# B.A.LL.B. Vth year

# Criminal Procedure Code :

## CLASSIFICATION OF COURTS :

Criminal Courts play an important role in administration of criminal justice. ChapterIIdealswiththeconstitutionofcriminalcourts.Therearefourclassesof criminal courts apart from High Court and SupremeCourt.

**Classification of Courts:** - Sec. 6 of the code classifies criminal courts as follows: -

**1) Supreme Court:** - It is the highest court of judicature in our country. It is empoweredtopassanysentenceincludinglifeimprisonmentanddeathsentence. It is empowered to hear appeals from various High Courts in the country. It is head by the Chief Justice of India.

**2) HighCourt:**-Itisthehighestcourtofjudicatureatstatelevel.Itisheadedby the Chief Justice of the state located at state capital generally it can pass any

sentence including life imprisonment and deathsentence.

It has over all superintendence over the courts of sessions and magistrates in the state. Its powers include appeal, reference, revision and transfer of suits.

**Court of Session:** -

**1) District Session Judge:** - The state government shall establish a court of session for every session division for each district. It is headed by District Sessions Judge appointed by the HighCourt.

**2) Additional Session Judge:**

**3) Assistant SessionJudge:**

The High Court may also appoint Additional Session Judge and Assistant Session Judge to exercise jurisdiction in the Court of Session.

An Assistant Session Judge is subordinate to sessions judge (Sec. 9)

**Powers:** - The Sessions Judge and Additional session Judge are empowered to pass any sentence including life imprisonmentand death sentenceand finewithout any limit. The life imprisonment and death sentence is subject to confirmation by the High Court.

The Assistant Sessions Judge is empowered to pass sentence upto 10 yrs imprisonment and fine without limit.

**4) CourtsofJudicialMagistrate:**-AccordingtoSec.11ofthecodethestatein consultation with the High Court establishes the courts of Judicial Magistrate. They are classified as follows:

**a) Chief Judicial Magistrate or Additional Chief Judicial Magistrate:** - In every district, a Judicial Magistrate of First class is appointed by the High Court to be the Chief Judicial Magistrate. Chief Judicial Magistrate is subordinate to session judge. Chief Judicial Magistrate is authorized to make rules for the distribution of business among Judicial Magistrate FirstClass.

He is empowered to pass sentence upto 7 yrs and fine without limit.

**b) FirstClassMagistrate(JudicialMagistrateorSpecialJudicialMagistrate of First Class):** - The state in consultation with High Court, may establish as many as the courts of judicial magistrates of First class and secondclass.

Thefirstclassmagistratecanpasssentenceupto3yrsandfineuptoRs.5000/-or 10000/-

**c) Second Class Magistrate:** - He can pass sentence of imprisonment upto 1 yr and fine upto Rs. 1000/- or5000/-

**5) Courts of Metropolitan Magistrates:** - The state govt can declare any town orcityasmetropolitanareaifthepopulationexceedsonemillion(10Lakhs).The Judicial Magistrate appointed in Metropolitan area are called Metropolitan Magistrates.

One of them may be appointed as the Chief Metropolitan Magistrate Sec. 16.

**a) Chief Metropolitan Magistrate or Additional chief Metropolitan Magistrate:** - His powers are equal to that of Chief Judicial Magistrate or Additional Chief Judicial Magistrate i.e. imprisonment upto 7 yrs and fine without limit (Sec17)

**b) Metropolitan Magistrates and Special Metropolitan Magistrate:** - A retired government servant may be appointed as special metropolitanmagistrate. Thepowersaresimilartothatofjudicialmagistrateorspecialjudicialmagistrate i.e upto 3 yrs imprisonment and fine upto Rs. 5000/- or 10000/- (Sec. 18)

**c) Executive Magistrates:** - In every districts and every metropolitan area, the stategovernmentisempoweredtoappointasmanypersonsasitthinksfititttobe executive magistrates. One of them is appointed as the District Magistrate.

Third it may also appoint any Executive magistrate to be an Additional District Magistrate.

The state government may also appoint special Executive Magistrate, for performing particular function of executive magistrate.

The code adopted the separation of judiciary from the executive. The judicial magistrate and metropolitan Magistrates are under the control of High Court. While the executive magistrate (District Collector Sub Collector and Tahsildar) are kept under the control of state government. Sec. 20)

## COGNIZABLE AND NON- COGNIZABLE OFFENCES :

**Cognizable offence Sec. 2(c):** - Cognizable offence means an offence for which apoliceofficermayinaccordancewiththeFirstscheduleorunderanyotherlaw for the time being in force, arrest withoutwarrant.

**Non cognizable offence Sec. 2(l):** - A non cognizable offence is one, for which a police officer has no authority to arrest without warrant.

Non–cognizableoffencesaremoretrivialandlessseriousthancognizable offences.

In cognizable offences police can arrest without warrant because the offender might escape by the time the police obtains a warrant.

A case cannot be partly cognizable and partly non – cognizable.

In non – cognizable offences police officer cannot investigate into it without the authority of Magistrate.

As shown in the First schedule of the code, all offences punishable with three yrs and above come within the purview of cognizable offences. While the offence punishable with less than 3 yrs fall under the category of differences between the cognizable and non-cognizable offences. However, this rule is subject to certain exceptions.

**Distinction between Cognizable and Non – Cognizable Offences:** -

| **Cognizable Offence** | **Non – Cognizable Offence** |
|---|---|
| 1) Cognizable offence is one, in respect of which a police officer can arrest without warrant. | 1) Non – Cognizable offence is one, in respectofwhichapoliceofficerhasno authority to arrest withoutwarrant. |

| | |
|---|---|
| 2) It is more serious in nature. Offences punishable with imprisonment for 3 yrs anabove would come under this category. | 2) It is less serious in nature.Offences punishable with imprisonment forless than 3 yrs would fall underthis category. |
| 3) The police officer can investigate the case without obtaining any orders or direction from the magistrate. | 3) The police officer cannot investigate the case withoutobtaining orders from the magistrate. |
| 4) Non bailable | 4) Bailable |

**Summons case and Warrant case:** -

**Warrant case (Sec 2(x)):** - Warrant case means 'a case relating to an offence, punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

**Summonscase(Sec2(w)):**-Summonscasemeans'acaserelatingtoanoffence and not being warrantcase.

**Distinction between Summons case and Warrant case:** -

| **Summons case** | **Warrant case** |
|---|---|
| 1) Summons case is less serious in nature. | 1) Warrant case is more serious in nature. |
| 2) Summons is addressed to the person summoned. | 2) Warrant is addressed to the police officer. |
| 3) Generally there is no participation of police machinery. | 3) Warrant cases contemplate participation of police machinery. |
| 4) Offences punishable upto twoyears imprisonment come within this category. | 4) Offences punishable with imprisonment exceeding 2 yrs including life imprisonment and death sentence come within this category. |

| | |
|---|---|
| 5) Formal charge need not be framed | 5) Framing of charge is necessary |
| 6) There is no stage of discharge of accused. | 6) There can be discharge of accused. |
| 7) The complaint can withdraw the case with the permission of the court. | 7) Such withdrawal is not allowed except in case of compoundable offences. |
| 8) Summons trial can be converted into warrant trial. | 8) Warrant trial cannot be converted into summons trial. |

**Bailable offence and Non - bailable**

Thecodewithreferencetobail,categorizedcertainoffences,intotwocategories namely –

1) Bailable offenceand

2) Non - bailableoffence,

**1) Bailable offence:-**

Bailable offence is one in respect of which a person arrested is entitled to be released on bail from the custody or detention.

Sec.2(a)defines"bailableoffence"meansanoffencewhichisshownasbailable in the First Schedule, or which is made bailable by any other law for the time being inforce;

Generallytheoffencespunishablewithlessthanthreeyearsimprisonment arebailable.

Sec.436ofthecodeconfersontheaccused,righttobailinbailableoffences.The court may grant bail against reasonablesecurity.

**2) Non – bailable offences:-**

AccordingtoSec.2(a)ofthecode,theotheroffenceswhicharenotshown as bailable under the First schedule are called “Non bailableoffences”

Non – bailable offences are more serious, when compared to the bailable offences.

Generally the offences for which punishment is 3 yrs imprisonment or more, are non bailable. However this rule is subject to certain exceptions.

**Distinction between Bailable and Non – Bailable offences: -**

| **Bailable Offence (Sec. 2(a))** | **Non – Bailable offence Sec. 2(l)** |
|---|---|
| 1) The accused is entitled to be released on bail. | 1) The accused may not be released on bail. |
| 2) The accused has a right to be released on bail. | 2) The accused has no right to be released on bail. However the person accused of non bailable offence may be released on bail, subject to judicial discretion. |
| 3) It is less serious is nature. | 3) It is more serious in nature. |
| 4) Generally, offences punishable with imprisonment for less than 3 yrs are bailable. | 4) Generally the offences punishable with imprisonment for 3 yrs or more are non bailable. |
| 5) A person to be accused of bailable offence cannot apply for anticipatory bail. | 5) A person to be accused of non – bailable offence can apply for anticipatory bail. |

**Compoundable and Non-compoundable Offences:**

**Criminal offences can also be classified as compoundable and non-compounable offences**

Compoundable offences are those offences where, the complainant (one who has filed the case, i.e. the victim), enter into a compromise, and agrees to have the charges dropped against the accused**.** However, such a compromise,

should be a "Bonafide," and not for any consideration to which the complainant is not entitled to.

Section 320 of the Cr.P.C looks at compounding of offences. Compoundable offences are less serious criminal offences and are of two different types mentioned in tables in Section 320 of the Cr.P.C, as follows:
1. Court permission is not required before compounding – Examples of these offences include adultery, causing hurt, defamation criminaltrespass.
2. Court permission is required before compounding – Examples of such offences are theft, criminal breach of trust, voluntarily causing grievous hurt, assault on a woman with intention to outrage her modesty, dishonest misappropriation of property amongstothers.

Application for compounding the offence shall be made before the same court before which the trial is proceeding. Once an offence has been compounded it shall have the same effect, as if, the accused has been acquitted of the charges.

# ARREST

**Meaning and Purpose:** - The expression Arrest literally means deprivation of personal liberty by a legal authority. It means apprehension of a person by legal authority resulting in deprivation of his personal liberty. It ensures presence of the accused at a trial.

**Arrest of a person may be necessary in certain circumstances:** -

1) For securing attendance of an accused at trial.
2) As a preventive or precautionarymeasure.
3) For obtaining correct name andaddress.
4) For removing obstruction topolice.
5) For retaking a person escaped fromcustody.

**The code provides for two types of Arrest:** -

1) Arrest withWarrant
2) Arrest withoutWarrant

1) **ArrestwithWarrant:**-AwarrantforarrestmaybeissuedbyaMagistrate after taking cognizance of an offence whether cognizable or non cognizable.Thepurposeofwarrantistocausetheaccusedtoappearbefore thecourt.Themagistrateissueswarrant,whenhehasreasontobelievethat the accused has absconded or would not obey thesummons.

**2) Arrest without Warrant: -** Arrest without warrant can be made under the following instances–

A) Arrest without warrant bypolice

B) Arrest by a privateperson

C) Arrest by a Magistrate

**A) Arrest without warrant by police:-**

Sec 41 of the code empowers a police officer to arrest a person without a warrant under the following circumstances:-

i) Any person actually concerned or reasonably suspected to be concerned in a cognizableoffence.

ii) Any person who is in possession without lawful excuse of any implement of house breakingor

iii) Anypersonwhohasbeenproclaimedasanoffendereitherunderthiscodeor by order of the state governmentor

iv) Any person in whose possession anything is found which may reasonably be suspected to be stolen propertyor

v) Any person obstructing a police officer in the discharge of his duties or any person who has escaped or attempts to escape from lawfulcustody.

vi) Any person, who is deserter from any of the Armed Forces of theUnion.

vii) AnypersonwhoisconcernedinanyactcommittedatanyplaceoutsideIndia, which if committed in India would be punishable as an offence and for which he is liable to be apprehended or detained in custody in India under the law of extradition or

viii) Any released convict committing a breach of any rule made u/s.365(5).

ix) Anypersonforwhosearrestanyrequisition(whetherwrittenororal)hasbeen received from another police officer for the arrest of thatperson.

x) If a person, in the presence of police officer is accused of committing a non cognizable offence and refuses to give his name and address. (Sec42)

xi) Any person who is a robber, thief, house-breaker, habitual receiver of stolen property, habitual kidnapper or abductor under this clause the arrest of such person can only be made by officer-in-charge of a policestation.

**B) Arrest by Private Person:-**

A private person may arrest any person –

a) If he commits a non-bailable and cognizable offenceor

b) If he is a proclaimedoffender.

He shall without any delay make over such person to a police officer or nearest police station.

If the police officer has reason to believe that such person falls under any of the clauses of Sec. 41 the police officer must re-arrest him.

If there is no sufficient reason to believe that he has committed any offence, such person is to be released forthwith.

If private person keeps the arrested person in his own custody, he would be guilty of the offence of wrongful confinement u/s 342 of IPC.

**C) Arrest by Magistrate:-**

Any Magistrate, whether judicial or executive may arrest a person within his jurisdiction: -

a) Any person who commits an offence in hispresence.

b) Any person for whose arrest, he is competent to issue awarrant.

**Caselaw: - Swami Harharnand Saraswati v/s The Jailer Dist Jail Banaras:**

**Held:** - A Magistrate arresting a person u/s 44(1) of the code should not try the case himself. The person so arrested by the magistrate shall be produced within 24 hours before another magistrate, otherwise the arrest becomes illegal.

**Protection of members of the Armed Forces from Arrest Sec. 45:** - No member of the Armed forces in India can be arrested for anything done or purported to be done by him in the discharge of his official duties, his arrest requires the consent of central government.

**Arrest how made Sec. 46:** - If the person to be arrested submits to the custody by word or by action, he can be taken into the custody, otherwise, the police officermaytouchorconfinehisbody.Ifheresistorattemptstoevadearrest,the police officer may use force. He cannot be killed unless he is charged with an offence punishable with death or imprisonment forlife.

**Other provisions regarding Arrest:** -

**Powertosearchaplace(Sec47):**-Policeofficercanenterandsearchtheplace entered by the offender. He can break any door or window for entering in the sameifrequired.Ifthereisanyoccupancyofpardanashinlady,thepoliceofficer must give notice to the lady to withdraw therefrom before entering in that premises.

**Power to pursue (Sec. 48):** - A police officer may for the purpose of arresting withoutwarrantanypersonwhomheisauthorizedtoarrest,pursuesuchaperson into any place inIndia.

**Sec. 49:** - The person arrested is not to be subjected to any more restraint than is necessary for preventing his escape.

**Sec. 50:** - The person arrested should be informed of the grounds of arrest. If personisarrestedforbailableoffencepoliceofficermustinformtohimthatheis entitled to be release don furnishingbail.

**Sec 51:** - After making arrest police officer may search such person and all articles except wearing must be placed in safe custody and a receipt should be issued.

Search of female should be made only by another female with strict regard to decency.

**SeizureofoffensiveweaponsSec52:**-Ifthearrestedpersonisinpossessionof any offensive weapons, they should be seized and delivered to thecourt.

**Medical examination of accused (Sec 53):** - If the medical examination of arrested is required to be done, may be done by the police officer not below the rank of PSI.

Ifthepersontobeexaminedisfemale,examinationcanbemadebyorunderthe supervision of a female registered medicalpractitioner.

**Sec 56/57:** - After arrest police officer must without any unnecessary delay produce the arrested person before magistrate i.e maximum within 24 hours journey period from the place of arrest to magistrate's court is excluded for the purpose of computing this period of 24 hours.

**Sec 59:** - Arrested person cannot be discharged by police officer except on his own bond, or his own bail or order of the magistrate.

**Sec.60:**-Ifarrestedpersonescapesfromlawfulcustody,thepersonfromwhose custodyheescapes,canimmediatelypursueandarresthiminanyplaceinIndia.

**Rights of Arrested Persons:** -

**a) Right of the accused to know the grounds of his arrest**. (Art 22(1), Sec.50, 55 and 75 Cr. P.C)**:**

As per Section 50(1) of Cr.P.C., where a person arrested without warrant is entitled to know the full particulars of offence for which he is being arrested and where a person is arrested with warrant, he must be notified the particulars of such warrant, or even show such warrant if needed. Sec. 75 of Cr.P.C.

b) **Right of the accused to know the information relating to the release on bail**. Sec50(2):

Anypersonwhoisarrestedwithoutawarrantandisaccusedofabailable offence has to be informed by the police officer that he is entitled to be released on bail on payment of the suretyamount.

**c) Right of the accused to be taken before a Magistrate without delay**. (Sec 56 and76)**:**

Irrespective of the fact, that whether the arrest was made with or without a warrant, the person who is making such arrest has to bring the arrested person before a judicial officer without any unnecessary delay. By Sec 56 and 76 of the code, an accused has to be produced before a magistrate within the 24 hrs.

d) **Right of the accused not to be detained for more than 24 hours without judicial scrutiny** (Art. 22(2) and Sec.57)

**e) Rightoftheaccusedtoconsultalegalpractitionerofhischoice.**(Art.22(1) and Sec. 303)**:**

This has been enshrined as a fundamental right in Article 22(1) of the Constitution of India, which cannot be denied in any case. Section 50(3) of the Code also lays down that the person against whom proceedings are initiated has a right to be defended by a pleader of his choice.

**f) Right of the accused to be examined by a medicalpractitioner.**

Section 54 of Cr.P.C. enumerates this right. If requested by the arrested personsotododirectthe examinationofthebodyofsuchpersonbyaregistered

medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

g) **Right of the accused person to get free legal aid** and to be informed about that (Art. 21 and Sec.304)

A duty is imposed on all magistrates and courts to inform the indigent accused of his right to get free legal aid.It is clear that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial entailing setting aside of the conviction and sentence.

**h ) Right to free, fair and speedy trial:**

Asjusticedelayedisjusticedenied,theconceptofspeedyandexpeditious trial was introduced by which the accused person is given fair and impartial justicequickly.

**I ) Presumption of Innocence:**

In Blackstone’s famous words, "it is better that ten guilty persons escape thanthatoneinnocentsuffer".Theessenceofcriminaltrialliesinthattheaccused is to be presume innocent until a charge is proved against him without any reasonabledoubt.

**j)Right to privacy and protection against unlawful searches:**

The police officials cannot violate the privacy of the accused on a mere presumptionofanoffence.Thepropertyofanaccusedcannotbesearchedbythe police without a searchwarrant.

**K)Right to be present during trial:**

Section 273 of the Code provides that all evidence and statements must be recorded in presence of the accused or his criminal lawyer.

**l) Right to get Copies ofDocuments:**

The accused has the right to receive copies of all the documents filed by the prosecutor in relation to the case.

**m) Right to be present at the trial:** The accused person has the right to be present during his trial and have testimony presented in front ofhim.

**n) Right to cross-examination:** The accused has the right to be cross-examined by the prosecutor to prove hisinnocence.

**o) Right to Appeal:** The rights of arrested persons include the right to filean appeal against his conviction in a highercourt.

**p) Right to Humane Treatment in Prison:** The accused has a right to have all his human rights when in prison and be subjected to humane treatment by the prison authorities.

**Cases**

In, **Nandini Sathpathy v. P.L.Dani** 1978 SCR (3) 608,wherein it was held that no one can forcibly extract statements from the accused and that the accused has the right to keep silent during the course of interrogation (investigation).

In, **D.K. Basu v. State of W.B** (1997) 1 SCC 416,the Supreme Court, in this case, issued some guidelines which were required to be mandatorily followed in all cases of arrest or detention which include, the arresting authority should bear accurate, visible, and clear identification along with their name tags with their designation, the memo be signed by the arrestee and family member, the family or the friend must be told about the arrest of the accused, The arrestee may be

permitted to meet his lawyer during interrogation, though not throughout the interrogation and many other.

## Information in cognizable cases (FIR) ( S. 154)

Every person who is aware of the commission of an offence or of the intentionofanyotherpersontocommitanoffencehasadutytoinformthesame tothepoliceofficer.Thenthepoliceofficerrecordstherepotanditiscalled First Information Report.

First Information Report is not defined in the code. Every information relating to cognizable offence is FIR

It is information related to the commission of a cognizable offence given tothepoliceorallyorinwriting,inordertoputthepoliceinmotiontoinvestigate thematter.

**Object of FIR**: - The object of FIR is to obtain information about the alleged criminalactivitysoastobeabletotakeappropriatestepsfortracingandtobring the guilty person behind thebars.

Formalities or Essentials requirements of FIR: - According to Sec. 154 the following requirements are to be compiled with in respect of FIR.

i) It is an information given to policeofficer.

ii) It must relate to commission of cognizableoffence.

iii) It is an information first in timeand

iv) It is an information which forms basis for investigation.

If the informant gives information orally the police officer shall reduce it in writing and read over the contents to the informant. The information

should be signed by the person giving it. The police officer should enter its substance in a book meant for the purpose.

