that a prima facie case s made out against the accused on the materials placed before him by the complainant. The magistrate can, therefore, postpone issue of process against accused till receipt of report by police.

The magistrate has discretion to postpone the issue of process against the accused but in that event he gas to record its reasons in writing merely directing a police officer to enquire and report is no compliance with the provisions of this section. *(Amresh Chandra v N.K. Chandra)*[5]

Dismissal of complaint (Section-203): If, after considering the statements on oath of the complainant and witnesses and the result of the inquiry or investigation, the magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for doing so.

Broadly speaking, a magistrate may dismiss a complaint in the three cases-

a. If, upon the statement of the complainant recorded under section 200, he finds that no offence has been committed.

b. If he distrusts the statement made by the complainant.

c. If he distrusts such a statement, but his distrust not being strong enough to warrant him to act upon it, he directs further inquiry and after that, finds that there is no sufficient ground for proceeding against the accused.

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATE

This chapter (Section-204-210) relates to commencement of proceedings before Magistrate when the cognizance of an offence has been taken.

Issue of process (Section-204): If the magistrate taking cognizance of an offence considers that there is sufficient ground for proceeding, then if the case appears to be-

a) a summons case, he shall issue his summons for the attendance of accused, or
b) a warrant case, he may issue a warrant or a summons, for causing the accused to be brought or (if he has no jurisdiction himself) some other magistrate having jurisdiction.

No summons or warrant can be issued against the accused, until a list of prosecution witnesses has been filed. Further, every summons or warrant shall be accompanied by a copy of complaint where the complaint was made in writing.

A magistrate who has neither taken cognizance nor is one to whom case has been transferred cannot issue process. *(Rajendra Nath v D.S.P., Purulia)*[6]

Where an accused has been summoned to appear before a magistrate, proceedings commence under this chapter and the magistrate cannot thereafter dismiss the complaint under section-203.

Magistrate may dispense with personal attendance of accused (Section-205): Whenever a magistrate issues a summons, he may dispense with the personal attendance of the accused, and allow him to appear through his pleader, if there is sufficient reason for doing so. However, at any stage of the proceedings, the magistrate may, in his discretion, direct the personal attendance of the accused and enforce it in the prescribed manner.

This section deals with exemption from initial appearance, and not with exemption from appearance at the final trial. This power can be exercised by a magistrate only when a summons has been issued (either in a summons/warrant case) but not when a warrant is" issued. This discretion may be exercised by the magistrate even in the absence of a prayer from the accused. (Durgadas)[7] The magistrate must give reasons for granting exemption.

Special summons in cases of petty offence (Section-206): If a magistrate is taking cognizance of a petty offence i.e. offences which are punishable only with fine upto 1000 rupees, and if the case can be summarily disposed of under section-260, the magistrate must (unless he records a contrary opinion in writing) issue summons to the accused requiring him to appear in person (or by a pleader) on a specified date, or to plead guilty without appearance.

Supply to the accused of copy of police report and other documents (Section-207): The accused should be given relevant documents or extracts from them, in cases where proceeding has been instituted on a police report, so that the accused is able to know the charge brought against him and the materials with the aid of which the charge is going to be substantiated by the prosecution.

It is the duty of the magistrate to furnish to the accused without delay and free of cost the copy of (i) the police report (ii) the F.IR. (iii) the statements of witnesses recorded under section-161 (3) excluding those which the magistrate after perusing the police request under section-176(3) do not think advisable to supply (iv) the statements/confessions recorded under section-164 and (v) any other documents forwarded to the magistrate with the police report under section-173(5).

Supply of copies of statements and documents to accused in other cases triable by court of session (Section-20B): A case which is instituted otherwise than on a police report, if it appears to the magistrate issuing the process that the offence can be tried exclusively by the Sessions Court, the magistrate must, without any delay, furnish to the accused free of court, a copy of the following documents-

a) the statements (recorded under section-200/202) of all persons examined by the magistrate.

b) the statements/confessions recorded under section-161 or 164.

c) any documents produced before the magistrate on which the prosecution proposes to rely.

Commitment of case to court of sessions (Section-209): A case (instituted on a police report! otherwise) if it appears to the magistrate that the offence is triable exclusively by the sessions court, he must commit the case to that court, send records of the case along with documents/articles to be produced in evidence and notify the public prosecutor.

PROCESS TO COMPEL APPEARANCE

There are mainly two methods of procuring the attendance of the accused at his trial, i.e., either by issuing a summons to him, or by his arrest and detention.

Summons - Meaning and form (Section-61): A summons is an authoritative call to the accused person to appear in court to answer a charge of an offence. Summons is a milder form of process issued (i) for enforcing the appearance of the accused or of witness, and (ii) for production of a document or thing. A summons case relates to less serious offences.

Every summons issued by a court must be in writing, in duplicate, and signed by the presiding officer of court. It should be clear and specified and must bear the seal of the court and show the name and address of the person summoned, the place, date and time at which the person summoned is to attend. n the absence of place, time and nature of offence committed the proceedings taken thereon are valid. *(Emperor v Rananjai Singh)*[8]

I summons a magistrate may dispense with personal attendance of accused and allow him to appear y his pleader.

Mode of Service (Sections-62-67, 69)

Summons how served (Section-62): Every summons shall be served by a police officer, or subject to such rules as the State Government may make, by an officer of the court issuing it or other public servant.

The summons shall if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. If so required by the serving officer, the person on whom the summons is served must sign a receipt on the other copy.

Summons should not only be shown but a copy of it be left, exhibited, delivered or tendered to the person summoned. *(Karsanal v Danatram)*[9] Service of summons by registered post is illegal (B. C. Sonar v Indrabai)[10]

Services of summons on corporate bodies and societies (Section-63): Summons may be served on a corporation by serving it on the Secretary, Local Manager, or other principal officer of the corporation, or by letter sent by registered post, addressed to the Chief Officer of the corporation in India. Corporation includes company and society registered under the Societies Registration Act 1860.

Service when persons summoned cannot be found (Section-64): Where personal service (as in Section-62) cannot be effected summons may be served with some adult male member of the family, but not on a servant.

Procedure when service cannot be effected as before provided (Section-65): When personal service of summons is not possible, a substituted service may be served by affixing a duplicate copy of it to some conspicuous part of the house of the person summoned. Summons on a person employed abroad cannot be served by affixture to his house in India but it should be sent to the Indian Embassy for service.

(E. Chathu v P Gopalan)[11]

Service on Government servant (Section-66): The summons is to be sent to the Head of the Office

where such person is employed. The head shall serve the summons and return it to the court with the proper signature and endorsements.

Service of summons outside local limits (Section-67): For service of summons beyond the jurisdictional limits of a court it shall be sent to the magistrate within whose local jurisdiction the person is either resident or is otherwise present.

Service of summons on witness by post (Section-69): When the person to be summoned is witness, the court may also direct that a copy of the summons be served on that person by registered post in addition to, or simultaneously with the issue of summons in a usual way.

Proof of service in particulars case (Section-68): When a summons issued by a court is served outside its focal jurisdiction and in any case where the serving officer is not present at the hearing of the case, all statements made in an affidavit before the magistrate that the summons was properly served is admissible in evidence unless the contrary is proud.

WARRANT

A warrant of arrest is written authority given by a competent magistrate for the arrest of a person named on it. Generally a warrant is issued only in serious cases or after a duly served summons which is disobeyed or willfully avoided.

Form of warrant of arrest and duration (Section-70): The requisites of a valid warrant (form no. 2 of Second Schedule) –

i) it shall be in writing
ii) it shall be signed by the presiding officer of the court
iii) it shall bear the court's seal
iv) it must indicate full name and address of the accused
v) it must state the offence
vi) it shall bear the name and designation of the person who is to execute it.

A warrant once issued shall remain in force until it is cancelled or executed. It is not invalid merely on the expiry of the date fixed by the court for the return of the warrant. *(Emperor v Binda Ahir)*[12] A magistrate is competent to issue a warrant of arrest for production of a person before his own court and not before a police officer. *(Johendra Nath Mukherjee)*[13]

Power to direct security to be taken (Section-71): A warrant of arrest may also include a direction (endorsement) that if a person arrested executes a bond and gives security for his attendance in court, he shall be released. It is called bailable warrant of arrest and can be issued both in cases of bailable and non-bailable offences. The endorsement shall state (a) the number of sureties (ii) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound (cc) the time at which he is to attend before the court.

Warrants to whom directed (Section-72): A warrant of arrest shall ordinarily be directed to one or more

police officers, but in case of emergency it can be directed to any person or persons to execute the same by anyone or more of them.

Warrant may be directed to any person (Section-73): The Chief Judicial Magistrate or a magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any (i) escaped convict (ii) proclaimed offender (iii) any person accused of a non-bailable offence who is avoiding arrest.

Mode of execution of a warrant of arrest (Section-74 to 81): A police officer is competent to execute a warrant of arrest under an endorsement from other police officer (to whom the warrant is initially directed). (Section-74)

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show (Section-75).

