THE TAMIL NADU
Dr. AMBEDKAR LAW UNIVERSITY
CHENNAI

LAW OF CRIMES – II

(CODE OF CRIMINAL PROCEDURE)

(Including Juvenile Justice Care and Protection Act and Probation of Offenders Act)

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SCHOOL OF EXCELLENCE IN LAW

PREFACE

Criminal law is the most important branch of law, because it closely touches and concerns man in his day-today affairs. From the beginning of the human civilization the human society has prescribed a code of conduct for its members. Any act or anti-social behaviour which will violate the code of conduct and will reduce human happiness is considered as crime. But violations are bound to occur and crime is inevitable. It is the responsibility of the state to protect the members of the society from any antisocial behaviour and hence the state makes criminal laws with the object to protect the society from the criminals. The Criminal law occupies a predominant place among the agencies of social control. But when a person commits a crime he is not automatically punished or he himself will not come and confess that has committed a crime and accept punishment. There must be a procedure to enforce the criminal law. The offender must be brought before the court and his guilt must be proved. For this process the procedural criminal law is necessary. The Criminal Procedure Code is designed to look after the process of the administration and enforcement of the Criminal law. The Criminal procedure is an inseparable part of the penal law. Without the Criminal procedure code the substantive criminal law will become worthless and meaningless. Our law of criminal procedure is mainly contained in the code of criminal procedure 1973. It provides the machinery for the detection of crime, apprehension of suspected criminals, collection of evidence, determination of the guilt or innocence of the suspected person and the imposition of suitable punishment on the guilty person. The Criminal Procedure code was enacted many years ago. It has undergone many changes. It is too enormous for classroom discussion. But the students should have a fair idea about how the code works as a main spring of the criminal justice. With this perspective the course is designed to make the student understand how the Criminal Procedure code controls and regulates the working of the machinery set up for the investigation and trial of offence. In addition the Juvenile Justice and Probation of offenders Act is also designed for the convenience of the students.

The study material on LAW OF CRIMES – II (CODE OF CRIMINAL PROCEDURE (Including Juvenile Justice Care and Protection Act and Probation of Offenders Act)is an attempt to throw some basic information on the procedural law. The study is not comprehensive one as it would require many more volumes to cover all the aspects of procedural law. The selection of the materials has been such so as to give an overall design of the LAW OF CRIMES – II (CODE OF CRIMINAL PROCEDURE) (Including Juvenile Justice Care and Protection Act and Probation of Offenders Act). It is basically compiled work by going into too many books, articles and case study. Lastly an apology for any flaws and mistakes.

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Objectives of the Course

Criminal Law is intended to provide a mechanism for the enforcement of Criminal Justice Administration. Without proper Procedural Law, the Substantive Criminal law which defines Offences and provides Punishment would be almost worthless. Every threat does not deter. Without deterrent effect, the Criminal Law will have hardly any meaning or justification. Thus the Code of Criminal Procedure is meant to be complementary to Criminal Law and has been designated to ensure the process of its Administration.

COURSE OUTLINE

UNIT - I

Criminal Procedure Code-Types and Functionaries

Aquisitorial, Inquisitorial - Brief history about the Code - Definition- Main functionaries of the Code- Powers of Superior Police Officers and Aid to the Magistrates and Police.

UNIT - II

Pre-Trial Proceedings

Stages of Investigation - Process compelling for the presence of the accused for Investigation and Trial - Arrest-Procedure for Arrest - Rights of Arrested Persons- Consequences of Non - Compliance of Arrest Procedures - Search and Seizure - Process of Investigation by Police - Investigation of Unnatural and Suspicious Death - Local Jurisdiction of the Courts in Inquires and Trials - Cognizance of Offence and Commencement of Proceedings - Bail Procedures -Types of Bail - General Provision regarding Bond of Accused and Sureties.

UNIT - III

Trial Procedure

Principal features of Fair Trial - Charge - Common features of Trial - Disposal of Criminal Cases without Full Trial - Preliminary Plea to Bar Trial - Trial before a Court of Session - Trial of Warrant Cases by Magistrates - Trial Summons Cases and Summary Trial Special Rules of Evidence.

UNIT - IV

Appeal Procedures

Types of Appeals - Reference and Transfer of Criminal Cases - Execution, Suspension, Remission and Commutation of Sentences - Execution of Sentence -Death Penalty and Imprisonment - Execution of Sentence of Fine - Preventive and Precautionary Measures for Keeping Peace and Good Behaviour - Maintenance Procedures - Conditions for Claiming Maintenance - Cancellation of Maintenance - Muslim Women Protection of Rights on Divorce Act.

UNIT - V

Juvenile Justice Care and Protection Act, 2000 and Probation of Offenders Act, 1958

Introduction - Object - Definitions - Statutory Bodies for Juveniles under the Act - Reformative Institutions for Juveniles - Special Offences - Probation - Object and Meaning - Criminal Court and Probation - Duties of Probation Officers - Report of the Probation Officers- Conditions and Cancellation of Probation.

Statutory Material

- Code of Criminal Procedure, 1973
- Juvenile Justice (Care and Protection of Children) Act, 2000
- Probation of Offenders Act, 1958

Books Prescribed

- Ratanlal - Code of Criminal Procedure
- Sarkar -Code of Criminal Procedure

- Kelkar R.V-Outlines of Criminal Procedure
- Basu - Code of Criminal Procedure
- Dr.Nandhal's -Code of Criminal Procedure
- P. Ramanatha Iyer -Code of Criminal Procedure

Books for Reference

- Sohonis -Code of Criminal Procedure
- R.B. Sethi -Probation of Offenders Act
- Consuls -Probation of Offenders Act and Rules.
- M.K.Chakrabarathi - Probation System in the Administration of Criminal Justice
- Vedkumari - Treaties on the Juvenile Justice Act.
- S.K. Swasthi -Judgments of Juvenile Justice Act 1986.

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Adversarial System

An adversarial legal system brings cases to the court with two opposing sides presenting themselves before a neutral panel that can include a jury and a judge. Once both parties have argued their cases, the panel will then determine the facts and the appropriate actions to be taken. Common law countries commonly use this justice system, as its beginnings are quite ancient. While this approach to holding actions and defenses is supported by many as venerable, it is also refrained by others because they see it as having some potential drawbacks. To fully understand the adversarial system, it is best to look at its advantages and disadvantages.