If the police officer receives information in writing he should see that it is signed by the informant. He has to record its substance in a book meant for the purpose.

1. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; andeverysuchinformation,whethergiveninwritingorreducedtowriting as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form astheStateGovernmentmayprescribeinthisbehalf.

   Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section[2]376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer;[1]

   Provided further that—

   1. in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section[2]376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 ofthe

Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

2. the recording of such information shall be videographed;

3. thepoliceofficershallgetthestatementofthepersonrecordedbya Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon aspossible.[1]

2. AcopyoftheinformationasrecordedunderSub-Section(1)shallbegiven forthwith, free of cost, to theinformant.

3. Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the substance of such information, in writing and by post, to the SuperintendentofPoliceconcernedwho,ifsatisfiedthatsuchinformation discloses the commission of a cognizable offence, shall either investigate thecasehimselfordirectaninvestigationtobemadebyanypoliceofficer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to thatoffence.

**Information as to non-cognizable cases and investigation of such cases (Section 155 –)**

1. Wheninformationisgiventoanofficerinchargeofapolicestationofthe commissionwithinthelimitsofsuchstationofanon-cognizableoffence,heshall enterorcausetobeenteredthesubstanceoftheinformation inabooktobekept bysuchofficerinsuchformastheStateGovernmentmayprescribeinthisbehalf, and refer, the informant to theMagistrate.

2. Nopoliceofficershallinvestigateanon-cognizablecasewithouttheorder of a Magistrate having power to try such case or commit the case fortrial.

3. Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizablecase.

4. 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, notwithstanding that the other offences arenon-cognizable.

**INVESTIGATION:**

A person accused of an offence is tried under three stages namely Investigation, Inquiry and Trial. Section 2(h) and 2(g) of the code defines investigation and inquiry, respectively. But the code has not defined Trial.

Sec 2(h) investigation" includes all the proceedings under this Code for the collectionofevidenceconductedbyapoliceofficerorbyanyperson(otherthan a Magistrate) who is authorized by a Magistrate in thisbehalf;

No oath shall be administered to the person examined or interrogated during investigation.

**Object:** - The main object of the investigation is to collect the evidence for the purpose of any inquiry or trial.

In non – cognizable case, investigation commences with the order of the magistrate u/s 155 of Cr PC.

Whenacognizableoffencesuspected,investigationcommenceswhenthepolice officer has sent his report to the magistrate concerned u/s 157 of the code or has received an order from him to investigate into theoffence.

It is the statutory power of the police to investigate into cognizable cases.

Broadly speaking, the investigation of an offence consists of –

1) Proceeding to the place ofoffence.

2) Ascertainment of the facts and circumstances of thecase.

3) Discovery and arrest of the suspectedoffender.

4) Collection of evidence relating to the commission of offence which may consist of –

a) The examination of various persons (including the accused) and the reduction of their statements into writing if the police officer making the investigation thinks fit.

b) The search of places or seizure of things considered necessary for the investigation ortrial.

5) Formationofopinionastowhetheronthematerialcollected,thereisacaseto placetheaccusedbeforeamagistratefortrialandifsotakingthenecessarysteps for the same by filing of a charge sheet (challan) u/s173.

**Police when to investigate: -**

The principal agency for carrying out investigation of offences is the police and the police can proceed to investigate –

a) On the information received from any person as to the commission of any cognizable offence (Sec157(1))

b) Even without any such information, but if they have reason to suspect the commission of any cognizable offence. (Sec157(1))

c) On receiving any order from any judicial magistrate empowered to take cognizance of any offence u/ s190 (Sec156(3))

If a competent judicial magistrate considers it as desirable that a non cognizable offenceinaparticularcaseshouldbeinvestigatedintobypolice,hecanorderthe police to doso.

**Power of police officer to seize certain property (Section 102)**

1. Any police officer may seize any property which may be alleged or suspectedtohavebeenstolen,orwhichmaybefoundundercircumstances which create suspicion of the Commission of anyoffence.
2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to thatofficer.
3. EverypoliceofficeractingunderSub-Section(1)shallforthwithreportthe seizuretotheMagistratehavingjurisdictionandwherethepropertyseized

is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertakingtoproducethepropertybeforetheCourtasandwhenrequired andtogiveeffecttothefurtherordersoftheCourtastothedisposalofthe same.

**Provided** that where the property seized under Sub-Section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

**When search-warrant may be issued:**

A search warrant is a written order issued by a competent Magistrate or a Court directing a police officer or other person to take search of any place either generallyorforspecifieddocumentsorthingsorforpersonswrongfullydetained.
Since a search involves invasion of the sanctity and privacy of individuals, the CourtortheMagistrateshouldexerciseutmostcareandcautionwhileusingtheir powertoissueasearchwarrant.TheMagistrateisrequiredtorecordreasons

beforeissueofasearchwarrant.Anillegalorderofsearchandseizureshallvitiate the seizure of thearticles.

Section93(1)(c)ofCrP.C.comprehendsasituationwheretheCourtmayissue a search warrant before proceedings of any kind are initiated and, in view of an enquiry about to be made, when the Magistrate considers that the purpose of an inquiry, trial or other proceeding under the Code will be served by a general searchorinspectiontosearch,seizeandproducethedocumentsmentionedinthe list.

When such a general search warrant is issued, in execution of it the premiseseveninpossessionoftheaccusedcanbesearchedanddocumentsfound thereincanbeseizedirrespectiveofthefactthatthedocumentsmaycontainsome statement made by the accused upon his personal knowledge and when proved may have any tendency to incriminate the accused, though it may not have even the remotest tendency to compel the accused to incriminatehimself.

Clause (b) of Section 93 (1) refers to a specific situation when there is a definite allegation to recover certain document or thing from a particular place or premises but the Court is unaware of the fact whether that document or thing or the place is in possession of a particular person.

The Supreme Court in V. S. Kuttan Pillai v. Ramkrishnan and another, made it abundantly clear that the constitutional immunity against self-incrimination extends to any incriminatory evidence which the accused may be compelled to give, but it does not extend to cover such situation as where evidence which may have tendency to incriminate the accused is being collected without in any manner compelling him or asking him to be a party to the collection of evidence.

Searchofthepremisesoccupiedbytheaccusedwithouttheaccusedbeing compelled to be a party to such search would not be violative of constitutional guarantee enshrined in Article 20 (3) of the Constitution. The Court in its concluding remarks held that there is no doubt that issuance of a search warrant is a serious matter and Court should not dispose it of in a mechanicalway.

The Code provides six circumstances under which a search warrant may be issued and three of them are mentioned in sub-sections (1) (a), (b) and (c) of this section.

The issue of a search warrant whether general or special under Section 93 is an integral step in the investigation, of a case. The search and seizure being only a temporary interference with the right of a person to hold the premises searched, it is a reasonable restriction and, therefore, it is not per se considered unconstitutional under Article 20 (3) of the Constitution

TheSupremeCourtinM.P.Sharmav.Stateobservedthatasearchbyitself isnotarestrictionontherighttoholdandenjoypropertyasitisonlyatemporary interference with the right to hold in premises searched and the articles seized. Therefore, it cannot be said that it is violative of Article 19 (1) (f) of the Constitution.

Sub-section (2) does not make it mandatory to specify the place to be searched in the warrant. A direction to search any house which the officer thinks necessary will not render the warrant illegal merely for this reason.

The final order of disposal of documents seized in execution of a search warrant is to be made by the Court. Therefore, an application for this purpose should be made to the concerned Court.

A person aggrieved by a search warrant issued against him may seek recourse to any of the remedies stated below:

(1) HemayfileawritpetitionunderArticle226oftheConstitutionforquashing of the illegal search warrant and for the restoration of the articles or documents seized during thesearch.

(2) HemayfilearevisionpetitionunderSection401,Cr.P.C.ifitcanbeshown thattheMagistratedidnotapplyhismindjudiciallyandissuedsearchwarrantin a routine manner and arbitraryfashion

(3) He can sue the person who had executed the illegal search warrant for actionable trespass and claim damages againsthim.

**Procedure by police upon seizure of property ( Section 457)**

Thesectionisapplicabletocaseswhereseizureofthepropertyisreported by police officer to the Magistrate and such property is not produced before a Court during an inquiry or trial. Thus the Magistrate can act under this section onlywhentheseizureofthepropertyisreportedtohim.Heisempoweredtopass anorderinrelationtosuchpropertyineitherofthethreewaysasstatedbelow:—

(i) He may order disposal of the property; or (ii) Deliver it to the person entitled to its possession subject to condition, as he deems fit; or (iii) In the absence of person entitled, he may order for its custody and its production.The Court should exercise discretion in this regard keeping in view the interests of justice and prospective necessity of the production of property seized at the time of inquiry or trial. If the Court forms an opinion that the seized property would notbeneededinanymannerinanystageoftheinquiryortrial,itmayreleasethe propertyinfavouroftheclaimantonfurnishingadequatesecurity.Thissection

comesintoplaywhenapoliceofficerseizesarticlesfoundduringtakingasearch of a person arrested or seizes any property which may be alleged or suspected to have been stolen and found in circumstances creating suspicion of the commission of any offence. The police are required to report about such seizure to the Magistrate or an interested party may also bring it to the notice of the Magistrate requesting for the restoration of the seized property to him. In these situations the Magistrate acts under Section457.

It is not necessary that the Magistrate to whom the seizure has been reported by the Police or a private party should have jurisdiction to hold inquiry or trial in the case in which that property is involved as that property is not required to be produced before the Magistrate.

In fact, this reporting of seized property to the Magistrate by the Police or the interested person refers to the stage of investigation of the case when inquiry or trial has not yet commenced. Therefore, if the Magistrate is of the opinion that the said property may be required to be produced at the time of inquiry or trial, then he may order for its custody and production when required. But before making such order, the party who is affected thereby should be given an opportunity to be heard.

Generally, when no offence is proved and the proceedings are dropped by the Court, the property is returned to the person from whom it was recovered or seized.ButwheretheCourtformsanopinionthatthepropertyhasbeenobtained bysuchpersonbymeansofanyoffence,itmaynotorderdeliveryoftheproperty to him but decide about its disposal on merits of thecase.

The order of the Magistrate under Section 457 relates only to the possession of the property and not the ownership of it. The Court has to exercise its judicial discretion to ensure that the property is returned to the rightful

possessor, if it is not required to be produced before the Court at the time of inquiry or trial whenever it begins.

Once the property is seized by the Police under the circumstances mentioned above, irrespective of the fact whether the investigation by the police discloses an offence or not, the disposal of the property can only be ordered by the Court, and police have no power to order disposal of the seized property without an order of a judicial Magistrate under this section.

Before returning the property to the person from whose possession it was seized or recovered or to any other rightful possessor thereof, the Court has to ensure that two conditions are fulfilled, namely, (1) it must have been seized by the police; and (2) it is not required to be produced before the Court at the time ofinquiryortrial.Ifthepropertyislikelytoberequiredforproductionbeforethe Court in inquiry or trial, then it may bewithheld.

Theprovisionsofthissectionhavenoapplicationincaseofseizurebythe officials of the forest department or the Excise or Customs department. Thus the seizure of a truck and a trolley by the Forest Ranger under the Wild Life Protection Act could not be said to be a seizure by the police within the meaning of Section 457 and, therefore, an application under this section is not maintainable.

Likewise, since the seizure by customs official cannot be said to be a seizure by the police, therefore, the Magistrate has no power under Section 457 to order release of the property seized by the customs officials.

IncaseswheretheMagistratehasnopowertoholdinquiryortrialundertheCode but only has the power to commit the case to the Court of Session, he will have no jurisdiction to pass an order of disposal of the seized property under Section 457 of Cr.P.C.

In Moosakoya v. State of Kerala, the validity of confiscation of vehicle whichwasusedforillegaltransportationofsandwaschallenged.TheHighCourt held that the District Collector was not vested with the power to confiscate a vehicle, hence vehicle seized was liable to be returned to the owner if he remits the amount fixed by the DistrictCollector.

The Orissa High Court in Guru Charan Singh v. State of Orissa, held that onreportofPoliceOfficerofseizureofpropertytoMagistratehavingjurisdiction to try the offence, the Magistrate could release the seized property in interim custody of the owner under Section 457 of the Code of CriminalProcedure.

## PROCESS TO COMPEL APPEARANCE

There are 4 ways or processes to compel a person to appear in court viz:

A) Summons (Sec61-69)

B) Warrant of Arrest (Sec.70-81)

C) Proclamation and Attachment (Sec.82-86)

D) Other processes (Sec.87-89)

**Summons:** - A summons is a form of a process issued by a court, calling upon a person to appear before a magistrate.

**Form of Summons:** - Summons shall be in writing, in duplicate, and must be signed by the presiding officer of the court. It bears the seal of the court. It is to be noted that a summons should be clear and specific in its terms, as to the descriptionofcourt,theplace,dateandtimeatwhichthepersonsummonedisto attend.

Summons may be served by a police officer or an officer of a court or a publicservant.Itmaybeservedtoapersonconcernedi.eanaccused,orawitness or the Head of the Institution / Organization, where the person summoned is employed.

**Procedure for Service of Summons: -**

**Personal Service (Sec 62): -** Summons shall be served as far as possible, personallytothepersonsummonedbydeliveringhimthefirstcopyandshallget the acknowledgement by obtaining his signature on the back of theduplicate.

**Service of Summons on corporate bodies and societies (Sec 63): -** Service of summons on corporation or society may be effected by serving it on –

a) TheSecretary

b) Local Manager

c) Other PrincipalOfficer

d) Service by letter sent by registered post to the chief officer of corporation in India.

**Service on member of the family (Sec. 64): -** If the person summoned is not found it may be served to an adult male member of the family. It is necessary to establish that all necessary efforts are made to find the person summoned.

**Substituted Summons (Sec 65): -** Service when other method fails:

In case, it is not possible to serve summons under above means Sec. 65 of the code provides for substituted service. If the summons could not be served in personaduplicatecopyofthesummonsistobeaffixedtosomeconspicuouspart of the house. (Dooretc)

**Serviceofsummonsonpublicservant(Sec66)**:-Incasethepersonsummoned is a public servant, it is to be served to the Head of Department. The Head of Departmentshallseethatitispersonally,servedtohimandtheduplicatecopyof the summons duly signed by the HOD must be returned to thecourt.

**Service of summons outside the limits of jurisdiction (Sec. 67):** - When the courtservesummonedoutsideitsjurisdictionshouldbeservedinduplicatetothe magistrate of the local jurisdiction, where the person summonedresides.

**Serviceofsummonsonwitnessesbypost(Sec69):** -Wheresummonsisserved to witness, a copy of the same should be sent simultaneously to his residential address by the registeredpost.

**B) Warrant of Arrest (Sec 70-81):** - Ordinarily a warrant is issued only in serious cases and after a duly served summons is disobeyed or if the accusedhas willfully avoided the service ofsummons.

Warrantmeansawrittenorderofacourtaddressedtooneormorepoliceofficers directing to arrest a person whose name and address is given with the offence charged, for the purpose of producing him before the court on a specified date and time.

**Requirements of a Valid Warrant:** -

i) It must be inwriting.

ii) It must be signed by the presiding officer of the court issuing thewarrant.

iii) It must bear the seal of thecourt.

iv) it must contain the description of the person to be arrested with sufficient certainty so as to identify himclearly.

v) It must clearly specify theoffence.

vi) It must also name the person who is to execute suchwarrant.

A warrant of arrest is normally to be directed, to one or more police officers, but if no police officer is immediately available, a warrant of arrest can be directed to any other person.

**Power to direct security to be taken (Sec 71): -**

Any court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bondwithsufficientsuretiesforhisattendancebeforethecourtataspecifiedtime and thereafter until otherwise directed by the court, the officer to whom the warrant is directed, shall take such security and shall release such a person from thecustody.

Sec 73 empowers the CJM or Magistrate of First Class to direct a warrant to any person within his local jurisdiction for the arrest of –

i) Any escaped convicts–

ii) Proclaimed of offenderor

iii) Any person accused of a non – bailable offence, who is avoidingarrest.

**Notification of substance of Arrest (Sec 75)**: -

ThePoliceofficertowhomwarrantisaddressedshallnotifythesubstance of the warrant to the person to be arrested, and shall show it to him ifnecessary.

**Person arrested to be brought before Magistrate without delay (Sec 76)**: - Afterarrestismade,thepersonarrestedshouldbepresentedbeforethemagistrate within 24 hours. The journey period from place of arrest to the court is excluded for the purpose of computing 24hours.

**Where warrant may be executed (Sec. 77):** - The warrant may be executed anywhere in India.

**Warrant forwarded for executed outside Jurisdiction:** -

Wherewarrantistobeexecutedoutsidethejurisdiction,suchwarrantmay beforwardedbyposttotheconcernedExecutiveMagistrateorSuperintendentof Police or Commissioner of police so as to cause execution of thatwarrant.

**Difference between Summons and Warrant:** -

1) Summons is an order to a person to appear before thecourt.

Warrant is an order to a police officer to arrest and produce the person.

2) Absconding for avoiding the service of warrant ispunishable.

But absconding for avoiding the service of summons is not punishable.

3) The provisions relating to substituted service of summons are peculiar to the case of summons and do not apply towarrant.

**C) Proclamation and Attachment (Sec 82-86):** - When the Summons served and warrant issued could not serve the purpose of making / compelling the appearanceofthepersonaccusedofanoffence,thecourtmayresorttofurther

stepofproceedingu/s82&83andissueproclamationandattachpropertyofthe accused.

**Proclamation (Sec. 82): -**

ThewordProclamationliterallymeansannouncement.Whereapersonis accused of an offence absconds or conceals himself, the court resorts tocompel

his appearance before the court by the process called ‘Proclamation’. The word ‘abscond’ means ‘to hide himself’.

The court may publish a written proclamation requiring him to appear at a specifiedplaceandatspecifiedtime,whichshouldnotbelessthan30daysfrom the date of publishing theproclamation.

**Such a proclamation is to be published as follows: -**

i) It must be publicly read in some conspicuous place of the town in which such person ordinarilyresides.

ii) It must be affixed to some conspicuous part of the house whose such person ordinarily resides.

iii) A copy of the proclamation must also be affixed to some conspicuous part of thecourt.

iv) If the court so directs, a copy of the proclamation is also to be published in a daily newspaper.

The proclamation which does not mention the time within which the abscondent should remain present himself, proclamation is void.

**Attachment of Property (Sec 83-85):** - At any time after the issue of the proclamation, the court may issue an order of attachment of any property, movable or immovable, of the proclaimed offender. Such an order of attachment can also be issued simultaneously with the proclamation in the following two cases:

i) If such a person about to dispose of the whole or any part of his propertyor

ii) If such person is about to remove the whole or any part of his property from the local jurisdiction ofcourt.

If the property ordered to be attached is a movable property, the attachment shall be made –

a) by seizure or

b) by the appointment of receiveror

c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on hisbehalf.

If property ordered to be attached is immovable, attachment to be made through collector and in all other cases –

a) by taking possessionor

b) by the appointment of a receiveror

c) by an order in writing the payment of rent on delivery of property to the proclaimed person or to any one on his behalfor

d) any manner as court thinksfit.

If the property ordered to be attached consists of live stock, or is of a perishable nature the court may order immediate sale thereof.

If the proclaimed offender appears within the time specified in proclamation, the court releases the property from attachment.

Ifhedoesnotappear,thepropertyremainsatthedisposalofthestategovernment and may be sold after six months after the date ofattachment.

The sale proceeds must be kept in deposit for two years.

**search-warrant**

Legal provisions regarding when search-warrant may be issued under section 93 of the Code of Criminal Procedure, 1973.

(1) (a) Where any Court has reason to believe that a person to whom a summons ororderunderSection91orarequisitionundersub-section(1)ofSection92has been,ormightbe,addressed,willnotorwouldnotproducethedocumentorthing asrequiredbysuchsummonsorrequisition;or(b)Wheresuchdocumentorthing is not known to the Court to be in the possession of any person;or

(c) When the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant, and the person, to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part sospecified.

(3) Nothing contained in this Section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search fora

document,parcelorotherthinginthecustodyofthepostalortelegraphauthority. A search-warrant under Section 93 can be issued only in threecases:

(i) WheretheCourthasreasontobelievethatthepersonsummonedtoproducea document or thing will not produceit;

(ii) Where the document or thing is not known to be in the possession of any person;

(iii) Where a general inspection or search isnecessary.

Search-warrant should be issued on petition using the Form No. 10 in Schedule II of the Code. The Magistrate may amend the warrant dispensing with the production of the articles before him.

The warrant must:

(a) Be in writing,and

(b) Contain all the matters that the law requires it to be statedtherein.

The Court issuing the search warrant under Section 93(1)(a) must have reasonto believe that the person against whom the search warrant is issued is not likely to producethedocumentorthinginhispossessioninpursuanceofameresummons or order under Section 91 or a requisition under Section 92(1). The Magistrate should give reasons for exercising his discretion in granting the issue of search-warrant.