The person executing the warrant shall without unnecessary delay (not exceeding 24 hours) bring the arrestee before the court. (Section-76)

A warrant of arrest can be executed at any place in India. (Section-77)

For the execution of warrant outside the jurisdiction, the court may forward a warrant by post or otherwise to any executive magistrate or District Superintendent of police or the Commissioner of Police within whose jurisdiction it is to be executed. (Section-78)

When a warrant is directed to a police officer to be executed beyond the local jurisdiction of the court, he shall first take it for endorsement to an Executive Magistrate/police officer in charge of a police station in the execution area, and then execute the same. He may dispense with such an endorsement only in case of immediate necessity. (Section-79)

When a warrant is executed outside the District in which it has been issued, the arrested person must be taken before a magistrate or D.S.P. or a Commissioner of Police, unless the court which has issued the warrant is within 30 km of the place of arrest, or is nearer than the magistrate/D.S.P. (Section-80)

Proclamation and Attachment (Section-82 to 86): These are the remedies available to the court against a person in case a warrant of arrest remains unexecuted.

Proclamation for person absconding (Section-82): Where a warrant of arrest has been issued against an accused and there are reasons to believe that he has absconded or is concealing himself to avoid the execution of the warrant, the court may publish a written proclamation requiring him to appear at a specified place and time (not less than 30 days from the date of proclamation).

It shall be published (i) for public reading in town/ village where such person ordinarily resides (ii) affixation to such persons house/conspicuous place of such town/village (iii) or the court and (iv) publication in a daily newspaper (if the court so directs).

Attachment of property of person absconding (Section-83): At any time after the issue of proclamation, the court may also issue an order for attachment of any property (movable or immovable) of the proclaimed offender. Such order can also be issued simultaneously with the proclamation if the absconder is about to dispose of the whole/part of his property, or to remove it from the local jurisdiction of the court.

In case of a debt or other movable property the attachment is so made by seizure, or by appointment of a receiver, or by an order in writing prohibiting the delivery of such property to the proclaimed person. In case of immovable property, the attachment shall be made through the District Collector if the land is paying revenue, and in all other cases by taking possession, or by appointment of receiver, or by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or by all or any two of such methods. If the property consists of livestock or is of a perishable- nature the court may order an immediate sale.

Claims and objections to attachment (Section-84): If any claim or other objection is made to the attachment of any property within 6 months from the date of the attachment by such person, on the ground that he has an interest in such property which is not liable to be attached, such claim/objection is to be inquired into by the court, and may be allowed or disallowed in whole or in part. In the event of the death of the claimant/objector, the claim can be continued by his legal representative.

Release, Sale and Restoration of attached property (Section-85): If the proclaimed person makes his appearance within the time specified in the proclamation, the court must pass an order releasing the property from the attachment. If he does not do so within time, then his property will be at the disposal of the State Government. Though, it cannot be sold before 6 months from the date of the attachment, and until all claims or objections made with reference to such property have been disposed of.

Other rules regarding processes (Section-87 to 90): A warrant may be issued in lieu of, or in addition to, a summons in two cases (i) where the court believes that the person 'summoned (either before/after the issue of summons) has absconded or will disobey the summons, or (b) where he has without reasonable cause failed to appear. (Section-87)

The presiding officer of the court may require such person to execute a bond (with) without sureties) for his appearance in court (Section-88).

If such person does not appear, a warrant can be issued for the arrest and production of such a person (Section-89).

THE CHARGE

A charge simply means an accusation in writing against a person that he committed an offence. It is always for the court to frame a charge against the accused.

A) Form of Charge :

Content of Charge (Section-211):

a. It must state the offence with which the accused is charged.
b. If the law which creates the offence gives it any specific name, the offence must be described in the charge by that name only.
c. If the offence is not given any specific name, definition must be stated.
d. The law and the Section of the law against which the offence is said to have been committed.
e. It must be in the language of the court.

Ex.- A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in Section-299 and 300, IPC, that it did not fall within any of the general exceptions of the said code and it did not fall within any of the five exceptions to Section-300.

Particulars as to time, place and person (Section-212): The charge must contain such particulars as to time and place of the alleged offence, and the person, if any, against whom, or the thing if any, in respect of which, the offence was committed, as are reasonably sufficient to give to the accused notice of the matter with which he is charged.

Where a person commits criminal breach of trust or dishonest misappropriation in respect of various sums at different times in the course of a single year, he may be charged in respect of the total of all the sums as for a single offence without specifying the items of which it is composed or the dates on which they were misappropriated.

When manner of committing offence must be stated (Section-213): If the nature of the case is such that the particulars mentioned is Section-211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Ex.-

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

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

In every charge of rioting and unlawful assembly, the common object must be set out. The magistrate must specify, in the charge itself, the common object of the unlawful assembly. (ChunderJ14

Words in charge taken in sense of law under which offence is punishable (Section-214): In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Cases when no charge need be framed-

a) for inquiries under section-116

b) for trials of summons under section-251

c) for summary cases where no appeal lies (Section-263)

Effects of errors in the charge (Section-215): Omission in charge cannot be regarded as material unless it is shown by the accused that he has in fact been misled by such omission or that there has been a failure of justice as a result of such omission. Where the accused is not misled, defect in the charge is not material.

Ex.- A is charged under section-242, IPC with having been in possession of counterfeit coin, having known, at the time when he became possessed thereof, that such coin was counterfeit, the word fraudulently being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

Mere defect in framing of the charge or not framing of a charge is not by itself an illegality which vitiates trial.

(P.P. Karpe v State of Maharashtra)[15]

Court may alter charge (Section-216): Any court may alter or add to any charge at any time before judgment is pronounced provided that the accused has not to face for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him.

Recall of witnesses when charge altered (Section-217): The prosecutor and the accused has a right to recall witnesses after the alteration of the charge, even if such alteration does not effect his case. Such right may be denied by the court if it is of the opinion that the purpose is. only delay or vexation or defeating the ends of justice.

B) Joinder of Charge:

Separate charges for distinct offence (Section-218): For every distinct offence of which any person is accused, there must be a separate charge, and every separate charge must be tried separately.

However, a magistrate may try together all or any number of charges framed against an accused, if he is of opinion that such a person is not likely to be prejudiced thereby.

Ex.- A is accused of a theft on one occasion and of causing grievous hurt on another occasion, he must be charged separately and also tried separately for theft and for causing grievous hurt.

Distinct offence as follows-

a) theft and escape from lawful custody.
b) kidnapping a boy and assaulting his mother.
c) criminal misappropriation and cheating.

Three offences of same kind within year may be charged together (Section-219): When a person is accused of more offences than one of the same kind committed within the space of twelve months, whether in respect of the same person or not, he may at one trial, be charged with and tried for any number of such offence, not exceeding three in all - Offences are of the same kind or they are punishable with the same amount of punishment.

Offences not punishable with same punishment as-

a) adultery and bigamy
b) murder and grievous hurt
c) forgery and giving false evidence.

Trial for more than one offence (Section-220): If in one series of acts which are so connected together as to constitute the same transaction, more than one offence is committed by the same person, he can be charged with and tried for every such offence at one trial only.

Ex.- (i) Theft of a cart from one house and theft of two bullocks from another house in order to remove the

cart.

(ii) Forgery, abetment of forgery and use of the forged document in the civil court.

Where it is doubtful what offence has been committed (Section-221): If a single act (or a series of acts) is of such a nature that it is doubtful what offence has been committed. It applies to cases in which the facts are not doubtful but the application of law to the facts is doubtful. If the magistrate is not able to ascertain facts that exist which would justify a conviction, he must of course, acquit the accused.

Conviction of an offence not specifically charged (Section-222): If a person is charged with an offence consisting of several particulars, a combination some only of which constitute a complete minor offence, and such a combination is proved, but the remaining particulars are not proved, he may be convicted of minor offence; though he was not charged with such offence.

a) persons accused of same offence committed in the course of the same transaction;
b) persons accused of an offence, and persons accused of abetment of or attempt to commit, such offence;
c) persons accused of offences under section-411 and 414, IPC, or either of those Section, in respect of stolen property, the possession of which has been transferred by one offence.

Withdrawal of remaining charges (Section-224): When a charge containing more heads than one and a conviction has been obtained on one or more of them, the complainant or officer of the prosecution may with draw the remaining charge. Such withdrawal will be considered as acquittal.

COMPOUNDING OF OFFENCE (SECTION-320

A crime is essentially presumed to be a wrong done against the society; therefore a compromise between the accused and the individual victim should not be enough to absolve the accused from criminal responsibility. Therefore, those offences which affect the individuals alone and are not of grave nature may be compounded by consent of the parties. The law permits the person against whom the offence has been committed to settle the difference by compromise. This is known as compounding of the offence and some others as compoundable only with the court's permission before which any prosecution for such offence is pending. At the same time there are still some graver offences which cannot be compounded under any circumstances.

Compounding helps to restore amicable relationship between the parties which otherwise is likely to result in an enduring feud.

Offences compoundable by parties-

i) Hurt to religious feelings (Section-29B)
ii) Causing hurt (Section 323)
iii) Wrongfully restraining/confining any person (Section-341)
iv) Assault or use of criminal force(Section-352)

Offences compoundable by court-

a) Voluntarily causing hurt with dangerous weapons (Section-324)'

b) Voluntarily causing grievous hurt (Section-325)

c) Assault, etc, to woman's modesty (Section-354)

d) Assault etc in wrongfully confining a person (Section-357)

A case may be compounded at any time before a sentence is pronounced even when the magistrate is writing the judgement (Aslam Meah)[16]

Section-320 expressly relates to certain offences under the IPC, it has no application to offences under other laws. Offences punishable under laws other than IPC are not compoundable. *(Bhaswabhan v Gopen Chandra)*[17]

IMPORTANT QUESTIONS

Q.1. Summons cases are tried with much less formality than warrant cases and the manner of their trial is less elaborate. Discuss.