Advantages of Adversarial System

1. It is seen as fair and less prone to abuse.

Those who support this system often argue that it is fairer and less prone to abuse than other legal systems, as it does not allow any room for the state to favor against the defendant. Instead, it allows private litigants to settle disputes in amicable means through pre-trial and discovery settlements, where non-contested facts will be agreed upon to try not to deal with them in the litigation process.

2. It properly observes the rights of the defending and prosecuting parties.

In this judicial system, an accused individual is given the right to remain silent, get a lawyer to help him state the case and remain innocent until proven guilty, which is a crucial aspect in the outcome of the case. As for the prosecution, they are also allowed to present facts as they interpret and understand them. Another thing is that the government is advised on all criminal matters.

3. It allows both sides to support their positions.

The adversarial system allows both parties to present witnesses and evidence to support their positions, where they can cross examine witnesses, independently analyze evidence

and challenge arguments. The objective here is to present all the facts for the benefit of the jury and the judge in deciding what really happened and who should be held responsible.

4. It provides power to the police.

In this approach, the police play an essential role in the path to justice, where they are the ones who will run the investigation while adhering to certain conditions, such as presenting a warrant. They cannot detain an accused individual without proper arrest.

5. It does not promote bias.

The jury and the judge are expected to remain impartial—after all they are chosen using criteria that are designed to get rid of people who might be biased in a certain case. Basically, this system presents the contest to individuals who do not have interest in the outcome and can evaluate the facts objectively. However, this system can become complicated, where lawyers on both sides can use rhetorical, but legal, strategies to influence opinion that can affect the outcome of the trial.

6. It hears the stories from both sides.

Generally, this system does not allow the Judge to comment until both sides are heard, making him less biased and lessening the possibility of public protest to the verdict.

Disadvantages of Adversarial System

1. It obliges each side to contest with each other.

The adversarial litigation approach is sometimes criticized for setting up a system where sides on a case are required to contest with each other. This is believed by critics to encourage deception and other questionable legal tactics, as the objective is to win at all costs, instead of evaluating the facts to learn the truth.

2. It might lead to injustice.

Critics point out that a lot of cases in an adversarial system, especially in the US, are actually resolved by settlement or plea bargain, which means that they do not go to trial, leading to injustice especially when the accused is helped with an overworked or unskilled lawyer. Also, they argue that this type of system causes the participants to act in perverse

ways, encouraging defendants to plead guilty even when they think otherwise and prosecutors to bring charges far beyond what is warranted.

3. It might result in judgments compelled by arguments, instead of evidence.
In this system, the discovery with evidence rests upon the lawyers who work for each side, with the better one having better chances to win the case. But is the jury is involved, the final decision might be swayed by the most compelling arguments, instead of solid proof.

4. It has issues with accessibility.
One criticism of an adversarial system that is very difficult to refute has something to do with accessibility. It cannot be plausibly argued that average defendants can enjoy the same access to legal representation as the wealthy and influential defendants, which is the same with the part of the plaintiffs. However, supporters explain that such unequal access resulted from social and economic conditions, not the structure of the judicial system, adding that altering the way of delivering legal services would do nothing in addressing the root causes of such a disparity.

5. It uses a tedious process.
It is also said that the adversarial form of legal system is slow and cumbersome, where the judge—who acts as a neutral fact finder—could only do little to hasten the trial process, not to mention that the evidentiary and procedural rules can slow down the process further. In addition, the wide availability of appellate reviews would mean that a final decision can be made for years, though at least one research has shown that some courts discouraged holding adversarial trials and making active settlements. However, litigants in this approach are still encountering substantial delays in reaching a resolution. And while this disadvantage is true, supporters still argue that the slow methodical system is needed to protect individual rights.

The term "adversarial system" might be misleading for some in a way that it entails that it is only within this system where there opposing prosecution and defense are allowed. By getting an in-depth knowledge about it and the other legal systems, we will know that it is not the case. Based on the advantages and disadvantages of adversarial system listed above, what would be your opinion about it?

Inquisitorial System

The inquisitorial system is a legal system that requires the court or a particular part of the court to conduct an investigation of its own to uncover the truth behind the case. Unlike an adversarial system that puts a prosecution and a defense against one another to present facts and information, an inquisitorial system mandates that the court should be in charge of collecting data to come up with a judgement. There are pros and cons to the use of an inquisitorial system, and we discuss them in detail with this short list.

Advantages of Inquisitorial System

1. No Lawyer Advantage

With the adversarial system, the defendant and the prosecution are responsible for finding their own lawyer and legal counsel which will help them win their case. If one of the parties is able to hire a better lawyer, they have higher chances of winning which may not necessarily reflect the actual truth behind the case. There have been instances in the past when cases were won not because the truth was revealed, but because one lawyer had more experience than the other.

2. Eliminates Emotionally Driven Judgement

An adversarial system uses a jury which is a group of members of society who ultimately come up with the judgement. They sit and watch the proceedings, after which they meet to discuss their ideas and decide the guilt of the accused. Because some defendants can seem pitiful, kind, and undeserving, the jury can be swayed by emotional factors, driving them to provide false judgement.

3. One Legal Expert

With one legal expert studying the case, they are more likely to come up with an untainted decision that relies on facts rather than fancy, flowery arguments provided by two different parties.

Disadvantages of Inquisitorial System

1. Chance of Bias

One of the main concerns of those against the inquisitorial system is that it is not immune to bias. The court could issue judgement in favor of one side simply because they were paid to, or because of preference.

2. Lengthy

With just one group uncovering information instead of two, the inquisitorial system could take some time. This leaves cases being left open for much longer than they would be with the adversarial system.

3. Limited Opportunity to Defend Self

Unlike the adversarial system, the inquisitorial system makes it hard for individuals to defend themselves, especially if the information uncovered works against them.

A comparison between the Adversary System and the Inquisitorial system:

The adversary system is a method of trial that has been adopted by the UK, Australia and New Zealand. Under this system, two parties are vying to win a case before an impartial third party based on the presentation of facts and evidence. This process is framed by a set of strict rules which are upheld to ensure fairness and equality. In saying that, there are other methods of trial that exists in countries such as France and Germany. This system is known as the inquisitorial system .