The search under Section 93 must be for some specific article or thing or document and not for stolen property. The law does not authorize for search of anything but specified articles which have been or can be made the subject of summons or warrant to produce. A general search-warrant can only be issued if

the Court considers that the purpose of any enquiry, trial or other proceeding of the Code would be served by such search. General search warrant cannot be

issued when the person, in whose possession a thing lay, is known andthe place where the things lay is alsoknown.

Magistrate should not issue search-warrant on mere asking of a party. Instead, he must conduct necessary enquiry, apply his judicial mind and satisfy himself objectively about its necessity and record reasons in support of his satisfaction.

A search warrant issued under section 93 should ordinarily be directed to one or more police officers. The Court may also issue search-warrant under section93toanyotherpersonifitsimmediateexecutionisnecessaryifnopolice officer is immediatelyavailable.

The power of search given by this Section includes also the power to take possession of the document or thing. When documents or things seized by virtue of a search-warrant are brought before the magistrate, he would have power to allow the parties inspection thereof in Court.

Where the person against whom a search warrant is issued prays for the stay thereof and offers to produce the document or thing before the court whenever required, the magistrate has jurisdiction to stay execution of the warrant conditionally on the execution of a bond.

A search in contravention with the provisions of section 93 is clearly illegal. A petition under Article 226 of the Constitution would lie for quashing an illegal search-warrant and for returning seized document or thing.

A revision also lies against an order of illegal search-warrant. A person aggrieved by an illegal search has also remedy in a civil court for an actionable

trespass. A suit for damage in such circumstance lies against those who have executed an illegal search-warrant.

Anissuanceofsearch-warrantisaseriousmatteranditwouldbeadvisable not to dispose of an application for search-warrant in a mechanical way. A clear application of mind by the Magistrate must be discernible in the order granting thesearch-warrant.

## CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS.

### SECTION 190.Cognizance of offences by Magistrates.

Thewordcognizanceisofgreatimportanceandhastobeunderstoodwell as a student and as a professional in the field of law whether in the capacity of a lawyerorajudgebecausethistermformstheveryessenceoftheentireprovision of law. The word cognizance is defined in the Wharton's Law Lexicon, 14thedition, as 'the hearing of a thing judicially'. It has been held that the cognizance therefore has a reference to the hearing and to the determination of the case in connection with the commission of an offence and not merely to a magistrate'slearningthatsomeoffencehasbeencommittedandhisorderingthat the matter be investigated. The criminal proceedings are not instituted until the magistrate has taken cognizance of an offence alleged under one or other of the clauses of sub section (1) of this section. The mere presentation of a challan by the police under section 173 in a magistrates court or the mere presentation of a complaint by a private individual does not constitute the institution of criminal proceedings. Thus the power to take cognizance on a complaint is not unguided. The magistrate verifies the complaint; he can refer it to the police investigation, he can take evidence himself. The section authorizes the magistrate to take cognizance under any one of the three clauses. But for taking cognizance the magistraterequiressomethingmore.Themagistratemustapplyhismindtothe

facts of the case and decide on a course of action in furtherance of such application of mind for the purpose of further proceedings with the matter in accordance with the subsequent provisions of the code. Thus, it also has to be kept in mind that cognizance and commencement of the proceedings are not

synonymousintheirconnotation.Cognizanceissomethingpriorto,anddoesnot necessarilymean,thecommencementofthejudicialproceedingsagainstanyone. Theexpression‘totakecognizance’hasnotbeendefinedinthecodenordoesthe code prescribe any special form of taking cognizance. The word cognizance is however used in the code to indicate the point when the magistrate takes judicial notice of an offence. It is a word of indefinite import and is perhaps not always used in exactly the same sense. Thus, it would mean applying one's mind to the facts stated in the report and then proceeding further in the matter under the relevant provisions of the code. In its broad and literal sense it means taking notice of an offence and would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whetherthereisanybasisforinitiatingjudicialproceedings.Atthestageoftaking cognizancethemagistratehassimplytobesatisfywhethertheallegationsagainst the accused prima facie make out a case for trial or not and nothing beyond that. On receiving a complaint the magistrate may come to a conclusion that there is no ground for proceeding with the case and in that case the complaint is to be dismissed under section 203. If however he finds that there is a case for proceedingwiththecomplainthetakescognizanceunderthissectionButifheis unable to come to either of these conclusions he may either order an enquiry undersection202oraninvestigationundersection156(3).Section191:Thewords " shall .....is entitled" are mandatory and a magistrate cannot refuse to comply with them. Silence on the part of the accused to take any objection as to the trial byamagistratetakingcognizanceofthecaseagainsthimunderclausecinthe

face of the obligation imposed on the magistrate by law to inform the accused of hisrighttoobjecttothetrailbysuchmagistrate,cannotprejudicehim,andthere cannot be any waiver of his rights in such a case. The accused, if he elects to be tried by another court, must signify his election before any evidence istaken.

**Section 192:**This section deals with the transfer of cases by magistrates, as section 407 deals with transfers by high court, section 406 with transfers by supremecourtandsection408and409withtransfersbysessionjudges.Thechief judicial magistrate may transfer cases to magistrates subordinate to him. The jurisdiction under this section may be exercised by a chief metropolitan magistrate or a magistrate in respect of cases of which cognizance was taken by theirpredecessors.Thetermsofthesectiondonotrequiretheorderoftransferto be in writing. Subsection 1 refers to the cases in which the cognizance has been taken by the chief judicial magistrate himself, whereas subsection 2 empowers thechiefjudicialmagistratetoauthorizeanyfirstclassmagistratewhohastaken cognizance to transfer cases to a specifiedmagistrate.

**Section193**:Section193ofthecodecompletelybarsthetakingofcognizanceof any offence by the court of sessions as a court of original jurisdiction without commitment in absence of any express provision to the contrary in the code or any law for the time being in force. The section is in a way a disabling one. Though the section is to be strictly interpreted, it is subject to the exception contained in the words " except otherwise expressly provided in the court". **Section 195**:This section speaks that no court shall take cognizance of any offence under the mentioned sections of the IPC except on complaint in writing ofthepublicservantconcerned.Thissectionisoneofthesectionswhichprohibits acourtfromtakingcognizanceofcertainoffencesunlessanduntilacomplaint

has been made by some particular authority or person. This section creates an absolutebaragainstthecourttakingcognizanceofthecasesexceptinthemanner provided by the section. As the section bars the jurisdiction of the magistrate to takecognizance,ifhedoestakecognizanceagainsttheprovisionsofthissection, thecognizancewouldbeillegalandwithoutjurisdiction.Theobjectofthesection

is to safeguard against the irresponsible and reckless prosecutions by private individualsinrespectoftheoffenceswhichrelatetotheadministrationofjustice and contempt of lawful authority. It is to minimize the possibility of needless harassment by rash, baseless or vexatious prosecution. As per sub section 1 (b), theoffencemusthavebeencommitted“inorinrelationto,anyproceedinginany court”. These words are of very general and wide import and cover proceedings in contemplation before a criminal court.

**Section 196**: This section is again a disenabling section and not enabling. Cognizance of offences under sub section 1 can only be taken on a complaint sanctioned by the government. The object of the sanction is to prevent unauthorized person from intruding in state affairs by instituting state prosecution. Thus prior sanction of the government is necessary. Thus sanction after filing of the complaint does not fulfill the requirements of this section. In absence of sanction, the prosecution is illegal. Subsection 2 only applies to a prosecution for conspiracy punishable under section 120-B of the IPC.

**Section 197:**Public servant must be one who is removable from his office either by the government or with the sanctionof the government. No court shall take cognizanceofanoffencecommittedbyapublicservantexceptwiththeprevious sanctionofthecentral/stategovernmentwherethepersonisorwasatthetimeof

the commission of the offence employed, in connection with the affairs of the union.

It was held in state of Orissa vs ganesh chander jew (2004 CrLJ 2011 S C) that the expression ‘no court shall take cognizance of such offence except with theprevioussanction’usedinsection197(1)ofthecodemakesprotectiontothe public servant mandatory. Further the words ‘no’ and ‘shall’ bars thevery

cognizance of the complaint by any court without obtaining previous sanction of the central or state government, as the case may be. It was further held that the useofexpression‘officialduty’impliesthatactoromissionmusthavebeendone by the public servant in the course of his service and it should have been done in dischargeofhisduties.Thissectiondoesnotextenditsprotectioncovertoevery act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in dischargeofofficialduties.Furthertheexpression‘whoisorwas’showsthatthe sanction is required even in cases where a retires public servant is sought to be prosecuted. The object of the section is primarily to guard against vexatious proceedingsagainstpublicservantssothattheydotheirworkwithdedicationand fearlessly. Thus before such criminal proceedings are launched against public servants, it has been considered proper that the well-considered opinion of a superior authority is obtained. Thus, before this section is invoked the following conditions must besatisfied:

a) The person accused of an offence is or was a publicservant,

b) The accused must be a person removable from his duty only with the sanction of the state government or of the central government according to whether the personisemployedinconnectionofhisaffairsofthestateorcentralgovernment,

c)Hemustbeaccusedofanoffenceallegedtohavebeencommittedbyhimwhile acting or purporting to act in the discharge of his officialduties,

d)Heisorwasemployed,atthetimeofthecommissionoftheallegedoffence,in connection with the affairs of the union or state, as the case may be. If these conditions are not fulfilled, the case will not attract the protection which is afforded by thissection.

**Section198:**Thussectionlikesections193,195and197regulatesthecompetence of the court and bars its jurisdiction in certain cases. What this section does is to prohibit cognizance except upon complaint made by the person aggrieved with certain exceptions. Thus a complaint by a person other than the one aggrieved may be made only with the permission of the court. Section 198-A:A court can takecognizanceofanoffenceundersection498-AIPConapolicereportoffacts which constitute an offence. At the same time the relative of the married woman asenumeratedinsection198-AC.r.P.C.canalsofileacomplaintinregardtothe offence under section 489-A IPC. To eradicate the evil of dowry demands and theconsequentharassmenttothemarriedwomen,theparliamentenactedthisact under which the husband or relative of the husband is punishable with imprisonment upto 3 years in case cruelty was caused to the marriedwoman.

**Section 199:**

Provisionsofthissectionaremandatoryandprovidethatacomplaintcanonlybe made by the aggrieved person. Therefore, if the magistrate takes cognizance of theoffenceofdefamationoncomplaintfiledbyonewhoisnottheaggrieved,the trail and the conviction will be illegal. Sub section 2 is to save a public servant fromtheembarrassmentofaprivateprosecutioninrespectofadefamatory

statement made against him in the discharge of his public duties. It is aimed to protect the high dignitaries set out in the section.

## COMPLAINT

**Complaint:** - When an offence is committed or to be committed, any member of the public, in the interest of justice, has a duty to –

1) Report the matter to the policeor

2) May file a complain with the magistrateor

3) May doboth.

If the report is made to the police it is called FIR and the person who has given the report is called 'Informant'. In case the matter is complained with the magistrate it is called 'Complaint' and the person, who lodged the complaint is called 'Complainant'.

The code has not defined FIR but Sec. 154 of the code lays down the procedure for recording FIR. Sec. 2(d) of the code defines complaint.

Sec 2(d): - "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Just as plaint is filed in a civil court, complaint is lodged to institute criminal proceedings against the accused.

**Distinction between Complaint and FIR: -**

| **Complaint** | **FIR** |
| --- | --- |

| | |
|---|---|
| 1) It is defined u/s 2(d) of this code. | 1) It is not defined under this code. |
| 2) It is an allegation made orally or in writing made to a magistrate as the commission of an offence. | 2) It is information given to a police officer as to the commission of an offence. |
| 3) The person lodging the complaint must take oath. (complainant) | 3) The person giving FIR need not take oath (informant) |
| 4) The complaint is liable for prosecution in the event, the complaint is found false. | 4) The informant is not liable for prosecution if the information by him is found false. |
| 5) Complaint itself is substantial evidence. | 5) FIR is not substantial evidence. |
| 6) It refers to both cognizable and non cognizable offence | 6) It refers only to cognizable offence. |

**Complaints to Magistrates (Sec 200-203): -**

**Sec. 200 –**

i) The magistrate must examine on oath the complainant, and his witnesses, if any at sufficient length, to satisfy himself as to the veracity of the complaint or as to any point on which it is silent or on which there may be anydoubt.

**Object:** - Is to find out whether the allegations make out a prima facie case to enable him to issue a process.

ii) If the magistrate finds no prima facie reason the distress the complainantand the fact constitute an offence under the law he must issue a processforthwith.

iii) If he distrust the complainant altogether or if no offence is made out hemust dismiss the complaint.

iv) If however, his distrust is not sufficiently strong the warrant action uponit, he can postpone the issue of process, pending further inquiry u/s202.

If the complaint is made to any magistrate who is not competent to take cognizance of the offence, he must –

a) If the complaint is in writing, return for presentation to the proper courtwith an endorsement to thateffect,

b) If the complaint is not in writing direct the complainant to go to theproper court.

**Sec. 202:** - The Magistrate may also 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 u/s 156(3) or any other person as he may think fit, for the purpose of deciding whether or not there is a sufficient ground for proceeding in the matter.

No such direction for investigation can be made –

When the offence complained of is exclusively triable by the court of sessions or

**Sec 203:** - After considering the statements of the complainant and witnesses after inquiry or investigation the magistrate is of the opinion that there is no sufficient ground for proceeding further in the matter, he must dismiss the complaint and must also briefly record his reasons for doing so.

Court may dismiss the complaint if the dispute is of civil nature and it is dressed up in criminal garments.

## CHARGE

Theterm‘Charge’literallymeansaccusation.Forthepurposeoftrialprocedures under the code it signifies a formal accusation in writing against a person that he committed anoffence.

It consists of a notification to the accused of an offence, which he is alleged to have committed and which he is required to plead.

Thepurposeofchargeistotelltheaccusedaspreciselyandconciselyaspossible about the matter with which he ischarged.

The object of charge is to warn the accused of the case which he has to answer.

**Form and contents of a charge: -**

Sec.211–214ofthecodedealswiththeprovisionsrelatingtoformandcontents of the charge as stated below:-

1) The charge must contain the offence with which the accused ischarged.

2) If the law gives the offence any specific name, the offence may be described bythatnameonly.Foreg.If‘A’isaccusedofmurder,thechargemaystatethat: A committed murder without reference to the definition of thosecrimes.

3) If the offence charged has no name its description should bemade.

4) The law and section of the law against which the offence is said to be committed shall be mentioned in thecharge.

For eg. If he commits murder, he is charged with murder u/s 300 of IPC.

5) The charge shall be written in the language of thecourt.

6) If prosecution is intended to prove previous conviction for enhance punishment, the fact, date and place of previous conviction is also stated in the charge.

7) It must contain the particulars as to time and place of the allegedoffence.

**EffectsofErrorsinthecharge(DefectiveCharge):**-Anerrorinchargewhich misleadstotheaccusedandresultedintofailureofjustice,itissaidthatchargeis defective.

When the accused did not take any objection to the defect in the form of the chargeattheearliestpossibleoccasionandnoprotestwasmadeonbehalf,itwas held that the irregularity had not occasioned any failure ofjustice.

Sec. 464 provides for a retrial of the accused when a charge contains a material error which has occasioned a failure of justice.

**Alteration and Addition to the charge:** - Sec. 216 Court has power to alter or add to any charge at any time before the judgement is pronounced.

However every such alteration or addition must be read and explained to the accused.

Afteralterationoradditionofcharge,courtmayrecallorre-summonanywitness whohasalreadybeenexaminedorcallanyfurtherwitnesseswhoarematerialto that context.

**Joinder of Charges Sec. 218-224:** - Joinder of charges means merger of two or morecharges.Thirdlyjoinderofoffendermeansmergeroftwoormoreoffenders to be triedtogether.

**Joinder of charges:** - Where different offences are committed by the same person, he may be charged with and tried at one trial for each such offence. In otherwordswhenapersonaccusedofdifferentcharges(viz.robbery,murderetc) is tried simultaneously for all the charges in a single trial, it is called Joinder of Charges. It is an exception to the BasicRule.

**BasicRule(Sec.218(1)):**-Whenapersonisaccusedofdifferentoffences,there shall be a separate charge and each charge shall be trieddifferently.

**Exceptions:** - Strict compliance to the above basic rules results in certain problems viz. multiplicity of proceedings, waster of time, energy and money to accusedetc.thecodeprovidesforcertainexceptionstotheaboveruleasfollows:

-

**1) At the desire of the accused (Sec 223):** - The accused may apply in writing that different charges against him may be tried at one trial. All such chargesmay be tried jointly if the magistrate thinksfit.

**2) Three offences of same kind (Sec. 219):** - When a person is accused ofmore offencesthanoneofthesamekindcommittedwithinoneyear,whetherinrespect of the same person or different person, he may be charged with and tried at one trial for any number of hem not exceedingthree.

**3) Different offences in the same transaction (Sec. 220(1):** - If a person is accusedofdifferentoffencesinthesametransaction,hemaybetriedatonetrial.

For eg. ‘A’ causes hurt ‘B’ while committing theft.

**4) Offences of criminal breach of trust and allied offences:** - Where a person is charged with one or more offences of criminal beach of trust or dishonest, misappropriation of property, he may be charged with one or more offences of falsification of accounts committed for canceling of facilitating the commission of such offence.

**5) Same Act falling under different offences:** - Single act may constitute different offences. For eg. ‘A’ strikes wrongfully ‘B’ with a cane. He maybe

charged with two offences namely hurt u/s 323 and assault u/s 352 of IPC. He may be tried jointly for the offences. Sec. 220(3)

**Acts forming an offence also constitute different offences when taken separately. Sec. 220(4):** - An act which constitutes one offence may constitute different offences under different circumstances. for eg. A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be charged separately with and tried at one trial of offences u/s 394 and 323 of IPC.

**When it is doubtful to identify which of the offences has been committed:** - Apersonisaccusedofanact,butitisnotpossibletoidentifywhethersuchactis theft or criminal breach of trust, or cheating etc, then he may be charged with all the offences and may be triedjointly.

**Joinder of persons Sec 223**: - Joinder of person / offenders means merger of two / more persons to be tried together.

According to Sec. 223, the following persons may be charged and tried together.

a) Persons accused of the same offence committed in course of the same transaction.

b) Personsaccusedofanoffenceandpersonsaccusedofabetment,oranattempt to commit suchoffence.

c) Personsaccusedofcommittingjointlymorethanoneoffencesofthesameking (within the meaning of Sec. 219 committed by them jointly) within 12months.

d) Persons accused of different offences committed in the course of the same transaction.

e) Persons accused of theft, extortion, cheating etc and persons accused of receiving retaining, disposing of stoleproperty.

f) Personsaccusedofoffencesrelatingtocounterfeitcoinandpersonsaccusedof attempt or abetment for thesame.

## TRIALS

### SUMMONS TRIALS (SEC 251 - 259)

Summons cases are less serious in nature than warrant cases. So the trial procedure in such cases is no as elaborate as in warrant cases. The procedure contains the following stages: -

**1) Explain the substance of accusation (Sec 251):-**

In a summons case, when the accused appears or is brought before the magistrate, the particulars of accusation shall be stated to him.

It is not necessary to frame a charge. The court, then asks the accused to plead guilty or claim to be tried.

**2) Conviction on plea of guilty (Sec. 252):-**

If the accused pleads guilty, the magistrate has to record his plea and may convict him. If the number of accused persons is more than one, the plea of each accused should be separately recorded on in own words after the accusation is read over to him.

**3) Conviction in the absence of accused in petty cases (Sec 253):-**

Whereasummonshasbeenissuedu/s206andtheaccuseddesirestoplead guilty to the charge without appearing before the magistrate, he shall transmitto

the magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

The magistrate may, is his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine,or where a pleader authorized by the accused in this behalf of the accused, the magistrate shall record the plea, as nearly as possible in the words used by the pleaderandmay,inhisdiscretion,convicttheaccusedonsuchpleaandsentence him asforesaid.

**4) Hearing of the prosecution and defence or procedure when not convicted (Sec 254): -** If the accused does not plead guilty, the magistrate does not convict and hear –

a) Prosecution evidence and

b) Evidence produced for defence and may summon the appearance ofwitnesses ifnecessary.

If the magistrate does not convict the accused u/s 252 / 253 the magistrate shall proceed to hear the accused and take all such evidence as he produces in his defence.

The magistrate if he thinks fit, on the application of the prosecution of the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

The magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purpose of the trial be deposited in court.

**5) Acquittal or Conviction (Sec 255):** - If the magistrate after taking the entire evidence finds the accused not guilty, he shall record an order or acquittal. If the magistrate finds that accused guilty, he is required to pass a sentence on him according tolaw.

Butafterconsideringthecharacteroftheoffenderandnatureoftheoffence and the circumstances of the case, the magistrate may instead of passing the sentence, decide to release the offender after admonition or on probation on his conduct u/s 360 or under the probation of offenders Act1958.

**6) Non – appearance or death of complainant (Sec 256):-**

Thecomplainantshallappearbeforethecourt/magistrateonthedatefixed for his appearance. If he fails to appear, the accused should be acquitted. In case of death of the complainant, the accused may be acquitted or the hearing may be adjourned.