Q.2. Point out differences between Trial Procedure for warrant cases instituted on police report and that provided for cases instituted otherwise than on a Police Report.

Q.3. Give explanatory notes on the following -

a) Session Trial

b) Summary Trial.

References:

1. (1993) 1 SCC 561
2. AIR 1971 A& N 14
3. (1906) 10 CWN 1086
4. 1989 Cr LJ 2277 (Pat)
5. AIR 1969 Tri 13
6. AIR 1972 SC 470
7. 27 Cal 985
8. AIR 1928 All 261
9. (1968) 5 BMCR (Cr C) 20
10. 1981 Cr LJ (NOC) 8 (Karn)
11. 1981 Cr LJ 691 (Kerala)
12. 29 Gr LJ 1007 (Pat)
13. (1897) 24 Cal 320
14. 3 CWN 605.
15. 1993 Cr L.J 2302 (Born)
16. (1917) 45 Cal 816

17. AIR 1967 SC 895

UNIT - IV

TRIAL BEFORE HIGH COURT AND COURT OF SESSIONS

According to Section-26, the High Court has the power to try any offence. But in practice, the High Court does not conduct any trial, nor does the first schedule indicate any offence as being triable by a High Court. However on rare occasions the High Court, after considering the importance and widespread ramifications of a case, may decide to try the case itself either at the instance of the Government or on its own initiative. The procedure to be observed by the High Court in such a trial shall, according to Section-474, be the same as would be followed by a court of sessions trying such a case. Thus the trial procedure of the sessions court shall also be applicable to trials before the High Court.

Trial Before Court of Sessions: The trial before the Sessions Court must proceed and be dealt with continuously from its inception to its finish. Sessions case must not be tried piecemeal. Once the trial commences, the Sessions Judge must, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded. *(Bhagirath v State of M.P.)*[1]

Trial to be conducted by public prosecutor (Section-225): In every trial before a court of session, the prosecution shall be conducted by a public prosecutor.

Opening case for prosecution (Section-226): When an accused appears or is brought before the court in pursuance of a commital of the case under section-209, the P.P. should give a brief summary of the evidence and the particulars of the witnesses by which he proposes to prove the case against the accused person.

It is the duty of trial court to secure the attendance of the accused. It cannot acquit the accus~d on the ground that the prosecution failed to bring the accused. *(State of Gujraj v Nareshbhai Haribhai Tande)*[2]

Discharge of Accused (Section-227): After considering the record of the case, and after hearing the submission of the parties, if the court considers that there is no sufficient ground for proceeding against the accused, it shall discharge him and record its reasons for so doing.

At the initial stage of the trial, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The court is only to see whether the material on record is such on which a conviction can be said to be reasonably possible. **(State of Bihar v Ramesh Singh)**[3]

Framing of charge (Section-228): After considering the record of the case, and hearing the parties, if the judge is of opinion that there is a ground for presuming that the accused has committed an offence which.

a) is not exclusively triable by court of sessions, he may frame a charge against the accused, and transfer the case to the CJM, who shall then try the offence in accordance with the procedure for the

trial of warrant case instituted on a police report.

b) is exclusively triable by the court, he shall frame in writing a charge against the accused. The charge shall be read and explained and be asked whether the accused pleads guilty of the offence charged or claims to be tried.

Once the case is committed to the sessions court it becomes clothed with the jurisdiction to try it and the mere fact that the offence disclosed was not exclusively triable by court of sessions does not divest it of that jurisdiction. ***(Sammun v State of M.P.)***[4]

When an offence is not triable exclusively by sessions court, it. is not mandatory that it should order transfer of case to CJM. Thus, when a case is exclusively triable by it and the counter case is not, the sessions court could try both cases. *(Sudhir v State of M.P')*[5]

Conviction on plea of guilty (229): If the accused pleads guilty, the judge shall record the plea and in his discretion may convict him.

The plea of guilty only amounts to an admission that the accused committed the acts alleged against him and must plead by his own mouth and not through his counselor pleader. *(Sursing)*[6]
The court has a discretion either to convict the accused or to proceed with the trial, so this discretion is to be exercised properly, specially in a case when some plead guilty and the others claim to be tried. *(Khandia)*[7]

Date for prosecution evidence (Section-230): If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted, the judge shall fix a date for the examination of witnesses. On the, application of the prosecution the judge may issue any process for compelling the attendance of any witness or the production of any document or other things.

If the prosecution fails to produce witnesses, on a direction by the court, the court must issue a warrant to compel the attendance of such witnesses because production of witnesses is the responsibility of the court. **(State of Mysore v Ramu)**[8]

Evidence for prosecution (Section-231): On the date fixed for evidence, the judge shall proceed to take all such evidence as may be produced in support of the prosecution and may permit the cross examination of any witness to be deferred untill any other witness has been examined or recall any witness for further cross-examination.

The prosecution is generally not bound to produce every witness but it must examine all the eye-witnesses when some of them are interested and require corroboration. (Bir Singh v State of u.p.)[9]

Acquittal of accused (Section-232): After (a) taking the evidence of the prosecution (b) examining the accused (c) hearing the prosecution and defence on the point, if the judge considers that there is no evidence that the accused had committed the offence, the judge, shall record an order of acquittal.

Evidence for the defence (Section-233): When the accused is not acquitted the court calls upon him to enter on his defence and adduce any evidence in support of his defence. Any written statement put by the accused must be filed with the record.

On request by accused for issue of process to compel attendance of witnesses or production of documents, the judge shall issue such process unless he considers the request to be vexatious or made for the purpose of delay or defeating the ends of justice.
The court cannot direct or require accused to pay expenses of witnesses sought to be examined by hi in his defence. (Mahe Aalam v State of U.P.)[10]

Arguments (Section-234): When the examination of the defence witnesses is complete, the prosecutor sums up his case, and the accused or his pleader shall be entitled to reply. Where any law point is raised by the defence the prosecution may be allowed to make his submission with regard to such point of law.

Judgment (Section-235): After hearing the arguments and P9ints of law (if any) the judge shall give a judgement in the case.

Procedure in case of previous conviction (Section-236): In a case where a previous conviction is charged under section-211 (7), and the accused denied to be previously convicted, as alleged in the charge, the judge may, after convicting the accused, take evidence in respect of the alleged previous conviction necessary to prevent the accused from being prejudiced at the trial.

Procedure in cases instituted under section-199(2): The case must try in accordance with the procedure for the trial of warrant cases instituted before a magistrate court otherwise than on a police report.

This chapter has been divided into three groups-

a) Cases instituted on police report (Section-238 to 243)
b) Cases instituted otherwise than on a police report (Section-244 to 247)
c) Equally applicable to both (Section-248 to 250)

The difference in procedure is understandable. In cases instituted on a police report, lot of record made during investigations by the police is made available to the court and to the accused person. Such record cannot obviously be available (as it simply does not exist) in cases instituted otherwise than on police report. Therefore it becomes necessary in such cases to provide special procedures to enable the accused to acquaint himself with the facts of the case on which the prosecution is relying before he is called upon to defend himself.

A) Cases instituted on police report (Section-238 to 243):

Supply of copies of documents to accused (Section-238): When the accused appears or is brought before a magistrate at the commencement of the trial, he shall satisfy him that the copies of the police report, FIR, confusions, etc. as required by Section-207 has been supplied to the accused. Under old law, this duty was on the police.

The expression "at the commencement of the trial" means at the beginning of the trial, and trial starts when the charge is framed. (Nageshwar Singh State of Assam)[11]

Discharge of accused (Section-239): If after (a) considering the police report and other documents (b) examination of the accused, and (c) giving the prosecution and the accused a opportunity of being heard,

the magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

In *State of H.P. v Krishan Lal*[12] there was sufficient material on record to summon the accused persons and therefore the judge had found that a prima facie case has been made out. But his successor judge passed an order to discharge. Held that no order of discharge could be passed by the successor in office because such an order would amount to review of the earlier order not permitted under the code.

But where fresh material was found to proceed against the discharged accused in a fresh trial, the magistrate would be competent to take cognizance as it did not amount to review of discharge order. *(Vijya Bai v State of Rajasthan)*[13]

Framing of charge (Section-240): After consideration, examination and hearing, the magistrate is of opinion that there is ground for presuming that the accused has committed an offence which he is competent to try and which could be adequately punished by him, he shall frame a charge in writing against the accused. It shall be read and explained and be asked whether he pleads guilty or claims to be tried.

The court should not automatically frame the charge merely because the prosecuting authorities consider it proper to institute the case. This responsibility is of that court. *(Century spinning & manufacturing co. v State of Maharashtra)*[14]

Conviction on plea of guilty (Section-241): It the accused pleads guilty, the magistrate shall record the plea and may, in his discretion, convict him.

Evidence for prosecution (Section-242): If the accused refuses to plead, or claims to be tried or the magistrate does not convict the accused, the magistrate shall fix a date for the examination of witnesses.

On the application of the prosecution, the magistrate may issue a summons to any of its witnesses directing him to attend or to produce any document thing.

On the date fixed for the examination of witnesses, the magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. He may permit the cross-examination of any witness to be deferred until any other witness has been examined, or recall any witness for further cross-examination.

Where enough number of eye-witnesses have been examined and their evidence is reliable and sufficient to base the conviction of the accused, the prosecution may decide to refrain from examining other witnesses. *(Ram Prasad v State of U.P.)*[15]

Evidence for defence (Section-243): After the prosecution evidence is over, the accused shall be called upon to enter upon his defence and produce his evidence. If he puts in any written statement the magistrate shall file it with the record.