A similar feature that is shared by both the adversary and inquisitorial system is that both methods rely on an impartial third party presiding over the case. This means that in both systems, the judge cannot show preference or bias towards any party. They must be independent and impartial to ensure that their decision making ability is not impacted by prejudice. When a jury is used, this also applies. Another similarity shared between both methods is the rules that bind submission of evidence. In the adversary system, certain evidence is deemed inadmissible such as hearsay, prior convictions, privileged information and evidence that has not be legally obtained such as those that require search warrants. In the inquisitorial system, a similar set of restrictions apply although not as harshly. Here, prior convictions are allowed however evidence that has been illegally obtained is still

considered inadmissible which suggests that under both systems, the way in which evidence is obtained should not override certain individual right such as privacy.

Despite these similarities, the adversary system and the inquisitorial system are essentially different. One key difference can be seen within the feature of the role of the judge. In the adversary system, one judge presides of the trial. Here, the role of the judge is considered passive and is there to perform the role similar to that of a referee in a sports game. The judge, although being one of the most experienced legal professionals within the room cannot assist parties or participate in the gathering of evidence. The judge must be impartial and ensure that rules of evidence and procedure are met by both sides. They are not responsible for the questioning of witnesses. They can empanel and instruct the jury on matters of law and if there is no jury present, the judge can make a decision based on facts presented.
On the other hand, a trial within the inquisitorial system is generally presided over by 3 judges with a central judge holding most jurisdiction. Prior to a trial, it is the active role of the judge to put together a case based on the offence in which the accused has been charged. The judge gathers the evidence, determines the legal arguments, the issues to be determined and reads written testimony from witnesses. Due to this ability, the judges in the inquisitorial system are considered more active in their approach however, in saying that, this may make it difficult for them to be impartial.

Another key difference is the feature of legal representation. In the adversary system, legal representation is required and highly recommended due to the extensive pre-trial procedures required even prior to getting to trial. During trial, parties must adhere to strict rules of procedure and must follow the guidelines of evidence submission. This requires the expertise and knowledge of a trained professional and as parties are responsible for the presentation of their own case, it is often suggested that the party that has the ability to afford the better experienced and skilled legal professional has the best chance of winning a case. On the other hand, due to the nature of the inquisitorial system, legal representation although necessary in some countries (such as Germany), the relevance may not be as high. This is because the judges are primarily responsible for the organisation and presentation of the case against the accused. The position of legal presentation is there to assist the judges in their decision making and deliberation rather than to present and wholly argue a case.

Overall, it can be seen that there are different methods of trial that exists. It can be fair to say that both systems, aim to provide justice and seek the truth despite going about them in distinctive ways.

Brief History and Development of the Code of Criminal Procedure

In the olden days, there was no uniform law relating to criminal procedure for the whole of India. There were separate Acts, mostly rudimentary in their character, for the Courts within and outside the Presidency-towns. Later on, the Acts in force in the Presidency-towns were consolidated into the Criminal Procedure Supreme Court Act, 1852, subsequently replaced by the High Court Criminal Procedure Act, 1865.

The numerous Acts prevailing in the mofussils were all absorbed in the Criminal Procedure Code, 1861, which was subsequently replaced by the Code of 1871. The Criminal Procedure Code, 1882, gave a uniform law of procedure for the whole of India, both in the Presidency-towns and in the mofussils, and it was supplemented by the Code of 1898. The last mentioned Code was amended several times, with major amendments in 1923 and 1955.

The Law Commission, set up in 1955, studied the old Code extensively, and made various recommendations and suggestions in its detailed report submitted in September 1969. These suggestions were incorporated in the Criminal Procedure Code, 1973, which came into force on 1st April 1974, and which has since been amended several times thereafter.

While drafting the Code, the following three basic considerations have been kept in mind, viz.—

(a) That an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(b) That every effort should be made to avoid delay in investigation and trial, which is harmful, not only to the individual involved, but also to the society

Criminal procedure: Definition

Rules governing how the court will process a criminal case. These rules protect the constitutional rights of suspects and defendants to ensure all stages of investigation, arrest, trial and sentencing are conducted indiscriminately.

The Code of Criminal Procedure Code

1973 (Act No. 2 of 1974) is the main legislation on the procedure for administration on substantive criminal law in India which provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife and children. The Act consists of 484 sections, which are further divided into 38 chapters, 2 schedules and 56 forms.

- Territorial extent, scope and applicability of this act: It is applicable to the whole of India except the state of Jammu and Kashmir as the parliament's power to legislate in respect of the said state is curtailed by Article 370 of constitution of India. Provided that the provisions of this code, other than those relating to chapters VIII,X and XI thereof, shall not apply:

1. To the state of Nagaland
2. To the tribal areas in Assam

But the concerned state Government may, by notification, apply such provisions or any of them to the whole or part of the state of Nagaland or such tribal areas, as the case may be specified in the notification.

Functionaries under the code

Functionaries under the code include the Magistrates and Judges of theSupreme Court and high Court, Police, Public Prosecutors, Defence Counsels Correctional services personnel.

Functions, Duties and Powers of these Machineries

Police

The code does not mention anything about the constitution of police. It assumes the existence of police and devolves various powers and responsibilities on to it. The police force is an instrument for the prevention and detection of crime. The administration of police in a district is done by DSP(District Superintendent of Police) under the direction and control of District Magistrate. Every police officer appointed to the police force other than the Inspector-General of Police and the District superintendent of police receives a certificate in the prescribed form by the virtue of which he is vested with the powers, functions and privileges of a police officer which shall be cease to be effective and shall be returned forthwith when the police officer ceases to be a police officer. The CrPC confers specific powers such as power to make arrest, search and investigate on the members of the police force who are enrolled as police officers. Wider powers have been given to police officers who are in charge of a police station. As per section 36 of CrPC which reads as " the police officers superior in charge of a police station may exercise the powers of such officials."

Prosecutor

If the crime is of cognizable in nature, the state participates in a criminal trial as a party against the accused. Public Prosecutor or Assistant Public Prosecutor is the state counsel for such trials. Its main duty is to conduct Prosecutions on behalf of the state. The public Prosecutor cannot appear on behalf of accused. According to the prevailing practice, in respect of cases initiated on police reports, the prosecution is conducted by the Assistant Public Prosecutor and in cases initiated on a private complaint; the prosecution is either conducted by the complainant himself or by his duly authorized counsel.