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the magistrate is of opinion that the personal attendance of the complainant is not necessary, the magistrate may dispense with his attendance and proceed with the case.

**7) Withdrawal of complaint (Sec 257):-**

A magistrate has a discretionary power to allow withdrawal of complaint. The complainant may be permitted to withdraw his complaint at any time before a final order is passed and shall thereon acquit the accused against whom the complaint is so withdrawn.

**8) Power to stop proceedings in certain cases (Sec 258):-**

In any summons case institute otherwise than upon complainant, a magistrate of First Class or with the previous sanction of the Chief Judicial

Magistrate,anyotherJudicialMagistrate,mayforreasonstoberecordedbyhim, stoptheproceedingsatanystagewithoutpronouncinganyjudgementandwhere such stoppage of proceedings is made after the evidence of one principal witnesses has been recorded, pronounce a judgement of acquittal an in any other case, release the accused, and such release shall have the effect ofdischarge.

**9) Conversion of summons case into warrant case (Sec 259):** - Sec. 259 empowers the magistrate to convert a summons case into a warrant case–

i) If the offence is punishable with imprisonment for more than six monthsand

ii) Ifheisoftheopinionthatitwouldbeintheinterestofjusticetotrysuchcase in accordance with procedure for trial of warrantcases.

**10) Compensationforwrongfulaccusation:**-Thecompensationu/s250ofthe code is applicable to summons casesalso.

## WARRANT TRIAL

The provisions dealing with the trial of warrant cases by magistrates can be divided into three categories.

A) Cases instituted on a policereport.

B) Cases instituted otherwise than on a police reportand

C) Provisions which are commonly applicable to all warrant cases whether instituted on a police report or otherwise–

**A) Trial of Warrant cases instituted on a police report (Sec 238 - 243):-**

**1) Supply of copies to the accused (Sec 238):-**

When the accused person is brought before the court or appears before it on his own, it is the responsibility of the magistrate to see that every document like FIR statement of persons recorded during investigation etc is given to the accused.

**2) Discharge of Accused (Sec 239):-**

Afterhearingfromthebothsidesifthemagistrateconsiderstheaccusation against the accused is groundless, he shall discharge the accused and record reasons for sodoing.

**3) Framing of charge (Sec 240(1)):-**

Thenthemagistrateshallframechargeinwriting,ifheisoftheopinionthat there is ground for presuming that the accused has committed theoffence.

**4) Explaining the charge to the accused (Sec. 240(2)**:-

The contents of the charge are to be read over and explained to the accused. He shall be asked whether he pleads guilty or to be tried.

**5) Conviction on plea of guilty (Sec241):-**

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

**6) Finding date for examination of witnesses (Sec 242(1)):-**

If the accused does not plead or refuses to plead or claims to be tied, the magistrate shall fix a date for examination of witnesses.

The magistrate may, on the application of the prosecution issue summons to any of its witnesses, directing him to attend or to produce any document or thing (Sec. 242(2).

**7) Evidence for prosecution (Sec 242):-**

Onthedatefixedforexaminationofthewitnessesthemagistrateshalltake evidence produced by the prosecution. The magistrate 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. The magistrate shall record theevidence.

**a)** Examination of witnesses

**b)** Record ofEvidence

**8) Steps to follow the prosecution evidence:-**

After the completion of prosecution evidence two important steps have to be followed.

i) Theprosecutionmustbeallowedtosubmitoralargumentsandamemorandum of arguments (Sec.314)

ii) The Magistrate has to examine the accused by putting some questions as per Sec.313.

**9) Evidence for Defences (Sec 243)**

**a) Examination of witnesses:-**

After completion of above steps, the accused shall then called upon to enter his defence.

The magistrate is to issue process, if so desired by the accused, for compellingtheattendanceofanywitnessforthepurposeofexaminationorcross – examination or the production of any document or other thing. The magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends ofjustice.

**b) Written Statement:-**

If the accused files any written statement, the magistrate shall record the same.

**c) Record of Evidence:-**

The evidence for the defence shall be recorded (as it was in case of trial before Court of Session).

**Arguments by parties / Advocates: -**

Afterrecordingevidenceofboththeparties,thecourtshallproceedtohear the court shall proceed to hear the arguments of the parties which shall refer to facts, question of facts, and question oflaw.

**Judgement for Acquittal or Conviction (Sec. 248): -**

If the Magistrate finds the accused not guilty he shall record an order of acquittal and if the accused is found guilty, he is convicted according to law.

**B) Cases instituted otherwise than police report:-**

**1) Preliminary hearing of prosecution case (Sec 244):-**

When the warrant case is instituted otherwise than on a police report, and the accused person brought before the court, the magistrate has to take all evidence produced by the prosecution in support of its case.

**2) Discharge of the accused:-**

After going through the evidence submitted by the prosecution, if the magistrate comes to the conclusion that no case has been made out against the accusedwhichwouldwarranthisconviction,themagistratehastodischargethat accusedperson.Indoingsothemagistratehastoexercisehisdiscretioncarefully and record reasons for thedecision.

**3) Framing of charge (Sec. 246(1)**:-

After going through the evidence submitted by the prosecution if the magistrate comes to the conclusion that there is a prima facie case and he is competent to try and punish the accuse for it, the magistrate shall frame a charge against the accused.

**4) Explaining the charge and plea of the accused (Sec. 246):-**

Afterframingthecharge,thechargeshallthenbereadandexplainedtothe accused and he shall be asked whether he pleads guilty or has any defence to make.

**5) Conviction on plea of guilty (Sec. 246):-**

If the accused pleads guilty, the magistrate shall record the plea and may in his discretion convict him thereon.

**6) Choice of accused to recall prosecution witnesses (Sec. 246 (4 & 5):-**

Iftheaccusedrefusestopleadordoesnotpleadguiltyorclaimstobetried he may be given an opportunity to cross examine prosecution witness and witnesses name by him may berecalled.

**7) Evidence for prosecution (Sec. 246(6):-**

After completion of the procedure contemplated in point No. 5, the evidence of the remaining witnesses for the prosecution shall be taken.

**8) Evidence for the defence (Sec. 247):-**

Later, the accused is called upon to produce his defence witness. If the accused puts in any written statement the magistrate shall file it with record.

**9) Acquittal or conviction (Sec 248):-**

After hearing both the sides, if the magistrate finds the accused not guilty, he shall record an order of acquittal and if the accused is found guilty he is convicted to law.

**C) Common provisions regarding conclusion of Trial:-**

**1) Acquittal / Conviction (Sec. 248):-**

In every case, where the charge has been framed, if the magistrate finds theaccusednotguiltyheshallrecordanorderofacquittal.Ifhefindstheaccused guilty, passes sentence according tolaw.

**2) Previous Conviction (Sec 249):-**

Whereth eaccuseddoesnotadmitpreviousconvictionthemagistrateafter convicting the accused, takes evidence in respect of alleged previousconviction.

**3) Compensation for accusation without reasonable cause (Sec 250):-**

Sec. 250 empowers the magistrate to award compensation to the accused. Where accusation is made without reasonable cause, the magistrate may acquit or discharge him and may also order such person making the accusation to pay compensation.

The amount of compensation shall not exceed the fine, which the magistrate is empowered toimpose.

In case of default, such person has to undergo simple imprisonment for a period not exceeding 30days.

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

(i)**SessionsCourt**:TheSessionsCourtisthehighestcourtintheDistrictandhas jurisdiction to conduct trials of offences including murder (302), culpable Homicide not amounting to murder Sn.304 etc. as per the First Schedule to Cr.P.C.Theseoffencesspecifiedtherein[intheSchedule]aretriableexclusively bytheSessionsCourt.(ii)Committingtheaccused:Inacaseinitiatedonapolice report, if the offence is one triable by the Sessions, theMagistrate

(a) ShouldcommittheaccusedtotheSessions(Noelaborateпreliminaryenquiry isnecessary).

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

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

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

**(iii) Opening of Sessions:**

The trial is conducted by the Public Prosecutor. He opens the case by readingoutthechargeandstatingbywhatevidenceheproposestoprovetheguilt of the accused. The Judge, on consideration of the records and documents and hearing the prosecutor and the accused, may discharge if there are no sufficient grounds. He records his reasons for thedischarge.

**(iv) Framing ofcharges:**

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

(v) **Examination ofwitnesses**:

If he does not please guilty or refuses to plead, the Judge fixes a date for examination of witnesses. The witnesses may be examined in chief and cross-examined. Their depositions are recorded. If after the prosecution evidence, examination of the accused and hearing the prosecution and the defence, the Judgeconsidersthatthereisnoevidence,herecordshisreasonsandacquitshim.

(vi) **Defence:** If not acquitted as above, he calls on the accused to enter his defence.TheJudgefilesthewrittenstatement,ifany,putforwardbytheaccused.

He issues summons to his witnesses etc. The witnesses are examined and cross examined. Their depositions are recorded.

(vii) **Arguments**: The public Prosecutor sums up his case and the defence gives itsreply.Ifthedefenceputforwardanypointoflaw,theprosecutoranswerswith the permission of thecourt.

**(viii) Judgment:**

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

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

**(ix) Appeal:**

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

## SUMMARY TRIAL

Summary Trial means ‘Speedy Trial’ or without any delay of formal proceedings i.e. in an informal manner. It should be restricted to simple cases and where exhaustive evidence is not required.

**1) Magistrate authorized to conduct summary trial (Sec. 260):-**

Sec. 260(1) of the code empowers the following magistrate to try summarily:

- a) Any chief judicial magistrate

b) Any metropolitanmagistrate

c) Any of First Class specifically empowered in this behalf by the HighCourt.

d) Any magistrate of the Second Class empowered by the High Court in this behalfmaytrysummarilyanyoffencepunishablewithfineorwithimprisonment for a term not exceeding six months with or without fine and any abetment of or attempt to commit any such offence.

**2) Offences triable summarily (Sec. 260(2):** -

i) Offencesnotpunishablewithdeath,imprisonmentforlifeorimprisonmentfor a term exceeding twoyears.

ii) Theft, u/s 379, 380 and 381 of the IPC, where the value of the property stolen does not exceed Rs.2000/-

iii) Receiving or retaining stolen property u/s 411 of the IPC, where the value of such property does not exceed Rs.2000/-

iv) Assistingintheconcealmentordisposalofstolenpropertyu/s414oftheIPC, where the value of such property does not exceed Rs.2000/-

v) Offences u/s 454 and 456 of theIPC.

vi) Insult with intent to provoke a breach of peace u/s 504 and criminal intimidation u/s 506 of theIPC.

vii) Abetment of any forgoingoffences.

viii) Any attempt to commit any of the forgoing offences when such attempt is anoffence.

ix) Any offences constituted by act in respect of which a complain may be made u/s 20 of the cattle Trespass Act1871

**Procedure for Summary Trial (Sec 262(1):** -

Normally the procedure followed in summary trial is summons case procedure subject to the special provisions made in this behalf.

**Punishment Sec. 262(2): -**

The punishment under summary trial shall not exceed 3 months imprisonment.

**Record in summary Trials (Sec. 263): -**

In the record prepared by the magistrate while conducting the summary trial the following particulars must be present: -

i) Serial number of thecase,

ii) Date of commission of theoffence,

iii) Date of the report or thecomplaint,

iv) The name of thecomplainant,

v) The name, parentage and residence of theaccused.

vi) The offence complained of and the offence (if any) proved, and in cases coming u/ c/ (2) or (3) or (4) of sub section (1) of Sec 260, the value of property in respect of which the offence has beencommitted.

vii) The plea of the accused and hisexamination.

viii) Thefinding.

ix) The sentence or finalorder.

x) The date on which proceedingterminated.

The record of a summary trial is kept in the form prescribed by the state government.Inasummarytrial,aformalchargeisnotframednoristheevidence of the witnesses recorded. The magistrate must himself write these particulars in the Register. He cannot depute that duty to hisclerk.

**6) Judgement (Sec. 264):-**

In every case tried summarily in which the 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 thefinding.

**7) Language of Record and Judgement (Sec 265):-**

Every such record and Judgement shall be written in the language of the court.Noappealliesfromasummarytrialifonlysentenceoffinenotexceeding Rs. 200/- has been awarded. But a revision application would however lie to the High Court for trials conducted under summarytrials

## BAIL

The term bail has not been defined in the code. It has been defined in the Law Lexicon as – "Security for appearance of the accused person, on giving which he is released pending trial or investigation."

If put in ordinary language bail is nothing but procuring the release of a person from legal custody by undertaking that he shall appear when and where required by the court.

In simple words bail is a process by which a person arrested is released from custody /detention.

Serious consequences will follow if a person is kept continuously in detention.

**These consequences are: -**

i) Accused person is forced to undergo both physical and psychological deprivation by jaillife,

ii) Accused person would not be in a position to prepare his defenceeffectively,

iii) Even though he is kept in detention, in reality his innocent family members are the real sufferers.

iv) Unless and until the trial is complete, we cannot say whether the accused is an innocent or a culprit. It is universally accepted that a real culprit may escape from the criminal liability, but an innocent must not bepunished.

Keeping in this mind, the bail provisions have been included in the Cr. PC

Thecodewithreferencetobail,categorizedcertainoffences,intotwocategories namely –

1) Bailable offenceand

2) Non - bailableoffence,

**1) Bailable offence:-**

Bailable offence is one in respect of which a person arrested is entitled to be released on bail from the custody or detention.

Sec.2(a)defines"bailableoffence"meansanoffencewhichisshownasbailable in the First Schedule, or which is made bailable by any other law for the time being inforce;

Generallytheoffencespunishablewithlessthanthreeyearsimprisonment arebailable.

Sec.436ofthecodeconfersontheaccused,righttobailinbailableoffences.The court may grant bail against reasonablesecurity.

**2) Non – bailable offences:-**

According to Sec. 2(a) of the code, the other offences which are not shown as bailable under the First schedule are called "Non bailable offences"

Non – bailable offences are more serious, when compared to the bailable offences.

Generally the offences for which punishment is 3 yrs imprisonment or more, are non bailable. However this rule is subject to certain exceptions.

**Distinction between Bailable and Non – Bailable offences: -**

| **Bailable Offence (Sec. 2(a))** | **Non – Bailable offence Sec. 2(l)** |
|---|---|
| 1) The accused is entitled to be released onbail. | 1) The accused may not be released on bail. |
| 2) The accused has a right to be released on bail. | 2) The accused has no right to be released on bail. However the person accused of non bailable offence may be released on bail, subject to judicial discretion. |

| | |
|---|---|
| 3) It is less serious is nature. | 3) It is more serious in nature. |
| 4)Generally,offencespunishablewith imprisonment for less than 3 yrs are bailable. | 4) Generally the offences punishable with imprisonment for 3 yrs or more are non bailable. |
| 5) A person to be accused of bailable offence cannot apply for anticipatory bail. | 5) A person to be accused of non – bailable offence can apply for anticipatory bail. |

**Whether Release on Bail is mandatory:** - It is mandatory in following circumstances.

1) **Not accused of Non-bailable offence (Sec. 436(1):-**

   Wherethepersonarrested/detainedwithoutwarrantisnotaccusedofa non–bailableoffenceandispreparedtogivebail,theauthorityisrequired to release him on bail. He may be released on bond withoutsureties.

2) **Investigation Incomplete (Sec 167**): -

   Thepersonarrestedcannotbedetainedformorethan24hours.Within 24 hours he should be presented before the magistrate. The detention can be extended beyond 24 hours for the purpose of investigation after obtaining a special order from the magistrate. However, the period shall not exceed 90 days in case of investigation relating to an offence punishable with life imprisonment or death sentence, imprisonment in a term of not less than 10 years and 60 days in case of otheroffence.

Iftheinvestigationisnotcompletedwithintheprescribedperiodof60or90days as above, the person detained shall be released onbail.

**3) No ground to believe to be Non – bailable (Sec 437(2)):-**

A person may be arrested without warrant under suspicion of committing a non bailable offence. But there is reasonable ground to believe at any stage of investigation or inquiry or trial that the accused had committed a non bailable offence. In such situation the accused shall be released on bail against a bond without sureties.

**4) Trial incomplete within 60 days (Sec. 437(b):-**

Where the trial by a magistrate is not concluded within 60 days in respect of a person accused of non – bailable offence (from the first date for taking evidence) such person, subject to the satisfaction of magistrate shall be released on bail.

**5) No ground to believe guilt after Trial, but before the Judgement (Sec 437(7)):-**

If after conclusion of trial, but before judgement, there is no reasonable ground to believe the guilt, the accused shall be released on bail on execution of a bond.

**Anticipatory Bail (Sec 438): -**

Anticipatorybailisanorderbythecourtdirectingtheauthoritiestorelease a person on bail in the event of his arrest. When anticipatory bail is granted, the person is arrested but released immediately the next moment. This is so because that there is no question of release on bail unless a person isarrested.

**Sec. 438 – Analysis: -**

1) HighCourtortheCourtofSessionhasgotthepowertograntanticipatorybail.

2) Whenanapplicationisbadebyapersonwhohasreasontobelievethathemay be arrested and that too in respect of the non bailable offence, anticipatory bail can be granted. It means this is granted only in the case of non bailable offences and that too when arrest isapprehended.

3) The object of anticipatory bail is to see that influential persons will not implicate their rivals in false cases.

4) Granting the anticipatory bail the court must be satisfied that the person seeking this bail is not likely to abscond or misuse hisliberty.

5) Anticipatory bail is an order issued by the court to release the person in the event of hisarrest.

6) Anticipatory bail becomes operative only on arrest of theperson.

7) There must be a reasonable belief of arrest for a non - bailableoffence.

**High Court or Court of Session may impose condition while granting anticipatory bail:** -

These conditions are: -

a) Person must make himself available for interrogation by police when and whererequired.

b) Thepersonshallnotmakeanyinducement,threatorpromisetoanypersonfor dissuading him from disclosing facts of the case to the court or to thepolice.

c) Without taking permission from the court, person should not leaveIndia.

**Distinction between Ordinary order of Bail and Anticipatory Bail:** -

Ordinary order of bail is granted after arrest and means release from the custodyofpolicewhereasanticipatorybailisgrantedinanticipationofarrestand therefore effective at the very moment of arrest. The provisions of Sec. 438 cannot be invoked after the arrest of theaccused.

**Howthediscretioningrantingbailhastobeexercisedincaseofnonbailable offences (Sec.437):-**

It is well settled law that granting of bail is a discretionary power of the court in non bailable offences. Granting the bail is the rule and refusal of it is an exemption.

**I) Way of exercising discretion by the Court: -** Certain circumstances have to be taken into account for making a decision relating to the grant of bail. These circumstances are:-

a) The seriousness of thecharge.

b) The nature ofaccusation.

c) The punishment and itsseverity.

d) The evidence supporting theaccusation.

e) The circumstances in which the crime wascommitted.

f) The status of the accused vis-à-vis the victim and thewitnesses.

g) The danger of witnesses being tamperedwith.

h) The chance of accusedabsconding.

i) The capacity of the accused committing moreoffences.

j) Opportunity to the applicant for preparation of his defence, and access to his counsel.

k) The health, age and sex of the accusedperson.

**II) No bail in case of an offence that attracts death penalty or imprisonment for life as punishment (Sec. 437): -** When the person is accused of committing an offence punishable with death penalty or imprisonment for life, generallybail isnotgranted.Butheretheremustbeeverypossibilityofaccusedcommittingthe above mentioned grave offence, mere possibility is notenough.

Buttherearecertaincategoriesofpersonexemptedfromthisprovision.Theyare:
–

a) Children below the age of 16yrs

b) Women,

c) Sick and infirmpersons.

**III) Habitual offender or person previously convicted of serious offence should not be released on bail (Sec. 437**):-

If a person is convicted previously of an offence punishable with death, imprisonmentforlifeorimprisonmentfor7yrsormoreofifthatpersonhasbeen convicted on two or more occasions for a non bailable and cognizable offence and the same person is accused of or suspected to have committed any non bailable offence and brought before the court he should not be released onbail.

**IV) Bail with conditions (Sec. 437):-**

Even though a case is considered to be fit for granting bail, the court may impose certain conditions.

The power to impose conditions can be exercised by the court –

a) When the offence is punishable with imprisonment upto 7 yrs ormore

b) Where the offence is one under the below given chapters of IPC–

i) Offences againststate.

ii) Offences against humanbody.

iii) Offences againstproperty.

c) Where the offence is one of Abetment to, or conspiracy to or Attempt to commit any of the offences mentioned in the above given chapters ofIPC.

## Execution, suspension, remission and commutation of sentences

Suspension means to take or withdraw the sentence for the time being. After a person is found guilty, the execution is stayed for a temporary period in suspension. It is the temporary postponement of the sentence. Remissionimplies reducing the period of sentence without changing its character. Commutation denotes the substitution of a form of punishment for a lighterone.