If the accused applies to magistrate to issue process for calling any witness for examing/cross-examination or for the production of document/thing, the magistrate shall issue process unless he considers that such application is made for the purpose of vexation or defeating the ends of justice.

The magistrate may require the accused to deposit reasonable expenses which may be incurred by the witnesses for the purpose of attendance in court.

Where the accused lacks the capacity or means to pal so, the court may exempt him. *(Venkateswara Rao v State)*[16]

B) Cases instituted otherwise than on police report (Section-244-247):

Evidence for prosecution (Section-244): When the accused appears or is brought before the magistrate, he is required to hear the prosecution and to take such evidence as may be produced in support of the prosecution. The magistrate may also summon such persons whom the prosecution wishes to give evidence in support of its case.

The magistrate should before closing evidence and framing the charge, ask the prosecution whether it wants some more of its witnesses to be examined in support of the complaint. *(Yashodabai Keshav v Bhaskar)*[17]

Discharge of accused (Section-245): The magistrate shall discharge an accused after taking all the evidence produced by the prosecution, if he considers (for reasons to be recorded) that no case against the accused has been made out. The magistrate is also empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless.

Normally, a person cannot be discharged unless the prosecution evidence has been taken and the magistrate considers that no case is made out against the accused. Section-245(2) is an exception to this rule.

Framing of charge (Section-246): The magistrate shall frame a charge after the prosecution evidence is over, or at any previous stage of the case, if he forms the opinion that a prima facie case has been made out against the accused it shall be read and explained to the accused and be asked whether he pleads guilty or has any defence to make. If he pleads guilty, the magistrate in to record plea and may convict him thereon.

If, however the accused refuses to plead, or does not plead, or claims to be tried, or if he is not convicted, the accused shall be required to state whether he wishes to cross-examination any witness for the prosecution whose evidence has already been taken. If he wishes to do so, the witness named by him shall be recalled, and cross-examined and re-examined (if necessary). The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any) they shall also be discharged.

Sufficient time should be given to the accused to think over whether he wishes to cross-examine any of the prosecution witnesses after framing of the charge and it is only in special cases that the magistrate can require him to state forthwith if he so wishes.

Evidence for defence (Section-247): After the completion of the prosecution evidence, arguments, and the examination of the accused, the accused shall then be called upon to enter upon his defence and produce his evidence, and the provisions of Section-243 shall apply to the case.

C) Conclusion of trial (Section-248 to 250): Conclusion of trial lays down a common procedure in respect of cases instituted on a police report and cases instituted otherwise than on a police report.

Acquittal or conviction (Section-248): After the close of the defence and after hearing arguments the magistrate shall give a judgment in the case.

If in any case in which a charge has been framed and the magistrate finds the accused not guilty, he shall record an order of acquittal and where the magistrate finds the accused guilty, but does not proceed in accordance with the provision of Section-325 (cases where the magistrate cannot pass sentence sufficiently severe) or Section-360 (cases where he releases the accused on probation etc) he passes sentence on the accused after giving him a hearing.

Absence of complainant (Section-249): If the complainant is absent on the day fixed for the hearing of the case, the magistrate may in his discretion, discharge the accused if-

i) the offence is compoundable

ii) the offence is not cognizable

iii) the proceedings have been instituted upon complaint

iv) the charge has not been framed.

After framing of the charge the magistrate cannot discharge the accused due to default of appearance by the complainant. (Aswini Kumar v Dwijen Dey)[18] So also if the complainant dies after framing of the charge the magistrate must proceed with the case. *(Wipal Singh v Manipur Administration)*[19]

TRIAL OF SUMMONS CASES BY MAGISTRATE

Summon cases are tried with much less formality than warrant cases, and the manner of their trial is less elaborate. Even the method of preparing the record (of evidence) is less formal.

Explaining the substance of the accusation to the accused (Section-251): When the accused appears or is brought before the magistrate, the particulars of the accusation shall be stated to him and he be asked whether pleads guilty or has any defence to make. It is not necessary to frame a formal charge.

Conviction on plea of guilty (Section-252): If the accused pleads guilty, the magistrate shall record the plea as nearly as possible in the words used by the accused and may, and may not convict him thereon.

A joint statement cannot be treated as a plea of guilty by all the accused persons. *(Thargiam v Irabot Singh)*[20]

An accused cannot register the plea of guilt on behalf of the co-accused. *(State of Maharashtra v Dhruwa Woolen Mills Pvt Ltd)*[21]

Conviction on plea of guilty in absence of accused in petty cases (Section-253): Where a summons has been issued under section-206 (i.e. in cases of petty offences) and the accused desires to plead guilty without appearing before the magistrate, he shall transmit to the magistrate a letter containing his plea and also the amount of fine specified in the summons. The magistrate may then convict the accused in his absence, and sentence him to pay the specified fine. A pleader may also plead guilty on behalf of the accused. This provision is for the speedy disposal of petty cases.

Procedure when not convicted (Section-254): If the magistrate does not convict the accused the

magistrate shall proceed to hear the prosecution and accused and take all such evidence as may be produced in support of the prosecution or defence.

If the accused does not admit his guilt, the magistrate is bound to hear the complainant and his witnesses. He cannot acquit the accused without examining the complainant and his witnesses.
the application of the prosecution or the accused the magistrate may issue a summons to any witness for his presence.

Acquittal or conviction (Section-255): If the magistrate, upon taking the evidence for the prosecution for the defence, and such further evidence, if any, as he may on his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

Where the magistrate does not proceed in accordance with the provisions of Section-325 or Section-325 he shall, if he finds the accused guilty, pass sentence upon him according to law.

It was held by the Madras High Court that where summons have been issued for the production of evidence by the prosecution but he fails to produce the evidence, the acquittal of the accused simply on is ground is not permissible. *(State v Veerappan)*[22]

Non-appearance or death of complainant (Section-256): There are three courses upon to the magistrate (in summons case) where the complainant is either absent or expired on the date of the appearance of the accused or the date of the hearing (i) to acquit the accused (ii) to adjourn the case for a future date (iii) to dispense with the attendance of the complainant and proceed with the case, where e personal attendance is not necessary or the complainant is represented by a pleader or public prosecutor.

The magistrate is not bound to wait until the court is about to close for the day but he should not pass an order of acquittal in the early hours of the sitting of the court for the days business. *(J. George v Premi Solomon)*[23]

Withdrawal of complaint (Section-257): In cases instituted on complaint, the complainant may be permitted to withdraw his complaint at any time before a final order is passed by satisfying the magistrate that there are sufficient grounds for granting such permission and the accused shall be acquitted.

For withdrawal of complaint consent of the accused is not required but the permission of the court is necessary.

Power to stop proceedings in certain cases (Section-258): In any summons case instituted otherwise than upon complaint, a first class magistrate or with the previous sanction of the CJM, any other judicial magistrate may stop the proceedings at any stage without pronouncing the judgment. When such stoppage is made after the evidence of the principal witnesses has been recorded, such magistrate may pronounce a judgment of acquittal, and in any other case, dis9harge.

Power of court to convert summons cases into warrant cases (Section-259): A magistrate may try a summons case as a warrant case in certain circumstances if-

1. the summons case relates to an offence punishable with imprisonment for a term exceeding six months.

2. The magistrate is of the opinion that such trial will be in the interest of justice.

SUMMARY TRIALS

Summary trial is an abridged form of regular trial and is a short-cut in procedure. Considering the risks involved in such short-cuts, it was considered necessary that only senior and experienced judicial officers should be empowered to try certain petty cases summarily. A summary trial implies speedy disposal and all cases should be tried by the summons procedure, whether the case is summons case or warrant case. No formal charge is framed.

Power to try summarily (Section-260 to 261): Notwithstanding anything contained in this code', any CJM, Metropolitan Magistrate or any first class magistrate specially empowered by the High Court, may, if he thinks fit, try the offence in a summary manner. The offences are-

a) Offences not punishable with death, life imprisonment or imprisonment for a term exceeding 2 years.
b) Theft (Section-379 to 381 IPC) of property not exceeding 2000 rupees
c) Receiving/retaining stolen property not exceeding Rs. 2000.
d) Assisting in the concealment/disposal of such stolen property.
e) Lurking house trespass (Section-454/456 IPC)
f) Insult with intent to provoke a breach of the peace (Section-504 IPC) and criminal intimidation (Section-506 IPC)
g) Abetment of any of the foregoing offences.
h) An attempt to commit any of the foregoing offences, when such attempt is also an offence.
i) Any offence constituted by an act in respect of which a complaint may be made under section- 20 Cattle Trespass Act 1871.

However, if in the course of a summary trial, it appears to him that the nature of the case is such that it is undesirable to try it summarily, the magistrate may recall any already examined witness and rehear the case afresh.

The summary procedure is to be applied to all offences irrespective of the fact whether any offence is punishable under the IPC or not.

Further a magistrate of second class may be empowered by the High Court to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding 6 months (with/ without fine) (Section-261).

Procedure for summary trials (Section-262): All cases should be tried by the summons procedure and no sentence of imprisonment for more than three months can be passed in any conviction.

If the court considers that a longer sentence is necessary in the interest of justice in any case, the trial should be held as in a warrant case or as a summons case according to the nature of the offence. But a sentence exceeding three months cannot be passed in summary trials.