Defence Counsel

According to section 303, any person accused of an offence before a criminal court has a right to be defended by a pleader of his choice. Such pleaders are not in regular employment of the state and a paid remuneration by the accused person. Since, a qualified legal practitioner on behalf of the accused is essential for ensuring a fair trial, section 304

provides that if the accused does not have means to hire a pleader, the court shall assign a pleader for him at state's expense. At present there are several schemes through which an indigent accused can get free legal aid such as Legal Aid Scheme of State, Bar Association, Legal Aid and Service Board and Supreme Court Senior Advocates Free Legal Aid society. The legal Services Authorities Act, 1987 also provides free legal aid for the needy.

Prison authorities and Correctional Services Personnel

The court presumes the existence of Prisons and the Prison authorities. It empowers Magistrates and judges under certain circumstances to order detention of under trial prisoners in jail during the pendency of the proceedings. It also empowers the courts to impose sentences of imprisonment on convicted persons and to send them to prison authorities. However, the code does not make specific provisions for creation, working and control of such machinery. These matters are dealt with in separate acts such as The Prisons Act 1894, The Prisoners Act 1900 and The Probation of Offenders Act 1958.

The rationale of criminal procedure

Importance of fair trial

One of the primary goals of criminal law is to protect society by punishing the offenders. However, justice and fair play require that no one be punished without a fair trial. A person might be under a thick cloud of suspicion of guilt, he might have been caught red-handed, and yet he is not to be punished unless and until he is tried and adjudged to be guilty by a competent court. In the administration of justice it is of prime importance that justice should not only be done but must also appear to have been done. Further, it is one of the most important principle of criminal law that everyone is presumed to be innocent unless his guilt is proved beyond reasonable doubt in a trial before an impartial and competent court. Therefore it becomes absolutely necessary that every person accused of crime is brought before the court for trial and that all the evidence appearing against him is made available to the court for deciding as to his guilt or innocence.

Constitutional perspectives

Articles 20 and 22 of the constitution of India provide for certain safeguards to the persons accused of offences. Article 20 secures the protection of the accused persons, in

respect of conviction for offences, from Ex post facto laws, double jeopardy and prohibition against self-incrimination. Similarly, Article 21 of the constitution of India ensures the protection of life and liberty which reads as "no person shall be deprived of his life or personal liberty except according to the procedure established by law. This right may be affected in cases of preventive detention under preventive detention laws. As such, Constitutional protection against arrest and detention is ensured under article 22(1) to (7) of the constitution of India.

Criminal Trial in Indian Law: From Charge to Conviction or Acquittal

The criminal procedure in India is governed by the CrPC 1973.It divides the procedure to be followed for administration of criminal justice into three stages namely-

- Investigation- where evidences are to be collected.
- Inquiry- a judicial proceeding where judge ensures for himself before going on trial, that there are reasonable grounds to believe that the person is guilty.
- Trial- the judicial adjudication of a person's guilt or innocence.

According to the provisions of CrPC, there are three types of criminal trial

(A) Trial of Warrant cases

- Relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
- Employed in most offences such as theft, Rape, Murder, Kidnapping, cheating etc. except in cases of defamation.
- The trial procedure in respect of these offences is contained in sections 238-250.
- The CrPC provides for two types of procedure for the trial of warrant cases by a Magistrate, viz. those instituted upon a police report where lot of record made during investigations by the police is made available to the court and to the accused person and those instituted upon complaint i.e. otherwise than on police report where such record cannot be available.

(B) Trial of Summons cases

- A summon case means a case relating to an offence, and not being a warrant case. These cases are tried with much less formality than warrant cases,the manner of their trial is less elaborated and the method of preparing the record (of evidence) is less formal.
- An abridged form of warrants trial, where some proceedings are omitted to ensure swift process but at the same time basic postulates of fair trial are retained.
- Cases relating to an offence punishable with imprisonment not exceeding 2 years.
- If a magistrate, after examining the case, does not find it fit to be called as a summons case, he may convert it into a warrant case.

- The trial procedure prescribed for these cases are contained in sections 251-259.
- In respect to these cases, there is no need to frame a charge. The session court gives substance of the accusation (notice) to the accused when the person appears in pursuance to the summons.
- The court has the power to convert a summons case into a warrant case, if the magistrate thinks that it is in the interest of justice.

(C) Summary Trial

- The trial procedure for these cases is contained in sections 260-265.
- An abridged form of regular trial and is resorted to in order to save time in trying petty cases.

Section 260(2) of the code lists certain offences which may be tried summarily by any Chief Judicial Magistrate, any Metropolitan Magistrate or any Judicial Magistrate First Class. A First class Magistrate must first be authorized by the respective High court to that effect before he may try cases summarily under this section.

Offences triable in a summary way

1. Offences not punishable with death, life imprisonment, or imprisonment for a term exceeding 2 years.

2. Theft under section 379, 380, and 381 of the IPC provided that the value of the stolen property is below Rs 2000.

- Receiving or retaining stolen property under section 411 of the IPC where the value of the stolen property is below Rs 2000.

1. Assisting in the concealment or disposal of stolen property, under section 414 of the IPC, the value of the stolen property being below Rs 2000.
2. Lurking house-trespass (section 454 of the IPC) and house-breaking(section 456 of the IPC) by night.
3. Abetment of any of the above mentioned offences.

- Attempt to commit any of the above mentioned offences.
- Offences with respect to which complaints may be made under section 20 of the Cattle Trespass Act, 1871.

Apart from the above, a Second Class Magistrate may, if so empowered by the High court, summarily try an offence punishable with fine or with imprisonment not exceeding 6 months or the abetment or attempt to commit such an offence.A summary trial tried by a magistrate without being empowered to do so is void. The maximum sentence that may be awarded by way of a summary trial is three months with or without fine.

Stages of Criminal Trial in India

(i) Registration of F.I.R

- Lodged under section 154 of the code which provides for the manner in which such information is to be recorded.
- Statement of the informant as recorded under section 154 is said to be the First Information Report. Its main object is to set the criminal law in motion.
- FIR means the information, by whomsoever given, to the officer in charge of a police station in relation to the commission of a cognizable offence and which is first in point of time and on the strength of which the investigation into that offence is commenced.

- Its evidentiary value: – It is not substantive evidence i.e. not the evidence of the facts which it mentions. Its importance as conveying the earliest information regarding the occurrence cannot be doubted. It can be used to corroborate the informant under section 157 of the Indian Evidence Act, 1872, or to contradict him under section 145 of the act, if the informant is called as a witness at the time of trial.