**Section 413 – Execution of order passed under section 368**

When in a case submitted to the High Court for the confirmation of a sentenceofdeath,theCourtofSessionreceivestheorderofconfirmationorother orderoftheHighCourtthereon,itshallcausesuchordertobecarriedintoeffect by issuing a warrant or taking such other steps as may benecessary**.**

**Section 414 – Execution of sentence of death passed by High Court**

When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant

**Section 415 – Postponement of execution of sentence of death in case of appeal to Supreme Court**

1. WhereapersonissentencedtodeathbytheHighCourtandanappealfrom itsjudgmentliestotheSupremeCourtundersub-clausea)orsub-clause b) of clause (1) of Article 134 of the Constitution, the High Court shall ordertheexecutionofthesentencetobepostponeduntiltheperiodallowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposedof.

2. Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of a certificate under Article 132 or under sub-clause c) of clause (1) of Article134oftheConstitution,theHighCourtshallordertheexecutionof the sentence to be postponed until such application is disposed of by the HighCourt,orifacertificateisgrantedonsuchapplicationuntiltheperiod allowed for preferring an appeal to the Supreme Court on such certificate hasexpired.

3. Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petitiontotheSupremeCourtforthegrantofspecialleavetoappealunder Article136oftheConstitution,theHighCourtshallordertheexecutionof the sentence to be postponed for such period as it considers sufficient to enable him to present suchpetition.

**Section 416 – Postponement of capital sentence on pregnant woman**

If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to imprisonment for life.

**Section 417 – Power to appoint place of imprisonment**

1. Except when otherwise provided by any law for the time being in force, the State Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall beconfined.
2. If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail the Court of Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminaljail.

3. WhenapersonisremovedtoacriminaljailunderSub-Section(2),heshall, on being released therefrom, be sent back to the civil jail, unlesseither
    1. three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been released from the civiljailundersection58oftheCodeofCivilProcedure,1908(5of 1908) or section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be;or
    2. the Court which ordered his imprisonment in the civil jail has certifiedtotheofficerinchargeofthecriminaljailthatheisentitled tobereleasedundersection58oftheCodeofCivilProcedure,1908 (5 of 1908) or under section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case maybe.

**Section 418 – Execution of sentence of imprisonment**

1. Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for bysection

413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail and the accused may be confined in such place as the Court may direct.

2. Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in Sub-Section (1), the Court shall issuea

warrantforhisarrestforthepurposeofforwardinghimtothejailorother place in which he is to be confined; and in such case, the sentence shall commence on the date of hisarrest.

**Section 424 – Suspension of execution of sentence of imprisonment**

1. When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine and the fine is not paid forthwith, the Court may

    1. orderthatthefineshallbepayableeitherinfullyonorbeforeadate not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirtydays;

    2. suspend the execution of the sentence of imprisonment and release theoffender,ontheexecutionbytheoffenderofabond,withor

without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the dateor dates on or before which payment of the fine or the instalment thereof, as the case may be, is tobemade;andiftheamountofthefineorofanyinstalment,asthe case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution atonce.

2. The provisions of Sub-Section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is notpaid

forthwith; and, if the person against whom the order has been made, on being requiredtoenterintoabondsuchasisreferredtointhatSub-Section,failsto do so, the Court may at once pass sentence ofimprisonment.

**Section 432 – Power to suspend or remit sentences**

When any person has been sentenced to punishment for an offence, the appropriate Government may, at any lime, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed,tostatehisopinionastowhethertheapplicationshouldbegrantedor refused,togetherwithhisreasonsforsuchopinionandalsotoforwardwiththe

statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

If any condition on which a sentence has been suspended or remitted is,in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

The condition on which a sentence is suspended or remitted under this section maybeonetobefulfilledbythepersoninwhosefavourthesentenceissuspended or remitted, or one independent of hiswill.

The appropriate Government may, by general rules or special orders, give directionsastothesuspensionofsentencesandtheconditionsonwhichpetitions should be presented and dealtwith:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and, where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

wheresuchpetitionismadebyanyotherperson,itcontainsadeclarationthatthe person sentenced is injail.

The provisions of the above Sub-Sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law

which restricts the liberty of any person or imposes any liability upon him or his properly.

In this section and in section 433, the expression “appropriate Government” means,incaseswherethesentenceisforanoffenceagainst,ortheorderreferred to in Sub-Section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the CentralGovernment;

inothercasestheGovernmentoftheStatewithinwhichtheoffenderissentenced or the said order ispassed.

**Section 433 – Power to commute sentence**

The appropriate Government may, without the consent of the person sentenced commute

1. asentenceofdeath,foranyotherpunishmentprovidedbytheIndianPenal Code (45 of1860);
2. a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or forfine;
3. asentenceofrigorousimprisonmentforsimpleimprisonmentforanyterm to which that person might have been sentenced, or forfine;
4. a sentence of simple imprisonment, forfine.

**Section433A–Restrictiononpowersofremissionorcommutationincertain cases**

Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by laws or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonmentforlife,suchpersonshallnotbereleasedfromprisonunlesshehad served at least fourteen years ofimprisonment.

**Confirmation by High Court**

Court of session after passing a death sentence shall submit the proceedings to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. The court passing the sentence shall then commit the convicted person to jail custody under a warrant.

**Enquiry and Additional Evidence**

The High Court while dealing with confirmation may order further inquiry be made into, or additional evidence taken upon, any point bearing upon, any point bearing upon the guilty or innocence of the convicted person.

**No order for confirmation**

No order for confirmation shall be made until the period allowed for preferring an appeal has expired, or if any appeal is presented within such period, until such appeal is disposed of.

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

**Copy of Order Sent to Court of Session**

In cases submitted by the court of session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall ,without delay, after the order of confirmation or other order has been made by

the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the court of session.

Where a person is sentenced to death and an appeal from its judgment lies the execution of the sentence will be postponed until the period allowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposed of.

## Judgment :

**Meaning of Judgement::**

After hearing both the sides, the final verdict or order that is passed by theJudge or bench of Judges is known as Judgement. The judgement is the final respond decision of court as to the guilt or innocence of the accused where the accused is foundguilty,thejudgementwouldalsoincludeanorderrequiringtheaccusedto undergo the prescribed punishment ortreatment

**Case:** In ***Surendra Singh vs. the State of U.P., A.I.R. 1954 SCR 330***, The SupremeCourtdefinedthetermfinalverdictorfinaldecisiongivenbytheCourt to the parties and deliver in the open court by pronouncingit.

**Section 353**

It is a written legal document which helps to resolve the dispute in a suit andfinalizingtherightsandliabilitiesoftheindividual.Judgmentisafinalorder, verdict or decision given by the judge or magistrate on the ground of decree. A decree is an integral part of the judgment which is given by the judge. It should be precise and clear containing names of the parties, amount of money, deadline etc. Judgment is given in every trial in Criminal Court falling under its jurisdiction.Itshouldbepronouncedintheopencourtbythepresidingauthority

just after the termination of the trial procedure and notice should be served to each party and to its assigned leaders.

**Purpose of Judgement:**

- **To determine whether the person is guilty orinnocent**–

  After considering all the facts, evidence and laws, courts take the final decision in a particular matter to set the position of the individual person whether he is guilty or innocent.

- **For determining the rights and liabilities of theparties**–

  Determination of rights and liabilities is the main work of the court and at the end.

- **For the development of legal jurisprudence**– When the court has heard all the facts and evidence from both the sides, certain new principles can be introduced which will affect the matter and help in the development of laws in variousfield.

- **To serve as a Precedent**– In Common Law, the doctrine of precedent depends upon a good, relevant and honest judgment. In the future, these kinds of cases rely upon thejurisprudence.

- **Provide accountability to judicial officers**– Court of law is known as a temple for justice and the Judges are considered as God for giving justice. There is always an eye on the work and credibility of judges and magistrates. Delivering good judgments helps the public trust the Judiciary.

- **The reason should be communicated to the parties**– Both the parties along with their lawyers will be communicated will all the reasons onthe

resulting judgment of the case. Even if they lose the case, they will be informedonwhatgroundstheylostthecase.Propercommunicationshould bemaintained.

**Provide a reasonable ground for an appeal in court**– If either of the parties is not satisfied with the final decision, they can appeal to the higher court.

**354. Language and contents of judgment.**

(1) Everyjudgment

(a) shall be written in the language of theCourt;

(b) shall contain the point or points for determination, the decision thereon and the reasons for thedecision;

(c) shallspecifytheoffence(ifany)ofwhich,andthesectionoftheIndianPenal Code (45 of 1860 ) or other law under which, the accused is convicted and the punishment to which he issentenced;

(d) ifitbeajudgmentofacquittal,shallstatetheoffenceofwhichtheaccusedis acquitted and direct that he be set atliberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860 ), and it is doubtful under which of two sections, or under which Of two parts of the same section,ofthatCodetheoffencefalls,theCourtshalldistinctlyexpressthesame, and pass judgment in thealternative.

(3) When the conviction is for an offence punishable with death or, in the alternative,withimprisonmentforlifeorimprisonmentforatermofyears,the

judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of thisCode.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he isdead.

(6) Every order under section 117 or sub- section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

In Ram Bali vs. the State of U.P., (2004) 6 SCC 533, it was observed that languageandcontentmustalsobeself-containedanditmustreflectthatthecourt has applied evidence and facts while forming thejudgment.

**Compensation and cost:**

**Section 357 – Order to pay compensation**

1. When a Court imposes a sentence of fine or a sentence (including a sentenceofdeath)ofwhichfineformsapart,theCourtmay,whenpassing judgment order the whole or any part of the fine recovered to beapplied-
    1. in defraying the expenses properly incurred in theprosecution;

2. in the payment to any person of compensation for any loss orinjury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a CivilCourt;

3. when any person is convicted of any offence for having caused the deathofanotherpersonorofhavingabettedthecommissionofsuch an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from suchdeath;

4. when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitledthereto.

2. Ifthefineisimposedinacasewhichissubjecttoappeal,nosuchpayment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of theappeal.

3. When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been sosentenced.

4. AnorderunderthissectionmayalsobemadebyanAppellateCourtorby theHighCourtorCourtofSessionwhenexercisingitspowersofrevision.

5. Atthetimeofawardingcompensationinanysubsequentcivilsuitrelating to the same matter, the Court shall take into account any sum paid or recovered as compensation under thissection.

- **OrdertoPayCompensation**–Whenacourtimposesasentenceorafine, then while passing the judgment, the court can order to recover the whole or partial amount by calculating the whole expenses incurred in the prosecution process.

Whenapersonfaceslossesorinjuriesbecauseoftheoffencecommitted,then under the civil court he can recover the Compensationamount.

When a person is convicted for causing death or abetting another person to committhesameact,hewillbeliabletopaycompensationunder“FatalAccident Act, 1855” to the family of the person whodied.

Whenanypersonisconvictedforcausingtheft,misappropriation,cheatingor breach of trust or stealing property, he will be liable to pay the compensation amount to the bonafide purchaser of that property and the property possession is restored to the entitledperson.

If a fine is imposed in a case which is subject to appeal then the payment should not be done until the period of appealing is over. If appealed, then the person must wait until the appeal decision is made.

Ifthereisnofinebeingimposedinthesentence,thecourtcanseparatelyorder the defendant to compensate for the losses or injuriesincurred.

ThepowertooptforrevisionunderthissectioniswiththeAppellateandThe High Court. While awarding the compensation, it should be seen that in any subsequent civil suit of the same matter the amount is paid or recovered as compensation.

Section 357

- **Victim Compensationscheme**–

  In every State, coordination and consultation with the Central government schemeshouldbemadetoprovidefundingtothesufferedpersonandtheir families. Facilities of rehabilitation must also beprovided.

Whenever an order is made by the court, the quantum of amount for compensation will be decided by the District and State Legal Service Authority.

Duringtheendofthetrial,ifthecourtthinksthattheamountisnotenough for rehabilitation facilities, the court can make recommendations for compensation. When the victim is identified but the accused person is not still found and no trial is taken place, the victim or his family members can write an applicationtotheDistrictandStatelegalAuthorityforgrantingthecompensation amount. After completing the inquiry process within 2 months, the amount of compensation can be granted. Immediate free of cost first aid and medical facilitiesshouldbeprovidedtothevictimbytheDistrictorStateLegalAuthority by the order of a police officer not below the rank of an officer incharge.

Section 357 B

- **Compensation payable by the StateGovernment**–

  Section357Ashallbeinadditiontothepaymentoffinetothevictimunder Section 326A, 376AB, Section 376D, 376DA, 376DB of the Indian Penal Code.

Section 357 C

- **Treatment ofVictim**–

All hospitals whether private or public, should provide medical and first aidfacilitiestothevictimwhofallsunderSection326A,376,376A,376B, 376C,376D,376DA,376DBand376DEoftheIPCandshouldinformthe police about the incident as soon aspossible.

Section 358

- **Compensation to the person for groundlessarrested**–

  If any person who is arrested without any reasonable grounds and the magistrategivesadecisionthatthereisnotsufficientgroundforarrestthen hewillreceivecompensationamountfromthepersonwhocausesthearrest for loss of time and money. Compensation amount should not exceed Rs. 1000/- and if the number of arrested persons is more than one, the magistrate will award each of them personally the compensation amount but it should not exceed Rs.1000/-

All such amount can be recovered under fine and if a person fails to pay the specifiedamountthenhewillbesenttoimprisonmentfornotmorethan30days period.

Section 359

- **Order to pay Compensation in Non cognizableoffence**–

  Whenever any non-cognizable offence has been committed, the court can order the accused person to pay the amount of fine imposed on him for committing the offence and addition to it the amount incurred in

prosecution process to the aggrieved person like the travelling expenses, courtfeesandfeesofwitnessandleadersetc.Hewillsufferimprisonment for not more than 30 days for not paying theamount.

Power of revision is with the Appellate Court, High Court or Court of Session

## APPEAL

Appeal can be defined as the transference of a case from an inferior court to the higher court in the hope of reversing or modifying the decision of the former. It is taking of the case to a superior court with a view to ascertaining whether the judgement of the lower court is sustainable or not.

AccordingtoBlacksLawDictionaryanAppealisacomplainttoasuperior courtofaninjusticedoneorerrorcommittedbyinferiorone,whosejudgmentor decision of court above is called upon to correct orreverse.

**1) No appeal in petty cases (Sec 376): -**

There shall be no appeal by a convicted person in the following cases –

a) Whereretheonlysentenceisoneofimprisonmentupto6monthsoroffineupto Rs. 1000/- or of both, and is passed by the HighCourt.

b) Where only sentence one of imprisonment upto 3 months or of fine upto Rs. 200/- or of both, and are passed by a court of session, or ascourt of metropolitan magistrate.

c) Where the only sentence is one of fine upto Rs. 100/- and is passed by the Judicial Magistrate FirstClass.

d) WheretheonlysentenceisoneoffineuptoRs.200/-andispassedinsummary trial by a Chief Judicial Magistrate, a Metropolitan Magistrate or a Judicial Magistrate First Class specially empowered by High Court.

Even in the above cases an appeal may be brought if any other punishment is combined with any sentence.

However, the sentence is not appealable in the following cases merely on the ground –

i) That the convict is ordered to furnish security to keeppeace,

ii) That more than one sentence of fine is passed in the case, if the total amount of fine does not exceed the amount allowed as nonappealable.

**No Appeal from conviction on plea of guilty (Sec. 375): -**

Where an accused person has pleaded guilty and has convicted on such plea, there shall be no appeal –

i) If the conviction is by the HighCourt.

ii) If the conviction is by Court of Session, Metropolitan Magistrate and Magistrate of First Class and Second Class, except as to the extent of legality of sentence.

The reason behind enacting this section is that a plea of guilty is a waiver of the right of appeal against the legality of conviction.

**Appeal to superior courts: -** This can be divided into three categories –

**1) Appeal to the Supreme Court:-**

Appeal can be preferred to the Supreme Court in the following circumstances -

a) Any person convicted by High Court in extra-ordinary original jurisdiction may appeal to the Supreme Court Sec.374(1).

b) Where the High Court has on appeal reversed an order of acquittal and sentencedanaccusedpersontodeathortolifeimprisonmentortoimprisonment for a term of 10 yrs or more, the accused may appeal to the SupremeCourt.

c) According to Art. 132 of the constitution, an appeal shall lie to the Supreme Court against the decision of High Court, if the High Court certifies that he case involves a substantial question of law as to the interpretation of theconstitution.

FurtherifsuchcertificateisrefusedbytheHighCourt,theSupremeCourt may, in a fit case, grant special leave to appeal from suchdecision.

d) AccordingtoArt.134(1)oftheconstitution,anappealshalllietotheSupreme Court from any decision of a High Court if the High Court–

i) has withdrawn for trial before itself any case from any court subordinate to its authorityandhasinsuchtrialconvictedtheaccusedpersonandsentenceshimto deathor

ii) Certifies that the case is a fit one for appeal to the SupremeCourt.

**3) Appeal to the High Court: -**

Any person convicted or trial held by –

a) A session judge or additional sessionjudge.

b) Any other court in which a sentence of imprisonment for a term exceeding 7 yrs has been passed against him, may appeal to HighCourt.

**3) Appeal to the Court of Session: -**

Any person –

i) Convicted on a trial held by a metropolitan magistrate or Assistant Sessions Judge or Judicial Magistrate First Class or Magistrate of SecondClass.

ii) In respect of whom an order has been made or sentence has been passed u/s 360(3) by any magistrate, may appeal to the Court ofSession.

Sec. 378 of Cr. PC deals with finding of appeals by the state against the order of acquittal.

**Section 395 in The Code Of Criminal Procedure, 1973**

## 395. Reference to High Court.

Where any Court is satisfied that a case pending before it involves a questionastothevalidityofanyAct,OrdinanceorRegulationorofanyprovision contained in an Act, Ordinance or Regulation, the determination of which is necessaryforthedisposalofthecase,andisofopinionthatsuchAct,Ordinance, Regulationorprovisionisinvalidorinoperative,buthasnotbeensodeclaredby the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court. Explanation.- In this section," Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897 ), or in the General Clauses Act of aState.

A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub- section (1)

donotapply,referforthedecisionoftheHighCourtanyquestionoflawarising in the hearing of suchcase.

(3) Any Court making a reference to the High Court may, pending the decision of the High Court thereon, either commit the accused, to jail or release him on bail to appear when called upon.

**S. 396 Disposal of case according to decision of High Court.**

(1) When a question has been so referred, the High Court shall pass such order thereonasitthinksfit,andshallcauseacopyofsuchordertobesenttotheCourt by which the reference was made, which shall dispose of the case conformably to the saidorder.

(2) TheHighCourtmaydirectbywhomthecostsofsuchreferenceshallbepaid.

**397. Calling for records to exercise powers ofrevision.**

TheHighCourtoranySessionsJudgemaycallforandexaminetherecord ofanyproceedingbeforeanyinferiorCriminalCourtsituatewithinitsorhislocal jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended,andiftheaccusedisinconfinement,thathebereleasedonbailoron his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellatejurisdiction,shallbedeemedtobeinferiortotheSessionsJudgeforthe purposes of this sub- section and of section398.

Thepowersofrevisionconferredbysub-section(1)shallnotbeexercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

If an application under this section has been made by any person either to theHighCourtortotheSessionsJudge,nofurtherapplicationbythesameperson shall be entertained by the other ofthem.

**398. Power to orderinquiry.**

On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make,

furtherinquiryintoanycomplaintwhichhasbeendismissedundersection 203 or sub- section (4) of section 204, or into the case of any person accused of an offence who has been discharged: Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been dischargedunlesssuchpersonhashadanopportunityofshowingcausewhysuch direction should not bemade.

**399. Sessions Judge' s powers ofrevision.**

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions judge may exercise all or any of the powers which may be exercised by the High Court under sub- section (1) of section401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub- sections (2), (3), (4) and (5) ofsection401shall,sofarasmaybe,applytosuchproceedingandreferencesin the said sub- sections to the High Court shall be construed as references to the Sessions Judge.

(3) Whereanyapplicationforrevisionismadebyoronbehalfofanpersonbefore theSessionsJudge,thedecisionoftheSessionsJudgethereoninrelationtosuch

personshallbefinalandnofurtherproceedingbyWayofrevisionattheinstance of such person shall be entertained by the High Court or any otherCourt.

**400. Power of Additional Sessons Judge.** An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the SessionsJudge.

**401. High Court' s Powers ofrevisions.**

(1) Inthecaseofanyproceedingtherecordofwhichhasbeencalledfor byitself orWhichotherwisecomestoitsknowledge,theHighCourtmay,initsdiscretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section392.

(2) No order under this section shall be made to the prejudice of the accused or otherpersonunlesshehashadanopportunityofbeingheardeitherpersonallyor by pleader in his owndefence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one ofconviction.

(4) WhereunderthisCodeanappealliesandnoappealisbrought,noproceeding bywayofrevisionshallbeentertainedattheinstanceofthepartywhocouldhave appealed.