Record in summary trials (Section-263):

I. serial number of case.
II. date of the commission of the offence
III. date of report/complaint.
IV. name of complainant.
V. name, parentage and residence of the accused.
VI. offence complained of, and the offence (if any) proved, and value of the property in respect of which the offence has been committed
VII. plea of the accused and his examination
VIII. finding
IX. sentence/other final order
X. date on which the proceedings terminated.

Judgment (Section-264): In every case in which accused does not plead guilty, the magistrate shall record the substance of the evidence and a judgement containing a brief statement of the reasons for e finding.

Language (Section-265): Every such record and judgement shall be written in the language of the court and signed by the magistrate.

TRANSFER OF CRIMINAL CASES

If an accused person has reasonable cause to believe that he may not receive a fair trial at the hands of a particular judge, he should have the right to have his case transferred to another court.

Power of Supreme Court to transfer cases and appeals (Section-406) : The Supreme Court has very wide discretionary power to transfer cases and appeals from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court for the ends of justice. This can be done only on the application of the Attorney General of India or of a party interested. Every such application shall be made in the form of a motion supported by affidavit or affirmation except when the applicant is the Attorney General of India or the Advocate General of a State.
The words 'partly interested' include the complainant, the public prosecutor and the accused and may even cover a person lodging the FIR *(Jag Bhushan v State)*[24]

A defamation case was instituted against some Christians by a non-Christian. The local atmosphere was surcharged with communal tension. Held the case must be transferred. *(Gx. Francis v Banke Bihari Singh)*[25]

Where a transfer application has been dismissed, and it is found to be frivolous or vexatious, the Supreme Court may order the applicant to pay appropriate compensation (not exceeding Rs. 1000) to any person opposing the transfer application.

Power of High Court to transfer cases and appeals (Section-407): The High Court may transfer cases in three ways (i) suo moto (ii) on the application of a party interested (iii) on the report of the lower court. This power may be exercised where -

1. a fair and impartial inquiry/trial cannot be held in any subordinate criminal court.
2. some question of law of unusual difficulty is likely to arise.
3. an order is required by any provisions of this code.
4. it will tend to the general convenience of the parties or witnesses.
5. it is expedient for the ends of justice.

If the application for transfer is accepted the High Court may order-

I. that an offence be inquired into or tried by a court otherwise competent though not empowered under section-177 to 185 of the code.
II. that any particular case or appeal be transferred to another criminal court.
III. that any case be committed for trial to a court of sessions.
IV. that any case or appeal be transferred to and tried by the High Court itself.

The application for transfer shall be made by motion supported by affidavit (except when the applicant is the Advocate-General of State). If the application is found to be frivolous or vexatious, the costs of the opponent may be ordered to be paid by the applicant not .exceeding Rs. 1000.

Power of sessions judge to transfer cases and appeals (Section-408): A sessions judge may order any particular case to be transferred from one criminal court to another in his sessions division, if it is expedient to do so for the ends of justice. The sessions judge may do so either suo motu i.e. on its own initiative, or on the report of the lower court or on the application of a party interested.

This section relates to those cases which are originally filed in the court of either the CJM or the sub-divisional judicial magistrate and not to those which are transferred to the Additional Sessions Judge or Assistant Sessions Judge or CJM.

(State of WB. v Gangadhar Dhawu)[26]

Withdrawal of cases and appeals by sessions judge (Section-409): A sessions judge may withdrawal or recall any case/appeal, which he has made over to any Asst. sessions judge/CJM sub-ordinate to him, and also from Additional sessions judge before the actual trial of the case or the hearing of the appeal has started. After withdrawal or recall any case/appeal, he may either try the case in his own court, or make it over to another court for trial or hearing.

A sessions judge cannot withdraw or recall any case or appeal pending before a judge, which has been partly heard by him. *(Smt. Guizar v Nizam)*[27]

Once the trial has commenced in the transferee court there can be no withdrawal.

Withdrawal of cases by Judicial Magistrate (Section-410): A CJM is empowered to withdraw or recall any case which he has made over to a subordinate magistrate, and either try it himself or refer it to any other

magistrate competent to try the same. Likewise any judicial magistrate can recall any case made over by him to any other magistrate under section-192(2), and try the same himself.

Making over or withdrawal of cases by Executive Magistrate (Section-411): Any DM or S.D.M. has a right to transfer for disposal any proceeding which has been started before him to any magistrate sub-ordinate to him. He can also withdraw or recall any case, which he has made over to any magistrate sub-ordinate to him and thereafter he can either dispose of the same himself or send it for disposal to any other magistrate.

Reasons to be recorded (Section-412): The sessions judge/magistrate are bound to record reasons for passing an order for transfer or recalling of the case/appeal.

APPEAL

Human judgment is not infallible. Despite all the provisions for ensuring a fair trial and a just decision, takes are possible and errors cannot be ruled out. The code therefore provides for appeals and revisions and thereby enables the superior courts to review and correct the decisions of the lower courts.

An appeal is a complaint to a superior court of an injustice done or error committed by an inferior one, whose judgement or decision the court above is called upon to correct or reverse. *(Black's Law dictionary)*[28]

An appeal is a creature of statute and there can be no inherent right of appeal from any judgement or determination unless an appeal is expressly provided for by the law itself. *(Durga Sankar v Raghuraj Singh)*[29]

This chapter has been divided into two parts-

a) Types of appeals - when an appeal lies or not (Section-372-380)
b) Procedure for dealing with an appeal and powers of appellate court (section-381-394).

No appeal to lie unless otherwise provided (Section-372): No appeal shall lie from any judgement or order of a criminal court except as provided by the code or by any other law.

Appeal from orders requiring security for keeping peace etc (Section-373): This Section applies to

a) appeals from order requiring security for keeping peace or for good behaviour.

b) appeal against an order rejecting a surety or refusing to accept a surety under section-121 of the code.

But, where proceedings are laid before a sessions judge under section-122(2) or 122(4) no appeal shall lie.

Appeal from convictions (Section-374):

1. A trial held by High Court in its extraordinary original criminal jurisdiction, an appeal may lie to Supreme Court,

2. A trial held by Sessions Judge/Additional Sessions judge or by any other court in which a sentence of

imprisonment of more than 7 years has been passed, an appeal may lie to High Court.

3. A trial held by a metropolitan magistrate/Asst Sessions Judge or magistrate of the first or second class (except cases falling under 2), or in case falling under sections-325 and 360, an appeal may lie to sessions court,

The High Court in case of appeal against conviction has full power to re-appreciate evidence and come o a conclusion independently. But there should be proper appreciation of evidence and the finding has to be recorded against each witness as to why the said witness is not being believed when he was believed by the trial court, *(State of Karnataka v Papanaika)*[30]

No appeal when accused pleads guilty (Section-375): When an accused has pleaded guilty and has been convicted on such plea, there shall be no appeal-

a) if the conviction is by a High Court.

b) if the conviction is by a sessions court, metropolitan magistrate or magistrate of the first class or second class, except as to the extent or legality of the sentence.

Thus an accused person who pleads guilty before a magistrate and is convicted has no right of appeal unless he contends that his conviction is illegal.

No appeal in petty cases (Section-376):

a) where a sentence of imprisonment up to 6 months, or fine up to Rs. 1000 or both is passed by the High Court.

b) where a sentence of imprisonment up to 3 months, or fine up to Rs. 200, or of both is passed by sessions court/metropolitan magistrate.

c) where the sentence only fine up to Rs. 200 is passed in a summary trial by a CJM, a metropolitan magistrate, or a first class magistrate specially empowered by the High Court.

But in cases an appeal may be brought if any other punishment is combined with any such sentence, but such sentence shall not be appealable merely on the ground-

i) that the person convicted is ordered to furnish security to keep the peace.
ii) that a direction for imprisonment in default of payment of fine is included in the sentence.
iii) that more than one sentence of fine is passed in the case, if the total amount of fine does not exceed the amount hereinbefore specified in respect of the case.

Appeal by the State Government against inadequacy of sentence (Section-377): The State Government and the Central Government in respect to cases investigated by the Delhi special police establishment or any other agency under a Central Act, to file appeal through their respective public prosecutors to the:

a) court of sessions, if the sentence is passed by the magistrate.

b) to the High Court, if the sentence is passed by any other court on the ground of inadequacy of such sentence.

Before enhancing the sentence, the accused should be given reasonable opportunity of showing cause against enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

In a case where the accused is tried for more than one offence, the trial court should pass separate sentence for each of such offences. *(State of Karnataka v Mohd. Jaffer)*[31]

Appeal against order of acquittal (Section-378): The State Government may direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court (other than a High Court)/sessions court in revision). However,' such appeals can be entertained only after obtaining the leave of the High Court.

If the order of acquittal has been passed in any case instituted upon complaint, and the High Court on an application made to it by the complainant, grants special leave to appeal from the acquittal order, the complainant may also present such an appeal to the High Court. However, no application for the grant of such special leave can be entertained by the High Court after the expiry of 6 months (where the complainant is a public servant) and after 60 days in any other case. If in such a case, the complainant is refused leave to appeal, the State Government cannot direct the public prosecutor to appeal in the same matter.

Appeal against conviction by High Court in certain cases (Section-379): An appeal may lie to the Supreme Court as a matter of right when High Court has, on appeal, reversed an order of acquittal of an accused and convicted and sentenced him to death or life imprisonment imprisonment for 10 years or more.