(ii) Commencement of investigation

- It includes all the efforts of a police officer for collection of evidence: Proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and taking of their statements in writing and the search of places or seizure of things considered necessary for their investigation and to be produced at the trial; formation of opinion as to whether on the basis of the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for the charge-sheet.
- Investigation ends in a police report to the magistrate.
- It leads an investigating officer to reach a conclusion whether a charge-sheet has to be filed or a closure report has to be filed.

(iii) Framing of charges

If a person is not discharged, trial begins by framing a charge (nothing but a specific accusation against the accused) and reading and explaining it to him (so that he knows what he is to force).

(iv) Conviction on plea of guilty

After framing of charges the judge proceeds to take the 'plea of guilt' which is an opportunity to the accused to acknowledge that he pleads guilty and does not wish to contest the case. Here the judge responsibility is onerous- a. to ensure that the plea of guilt is free and voluntary, b. He has to ensure that if there had been no plead of guilt- was the prosecution version if unrebutted- would have led to conviction. If both the requirements

are met-then judge can record and accept plea of guilt and convict the accused after listening to him on sentence.

(v)Recording of the prosecution Evidence

Examination of prosecution witness by the police prosecutor, marking of exhibits and cross examination by defense counsel.

(vi) Statement of the Accused

Section 313 of the Criminal procedure empowers the court to ask for explanation from the accused if any. The basic idea is to give an opportunity of being heard to an accused and explain the facts and circumstances appearing in the evidence against him. Under this section, an accused shall not be administered an oath and the accused may refuse to answer the questions so asked. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him.

(vii) Evidence of Defense

In cases of accused not being acquitted by the court, the defense is given an opportunity to present any defense evidence in support of the accused. The defense can also produce its witnesses and the said witnesses are cross- examined by the prosecution. However, in India the defense does not provide defense evidence as the criminal justice systemputs burden of proof on the prosecution to prove that a person is guilty of an offence beyond the reasonable doubt.

(ix) Final arguments on both the sides

once the public prosecutor and the defense counsel present their arguments, the court generally reserve its jugdement.

(x)Judgement

Judgement is the final reasoned decision of the court as to the guilt or innocence of the accused. After application of judicial mind, the judge delivers a final judgement holding an accused guilty of an offence or acquitting himof the particular offence. If a person is

acquitted, the prosecution is given time to file an appeal and if a person is convicted of a particular offence, then date is fixed for arguments on sentence. Once a person is convicted of an offence, both the sides present their arguments on what punishment should be awarded to an accused. This is done in cases which are punished with death or life imprisonment. After the arguments on sentence, the court finally decides what should be the punishment for the accused. While punishing a person, the courts consider various theories of punishment for the accused. While punishing a person, the courts consider various theories of punishment like deterrent theory of punishment and reformative theory of punishment. Court considers the age, background and history of an accused and the judgement is pronounced accordingly.

The foregoing discussion reveals that police organizations of many countries have launched various schemes and programmes for people's participation in policing.

But there is still a need for the modification of the situation and thereby the agency of criminal justice system namely the police to protect the human rights of citizens and fulfill the objective of welfare state. The most important transition that merits urgent attention hinges on the attitude of the average policemen in their day-to-day work. To make this task possible, a great amount of social awareness coupled with the self-awareness on the part of the police personnel is a primary pre-requisite.In specific cases related to arrests and other offences also where there is a scope for the misuse of police power, the abuse of police power can be stopped by Transparency of action and Accountability.

Territorial Extent, Scope and Applicability

The Criminal Procedure Code is applicable in the whole of India except in the State of Jammu and Kashmir. The Parliament's power to legislate in respect of Jammu & Kashmir is curtailed by Article 370 of the Constitution of India.

Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply-

(a) to the State of Nagaland,

(b) to the tribal areas,

However the concerned State Government may, by notification apply any or all of these provisions in these areas. Moreover, the Supreme Court of India has also ruled that even in these areas, the authorities are to be governed by the substance of these rules.

Classes of Criminal Courts

Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in

every State, the following classes of Criminal Courts, namely:-

(i) Courts of Session;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

Territorial Devisions

(1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions

division shall, for the purposes of this Code, be a district or consist of districts:

Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts

(3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions.

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section.

Metropolitan Areas

(1) The State Government may, by notification, declare that , as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code.

(2) As from the commencement of this Code, each of the Presidency-towns of Bombay, Calcuttaand Madras and the city of Ahmedabad shall be deemed to be declared under subsection

(1) to be a metropolitan area.

(3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million.

(4) Where, after an area has been declared, or deemed to have been declared to be, a metropolitan area, the population of such area falls below one million, such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place.

(5) Where the State Government reduces or alters, under sub-section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place.

Explanation.- In this section, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Court of Session

(1)The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation.- For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.

Subordination of Assistant Sessions Judge

(1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

(2) The Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges.

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

Courts of Judicial Magistrates

(1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

Chief Judicial Magistrate and Additional Chief Judicial Magistrates, etc

(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial

Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

(3) (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

Special Judicial Magistrates

(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the second class, in respect to particular cases or to particular classes of cases or to cases generally, in any district, not being a metropolitan area:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

Local Jurisdiction of Judicial Magistrates

(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

Subordination of Judicial Magistrates

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

Courts of Metropolitan Magistrates

(1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.

Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrates

(1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.

(2) The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

Special Metropolitan Magistrates

(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases or to cases generally, in any metropolitan area within its local jurisdiction:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

(3) Notwithstanding anything contained elsewhere in this Code, a Special Metropolitan Magistrate shall not impose a sentence which a Judicial Magistrate of the second class is not competent to impose outside the Metropolitan area.

Subordination of Metropolitan Magistrates

(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

(2) The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

(3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

Executive Magistrates

(1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional district Magistrate, and such Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force.

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

Special Executive Magistrates

The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

Local Jurisdiction of Executive Magistrates

(1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

Subordination of Executive Magistrates

(1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

Public Prosecutors

(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor for conducting, in such Court, any prosecution, appeal or other proceeding on behalf of the Central or State Government, as the case may be.

(2) For every district the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district.

(3) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons who are, in his opinion, fit to be appointed as the Public Prosecutor or Additional Public Prosecutor for the district.

(4) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears on the panel of names prepared by the District Magistrate under sub-section (3).

(5) A person shall only be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2), if he has been in practice as an advocate for not less than seven years.

(6) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, an advocate who has been in practice for not less than ten years, as a Special Public Prosecutor.