(5) WhereunderthisCodetanappealliesbutanapplicationforrevisionhasbeen made to the High Court by any person and the High Court Is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests ofjustice

so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

**402. Powers of High Court to withdraw or tranfer revisioncases**.

(1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the questions involved, which of the two Courts shouldfinally dispose of the applications for revision and when the High Court decides that all theapplicationsforrevisionshouldbedisposedofbyitself,theHighCourtshall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the SessionsJudge.

(2) Whenever any application for revision is transferred to the High Court, that Courtshalldealwiththesameasifitwereanapplicationdulymadebeforeitself.

(3) WheneveranyapplicationforrevisionistransferredtotheSessionJudge,that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Courtor

to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Session Judge.

**403. Option of Court to hearparties.**

Nopartyhasanyrighttobeheardeitherpersonallyorbypleaderbeforeany Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or bypleader.

**404.** Statement by Metropolitan Magistrate of ground of his decision to be considered by High Court. When the record of any trial held by a Metropolitan MagistrateiscalledforbytheHighCourtorCourtofSessionundersection397, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and theCourtshallconsidersuchstatementbeforeoverrulingorsettingasidethesaid decision ororder.

**405. High Courts' order to be certified to lowerCourt.**

When a case is revised under this Chapter by the High Court or aSessions Judge, it or he shall, in the manner provided by section 388, certify its decision orordertotheCourtbywhichthefinding,sentenceororderrevisedwasrecorded or passed, and the Court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordancetherewith

# MAINTENANCE OF WIVES, CHILDREN AND PARENTS

It is the duty of every person to maintain his wife, children and aged parents, when they are unable to maintain themselves.

Sec 125 to 128 of the Cr. PC lay down the provisions relating to the maintenance of dependent wives, children and parents.

**Object:**-Toenablediscardedwives,helplessanddesertedchildrenanddestitute parents to secure much neededrelief.

**Sec 125 runs as follows: -** If any person having sufficient means neglects or refuses to maintain –

a) his wife, unable to maintain herselfor

b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itselfor

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

d) His father or mother, unable to maintain himself orherself.

A magistrate of the First class may an order against such a person ordering him tomakeamonthlyallowanceforthemaintenanceofsuchchild,fatherormother as the case may be at any rate not exceeding Rs. 1500/- per month in thewhole.

In the case of the minor female daughter who is married, if the magistrate is satisfiedthatthehusbandofsuchminorchildisnotpossessedofsufficientmeans,

anordercanbemadeagainstthefatherofthechildtomakesuchallowanceuntil she attains the age ofmajority.

**Explanation: -**

a) Minor means a person who under the provisions of the Indian Majority Act 1875 is deemed not to have attained hismajority.

b) Wife includes a woman who has been divorced by or has obtained a divorce from her husband, and has notremarried.

Magistrateshouldawardmaintenancenotfromthedateoforderbutfromthedate ofapplication.

**Non compliance of maintenance order:-**

Anypersonfailstocomplywithorderwithoutsufficientcausetodosothe magistratemayforeverybreachofsuchissuewarrantforlevyingtheamountdue as provided for levying fine and may in addition, sentence, such person for imprisonment upto one month or until payment whichever is earlier. But such warrant cannot be issued after expiry of the period of one year from the date on which the amount in question becamedue.

**Ground of wife's refusal to live with her husband: -**

If such person offers to maintain his wife on condition of her living with him,andsherefusestolivewithhim,suchmagistratemayconsideranygrounds of refusal stated by her and may make an order if he is satisfied that there is just ground for doing i.e.–

i) If a husband remarried or kept amistress

ii) Kept amistress

iii) Cruelty

iv) If husband is suffering from venerealdisease.

**Wife is not entitled to maintenance: -**

a) If she is living in adulteryor

b) If she refuse to live with her husband without any sufficient reasonor

c) If the husband and wife are living separately by mutualconsent.

**Application of Sec. 125 of Cr. PC to Muslim Woman: -**

The code of criminal procedure is a territorial law and is applicable to all irrespective of their religion.

**Caselaw: Mohammad Ahmed Khan v/s Shah Banu Begum AIR 1985 SC 945:-**

**Facts:-**MohammadAhmedKhangotmarriedtoShahBanoBegum45yrsafter the marriage Ahmed Khan divorced Shah Bano Begum by pronouncing triple talak. Shah Banu filed a petition against her husband for maintenance u/s 125 of Cr.PC.

**Judgement: -** The trial court and MP High Court upheld the petition by the Muslimwoman,ShahBanoformaintenanceonthegroundthatSec.125ofCr.PC is applicable to all including the Muslimwomen.

Ahmed Khan preferred an appeal before the SC contending that he had no obligationtopaymaintenance,beyondtheIddatperiod.ButtheSCdidnotadmit his contention and upheld the maintenance to ShahBano.

**Issue / Principle: -** The issue involved in the instant case is whether Sec. 125 of Cr.PC is applicable to Muslim women also?

Sec 125 Cr.PC is a general provision and is applicable to all irrespective of the religion and hence the SC in the instant case upheld the maintenance to the Muslim woman.

However the leader of Muslim religion criticized that the SC through 125 interferedinMuslimpersonallawanddemandedtoamendSec.125fromCr.PC. later,Muslimwomen(ProtectionofRightsandDivorce)Act1986waspassedto remove the above conflict. The divorced Muslim wife's claims are now to be governed by the Act. The Act overrules Shah Bano's decision by SC. The Act also was subject to criticism as bad law. However, same HC allowed Muslim woman to invoke maintenance u/s 125 as the Muslim spouses could opt to be governed by Sec. 125 Cr.PC as provided for in theAct.

**Effect:** - The Muslim woman (Protection of Right on Divorce) Act 1986 allows a Muslim woman to invoke relief u/s 125 Cr.PC only if the husband consents to it.

As a consequence of the Act, the claim for maintenance was not entertained / allowed**inMohammadUmarKhanv/sGulshanBegum1992Cr.LJ899MP:** -Onthegroundthattherewasnoconsentbythehusbandtobegovernedby Sec. 125 Cr. PC

**Appeal:** - No appeal lies against the order of maintenance.

**Alteration in Allowance Sec. 127:** - Upon a proof of any change in circumstances of the person receiving or paying the monthly allowance the magistrate may make any alteration in the allowance as he may deem fit. If divorcee remarried after the date of order, magistrate may

## Transfer of Criminal Case

Parties or witnesses can submit an application for the transfer of a criminal case under Cr.PC if they feel insecure, threaten or inconvenient. The principle

whichislaiddowninsection177ofthecodeofcriminalprocedureisverymuch clear.

Thateveryoffenseshallordinarilybeinquiredintoandtriedbyacourtwithinthe locallimitsofwhosejurisdictionitwascommitted.Butthisisnotahardandfast rule.Becausepartiescanalsofileanapplicationforthetransferofacriminalcase from court to another court, district to another district or province to another province.

Court has the absolute authority to transfer criminal case from one district to another. Mere allegation is not a ground for the transfer of case, some concrete proof has to be given in court.

**Transfer of Criminal Case**

There are three modes of transfer of a case under Cr.PC. Only three provisions relatingtothetransferofthecasecanbefoundincriminallaw.Thesemodesare as under:

1. Transfer of Criminal Case Through HighCourt
2. Transfer of Criminal Case By ProvincialGovernment
3. Transfer By SessionCourt

**1. Transfer Through HighCourt**

Section 526 of the criminal procedure code explains the procedure

**Grounds For transfer Of Criminal Case**

There are five grounds of transfer that a party can take if the parties suspect that a fair justice will not be served.

1. That a fair or impartial inquiry or trial cannot be had in any subordinate criminal court
2. That a place where the offense took place is far away from the place of court and the court wants to view theoccurrence
3. Adifficultquestionoflawhasarisenwhichcannotbedecidedbythelower court
4. The convenience of the party orwitness
5. That it is expedient forjustice

**if any of the above-ground exists in any case than the high court can order that;**

- Any particular case or class of case or appeal be transferred from one subordinate court toanother
- Any particular case is tried byitself
- Anyaccusedpersoncanbesenttoanothersessioncourtortoitselffortrail

**Transfer Of Case To The High Court**

When any case is withdrawn from any of its subordinate courts and is tried by itself. Then the high court must adopt the same rules and procedures which the lower court has adopted.

**Mods For Application Of Transfer**

There are three mods to file a transfer petition in criminal cases;

1. Application by the lowercourt
2. Application by any interestedparty
3. Suo Motuorder

**1. Application By LowerCourt**

Whenanymatterarisestodetermineanydifficultquestionoflaw.Thenthelower courtalwaysconsultswiththehighcourtandforthispurpose,theymakeareport. High court while considering the importance of this report can transfer criminal cases from one court to another or toitself.

**2. Application By Any InterestedParty**

Application for transfer can be filed by any party mentioning the grounds in it which are explained above. If the party show mistrust towards the presiding officer of the court or there is a danger to his life or fair trial cannot be held than he can submit this application and upon this high court can transfer the case.

**3. Suo MotuOrder**

The high court has the discretion to transfer case Suo Motu even without having any application to transfer.

**Transfer Application By Advocate General**

When the applicant is an advocate general who wants to transfer the criminal case,thanhisapplicationmustbesupportedbyaffidavitorconfirmation.Except advocate general this requirement is not mandatory for otherapplicants.

**Application By Accused person**

Whentheapplicationisfiledbytheaccusedpersonthanhighcourtmayorderthe accuse to furnish bonds with or without sureties in the court. If his application is rejected than the amount of bonds will be awarded to the opposingparty.

**Notice To The Public Prosecutor By The Accused Person**

Ineveryapplicationoftransferfiledbytheaccused,priornoticeshallbegivenin writingtothepublicprosecutoralongwiththecopyofgroundsonwhichtransfer

ofthecaseissought.Thecourtcanmakenoorderunlessthe24hoursareelapsed of giving notice to the publicprosecutor.

**Payment Of Compensation Upon Rejection Of Application**

Whenanapplicationisfiledundersection526andwhilerejectingthisapplication the high court thinks that this application was filled to waste the time of court or it was frivolous and vexatious. Then the High Court can impose fine on the applicantwhichwillbepaidtotheopposingparty.Themaximumamountoffine cannot exceed five hundredrupees.

**No Adjournment or Judgement Is pronounced**

Duringthetrial,ifanypartyintimatestothepresidingofficerofthecourtthathe wants to file an application to transfer the case. No adjournment will be granted to the intended applicant. And also no judgment will be pronounced unless this application has been decided by the highcourt.

**Application of Transfer In Appeal**

When after the conviction an appeal has been preferred and before arguing on this appeal the appellant intimates to the high court that he wants to file an application under this section. the court while accepting the wishes of the appellantcanorderhimtofurnishbondwithoutsuretiesofrupees500.Thecourt fixesatimeunderwhichtheintendedpartywillfileanapplication,otherwise,his bond will befortified.

**2. Transfer of Criminal Case By ProvincialGovernment**

Section 527 of the Criminal Procedure Code states that, If the provincial government thinks that by transfer of case it will promote the ends of justice or tendtothegeneralconvenienceofpartiesorwitnesses.ThenGovernmentcando so by making a notification in the official gazette and by this can orderthat

1. A particular case or appeal be transferred from one high court to another high court
2. From one criminal court subordinate to the high court to another criminal court equal or superior-subordinate court of another highcourt.

**Consent of Other Provincial Government**

ButThisorderoftransfercannotbemadeunlessthegovernmentofthatprovince gave consent. In this way, the case can be transferred from one high court to another highcourt.

**3. Transfer Of Criminal Case By SessionCourt**

Section 528 of Cr.P.C gives power to the session judge to transfer or withdraw the case from his subordinate courts. Session judge while withdrawing the case from its subordinate can transfer it to another additional session judge before the trial commences or appeal is argued.

**4. Transfer Of Criminal Case ByMagistrate**

Anymagistratetowhomcognizanceisgivenundersection192(2)canrecallthe case and give it to another magistrate to start aninquiry.

Whilemakingsuchtransferthemagistratehastorecordthereasoninwritingfor doing.

## Security for keeping the peace and for good behavior:

ChapterVIIIoftheCr.P.C.dealswiththepreventiveprovisionstopreventbreach of the peace ortranquility.

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

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

**Security for keeping the peace:**

There are two provisions:

(i) **On conviction**: (Sn. 106) If the sessions court, or the first class magistrate is of the opinion, that the convicted accused should execute a bond for keeping the peace, it may, at any time of passing sentence, order him to execute such abond. This may be with or withoutsureties.

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

The offences for which the accused is convicted may be:

i) Those affecting the publictranquility

ii) Assault

iii) Criminal intimidation iv) breach of the peaceor

v) abatement of these offences.

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

When the executive magistrate is informed that any person is likely to commitabreachofthepeaceorpublictranquilityoranywrongfulact,tothatend such magistrate may issue a show cause notice to such a person, as to why he shouldnotbeorderedtoexecuteabond.Themaximumperiodofthebondisone year.

Theordermustbeinwritingsettingforththesubstanceoftheinformation, amount of bond, the period and the nature of sureties required. The magistrate inquires into the truth of the information as in summons cases. This must be completedwithin6months.Ifhefindsproofheorderstoexecuteabond,heasks the order to do so. If he finds no evidence, he may discharge theaccused.

Ifafterexecutingthebond,forkeepinggoodbehavior,thepersoncommits an offence or attempts or abets, then there is a breach of thebond.

The magistrate, on holding an enquiry may refuse to accept the sureties and demand for new sureties or commit the person to prison. ii) Security for good behavior (Sn. 108, 109 & 110)

The security for the good behavior of a person can be taken from the following classes of persons: a) Sn.108:

Persons disseminating seditious matter, (Sn.l24A, I.P.C.), promoting enmity between classes (SN. 153A, IPC), out ranging religious feelings (Sn.295,1.P.C) etc.,

b) **Sec. 109:** Suspected person who is trying to concealhimself.

c) Sec.110:

Habitual robber, house-breaker, thief, forger, receiver of stolen

property, habitual offender under any law relating to offences in adulteration of Drugs,profiteering,hoardingetc.,orapersonwhoisdesperateanddangerousto thecommunity.

The magistrate may issue an order to show cause why he should not be orderedtoexecuteabondwithorwithoutsureties.Theperiodofthebondisone year under Sns.108 & 109 and it is 3 years under Sn.110. The order must be in writing,andmustsetforththesubstanceoftheinformation,theamountofbond, thenatureofthesuretiesetc.Themagistrateconductsaninquiry,and,ifhefinds

proof, he may order the accused person to execute the bond. If there is no proof he discharges the accused.

## Limitation for taking cognizance of certain offences

**Section 467 – Definitions**

For the purposes 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 468 – Bar to taking cognizance after lapse of the period of limitation**

1. No Court, shall take cognizance of an offence of the category specifiedin Sub-Section (2), after the expiry of the period oflimitation.
2. The period of limitation shallbe-
    1. six months, if the offence is punishable with fineonly;
    2. one year, if the offence is punishable with imprisonment for a term not exceeding oneyear;
    3. threeyears,iftheoffenceispunishablewithimprisonmentforaterm exceeding one year but not exceeding threeyears.
3. For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severepunishment.

**Section 469 – Commencement of the period of limitation**

1. The period of limitation, in relation to an offence, shallcommence,

1. on the date of the offence;or
2. where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on whichsuchoffencecomestotheknowledgeofsuchpersonortoany police officer, whichever is earlier;or
3. whereitisnotknownbywhomtheoffencewascommitted,thefirst day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever isearlier.

2. In computing the said period, the day from which such period is to be computed shall beexcluded

**Section 470 – Exclusion of time in certain cases**

In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Wherenoticeofprosecutionforanoffencehasbeengiven,orwhere,under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecutionforanoffence,than,incomputingtheperiodoflimitation,theperiod ofsuchnoticeor,asthecasemaybe,thetimerequiredforobtainingsuchconsent or sanction shall beexcluded.

**Section 471 – Exclusion of date on which Court is closed**

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 reopens. **Explanation** – A Court shall be deemed to be closed on any day within the meaningofthissection,if,duringitsnormalworkinghours,itremainsclosedon thatday.

**Section 472 – Continuing offence**

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.

**Section 473 – Extension of period of limitation in certain cases**

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, 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.

## Plea Bargaining (Section 265 of CrPc)

Legal provisions regarding plea bargaining under section 265 of the Code of Criminal Procedure, 1973.

**1. Application of the Chapter 'plea bargaining'**

Section 265-A of the Code of Criminal Procedure provides:

Legal provisions regarding plea bargaining under section 265 of the Code of Criminal Procedure, 1973.

(1) This Chapter shall apply in respect of an accused againstwhom:

(a) The report has been forwarded by the officer in charge of the police station under Section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force;or

(b) A Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonmentforatermexceedingsevenyears,hasbeenprovidedunderthelaw for the time being in force, and after examining complaint and witnesses under Section 200, issued the process under Section204;

But does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years is for the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in

force which shall be the offences affecting the socio-economic condition of the country.

**(2) Application for pleabargaining:**

Section 265-B of the Code of Criminal Procedure Code provides:

(1) Apersonaccusedofanoffencemayfileapplicationforpleabargaininginthe Court in which such offence is pending fortrial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the caserelatesandshallbeaccompaniedbyanaffidavitswornbytheaccusedstating thereinthathehasvoluntarilypreferred,afterunderstandingthenatureandextent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the sameoffence.

(3) After receiving the application under sub-section (1), the Court shall issue noticetothePublicProsecutororthecomplainantofthecase,asthecasemaybe, and to the accused to appear on the date fixed for thecase.

(4) When the Public Prosecutor or the complainant of the case, as the case may be,andtheaccusedappearonthedatefixedundersub-section(3),theCourtshall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself the accused has filed the application voluntarily and where:

(a) The Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory dispositionofthecasewhichmayincludegivingtothevictimbytheaccusedthe compensation and other expenses during the case and thereafter fix the date for further hearing of thecase;

(b) TheCourtfindsthattheapplicationhasbeenfiledinvoluntarilybytheaccused or he has previously been convicted by a Court in a case in which he had been chargedwiththesameoffence,itshallproceedfurtherinaccordancewiththe

provisionsofthisCodefromthestagesuchapplicationhasbeenfiledundersub- section (1).

**(3) Guidelines for mutually satisfactorydisposition:**

AccordingtoSection265-CoftheCodeofCriminalProcedure,inworkingouta mutually satisfactory disposition under clause (a) of sub-section (4) of Section 265-B, the Court shall follow the following procedure,namely:

(a) Inacaseinstitutedonapolicereport,theCourtshallissuenoticetothePublic Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of thecase:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Providedfurtherthattheaccusedifhesodesires,mayparticipateinsuchmeeting with his pleader, if any, engaged in thecase;

(b) Inacaseinstitutedotherwisethanonpolicereport,theCourtshallissuenotice totheaccusedandthevictimofthecasetoparticipateinameetingtoworkouta satisfactory disposition of thecase

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed, voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

**(4) Reportofthemutuallysatisfactorydispositiontobesubmittedbeforethe Court:**

As per Section 265-D of the Code of Criminal Procedure, wherein a meeting under Section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signedbythepresidingofficerofthecourtandallotherpersonswhoparticipated in the meeting and if no such disposition has been worked out, the Court shall recordsuchobservationandproceedfurtherinaccordancewiththeprovisionsof this Code from the stage the application under sub-section (1) of Section 265-B has filed in such case.

**(5) Disposal of theCase:**

According to Section 265-E of the Code of Criminal Procedure, where a satisfactorydispositionofthecasehasbeenworkedoutunder Section265-D,the Court shall dispose of the case in the following manner,namely:

(a) The Court shall award the compensation to the victim in accordance with the disposition under Section 265-D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under Section 360 or for dealing with the accused underthe

provisionsoftheProbationofOffendersAct,1958(20of1958)areanyother law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on theaccused;

(b) After hearing the parties under clause (a), if the Court is of the view that Section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case ofthe

accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;

(c) After hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimumpunishment;

(d) In case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for suchoffence.

**(6) Judgment of theCourt:**

As per Section 265-F of the Code of Criminal Procedure, the Court shall deliver its judgment in terms of Section 265-E in the open Court and the same shall be signed by the presiding officer of the Court.

**(7) Finality of thejudgment:**

According to Section 265-G of the Code of Criminal Procedure, the judgmentdeliveredbytheCourtunderSection265-Gshallbefinalandnoappeal (except the special leave petition under Article 136 and writ petition under Articles 226 and 227 of the Constitution) shall lie in any Court against such judgment

**(8) Power of the Court in pleabargaining:**

As per Section 265-H of the Code of Criminal Procedure, a Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offence and other matters relating to the disposal of a case in such Court under this Code.

**(9) Period of detention undergone by the accused to be set off against the sentence ofimprisonment:**

Section 265-1 of the Code of Criminal Procedure provides that the provisions of Section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

**(10) Savings:**

AspertheSection265-JoftheCodeofCriminalProcedure,theprovisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

**Explanation:**

For the purpose of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (u) of Section 2 and includes an Assistant Public Prosecutor appointed under Section 25.

**(11) Statement of accused not to beused:**

According to Section 265-K of the Code of Criminal Procedure, notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining file

under Section 265-B shall not be used for any other purpose except for the purpose of this Chapter.