Special right of appeal in certain cases (Section-380): Notwithstanding anything contained in this chapter, when more persons than one are convicted in one trial, and an appealable judgment/order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

REFERENCE AND REVISION

Reference is a process in which an inferior court consults the High Court on a matter of law in certain circumstances. If a criminal court other than a High Court has to decide whether a particular enactment is constitutionally valid, and is itself of opinion that it is not, but finds that neither the High Court to which the court is subordinate nor the Supreme Court has pronounced on that encashment, the court is required to make a reference to the High Court for the decision on that question. The intention here is that the validity of the laws possibly in conflict with the constitution should be decided authoritatively and quickly. *(See 41st Report)*[32]

Reference to High Court (Section-395): A reference is made by a subordinate court to the High Court, if following conditions are necessary-

a) A case must be pending before the court making the reference.
b) The court making reference must be satisfied that the determination of that case involves a question

as to the validity of-

a. any Act, Ordinance or Regulation.

b. any provision contained in an Act, Ordinance or Regulation.

c) The determination of validity of any such Act, Ordinance, Regulation or any provision thereof must be necessary for the disposal of the case.

d) The court making reference must be of the opinion that such Act, Ordinance, Regulation or any provision thereof is invalid or inoperative.

e) Till the date of reference, the Act, Ordinance, Regulation or any such provision thereof must not have been declared as invalid by the High Court to which that court is subordinate or by the Supreme Court.

The court shall also set out its own opinion and give reasons in support thereof while making a reference.

Post references procedure (Section-396): When a question is referred to High Court, the High Court shall pass such order as it thinks fit and shall cause a copy of such order to be sent to the court by which the reference was made, which shall dispose of the case conformably to the said order. The High Court may also direct by whom the costs of such reference are to be paid.

Revision: The right of appeal is not available in each and every case and is confined to such cases as are specifically provided by law. Secondly, even in such specified cases, the code ordinarily allows only one appeal, and a review of the decisi9n of the appellate court is not normally permissible by way of further appeal to yet another higher court. In order to avoid the possibility of any miscarriage of justice in cases where no right of appeal is availabre, the code has devised another review procedure namely revision. The powers of revision conferred on the higher courts are very wide and are purely discretionary in nature. Therefore, no party has any right as such to be heard before any court exercising such powers.

Power to call for and examine the record of subordinate court (Section-397): The High Court or the sessions court is empowered to call for and examine the record of any proceedings before any inferior criminal court within its local jurisdiction and satisfy itself as to –

1. the correctness, legality or propriety of any finding, sentence or order recorded or passed by such inferior court

2. the regularity of any proceedings of such inferior court.

While calling for such record, the High Court/Sessions Court may direct that the execution of any sentence or order be suspended and if the accused is in confinement, be released on bail or on his own bond pending the examination of the record.

A court is inferior to other court when an appeal lies from the former to the later. *(Krishnaji Vithal v Emperor)*[33]

A revisional authority can take up the matter suo motu. The scope of revisional jurisdiction is limited and discretionary.[34]

The powers of revision conferred are not to be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

Interlocutory order has not been defined in the code, but it means an order which is passed at some intermediate stage of a proceedings generally to advance the cause of justice for the final determination of the rights between the parties. *(Dhola v State)*[35]

Power of court of revision to order inquiry (Section-398): On examining any record (under section¬397) or otherwise, the High Court/sessions judge may direct the CJM to make, or to cause to be made through any other subordinate magistrate, further inquiry into any complaint which has been dismissed [under section-203/204(4)] or into the case of a discharged accused.
However, an opportunity should be given to the accused to show cause why further inquiry should not be ordered.

The effect of order for further inquiry is to set aside the dismissal of complaint or the order of discharge. The High Court, the sessions judge or the CJM have powers of a revisional court where the CJM has once acted, the sessions judge has no jurisdiction to review the order, but he may refer the matter to the High Court and vise-versa.

Sessions judge's powers of revision (Section-394): This section deals with revisional power of e sessions judge while hearing a case records of which have been called for by himself; the sessions judge has the same powers as the High Court has under section-401 of the code.

Power of Additional sessions judge (Section-400): An additional sessions judge shall have and may exercise all the powers of a sessions judge in respect of any case which may be transferred to him by or under any general or special order of the sessions judge.

High court's power of revision (Section-401): In the case of any proceedings the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections-386, 389, 390 and 391 or on a court of sessions by Section-3D? When the judges composing the court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section-392.

The revisional jurisdiction of the High Court is very wide and no form of judicial injustice in beyond its reach. The limits placed on revisional jurisdiction of High Court are -

a. that a finding of acquittal cannot be converted into conviction, and

b. sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement and conditions laid down in second proviso to Section-386 are also fulfilled.

LIMITATION FOR TAKING COGNIZANCE

Periods of limitation (Section-467- 468): For the purpose of this Chapter, unless the context otherwise

requires, period of limitation means the period specified in Section-468 for taking cognizance of an offence (section-467).

No court, after the expiry of the period of limitation, shall take cognizance of an offence of the category specified-

a) 6 months, if the offence in punishable with fine only.
b) 1 year, if the offence is punishable with imprisonment not exceeding 1 year.
c) 3 years, if the offence is punishable with imprisonment exceeding 1 year but not exceeding 3 years. (Section-468)

If the offence for which the accused is charged is punishable with imprisonment exceeding three years, the bar of limitation under this section is not attracted.

(Harnam Singh v Everest Construction Co)[36]

The Government has no power to grant permission to institute a prosecution after the expiry' of the statutory period of limitation. (Delhi Bitumen Sales Agency v State of Punjab)[37]

Commencement of limitation period (Section-469): This section fixes the date from which the period of limitation in relation to an offender shall commence. As a general rule the period of limitation begins to run from the date of the commission of the offence and to this general rule two exceptions are provided. One is where the aggrieved party or the police was not aware of the commission of the offence and the second is where the identity of the offender was not known. In computing the period of limitation the firs day shall be excluded.

Exclusion of data on which court is closed (Section-471): Where the period of limitation expires on a day when the court is closed, the court may take cognizance on the day on which the court re-opens.

Continuing offence (Section-4712): In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Extension of limitation period in certain cases (Section-473): The court may take cognizance of an offence after the expiry of the limitation period, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

Definition

Bailable and non-bialable offences: Bailable offence means an offence which is shown as bailablein the first schedule, or which is made bailable by a law for the time being in force and non-bailable offence by some other law. (Section-2a)

Bailable offences are less serious than non-bailable. In bailable offence bail is granted as a matter of right by the police officer or by the court. Non bailable offence does not mean that bail can not be granted. It only means that bail can be granted in the discretion of the court.

The code has not given any criterion to determine whether any particular offence is bailable or non-bailable. It all depends upon the first schedule of the code, according to which offences under laws, other than the

IPC, punishable with imprisonment for 3 years or more, have been considered as non¬bailable and rest are bailable offences.

Cognizable and Non-cognizable offences: A cognizable offence means an offence for which and cognizable case means a case in which a police officer may, in accordance with the first schedule of the code or under any other law, arrest without warrant (Section-2c).

A non cognizable offence means an offence in which a police officer has no authority to arrest without warrant. (Section-22)

Offence under the laws other than the IPC punishable with imprisonment for 3 years or more is considered as cognizable. If the power of arrest without a warrant is limited to any particular class of police officers that does not prevent the offence being regarded as a cognizable offence. Ex.- in case of an offence under the Gambling Act only Deputy Superintendent of police is given power to arrest.

Complaint: Complaint means any allegation made orally or in writing to a magistrate with a view to his taking action under this code, that some person (whether known or unknown) has committed an offence, but does not include a police report. But if a report is made by a police officer in a case which discloses (after investigation) the commission of a non-cognizable offence, the same is deemed to be a complaint, and the police officer the complainant. (Section-2d)

The complaint has a very wide meaning and there is no particular form. A complaint in a criminal case is what a plaint is in a civil case. A complaint is constituted of the allegations of fact relating to the commission of an offence. Allegations which donot amount to an offence would not be a complaint. *(Chabilal Gorung v Krishna)*[38] A mere statement to a magistrate by way of information, without asking him to take action, is not a complaint.

Distinction between complaint and FIR:

1. In complaint the allegation is made orally on in writing to a magistrate, but the FIR is given to an officer in charge of a police station.

2. A complaint may relate to a cognizable or non-cognizable offence, while a FIR must relate to a cognizable offence.

3. A magistrate takes cognizance of an offence on a complaint made to him, but he cannot do so on a FIR.

4. A complaint generally does not include the report of a police officer while FIR may be given by a police officer.

Inquiry: Inquiry means every inquiry, other than a trial, conducted under this code by a magistrate or court. (Section-2g)

All those proceedings before a magistrate prior to the framing of a charge which do not result in conviction can be termed as inquiry.

Investigation: Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorised by a magistrate in this behalf (Section-2h)

The definition given in the code is not exhaustive. The arrest and detention of a person for the purpose of investigation of a crime forms an integral part of the process of investigation. *(Baldev Singh)*[39]

There are three stages is a criminal case-

a. Investigation
b. inquiry, and
c. trial.

If the investigating officer finds that no offence has been committed, he reports the fact to a magistrate who drops the proceedings and the case thereby comes to an end.

Difference between investigation and inquiry:

a. An investigation is made by a police officer or by some person authorised by a magistrate. Inquiry is made by a magistrate or a court. Investigation is never made by a magistrate or court.

b. The object of an investigation is to collect evidence for the prosecution of the case. The object of inquiry is to determine the truth or falsity of certain facts with a view to taking further action thereon.

c. Investigation is the first stage of a criminal case and is normally followed by inquiry by a magistrate. Inquiry is the second stage of a case and is ordinarily preceded by investigation.

d. Investigation is not a judicial proceeding, whereas an inquiry is a judicial proceeding.