Assistant Public Prosecutors

(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed-

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector.

Power and Functions of Courts

Courts by which offences are triable.-

Subject to the other provisions of this Code.-

(a) any offence under the Indian Penal Code(45 of 1860) may be tried by –

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other Court by which such offence is shown in the First Schedule to be triable;

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by-

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

Jurisdiction in the case of juveniles.-

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960,(60 of 1960) or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

Sentences which High Courts and Sessions Judges may pass.-

(1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

Sentences which Magistrates may pass.-

(1) The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

Investigation , Inquiry and Trial

Investigation

"Investigation" has been defined under S. 2 (h) of the Criminal Procedure Code. It includes all the proceedings under "the Code of Criminal Procedure, 1973" for the collection of evidence conducted by a Police officer or by any person (other than a Magistrate) who is authorized by a Magistrate. The officer-incharge of a Police Station can start investigation either on information or otherwise (section 157 Cr.P.C.).

The investigation consists of the following steps starting from the registration of the case:-

(i). Registration of the case as reported by the complainant u/s 154 Cr.P.C.,

(ii). Proceeding to the spot and observing the scene of crime,

(iii). Ascertainment of all the facts and circumstances relating to the case reported,

(iv). Discovery and arrest of the suspected offender(s),

(v). Collection of evidence in the form of oral statements of witnesses (sections 161/162 Cr.PC.), in the form of documents and seizure of material objects, articles and movable properties concerned in the reported crime,

(vi). Conduct of searches of places and seizure of properties, etc.

(vii). Forwarding exhibits and getting reports or opinion from the scientific experts (section 293 Cr.P.C)

(viii). Formation of the opinion as to whether on the materials collected, there is a case to place the accused before a magistrate for trial and if so, taking necessary steps for filing a charge sheet, and

(ix). Submission of a Final Report to the court (section 173 Cr.P.C.) in the form of a Charge Sheet along with a list of documents and a Memo of Evidence against the accused person(s).

Case - In Adri Dharan Das v. State of W.B. , it has been opined that: "arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and connection of other persons, if any, in the crime."

In **Niranjan Singh v. State of U.P.** , it has been laid down that investigation is not an inquiry or trial before the Court and that is why the Legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial.

In **S.N.Sharma v. Bipen Kumar Tiwari** , it has been observed that the power of police to investigate is independent of any control by the Magistrate.

In **State of Bihar v. J.A.C. Saldanha** , it has been observed that there is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment and further investigation of an offence is the field exclusively reserved for the executive in the

Police Department. **Manubhai Ratilal Patel v. State of Gujarat and Others,(2013) 1 SCC 314.**

The documentation for the Police investigation shall include the following papers namely :-

(a). First Information Report (section 154 Cr.P.C.),

(b). Crime details form, - (I F.2) (c). Arrest / court surrender memo,

(c). Arrest / court surrender memo,

(d). Property seizure memo

(e). Final Report Form (section 173 Cr.P.C.)

Police Officer's Power to Investigate Cognizable Cases

Any officer-in-charge of a Police Station may, without the order of a magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of the Criminal Procedure Code. 1973.

Note : The courts have no control in such cases over the investigation or over the action of the Police in holding such investigation. Where the offence takes place during night time, the investigation officer should bring out in his investigation the existence of light at the time of the incident. For this, he should clearly bring out the position of Electricity post / lights (public place or private place) in the rough sketch of the scene of occurrence or the scene of crime to be drawn on the crime details form. While recording the statements of witnesses of the occurrence or the observation mahazar witnesses, the facts relating to the availability of light at the spot should be highlighted.

Refusal of Investigation

(1). The following principles are laid down to guide the exercise of their discretion by Station House Officers in the matter of refusing investigation under section 157 (1) (b) of the Criminal Procedure Code.

(2). The investigation may be properly refused in the following cases:-

(a). **Triviality:-** Trivial offences, such as are contemplated in section 95 of the Indian Penal Code. " Nothing is an offence by reason that it causes or that is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight that no person or ordinary sense and temper would complaint of such harm".

(b). **Civil Nature:-** Cases clearly of civil nature or in which complainant is obviously endeavoring to set the criminal law in motion to support a civil right.

(c). **Petty thefts:-** Cases of petty theft of property less than Rs. 10/- in value, provided that the accused person is not an old offender, nor a professional criminal, and that the property does not consist of sheep or goats.

(d). **Injured person not wishing an inquiry:-** Unimportant cases in which the person, injured does not wish inquiry, unless (i) the crime is suspected to be the work of a professional or habitual offender or (ii) a rowdy element (iii) the investigation appears desirable in the interests of the Public.

(e). **Undetectable simple cases:-** Simple cases of house-breaking or house trespass and petty thefts of unidentifiable property, is none of which cases is there any clue to work upon or any practical chance of detection, provided that there is nothing to indicate that the offence has been committed by a professional criminal.

(f) **Exaggerated assaults**:- Assault in cases which have been obviously exaggerated by the addition of the other charges such as theft.

Report to be sent in case of Refusal of Investigation

When an investigation is refused, at once a First Information Report only need be submitted to the court with copies usually sent to others, specifically indicating in the FIR format under column 13 – "ACTION TAKEN" that "the above report reveals commission of offences under section ....., but falling under the categories of triviality or civil nature or petty theft or injured person not wishing to have an inquiry or undetectable simple case or exaggerated assault coupled with theft, was registered in crime number ..... and investigation 'REFUSED'. It is also stated that further report will not be submitted, under section 157 (1) (a) (b) and (2) of the Code of Criminal Procedure. "When information as to the commission of any such offence is given against any person

by name and the case is not of a serious nature, the officer-in-charge of a Police Station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;" " If it appears to the officer-in-charge of a Police Station that there is no sufficient ground for enquiring on an investigation, he shall not investigate the case;" " The officer-in charge of the Police Station shall state in his report his reasons for not fully complying with the requirements, "the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, that fact that he will not investigate the case or cause it to be investigated." Note (i). The Station House Officer, after registering a case of trivial nature under appropriate sections of the law and the connected circumstances and refusing investigation of that case, shall give a copy of the FIR to the informant or the complainant and obtain an acknowledgement in the counterfoil copy of the FIR. (ii). The SHO will not send any further report of such cases including the final report under section 173 Cr.P.C.