**(12) Non-application of theChapter:**

Section 265-L of the Code of Criminal Procedure provides that nothing in this Chapter shall apply to any Juvenile or Child as defined in sub-clause (k) of Section2oftheJuvenileJustice(CareandProtectionofChildren)Act,2000(56 of2007).

## PROBATION OF OFFENDERS ACT 1958

ThetermProbationisderivedfromtheLatinword‘Probate’whichmeans ‘to test’ or to‘prove’.

When a person convicted of an offence, as a special case by virtue of age orotherreasonisnotsenttoprisonbutiskeptunderthesupervision/observation for the purpose of correcting him as a good citizen, he is said to have been kept on probation. The official, who supervises is called ‘ProbationOfficer’.

Probation means the conditional supervision of a sentence by the court in selected cases, especially of young offenders, who are not sent to prisons but are released on probation, on agreeing to abide by certain conditions.

Earlier, probation was designed only for child offenders (Juvenile delinquent).Nowitcanbeextendedtoadelinquentofanyage(General)upto21 years.

**Definition:** - Probation may be defined as a method of dealing with specially selected offenders and consists of conditional suspension of punishment while the offender is placed under personal supervision and is given individualized treatment.

**Object:** - The main object of probation is to save some selected types of offenders, from rigorous imprisonment.

The sole intention of the legislature in passing probation laws is to give persons of a particular type a chance of reformation, which they would not get if senttoprison.Thetypeofpersonswhoareinthecontemplationofthelegislature under the probation laws are those who are not hardened or dangerous criminals but those who have committed offences under some monetary weakness of character of some temptingsituation.

By passing the offender on probation the court saves him from the stigma ofjaillifeandalsofromthecontaminatinginfluenceofhardenedprisoninmates.

It helps in eliminating overcrowding in jails by keeping many offenders away from then under probation programmes.

It aims at rehabilitation of offender by returning them to society during a periodofsupervisionratherthanbysendingthemintotheunnaturalandsocially unhealthy atmosphere of prisons. The offender is allowed to remain in the community and develop as a normal human being in his own natural surroundings.

**Short note:** -

**Power of Court to release certain offenders on probation of good conduct Sec 4: -**

1) When any person is found guilty of having committed an offence not punishablewithdeathorimprisonmentforlifeandthecourtbywhichtheperson is found guilty of opinion that, having regard to the circumstances of the case includingthenatureoftheoffenceandthecharacteroftheoffenderitisexpedient to release him on probation of good conduct, then the court may insteadof

sentencing him at once to any punishment direct that he be released on his enteringintoabond,withorwithoutsuretiestoappearandreceivesentencewhen called upon during such period, not exceeding 3 years, as the court may direct and in the meantime to keep the peace and be of goodbehaviour.

2) The court shall not direct such release of an offender unless it is satisfied that offender or his surety, if any has a fixed place of abode or regular occupation in the place over which the court exercised jurisdiction or in which the offender is likely to live during the period of which he enter into thebond.

Before making any order the court shall take into consideration the report of probation officer.

3) When an order is made, the court may, if it is of opinion that in the interest of the offender and of the public it is expedient so to do, in addition pass a supervision order directing, that the offender shall remain under the supervision of a probation officer in the order during such period, not being less than one year,asmaybespecifiedtherein,andmayinsuchsupervisionorderimposesuch conditions as it deems necessary for due supervision of theoffender.

4) The court making a supervision order shall require the offender, before he is released, to enter into a bond, with or without sureties to observe the conditions specified in such order and such additional conditions 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 for preventing and repetitionofthesameoffenceoracommissionofotheroffencesbytheoffender.

The court making a supervision order shall explain to the offender the terms and conditionsoftheorderandshallforthwithfurnishacopyofthesupervisionorder to each of the offender, the sureties and the probation officerconcerned.

**Powers of Court to release certain offenders after admonition:** - U/s 3 of Probation of Offenders act 1958 the court is empowered to release certain offenders after admonition.

When any person is found guilty of having committed an offence punishable u/s

Sec 379: - punishment for theft

Sec 380: - theft in dwelling house etc

Sec 381: - theft by clerk / servant of property in possession of master.

Sec404:-Dishonestmisappropriationofpropertypossessedbydeceasedperson as the time of hisdeath.

Sec 420: - Cheating and dishonestly inducing delivery of property, of the IPC or any offence punishable with imprisonment for not, more than 2 yrs, or with fine or with both, under IPC or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, havingregardtothecircumstancesofthecaseincludingthenatureoftheoffence

and the character of the offender it is expedient to do then the court may, instead of sentencing him on probation of good conduct u/s 4 release him after due admonition.

Thus when the court is of the opinion after taking the consideration the relevantfactors,thedirectsentenceisnotrequiredbutmerewarningissufficient to suppress crime, the magistrate can issue order of admonition and release the offender.

**Variations of conditions of probation (Sec 8): -**

1) Ifontheapplicationofaprobationofficer,anycourtwhichpassesanorderu/s 4inrespectofanoffenderisofopinionthatintheinterestoftheoffenderandthe publicitisexpedientornecessarytovarytheconditionsofthebondenteredinto by the offender, it may at any time during the period when the bond is effective, varythebondbyextendingordiminishingthedurationthereof,sohowever,that it shall not exceed 3 yrs from the date of the original order or by altering the conditions thereof or by inserting additional conditionstherein.

Providedthatnosuchvariationshallbemadewithoutgivingtheoffenderandthe surety or sureties mentioned in the bond an opportunity of beingheard.

2) Ifanysuretyrefusestocontenttoanyvariationproposedtobemade,thecourt may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.

3) The court which passes an order u/s 4 in respect of an offender may, if it is satisfied on an application made by the probation officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into byhim.

**Report of probation officer to be confidential (Sec. 7):** - The report of the probationofficerisofprimaryimportanceandanaidtothecourt,formakingthe decision regarding the release on probation. An ideal report shouldgive

information regarding family history and personal, social and economic factors of the offender and a plant for correctional treatment of the offender if the recommendation is for grant of probation.

Inshorttheprobationofficerhastoevaluatethepersonalityoftheoffender. The court has to make decision after taking into consideration the probation officer's report and nature and circumstances of theoffence.

The report of probation officer shall be treated as confidential.

Providedthatthecourtmay,ifitthinksfit,communicatethesubstancethereofto the offender and may give an opportunity of producing such evidence as may be relevant to the matter stated in thereport.

**Power of Court to require released offender to pay compensation and cost (Sec 5):** -

1) The court directing the release of an offender u/s 3 or 4 may if it thinks fit, make at the same time a further order directing him to pay–

a) Such compensation as the court thinks reasonable for loss or injury caused to any person by commission of the offenceand

b) Such cost of the proceedings as the court thinksreasonable.

2) The amount ordered to be paid may be recovered as a fine in accordance with the provisions of Sec. 386 and 387 of thecode.

3) Acivilcourttryingaysuit,risingoutofthesamematterforwhichtheoffender is prosecuted, shall take into account any amount paid or recovered as compensation in awardingdamages.

**Restrictions on imprisonment of offender under 21 years of age (Sec 6):-**

1) When any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment (but now with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonmentunlessitissatisfiedthat,havingregardtothecircumstancesofthe case including the nature of the offence and the character to deal with him u/s 3 or4,andifthecourtpassesanysentenceofimprisonmentontheoffenderitshall record its reasons for doingso.

2) For the purpose of satisfying itself whether it would not be desirable to deal u/s3or4withtheoffenderu/s6(1)thecourtshallcalforareportfromprobation officer and consider the report and any other information available to it relating to the character and physical and mental condition of theoffender.

**Importance of probation in Reformation of the offender**: -

1) Themodern,therapeuticapproachtowardscriminalsisnottopunishthembut to give an opportunity to reform themselves in future. Probation is one of the important mode of thistype.

2) The major objective of probation is to rehabilitation. The offender as well as to protect the society from his criminaleffort.

3) Whenever an offender is kept under probation, he saved from the society of those hardened and dangerous criminals with whose company he other wise had to live during his detention in jail. It will also save himself from many other evil and learning badhabits.

4) The personality of the offender is protected from contaminating influence of the prison life, only through theprobation.

5) Thereleasedoffendergetsnormalsociallifeandrelationshipandemployment duringprobation.

6) Probation helps in reducing the unnecessary crowds injails.

7) The Probationers are given various professional training during the period of probation and as such they are made competent to do various works, for their feeding after release.

8) The feeling of self confidence and self reliance are created in the offender throughvariouspsychologicalmethods.Ithelpsinmakingtheircharactersound.

9) The strict discipline and supervision over the probationers, during the period of probation, make them disciplined andobedient.

**Critical appreciation: Probation as a Corrective Measure: -**

1) There are some critics who look probation as a form of leniency towards the offender.

2) There are certain pitfalls in the system keeping in view the increasing crime rateanditsfrighteningdimensions,undueemphasisonindividualoffenderatthe cost of societies insecurity can hardly be appreciated as sound penalpolicy.

Admitting all young offenders and first offender to probation regardless of their personality, mental attitude might lead to recidivism because many of them may not respond adorably treatment.

Sec 4 of the Act, which is key section of the Act, does not make supervision ofa personreleasedonprobationmandatorywhenthecourtordersreleaseofaperson

on probation on his entering into a bond with or without sureties. This is not according to probation philosophy.

Though Sec. 6 of the Act requires the court to take into consideration the probation officers report when decision will deliver but many times court gives decisionwithouttakingintoconsiderationofthereportofprobationofficer.This is against the spirit of the philosophy ofprobation.

Sec3criticizedonthegroundthatitdoesnotrequirethecourttocallforareport from the probation officer and thus the court is not in a position to possess the information to decide the issue of character of the offender and other relevant factor.

**Judicial Trend:** -

**Caselaw: - In Musa Khan v/s State of Maharashtra 1997:** - The Supreme CourtpointedoutthatthoughtheprovisionsofSec.6oftheActweremandatory, the court did not appear to make wise use of the provision, which was necessary to protect our younger generation from becoming professional criminals and a menace to thesociety.

**Caselaw: - Devki Alais kalu v/s State of Haryana 1979:** - Where the offender found guilty of abducing a teenager girl of 17 years and forcing to sexual submission with commercial object, the Supreme Court held that the provisions of Probation Offender's Act could not be extended, this a abominable culprit.

**Caselaw: - Dhansukh Chhotalal v/s State of Gujarat 1990 Cr LJ 73:** - The accused was 58 years old, a teacher by profession and his carrier was without blemish.GujaratHighCourtheldthathewasentitledtobenefitofProbationand order of conviction should not affect hisservice.

**Caselaw: - Sunil Kumar Parida v/s State of Orrisa 1993 Cr. LJ 544:** - The accused was released on admonition and appellate court held that conviction should not affect his service.

## Juvenile Justice (Care And Protection Of Children) Act,2000

### Definitions.-

"advisory board" means a Central or a State advisory board or adistrict and city level advisory board, as the case may be,constituted under section 62;
"begging" means-
soliciting or receiving alms in a public place or entering intoany private premises for the purpose of soliciting or receiving alms,whether under any pretence;
exposing or exhibiting with the object of obtaining or extortingalms, any sore, wound, injury, deformity or disease, whether ofhimself or of any other person or of an animal;
"Board" means a Juvenile Justice Board constituted under section4;

"child in need of care and protection" means a child-
who is found without any home or settled place or abode andwithout any ostensible means of subsistence,
who resides with a person (whether a guardian of the child ornot) and such person-
has threatened to kill or injure the child and there is areasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children andthere is a reasonable likelihood of the child in question beingkilled, abused or neglected by that person,who is mentally or physically challenged or ill children orchildren suffering from terminal diseases or incurable diseases havingno one to support or look after,who has a parent or guardian and such parent or guardian is unfitor incapacitated to exercise control over the child,
who does not have parent and no one is willing to take care of orwhose parents have abandoned him or who is missing and run away childand whose parents cannot be found after reasonable inquiry,
who is being or is likely to be grossly abused, tortured orexploited for the purpose of

sexual abuse or illegal acts,who is found vulnerable and is likely to be inducted into drugabuse or trafficking,
who is being or is likely to be abused for unconscionablegains,
who is victim of any armed conflict, civil commotion or naturalcalamity;

"children's home" means an institution established by a StateGovernment or by voluntary organisation and certified by thatGovernment under section 34;
"Committee" means a Child Welfare Committee constituted undersection 29;
"competent authority" means in relation to children in need ofcare and protection a Committee and in relation to juveniles inconflict with law a Board;
"fit institution" means a governmental or a registerednon-governmental organisation or a voluntary organisation prepared toown the responsibility of a child and such organisation is found fitby the competent authority;
"fit person" means a person, being a social worker or any otherperson, who is prepared to own the responsibility of a child and isfound fit by the competent authority to receive and take care of thechild; "guardian", in relation to a child, means his natural guardian orany other person having the actual charge or control over the childand recognised by the competent authority as a guardian in course ofproceedings before that authority; "juvenile" or "child" means a person who hasnot completedeighteenth year ofage;
"juvenile in conflict with law" means a juvenile who is alleged tohave committed an offence; "local authority" means Panchayats at the village and ZilaParishad at the district level and shall also include a MunicipalCommittee or Corporation or a Cantonment Board or such other bodylegally entitled to function as local authority by the Gove nment; "narcotic drug" and "psychotropic substance" shall have themeanings respectively assigned to them in the Narcotic Drugs andPsychotropic Substances Act, 1985 (61 of 1985);"observation home" means a home established by a State Governmentor by a voluntary organisation and certified by that State Governmentunder section 8 as an observation home for the juvenile in conflictwith law; "offence" means an offence punishable under any law for the timebeing in force;
"place of safety" means any place or institution (not being apolice lock-up or jail), the person incharge of which is willingtemporarily to receive and take care of the juvenile and which, in theopinion of the competent authority, may be a place o safety for thejuvenile; "prescribed" means prescribed by rules made under this Act;
"probation officer" means an officer appointed by the StateGovernment as a probation officer under the Probation of OffendersAct, 1958 (20 of 1958);

"public place" shall have the meaning assigned to it in theImmoral Traffic (Prevention) Act, 1956 (104 of 1956);
"shelter home" means a home or a drop-in-centre set up undersection 37; "special home" means an institution established by a StateGovernment or by a voluntary organisation and certified by thatGovernment under section 9; "special juvenile police unit" means a unit of the police force ofa State designated for handling of juveniles or children under section63;
"State Government", in relation to a Union territory, means theAdministrator of that

Union territory appointed by the President underarticle 239 of the Constitution
all words and expressions used but not defined in this Act anddefined in the Code of Criminal Procedure, 1973 (2 of 1974), shallhave the meanings respectively assigned to them in that Code.
Continuation of inquiry in respect of juvenile who has ceased tobe a juvenile.-
Where an inquiry has been initiated against a juvenilein conflict with law or a child in need of care and protection andduring the course of such inquiry the juvenile or the child ceases tobe such, then, notwithstanding anything contained in this Act or inany other law for the time being in force, the inquiry may becontinued and orders may be made in respect of such person as if suchperson had continued to be a juven le or a child.

## JUVENILE IN CONFLICT WITH LAW

. **Juvenile Justice Board**.- (1) Notwithstanding anything contained inthe Code of Criminal Procedure, 1973 (2 of 1974), the State Governmentmay, by notification in the Official Gazette, constitute for adistrict or a group of districts specified in the n tification, one ormore Juvenile Justice Boards for exercising the powers and dischargingthe duties conferred or imposed on such Boards in relation tojuveniles in conflict with law under thisAct.
A Board shall consist of a Metropolitan Magistrate or a JudicialMagistrate of the first class, as the case may be, and two socialworkers of whom at least one shall be a woman, forming a Bench andevery such Bench shall have the powers conferred by he Code ofCriminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or,as the case may be, a Judicial Magistrate of the first class and theMagistrate on the Board shall be designated as the principalMagistrate.
No Magistrate shall be appointed as a member of the Board unlesshe has special knowledge or training in child psychology or childwelfare and no social worker shall be appointed as a member of theBoard unless he has been actively involved in health education, orwelfare activities pertaining to children for at least seven years.
The term of office of the members of the Board and the manner inwhich such member may resign shall be such as may be prescribed.
(5) The appointment of any member of the Board may be terminated afterholding inquiry, by the State Government, if-
he has been found guilty of misuse of power vested under this Act,
he has been convicted of an offence involving moral turpitude,and such conviction has not been reversed or he has not been grantedfull pardon in respect of such offence,he fails to attend the proceedings of the Board for consecutivethree months without any valid reason or he fails to attend less thanthree-fourth of the sittings in a year.

5 . **Procedure, etc., in relation to Board**.- (1) The Board shall meet atsuch times and shall observe such rules of procedure in regard to thetransaction of businessat

its meetings, as may be prescribed.
A child in conflict with law may be produced before an individualmember of the Board, when the Board is not sitting.A Board may act notwithstanding the absence of any member of theBoard, and no order made by the Board shall be invalid by reason onlyof the absence of any member during any stage of proceedings:Provided that there shall be at least two members including theprincipal Magistrate present at the time of final disposal of thecase.In the event of any difference of opinion among the members of theBoard in the interim or final disposition, the opinion of the majorityshall prevail, but where there is no such majority, the opinion of theprincipal Magistrate shallprevail.

6 . **Powers of Juvenile Justice Board**.- (1) Where a Board has beenconstituted for any district or a group of districts, such Boardshall, notwithstanding anything contained in any other law for thetime being in force but save as otherwise expressly provid d in thisAct, have power to deal exclusively with all proceedings under thisAct relating to juvenile in conflict withlaw.

(2) The powers conferred on the Board by or under this Act may also beexercised by the High Court and the Court of Session, when theproceeding comes before them in appeal, revision or otherwise.

7 . **Procedure to be followed by a Magistrate not empowered under theAct**.- Procedure to be followed by a Magistrate not empowered under theAct.-(1) When any Magistrate not empowered to exercise the powers of aBoard under this Act is of the opinion that a person brought beforehim under any of the provisions of this Act (ot er than for thepurpose of giving evidence), is a juvenile or the child, he shallwithout any delay record such opinion and forward the juvenile or thechild and the record of the proceeding to the competent authorityhaving jurisdiction over the proceedng.

(2)Thecompetentauthoritytowhichtheproceedingisforwardedundersub-section(1)shall hold the inquiry as if the juvenile or the childhad originally been brought beforeit.

8 .**Observationhomes**.-
(1)AnyStateGovernmentmayestablishandmaintaineitherbyitself or under an agreement with voluntaryorganisations, observation homes in every district or a group ofdistricts, as may be required for the temporary reception of nyjuvenile in conflict with law during the pendency of any inquiryregarding them under this Act.Where the State Government is of opinion that any institutionother than a home established or maintained under sub-section (1), isfit for the temporary reception of juvenile in conflict with lawduring the pendency of any inquiry regarding them un er this Act, itmay certify such institution as an observation home for the purposesof this Act.The State Government may, by rules made under this Act, providefor the management of observation homes, including the standards andvarious types of services to be provided by them for rehabilitationand socialintegration

of a juvenile, and the cir umstances underwhich, and the manner in which, the certification ofanobservationhomemaybegrantedorwithdrawn.Everyjuvenilewhoisnotplacedunder the charge of parent orguardian and is sent to an observation home shall be initially kept ina reception unit of the observation home for preliminary inquiries,care and classification for juveniles according o his age group, suchas seven to twelve years, twelve to sixteen years and sixteen toeighteen years, giving due considerations to physical and mentalstatus and degree of the offence committed, for further induction intoobservationhome.

9 . **Special homes**.- (1) Any State Government may establish and maintaineither by itself or under an agreement with voluntary organisations,special homes in every district or a group of districts, as may berequired for reception and rehabilitation of ju enile in conflict withlaw under this Act.Where the State Government is of opinion that any institutionother than a home established or maintained under sub-section (1), isfit for the reception of juvenile in conflict with law to be sentthere under this Act, it may certify such institutio as a special homefor the purposes of this Act. The State Government may, by rules made under this Act, providefor the management of special homes, including the standards andvarious types of servicestobeprovidedbythemwhicharenecessaryforre-socialisationofajuvenile,andthe circumst nces under which,and the manner in which, the certification of a special home may begranted or withdrawn. The rules made under sub-section (3) may also provide for theclassification and separation of juvenile in conflict with law on thebasis of age and the nature of offences committed by them and hismental and physicalstatus.

10 . **Apprehension of juvenile in conflict with law**.- (1) As soon as ajuvenile in conflict with lawisapprehendedbypolice,heshallbeplacedunderthechargeofthespecialjuvenilepolic e unit or thedesignated police officer who shall immediately rep rt the matter to amember of theBoard.

(2) The State Government may make rules consistent with this Act,- to provide for persons through whom (including registeredvoluntary organisations) any juvenile in conflict with law maybeproducedbeforetheBoard;toprovidethemannerinwhichsuchjuvenilemaybesent to anobservationhome.