IMPORTANT QUESTIONS

Q.1. Distinguish between Appeal and Revision. Where does a revision lie against the order of Magistrate?

Q.2. Explain the provision relating to limitation for taking cognizance of offences.

Q.3. Describe the powers of a Sessions Judge to transfer cases and appeals.

Q.4. Discuss the law relating to Bail. What is the basis for bail in a non-bailable case? What is anticipatory bail?

Q.5. Discuss the powers of Sessions Judge to transfer cases and appeals. Can he withdraw or recall any case or appeal? Discuss.

Q.6. "A person once convicted or acquitted shall not be tried again for the same offence", Comment. Are there any exceptions to this rule? If so, what?

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UNIT - V

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN] ACT, 2000

The Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 with a view to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

Definitions: In this Act, unless the context otherwise requires,

i. "advisory board" means a Central or a State advisory board or a district and city level advisory board, as the case may be, constituted under section 62;

ii. “begging” means-

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

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

iii. "Board" means a Juvenile Justice Board constituted under section 4;

iv. "child in need of care and protection" means a child –

a. who is found without any home or settled place or abode and without any ostensible means of subsistence,

b. who resides with a person (whether a guardian of the child or not) and such person-

I. has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

II. has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

c. who is mentally or physically challenged or ill child or children suffering from terminal diseases or incurable diseases having no one to support or look after,

d. who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

e. who does not have parent and no one is willing to take care of him or whose have abandoned him or who is missing and run away child and whose parents ca found after reasonable inquiry,

f. who is being or is likely to be grossly abused, tortured or exploited for the purpose sexual abuse or illegal acts,

g. who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

h. who is being or is likely to be abused for unconscionable gains,

i. who is victim of any armed conflict, civil commotion or natural calamity;

v. "children's home" means an institution established by a State Government or by voluntary organisation and certified by that Government under section 34;

vi. "Committee" means a Child Welfare Committee constituted under section 29;

vii. “competent authority" means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board;

viii. “fit institution" means a governmental or a registered non-governmental organisation or a voluntary organisation prepared to own the responsibility of a child and such organisation is found fit by the competent authority;

ix. "fit person" means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of the child;

x. "guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority;

xi. "juvenile" or "child" means a person who has not completed eighteenth year of age;

xii. "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence;

xiii. "local authority" means Panchayats at the village and Zila Parishad at the district level and shall also include a Municipal Committee or Corporation or a Cantonment Board or such other body legally entitled to function as local authority by the Government;

xiv. "narcotic drug" and "psychotropic substance" shall have the meanings respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

xv. "observation home" means a home established by a State Government or by a voluntary organisation and certificated by that State Government under section 8 as an observation home for the juveniles in conflict with law;

xvi. "offence" means an offence punishable under any law for the time being in force;

xvii. "place of safety" means any place or institution (not being a police lock-up or jail), the person incharge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile;

xviii. "prescribed" means prescribed by rules made under this Act;

xix. "probation officer" means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958);

xx. "public place" shall have the meaning assigned to it in the Immoral Traffic (Prevention Act, 1956 (104 of 1956);

xxi. "shelter home" means a home or a drop-in-centre set up under section 37;

xxii. "special home" means an institution established by a State Government or by a voluntary organisation and certified by that Government under Section 9;

xxiii. "special juvenile police unit" means a unit of the police force of a State designated for handling of juveniles or children under section 63;

xxiv. "State Government", in relation to a Union territory, means the Administrator of that Union territory appointed by the President under Article 239 of the Constitution;

xxv. all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

Section 3 provides that where an inquiry has been commenced against a juvenile in conflict with law or a child in need of care and protection and during the course of inquiry the juvenile or child ceases to be a juvenile, then the inquiry may be continued and orders may be made as if such person has continued to be a juvenile. This position will continue in spite of any provisions contained in this Act or any other law for the time being in force.

Section 4 of the Act makes provision regarding constitution of Juvenile Justice Board. The power to constitute such Board vests in the State Government. Such Board may be constituted for a district or group of districts specified in the notification issued by the State Government concerned.

Section 4(2) makes provisions regarding the personnel who shall constitute the Board. 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. Every bench of the Board shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a

Judicial Magistrate of the first class.

Sub-section (3) of Section 4 provides qualifications of Magistrates who can be appointed as members of the Board. Sub-Section (4) deals with term of office of the members of the Board and sub-section (5) provides for grounds and mode of termination of appointment of any member of the Board.

According to Section 6, the Board shall have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law except as otherwise provided in this Act.

Section 6(2) provides that the powers conferred on Board by or under this Act may also be exercised by 'he High Court and the Court of Sessions when the proceeding comes before them in appeal revision or otherwise.

Section 8(1) confers power of the State Government to establish and maintain observation homes in every district or a group of districts, as may be) required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act. Such observation homes may be established either by the State Government, themselves or under an agreement with voluntary organisation.

Under Section 8(2) the State Government is also empowered to certify any institution other than a home established or maintained under sub-section (1) of Section 8. The Government may certify that the institution is fit for temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act.

Section 8(3) empowers the State Government to make rules providing for the management of observation homes. Rules so made may also provide for the standards and various types of services to be provided by the observation homes for rehabilitation and social integration of the juvenile. The circumstances under which and the manner in which, the certification of an observation home may be granted or withdrawn may also be provided by such rules.

Section 8(4) provides for those cases where any juvenile is not placed under the charge of parent or guardian and is sent to an observation home. Every such juvenile shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles. Classification shall be made according to the age group of the juvenile such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years. While making such classification due consideration shall be given to physical and mental status and degree of the offence committed by him. This procedure has to be followed prior to further induction of the juvenile into observation home.

Section 9(1) empowers any State Government to establish and maintain special homes in every district or a group of districts for the reception and rehabilitation of juvenile in conflict with law. The State Government may either establish a special home itself or it may do so under an agreement with voluntary organisations.

Under Section 9(2) the State Governments have also been empowered to certify any institution, other than a special home established or maintained under section 9(1), that it is fit for the reception of a juvenile in conflict with law.

Section 9(3) empowers the State Government to make rules under this Act. These rules may provide for the management of special homes including the standards and various types of services to be provided by them. Such types of services shall be provided which are necessary for re-socialisation of a juvenile. These rules may also provide for the circumstances under which, and the manner in which the certification of a special home may be granted or withdrawn.

According to Section 9(4) the rules made under section 9(3) may also provide for the classification and separation of juvenile in conflict with law on the basis of age and nature of the offence committed by them and his mental and physical status.

Section 12 makes provision regarding granting of bail to juveniles. According to Section 12(1) any person who is a juvenile and is accused of a bailable or non-bailable offence may be released on bail notwithstanding anything contained in the Cr.P.C. or in any other law for the time being in force. A juvenile shall not be released on bail if there appear reasonable grounds for believing that the juvenile if released may come in association with may known criminal or the release may expose a juvenile to moral, physical or psychological danger or would defeat the ends of justice.

According to Section 12(2) if a juvenile is not released on bail under sub-section(1) by the officer incharge of the police station, such officer shall ensure that the juvenile is kept only in an observation home. A juvenile shall not be kept in a police station of jail until he can be brought before a Board.

In view of Section 12(3) when a juvenile is not released on bail under sub-section(1) by the Board, the Board shall instead of committing him to prison, make an order for sending him to an observation home, or a place of safety during the pendency of inquiry.

Section 13 provides that when a juvenile is arrested the Officer in-charge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be, after the arrest take the following action-

a) he shall inform the parent or guardian of the juvenile about his arrest and direct him to be present at the Board before which the juvenile will appear; and

b) he shall also inform the probation officer about such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances which are likely to be of assistance to the Board for making the inquiry.

Sub-section (1) of Section 15 deals with the orders that may be passed by a Board when the Court is satisfied on inquiry that a juvenile has committed an offence.

According to Section 15(3) the Board is empowered to order a delinquent juvenile to remain under the supervision of a probation officer named in the order. The Board may in such supervision order impose such conditions as it thinks necessary. The period of being kept in supervision of a probation officer shall not exceed three years. In view of proviso to Section 15(2) if it appears to the Board on receiving a report from the probation officer or otherwise that a delinquent juveniles has not been of good behaviour during the period of supervision it may after such inquiry as it deems fit, order the delinquent to be sent to a special home. The Board may also order a juvenile to be sent to a special home where the institution under whose

care the juvenile was placed in no longer willing or able to ensure the good behaviour and well-being of the juvenile.

Sub-section (4) imposes a duty on Board making a supervision order under sub-section (3) to explain to the juvenile and the parent, guardian or other person or institution under whose care the juvenile has been placed, the terms and conditions of the order. A copy of the supervision order shall be given to the Juvenile, the parent, guardian etc. or the sureties if any and the probation officer.

According to Section 16(1) the following orders cannot be passed against juveniles in conflict with law-

a) sentence of death;
b) sentence to imprisonment;
c) commitment of prison in default of payment of fine or in default of furnishing security.

However in a case where an offence has been committed by a juvenile who has attained the age of 16 years and in the opinion of the Board the offence is of so serious a nature and the conduct of juvenile is such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and manner as it thinks fit. The Board shall also report the case for orders of the State Government.