Refusal of Local Investigation

The power to abstain from local investigation under section 157 (1) (a) of the Criminal Procedure Code is primarily intended to be exercised in cases which are complete on the information brought to the station, requiring no further enquiry.

Investigation to be Impartial

Investigating officers are warned against prematurely committing themselves to any view of the facts for, or against a person. The aim of the investigating officer should be to find out the truth and to achieve this purpose, it is necessary to preserve an open mind throughout the Inquiry.

Further Investigation

The mere undertaking of a further investigation either by the investigating officer on his own or upon the directions of the superior police officer or pursuant to a direction by the Magistrate concerned to whom the report is forwarded does not mean that the report submitted under Section 173 (2) is abandoned or rejected. It is only that either the investigating agency or the court concerned is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of

the offence indicated in the report. **Vipul Shital Prasad Agarwal v. State of Gujarat and another, (2013) 1 SCC 197.**

Inquiry

According to S. 2(g)"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

Case – The word Inquiry has been defined u/s 2 (g), Cr.P.C. It is evident from the Provision that every Inquiry other than a trial conducted by the Magistrate or Court is an Inquiry. No specific mode or manner of inquiry is provided u/s 20, of the code. In the inquiry envisaged u/s 202, Cr.P.C. examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an Inquiry envisaged u/s 202. An inquiry is basically a proceeding wherein the magistrate or court applies the judicial mind and the purpose of such judicial mind is to determine whether further proceedings moving towards the trial shall be taken or not. Inquiry as a stage of criminal process commences with the cognizance taken by magistrate u/s 190. However the filing of complaint or the police report whereupon the magistrate applies his mind on the point whether he shall take cognizance or not will also be deemed to be a part of the stage of inquiry.

The inquiry proceedings moves uptill the stage of commencement of charge framing. Thereafter with the charge of framing the trial process starts. During an inquiry some important proceedings that can be taken place in the inquiry. For Example :

1. Taking of Cognizance
2. Complaint proceeding
3. Dismissal of complaint
4. Issue of process
5. Handing over of documents
6. Fixation of date for 1st hearing etc.

Trial

Trial has three basic stages, which normally occur in the same order. Investigation (where evidences are to be collected), Inquiry (A judicial proceeding where judge ensures for himself before going on trial, that there are reasonable grounds to believe the person to be guilty) and trial. The term trial has not been defined in the CrPC, however is commonly understood to mean – a judicial proceeding where evidences are allowed to be proved or disproved, and guilt of a person is adjudged leading to a acquittal or a conviction.

Trials are normally divided into Warrant Trials and Summons Trials. A criminal trial starts with framing of charges, if a person is not discharged- trial begins, by framing of charge and reading and explaining to him. After framing of charges the judge proceeds to take the "plea of guilt" which is an opportunity to the accused to acknowledge that he pleads guilty and does not wish to content the case. Here the judge's responsibility is onerous, he has to, first ensure – plea of guilt is free and voluntary. Secondly - he has also to ensure that if there had been no plea of guilt – was the prosecution version if unrebutted- would have led to conviction. If both the requirements are met – then judge can record and accept plea of guilt and convict the accused after listening to him on sentence

After plea of guilt is taken, if accused pleads "not guilty" or court does not accept his plea of guilt, trial moves on- prosecutor then explains to the court the basic outline of the case and what evidences he proposes to lead in order to prove the same. He ask the court to summon witnesses so that court can record their evidence. As the prosecution has to start leading evidence to bring home the offence to the accused – it is said "The Burden of Proof lies on the Prosecution". The basic rule is whoever asserts the affirmative of an issue has the burden to prove facts on which the accused's liability depends, and this burden of proof - is not a light burden – the prosecution has to prove that the accused is guilty beyond reasonable doubts. This is primarily for two reasons:

1. A person's (accused's) life and liberty is involved.

2. And the state with the investigative machinery at its disposal is sufficiently armed to get good evidence which an individual would not have.

So since now the burden of proof is on the prosecution it has to prove facts which incriminate the accused. When witnesses for the prosecution are called they are first

examined by the prosecutor – then cross examination by the defence advocate, and with the leave of court prosecutor can again examine to clarify the loopholes exposes during toss.

After the prosecutor has led its evidence – court asks the accused to himself enter the witness box but in order to explain circumstances that appeared against him – he has given an opportunity to give personal explanations. This is a remarkable manifestation of Audi Alteram Partem where the court makes a direct dialogue with the accused to know what his take is. This is not a chance to the court to bequile or cross examine the accused. Any answer given by accused is not to be used as evidence against him but the court may take into consideration to adjudge overall trustworthiness of the case. This is done u/s 311 CrPC, after the examination. If the court feels that prosecution has not successfully brought home the guilt – it may acquit – else if it feels that they have sufficiently discharged their burden – then it asks defence if it seeks to lead evidence, and the same cycle again. Now after evidence from both sides is recorded. Parties then make arguments on the same, and in the end court pronounces the judgement.

In case of Acquittal the accused is set at liberty. In case of conviction – the punitive dilemma begins. The court has to fix another hearing to decide on the quantum of sentence. Here the prosecution as well as the defence can lead evidences that would have been fatal earlier, in order to aggravate or mitigate the punishment. Here the court gives equal leverage to the "Crime" as well as the "Criminal". Earlier the gravity of crime used to be the sole criteria – however in recent times, there has been a definitive shifts of focus from crime to criminal which manifests growing importance of reformation at the end of punishment. The court at this stage would also consider whether the accused is entitled to the benefits of probation or admonition.

Distinction between Investigation, Inquiry and Trial

Investigation, inquiry and trial are three different stages of a criminal case. The case is first investigated by the police to ascertain whether an offence has actually been committed and if so, by whom and the nature of evidence available for the prosecution.

Inquiry is the second stage which is conducted by a Magistrate for the purpose of committing the accused to sessions or discharging him when no case has been made out. In case of complaints made to a Magistrate, it refers to a preliminary inquiry made by him

under Section 202 to ascertain the truth or falsehood of the complaint or whether there is any matter which calls for investigation by a criminal court.

The final stage of the case comes when the accused is put on trial before the Sessions Judge or the Magistrate when he is empowered by law to try the cases himself.

Investigation and Inquiry :

(1) An investigation is made by a police officer or by some person authorized by a Magistrate but is never made by a Magistrate or a court. An inquiry is a judicial proceeding made by a Magistrate or a court.

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

(3) Investigation is the first stage of the case and normally precedes enquiry by a Magistrate.