. **Control of custodian over juvenile**.- Any person in whose charge ajuvenile is placed in pursuance of this Act shall, while the order isin force have the control over the juvenile as he would have if hewere his parents, and shall be responsible for h s maintenance, andthe juvenile shall continue in his charge for the period stated bycompetent authority, notwithstanding that he is claimed by his parentsor any other person.

. **Bail of juvenile**.- (1) When any person accused of a bailable ornon-bailable offence, and apparently a juvenile, is arrested ordetained or appears or is brought before a Board, such person shall,notwithstanding anything contained in the Code of Crim nal Procedure,1973 (2 of 1974) or in any other law for the time being in force,

bereleased on bail with or without surety but he shall not be soreleased if there appear reasonable grounds for believing that

therelease is likely to bring him into asso iation with any knowncriminal or expose him to moral, physical or psychological danger orthat his release would defeat the ends of justice. When such person having been arrested is not released on bailunder sub-section (1) by the officer incharge of the police station,such officer shall cause him to be kept only in an observation home inthe prescribed manner until he can be brought efore a Board.

When such person is not released on bail under sub-section (1) bythe Board it shall, instead of committing him to prison, make an ordersending him to an observation home or a place ofsafetyforsuchperiodduringthependencyoftheinquiryregardnghimasmaybespecified in theorder.

13. **Information to parent, guardian or probation officer.**- Where ajuvenile is arrested, the officer incharge of the police station orthe special juvenile police unit to which the juvenile is broughtshall, as soon as may be after the arrest,inform-

the parent or guardian of the juvenile, if he can be found of sucharrest and direct him to be present at the Board before which thejuvenile will appear; and

the probation officer of such arrest to enable him to obtaininformation regarding the antecedents and family background of thejuvenile and other material circumstances likelyto be of assistanceto the Board for making theinquiry.

14. **Inquiry by Board regarding juvenil**e.- Where a juvenile having beencharged with the offence is produced before a Board, the Board shallhold the inquiry in accordance with the provisions of this Act and maymake such order in relation to the juvenile s it deemsfit:

Providedthataninquiryunderthissectionshallbecompletedwithinaperiodoffourmonths fromthedateofitscommencement,unlesstheperiodisextendedbytheBoardhavingregard to the circumstances ofthe case and in special cases after recordin the reasons in writingfor such extension.

15. **Order that may be passed regarding juvenile**.- (1) Where a Board issatisfied on inquiry that a juvenile has committed an offence, then,notwithstanding anything to the contrary contained in any other lawfor the time being in force, the Board may, if t thinks so fit,- allow the juvenile to go home after advice or admonition followingappropriate inquiry against and counselling to the parent or theguardian and thejuvenile;

direct the juvenile to participate in group counselling andsimilar activities; order the juvenile to perform community service;

order the parent of the juvenile or the juvenile himself to pay afine, if he is over fourteen years of age and earns money;

direct the juvenile to be released on probation of good conductand placed under the care of any parent, guardian or other fit person,on such parent, guardian or other fit person executing a bond, with orwithout surety, as the Board may require, fo the good behaviour

andwell-being of the juvenile for any period not exceeding three years; direct the juvenile to be released on probation of good conductand placed under the care of any fit institution for the goodbehaviour and well-being of the juvenile for any period not exceedingthree years; makeanorderdirectingthejuveniletobesenttoaspecialhome,-inthecaseofjuvenile,over seventeenyearsbutlessthaneighteenyearsofageforaperiodofnotlessthantwoyears;in case of any other juvenile for the period until he ceases tobe ajuvenile:
Provided that the Board may, if it is satisfied that having regard tothe nature of the offence and the circumstances of the case it isexpedient so to do, for reasons to be recorded, reduce the period ofstay to such period as it thinks fit.
The Board shall obtain the social investigation report on juvenileeither through a probation officer or a recognised voluntaryorganisation or otherwise, and shall take into consideration thefindings of such report before passing an order.

Where an order under clause (d), clause (e) or clause (f) ofsub-section (1) is made, the Board may, if it is of opinion that inthe interests of the juvenile and of the public, it is expedient so todo, in addition make an order that the juvenile i conflict with lawshall remain under the supervisionofaprobationofficernamedintheorderduringsuchperiod,notexceedingthree years as may bespecified therein, and may in such supervision order impose suchconditions as it deems necessary for he due supervision of thejuvenile in conflict withlaw:

Provided that if at any time afterwards it appears to the Board onreceiving a report from the probation officer or otherwise, that thejuvenile in conflict with law has not been of good behaviour duringthe period of supervision or that the fit institut on under whose carethe juvenile was placed is no longer able or willing to ensure thegood behaviour and well-being of the juvenile it may, after makingsuch inquiry as it deems fit, order the juvenile in conflict with lawto be sent to a special home.

(4) The Board shall while making a supervision order under sub-section(3), explain to the juvenile and the parent, guardian or other fitperson or fit institution, as the case may be, underwhosecarethejuvenilehasbeenplaced,thetermsandconditiosoftheorderandshall forthwith furnish one copy of the supervision order to thejuvenile, the parent, guardian or other fit person or fit institution,as the case may be, the sureties, if any, and the probation officer.

16 . **Order that may not be passed against juvenile**.- (1)Notwithstanding anything to the contrarycontainedinanyotherlawforthetimebeinginforce,nojuvenileinconflictwithlaw shallbesentencedtodeathorlifeimprisonment,orcommittedtoprionindefaultofpayment of fine or in default of furnishingsecurity:

Provided that where a juvenile who has attained the age of sixteenyears has committed an offenceandtheBoardissatisfiedthattheoffencecommittedisofsoseriousinnatureorthat

his conduct andbehaviour have been such that it would not be in hi interest or in theinterest of other juvenile in a special home to send him to suchspecial home and that none of the other measures provided under thisAct is suitable or sufficient, the Board may order the juvenileinconflictwithlawtobekeptinuchplaceofsafetyandinsuchmannerasitthinksfit and shall report the case for the order of theStateGovernment.

(2) On receipt of a report from a Board under sub-section (1), theState Government may make such arrangement in respect of the juvenileas it deems proper and may order such juveniletobekeptunderprotectivecustodyatsuchplaceandonsuchconditiosasitthinksfit:

Provided that the period of detention so ordered shall not exceed themaximum period of imprisonment to which the juvenile could have beensentenced for the offencecommitted.

. **Proceeding under Chapter VIII of the Code of Criminal Procedurenot competent against juvenile**.- Notwithstanding anything to thecontrary contained in the Code of Criminal Procedure, 1973 (2 of 1974)no proceeding shall be instituted and no order shal be passed againstthe juvenile under Chapter VIII of the said Code.

. **No joint proceeding of juvenile and person not a juvenile**.- (1)Notwithstanding anything contained in section 223 of the Code ofCriminal Procedure, 1973 (2 of 1974) or in any other law for the timeoffence together with a person who is not a juvenile. being in force,no juvenile shall be charged with or tried for any

(2) If a juvenile is accused of an offence for which under section 223of the Code of Criminal Procedure, 1973 (2 of 1974) or any other lawfor the time being in force, such juvenile and any person who is not ajuvenile would, but for the prohibition co tained in sub-section (1),have been charged and tried together, the Board taking cognizance ofthat offence shall direct separate trials of the juvenile and theother person.

19 . **Removal of disqualification attaching to conviction**.- (1)Notwithstanding anything containedinanyotherlaw,ajuvenilewhohascommittedanoffenceandhasbeendealtwith undertheprovisionsofthisActshallnotsufferdisqualification,ifany,ttachingtoaconviction of an offence under suchlaw.

(2) The Board shall make an order directing that the relevant recordsof such conviction shall be removed after the expiry of the period ofappeal or a reasonable period as prescribed under the rules, as thecase may be.

. **Special provision in respect of pending cases**.- Notwithstandinganything contained in this Act, all proceedings in respect of ajuvenile pending in any court in any area on the date on which thisAct comes into force in that area, shall be continued n that court asif this Act had not been passed and if the court finds that thejuvenile has committed an offence, it shall recordsuchfindingandinsteadofpassinganysentenceinrespectofthejuvenile,forwardthe juvenile to the Board which sha l pass orders in respect of thatjuvenile in accordance with the provisions of this Act as if it hadbeen satisfied on inquiry under this Act that a juvenile has committedtheoffence.

. **Prohibition of publication of name, etc., of juvenile involved inany proceeding**

**under the**

**Act.**- (1) No report in any newspaper,magazine, news-sheet or visual media of any inquiry regardingajuvenileinconflictwithlawunderthisActshalldisclosthename,addressorschool or any other particulars calculated to lead to theidentification of the juvenile nor shall any picture of any suchjuvenile bepublished:

Provided that for reasons to be recorded in writing the authorityholding the inquiry may permit such disclosure, if in its opinion suchdisclosure is in the interest of the juvenile.

(2) Any person contravening the provisions of sub-section (1) shall bepunishable with fine, which may extend to one thousand rupees.

22 . **Provision in respect of escaped juvenile**.- Notwithstandinganything to the contrary contained in any other law for the time beingin force, any police officer may take charge without warrant of ajuvenile in conflict with law who has escaped from a sp cial home oran observation home or from the care of a person under whom he wasplaced under this Act, and shall be sent back to the special home orthe observation home or that person, as the case may be; and noproceeding shall be instituted in respec of the juvenile by reason ofsuch escape, but the special home, or the observation home or theperson may, after giving the information to the Board which passed theorder in respect of the juvenile, take such steps in respect of thejuvenile as may be eemed necessary under the provisions of this Act.

. Punishment for cruelty to juvenile or child.- Whoever, having theactual charge of or control over, a juvenile or the child, assaults,abandons, exposes or wilfully neglects the juvenile or causes orprocures him to be assaulted, abandoned, exposed o neglected in amanner likely to cause such juvenile or the child unnecessary mentalor physical suffering shall be punishable with imprisonment for a termwhich may extend to six months, or fine, or with both.

. **Employment of juvenile or child for begging**.- (1) Whoever, employsor uses any juvenile or the child for the purpose or causes anyjuvenile to beg shall be punishable with imprisonment for a term whichmay extend to three years and shall also be li ble to fine.

(2) Whoever, having the actual charge of, or control over, a juvenileor the child abets the commission of the offence punishable undersub-section (1), shall be punishable with imprisonment for a termwhich may extend to one year and shall also be lia le to fine.

. **Penalty for giving intoxicating drug or psychotropic substance tojuvenile or child**.- Penalty for giving intoxicating drug or psychotropic substance tojuvenile or child.- Whoever gives, or causes to be given, to anyjuvenile or the child any intoxicating liquor in a public place or anynarcotic drug or psychotropic substance except up n the order of dulyqualified medical practitioner or in case of sickness shall bepunishable with imprisonment for a term which may extend to threeyears and shall also be liable to fine.

. **Exploitation of juvenile or child employee**.- Whoever ostensiblyprocures a juvenile or the child for the purpose of any hazardousemployment keeps him in bondage and withholds his earnings or usessuch earning for his own purposes shall be punishable withimprisonment for a term which may extend to three years and

shall alsobe liable tofine.

. **Special offences**.- The offences punishable under sections 23, 24,25 and 26 shall be cognizable.

. **Alternative punishmen**t.- Where an act or omission constitute anoffence punishable under this Act and also under any other Central orState Act, then, notwithstandinganything contained in any law for thetime being in force, the offender found g ilty of suchoffences
shallbe liable to punishment only under such Act as provides for punishmentwhich is greater in degree.

## CHILD IN NEED OF CARE AND PROTECTION

. **Child Welfare Committee.**- (1) The State Government may, bynotification in Official Gazette, constitute for every district orgroup of districts, specified in the notification, one or more ChildWelfare Committees for exercising the powers and dischar e the dutiesconferred on such Committees in relation to child in need of care andprotection under this Act.

(2) The Committee shall consist of a Chairperson and four othermembers as the State Government may think fit to appoint, of whom atleast one shall be a woman and another, an expert on mattersconcerning children.

The qualifications of the Chairperson and the members, and thetenure for which they may be appointed shall be such as may beprescribed.
The appointment of any member of the Committee may be terminated,after holding inquiry, by the State Government, if-he has been found guilty of misuse of power vested under this Act;

he has been convicted of an offence involving moral turpitude,and such conviction has not been reversed or he has not been grantedfull pardon in respect of such offence;
he fails to attend the proceedings of the Committee forconsecutive three months without any valid reason or he fails toattend less than three-fourth of the sittings in a year.
(5) The Committee shall function as a Bench of Magistrates and shallhave the powers conferred by the Code of Criminal Procedure, 1973 (2of 1974) on a Metropolitan Magistrate or, as the case may be, aJudicial Magistrate of the first class.

30 . **Procedure, etc., in relation to Committee.**- (1) The Committeeshall meet at such times and shall observe such rules of procedure inregard to the transation of business at its meetings, as maybeprescribed.
A child in need of care and protection may be produced before anindividual member for being placed in safe custody or otherwise whenthe Committee is not in session.
In the event of any difference of opinion among the members of theCommittee at the time of any interim decision, the opinion of themajority shall prevail but where there

is no such majority the opinionof the Chairperson shall prevail.
Subject to the provisions of sub-section (1), the Committee mayact, notwithstanding the absence of any member of the Committee, andno order made by the Committee shall be invalid by reason only of theabsence of any member during any stage of the proceeding.

31 . **Powers of Committee**.- (1) The Committee shall have the finalauthority to dispose of cases for the care, protection, treatment,development and rehabilitation of the children as well as to providefor their basic needs and protection of human right.

(2) Where a Committee has been constituted for any area, suchCommittee shall, notwithstanding anything contained in any other lawfor the time being in force but save as otherwise expressly providedin this Act, have the power to deal exclusively wi h all proceedingsunder this Act relating to children in need of care and protection.

32 . **Production before Committee**.- (1) Any child in need of careandprotection may be produced before the Committee by one of thefollowingpersons-
(i) any police officer or special juvenile police unit or a designatedpolice officer;

any public servant;childline, a registered voluntary organisation or by such othervoluntary organisation or an agency as may be recognised by the StateGovernment; any social worker or a public spirited citizen authorised by theState Government; or by the child himself.
(2) The State Government may make rules consistent with this Act toprovide for the manner of making the report to the police and to theCommittee and the manner of sending and entrusting the child tochildren's home pending the inquiry.

33 . **Inquiry**.- (1) On receipt of a report under section 32, theCommittee or any police officer or special juvenile police unit or thedesignated police officer shall hold an inquiry in the prescribedor agency as mentioned in sub-section (1) of section 32, may pass anorder to send the child to the children's home for speedy inquiry by asocial worker or child welfare officer. manner and the Committee, onits own or on the report of any personThe inquiry under this section shall be completed within fourmonths of the receipt of the order or within such shorter period asmay be fixed by the Committee:Provided that the time for the submission of the inquiry report may beextended by such period as the Committee may, having regard to thecircumstances and for the reasons recorded in writing,determine.
After the completion of the inquiry if the Committee is of theopinion that the said child has no family or ostensible support, itmay allow the child to remain in the children's home or shelter hometill suitable rehabilitation is found for him or t ll he attains theage of eighteen years.
34 . **Children's homes**.- (1) The State Government may establish andmaintain either by itself or in association with the voluntaryorganisations, children's homes, in every districtor
group ofdistricts, as the case may be, for the reception of child in ne d ofcare and protection

during the pendency of any inquiry andsubsequently for their care, treatment, education, training,development and rehabilitation.
(2) The State Government may, by rules made under this Act, providefor the management of children's homes including the standards and thenature of services to be provided by them, and the circumstances underwhich, and the manner in which, the certific tion of a children's homeor recognition to a voluntary organisation may be granted orwithdrawn. 35 . **Inspection**.- (1) The State Government may appoint inspectioncommittees for the children's homes (hereinafter referred to as theinspection committees) for the State, a district and city, as the casemay be, for such period and for such purposes as ma be prescribed.
(2) The inspection committee of a State, district or of a city shallconsist of such number of representatives from the State Government,local authority, Committee, voluntary organisations and such othermedical experts and social workers as may be pres ribed.
. **Social auditing**.- The Central Government or State Government maymonitor and evaluate the functioning of the Children's homes at suchperiod and through such persons and institutions as may be specifiedby that Government.
. **Shelter homes**.- (1) The State Government may recognise, reputedand capable voluntary organisations and provide them assistance to setup and administer as many shelter homes for juveniles or children asmay be required.
The shelter homes referred in sub-section (1) shall function asdrop-in-centres for the children in the need of urgent support whohave been brought to such homes through such persons as are referredto in sub-section (1) of section 32.
As far as possible, the shelter homes shall have such facilitiesas may be prescribed bythe rules.
38. **Transfer**.- (1) If during the inquiry it is found that the childhails from the place outside the jurisdiction of the Committee, theCommittee shall order the transfer of the child to the competentchild. authority having jurisdiction over the place of reside ce of the Such juvenile or the child shall be escorted by the staff of thehome in which he is lodged originally.The State Government may make rules to provide for the travellingallowance to be paid to the child.
39. **Restoration**.- (1) Restoration of and protection to a child shallbe the prime objective of any children's home or the shelterhome.
The children's home or a shelter home, as the case may be, shalltake such steps as are considered necessary for the restoration of andprotection to a child deprived of his family environment temporarilyor permanently where such child is under the are and protection of achildren's home or a shelter home, as the case may be.
The Committee shall have the powers to restore any child in needof care and protection to his parent, guardian, fit person or fitinstitution, as the case may be, and give them suitable directions.

**Explanation**.-For the purposes of this section "restoration of child"means restoration to-

parents;
adopted
parents;
fosterparents.

## REHABILITATION AND SOCIAL REINTEGRATION

. Process of rehabilitation and social reintegration.- Therehabilitation and social reintegration of a child shall begin duringthe stay of the child in a children's home or special home and therehabilitation and social reintegration of children shall be carriedout alternatively by (i) adoption, (ii) foster care, (iii)sponsorship, and (iv) sending the child to an after-care organisation.

. **Adoption**.- (1) The primary responsibility for providing care andprotection to children shall be that of his family.

Adoption shall be resorted to for the rehabilitation of suchchildren as are orphaned, abandoned, neglected and abused throughinstitutional and non-institutional methods.In keeping with the provisions of the various guidelines foradoption issued from time to time by the State Government, the Boardshall be empowered to give children in adoption and carry out suchinvestigations as are required for giving children in adoption inaccordance with the guidelines issued by the State Government fromtime to time in this regard.The children's homes or the State Government run institutions fororphans shall be recognised as an adoption agencies both for scrutinyand placement of such children for adoption in accordance with theguidelines issued under sub-section (3).

No child shall be offered for adoption- until two members of the Committee declare the child legally freefor placement in the case of abandoned children, till the two months period for reconsideration by the parent isover in the case of surrendered children, and without his consent in the case of a child who can understand andexpress his consent.The Board may allow a child to be given in adoption-
to a single parent, and to parents to adopt a child of same sex irrespecitve of the numberof living biological sons or daughters.

42. **Foster care.**- (1) The foster care may be used for temporaryplacement of those infants who are ultimately to be givenforadoption.

(2) In foster care, the child may be placed in another family for ashort or extended periodof time, depending upon the circumstanceswhere the child's own parent usually visit regularly and eventuallyafter the rehabilitation, where the children may re urn to theirownhomes.

(3) The State Government may make rules for the purposes of carryingout the schemeof foster care programme ofchildren.

43. Sponsorship.- (1) The sponsorship programme may providesupplementary support to families, to children's homes and to specialhomes to meet medical, nutritional,educational

and other needs of thechildren with a view to improving their quality of lif .
(2) The State Government may make rules for the purposes of carryingout various schemes of sponsorship of children, such as individual toindividual sponsorship, group sponsorship or community sponsorship.

44. **After-care organization**.- The State Government may, by rules madeunder this Act, provide-
for the establishment or recognition of after-care organisationsand the functions that may be performed by them under this Act;
for a scheme of after-care programme to be followed by suchafter-care organisations for the purpose of taking care of juvenilesor the children after they leave special homes, children homes and forthe purpose of enabling them to lead an honest, i dustrious and usefullife;
for the preparation or submission of a report by the probationofficer or any other officer appointed by that Government in respectof each juvenile or the child prior to his discharge from a specialhome, children's home, regarding the necessity and nature ofafter-care of such juvenile or of a child, the period of suchafter-care, supervision thereof and for the submission of report bythe probation officer or any other officer appointed for the purpose,on the progress of each juvenile or the chil ;
for the standards and the nature of services to be maintained bysuch after-care organisations;
for such other matters as may be necessary for the purpose ofcarrying out the scheme of after-care programme for the juvenile orthe child:
Provided that any rule made under this section shall not provide forsuch juvenile or child to stay in the after-care organisation for morethan three years:
Provided further that a juvenile or child over seventeen years of agebut less than eighteen years of age would stay in the after-careorganisation till he attains the age of twenty years.
. **Linkages and co-ordination**.- The State Government may make rulesto ensure effective linkages between various governmental,non-governmental, corporate and other community agencies forfacilitating the rehabilitation and social reintegration of the ch ld.