Aaccording to Section 16(2) when a report from a Board is received by the State Government, it ay make such arrangement in respect of the juvenile as it deems proper. The State Government may order the place where such juvenile is to be detained and the conditions under which he is to be kept. Provided that the period of detention so ordered by the State Government shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed by him.

Section 23 provides punishment for cruelty to juvenile or child. Under this section any person having the actual charge of, or control over, a juvenile or the child is punished. Such person can be punished if he assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering. He shall be punishable with imprisonment for a maximum period of six 110nths or fine or with both.

Section 34(1) empowers the State Government to establish and maintain either by itself or in association with voluntary organisations children's homes in every district or a group of districts for the reception of child in need of care and protection during the pendency of any inquiry. After the inquiry is over a children's home will serve the need of care, treatment, education, training, development and rehabilitation.

Under section 34(2) the State Government has power to make rules which may provide for the management of children's home. These rules may also provide for standards and the nature of services o be provided by them. The rules will also provide for the circumstances under which and the manner in which the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

Section 37(1) empowers the State Government to recognise reputed and capable voluntary organisations

and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required.

According to section 37(2) the shelter homes shall function as drop-in-centres for the children in need for urgent support who have been brought to such homes through persons referred to in section 32(1) of this Act.

According to section 37(3) as far as possible the shelter homes shall have such facilities as may be prescribed by the rules.

Section 64 makes provision regarding a juvenile in conflict with law undergoing sentence of imprisonment at commencement of this Act. In any area in which this Act is brought into force, the State Government or the local authority may direct that a juvenile of the category stated above shall in lieu of undergoing such sentence, be sent to special home or be kept in fit institution in such manner as the State Government or the local authority thinks fit for the remainder of the period of sentence. Further the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under section 16(2) of this Act.

THE PROBATION OF OFFENDERS ACT, 1958

The Probation of Offenders Act, 1958 was enacted in the year 1958. The reasons for enacting central legislation relating to the release of offenders on probation was stated in the Statement of Objects and Reasons as reported in the Gazette of India dated Nov. 11, 1957.

The Probation of Offenders Act, 1958 aims to provide for release of offenders on probation after due admonition and for matters connected therewith. With the emerg3nc9 of reformative theory of punishment the present Act has been enacted with a view to provide an offender the opportunity of improving his conduct so as to be able to live in the society. Its aim is the rehabilitation of the offender. If a chance offender is put in jail, he comes in contact with other criminals and the chances of his being reformed and made worthy of living in the society are diminished to a great extent.

The object of the Act has been re-stated by the Supreme Court in Jugal Kishore Prasad v. State of Bihar[1] - that is to prevent the conversion of youthful offenders into obdurate criminals as result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in Jai.

a) "Code" means the Code of Criminal Procedure, 1898 (5 of 1898);
b) "probation officer" means an officer appointed to be a probation officer or recognised as such under Section 13;
c) "prescribed" means prescribed by rules made under this Act;
d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (5 of 1898), shall have the meanings respectively assigned to them in that Code.

Section 3 of the Act deals with powers of the court to deal with certain offenders. Section 3 applies when any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or

Section 381 or Section 404 or Section 420 of the Indian Penal Code. It also applies in case of any offence punishable with imprisonment for not more than 2 years or" with fine or with both under the Indian Penal Code or any other law. The Court has power to release the offender after due admonition. The conditions necessary for application of Section 3 are as follows-

1. No previous conviction is proved against the person who has been charged of having committed an offence.

2. The Court by which the person is found guilty is of the opinion that it is expedient to do so.

3. The Court may form its opinion keeping in view the nature of the offence and character of the offender.

If the above conditions are fulfilled the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 of this Act release the-offender after due admonition. The power may be exercised by the court in spite of anything contained in any other law for the time being in force. That is even though there are provisions in some other law which are contrary to the powers of the court under this Section, the provisions of this Section shall prevail.

Explanation- The explanation annexed to Section 3 provides that for the purposes of this section previous conviction against a person shall also include any previous order made against him under Section 3 or Section 4 of the Probation of Offenders Act, 1958.

Section 4 of the Act deals with the power of the court to release certain offenders on probation of good conduct. Section 4(1) applies if following conditions prevail-

1) Any person is found guilty of having committed an offence.
2) The offence so committed must not be punishable with death or imprisonment for life.
3) The court by which the person is found guilty is of the opinion that it is expedient to release him on probation of good conduct.
4) The court may from such opinion having regard to (i) the circumstances of the case, (ii) the nature of the offence and (iii) the character of the offender.

If the above conditions are fulfilled, the court may, instead of sentencing him at once of any punishment, direct that the offender should be released on entering into a bond to appear and receive sentence when called upon during period of probation. The bond so directed to be taken may be with or without securities.

The period of probation will be such as the court may direct but it will not exceed three years. The probation order shall provide that the offender shall keep peace and be of good behaviour during the probation period.

Proviso to Section 4(1) states that an offender shall not be released on probation of good conduct unless the court is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

According to Section 4(2) before making any order under Section 4(1) the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

Section 4(3) empowers the court to pass a supervision order when an offender is released on probation of good conduct by an order passed under Section 4(1). The court shall pass the supervision order if it is of the opinion that such order is in the interest of the offender and it is expedient to do so in the interest of public. By the supervision order the court may direct that the offender shall remain under the supervision of a probation officer who shall be named in that order. The period of supervision shall be specified in the order but it shall not be less than one year. The court may also in such supervision order impose such conditions as it thinks necessary for the due supervision of the offender.

By sub-section (4) of Section 4 some other conditions are also provided when a supervision order is passed under Section 4(3). The court shall require the offender, before he is released to enter into a bond to observe the conditions specified in the supervision order. The bond may be required to be furnished either with or without sureties. Besides the conditions mentioned in the supervision order under Section 4(3), additional condition may also be imposed which shall be with respect to residence, abstention from intoxicants or any other matter, as the court may, having regard to the particular circumstances consider fit to impose. These conditions are imposed for preventing repetition of the same offence or a commission of other offences by the offender.

Sub-section (5) imposes certain duties upon the court while passing a supervision order under Section 4(3). The court shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision to each of the offenders, the sureties, if any, and the probation officer concerned.

Section: 5(1) of the Act deals with power of the court to require an offender released under Section 3 or Section 4 of the Act to pay compensation. Any order for payment of compensation shall be such as the court thinks reasonabie for loss or injury caused to any person by the commission of the offence. The court is also empowered to order payment of such costs of the proceedings as it thinks reasonable.

Sub-section (2) provides that the amount of compensation ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Section 386 and 387 of the Criminal Procedure Code.

Sub-section (3) lays down that where a Civil Court is trying any suit, arising out of the same matter for which the offender is prosecuted it shall take into account any" amount paid or recovered as compensation under sub-section (1) in awarding damages.

Section 6 deals with restrictions on imprisonment of offenders who are under twenty-one years of age. When such a person is found guilty of having committed an offence punishable with imprisonment the court shall not sentence to imprisonment. This restriction does not apply where the offence committed is punishable with imprisonment for life. Any offender under 21 years of age shall not be imprisoned unless the court is satisfied that it would not be desirable to deal with him under Section 3 or Section 4 of the Act. The satisfaction of the court shall depend upon the circumstances of the case, the nature of the offence and the character of the offender. In case the court passes any sentence of imprisonment in case of offenders under 21 years of age it shall record its reasons of doing so.

Sub-section (2) lays down that in order to satisfy whether it would not be desirable to deal under Section 3 or Section 4 with an offender as provided in sub-section (1) of this Section, the Court shall call for a report of the probation officer. While taking above decision the court shall consider the report of the probation officer and physical and mental conditions of the offender. Thus a decision will be taken by the court after considering the above things whether an offender should be dealt with under Section 3 or Section 4 or not.

Section 9 deals with the power of the court in case the offender fails to observe the conditions of bond. The power given under Section 9 shall be exercised by the court which passes an order under Section 4 of this Act in respect of an offender or any court which could have dealt with offender in respect of his original offence. The court may exercise its power on the report of a probation officer or otherwise. If the court on the basis of the report of a probation officer or otherwise has reason to believe that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant of arrest, or may, if it thinks fit, issue a summons to him and his sureties if any. The court may require the offender or the sureties to attend before it at such time as may be specified in the summons.

Sub-section (2) lays down that the court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail. Bail may be granted with or without surety, to appear on the date which it may fix for hearing.

According to Section 9(3) if the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may take following action-

a) the court may sentence him for the original offence; or
b) where the failure on the part of the offender is for the first time, then, the court may impose upon him a penalty not exceeding fifty rupees. The court may do so without prejudice to the continuation enforce of the bond already entered with by the offender.

Sub-section (4) provides that if a penalty imposed under clause (b) of Section 9(3) is not paid wit such period as the court may fix, the court may sentence the offender for the original offence.

IMPORTANT QUESTIONS

Q.1. Discuss the powers of the court to release offender on probation of good conduct under "The Probation of Offenders Act, 1958". When can the court vary the conditions of probation?

Q.2. What do you understand by "Neglected Child" as explained in the "Juvenile Justice Act, 1986"?

Q.3. a) Can a court make variations in the condition of the probation?
b) Whether the court has power to release certain offenders after admonition.

Q.4. Is any information made to parents or guardian or others after the arrest of juvenile? Whether the juvenile court has power to inquiry regarding delinquent juvenile?

Q.5. Discuss the constitution of Juvenile Courts.