Inquiry and Trial :

Both inquiry and trial are judicial proceedings, but they differ in the following respects:

(1) An enquiry does not necessarily mean an inquiry into an offence for, it may, as well relate to matters which are not offences, e.g., inquiry made in disputes as to immovable property with regard to possession, public nuisances, or for the maintenance of wives and children. A trial on the other hand, is always of an offence.

(2) An inquiry in respect of an offence never ends in conviction or acquittal; at the most. It may result in discharge or commitment of the case to sessions. A trial must invariably end in acquittal or conviction of the accused.

Jurisdiction of Criminal Courts

Territorial jurisdiction of court to take cognizance of offences. It deals with s. 177- 188 of CrPc

Section 177 - Ordinary place of inquiry and trial: - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Section 178: Place of inquiry or trial: -

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

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

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

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

Section 181: Place of trial in case of certain offences.

(1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

Section 182: Offences committed by letters, etc.: -

(1) Any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 495 or section 494 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage [, or the wife by first marriage has taken up permanent residence after the commission of offence].

Section 183: Offence committed on journey or voyage: - When an offence is committed, whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

Section 184: Place of trial for offences triable together:- Where

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219 , section 220 or section 221 , or

(b) the offence or offences committed by several persons are such that they may be charged with, and tried together by virtue of the provisions of section 223 , the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

Section 185: Power to order cases to be tried in different sessions divisions: -

Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessionsdivision:

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force.

Section 186: High Court to decide, in case of doubt, district where inquiry or trial shall take place:-

Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued.

Section 187: Power to issue summons or warrant for offence committed beyond local jurisdiction.

(1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond with or without sureties for his appearance before the Magistrate having such jurisdiction.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

Section 188: Offence committed outside India: - When an offence is committed outside India

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

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

Information to Police and their power to Investigate

Chapter 12 of Code of Criminal Procedure, 1973 deals with it. It covers s. 154 – 176.

154.Information in cognizable cases.- (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; and every such information, whether given in writing or reduced to writing 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 as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(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 Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer 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 that offence.

155.Information as to non-cognizable cases and investigation of such cases.- (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(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 cognizable case.

(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, not-withstanding that the other offences are non-cognizable.

156. Police officers power to investigate cognizable case.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

157.Procedure for investigation.- (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

158.Report how submitted.- (1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to them Magistrate.

159.Power to hold investigation or preliminary inquiry.- Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code.

160.Police officers power to require attendance of witnesses.- (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

161.Examination of witnesses by police.- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

162.Statements to police not to be signed: Use of statements in evidence.- (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to 1 writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner

provided by section 145 of the Indian Evidence Act , 1872; (1 of 1872) and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872, (1 of 1872) or to affect the provisions of section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

163.No inducement to be offered.- (1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872(1 of 1872).

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 164.

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

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

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

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

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

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any

confession he may make may be used as evidence against him and I believe that this confession was voluntarily made.It was taken in my presence and hearing, and was read

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

(Signed) A. B.

Magistrate".

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

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

165.Search by police officer.- (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to then earest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

166.When officer in charge of police station may require another to issue search warrant.-

(1) An officer in charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in-charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in-charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165.

(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub-section (4).

167.Procedure when investigation cannot be completed in twenty four hours.- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

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

Provided that-

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail; and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

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

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

168.Report of investigation by subordinate police officer.- When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.

169.Release of accused when evidence deficient.- If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

170.Cases to be sent to Magistrate when evidence is sufficient.- (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

171.Complainant and witnesses not to be required to accompany police officer and not to be subjected to restraint.- No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

172.Diary of proceedings in investigation.- (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145 as the case may be, of the Indian Evidence Act, 1872, (1 of 1872) shall apply.

173.Report of police officer on completion of investigation.- (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interest of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to

(6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

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

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

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

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

175.Power to summon persons.- (1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said

investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

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

176.Inquiry by Magistrate into cause of death.- (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

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

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

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

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

First Information Report

An information given under sub-section (1) of section 154 CrPC is commonly known as first information report though this term is not used in the Criminal Procedure Code (in short CrPC). It is the earliest and the first information of a cognizable offence recorded by an officer-in-charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under

section 169 or 170 CrPC, as the case may be, and forwarding of a police report under section 173 CrPC. It is quite possible and it happens not infrequently that more information than one are given to a police officer-in-charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in section 154 CrPC. Apart from a vague information by a phone call, the information first entered in the station house diary, kept for this purpose, by a police officer-in-charge of a police station is the first information report- FIR postulated by section 154 CrPC. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC.

Take a case where an FIR mentions cognizable offence under section 307 or 326 IPC and the investigating agency learn during the investigation or receive fresh information that the victim died, no fresh FIR under section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt.

Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected, it does not require filing of fresh FIR against H – the real offender who can be arraigned in the report under section 173(2) or 173(8) of CrPC, as the case may be.

Purpose and Object :

The purpose of registration of FIR is manifold that is to say

(1) to reduce the substance of information disclosing commission of a cognizable offence, if given orally, into writing.

(2) If given in writing to have it signed by the complainant.

(3) To maintain record of receipt of information as regards commission of cognizable offences.

(4) To initiate investigation on receipt of information as regards commission of cognizable offence.

(5) To inform Magistrate forthwith of the factum of the information received.

The principal object of the FIR from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and bring to book the guilty.

Evidentiary value of FIR :

FIR is not a piece of substantive evidence. It can be used only for limited purposes, like corroborating under section 157 of the Evidence Act or contradicting (cross-examination under section 145 of Evidence Act) the maker thereof, or to show that the implication of the accused was not an after-thought. It can also be used under section 8 and section 11 of the Evidence Act. Obviously, the FIR cannot be used for the purposes of corroborating or contradicting or discrediting any witness other than the one lodging the FIR. It cannot be used for corroborating the statement of a third party. If the FIR is of a confessional nature it cannot be proved against the accused-informant, because according to section 25 of the Evidence Act, no confession made to a police officer can be proved as against a person accused of any offence. But it might become relevant under section 8 of the Evidence Act.

What you will do when police officer refuse to register FIR?

The police cannot refuse to register the case on the ground that it is either not reliable or credible **(Smt. Gurmito vs. State of Punjab And Ors 1996 CriLJ 1254 P&H).** Further, refusal to record FIR on the ground that the place of crime does not fall within the territorial jurisdiction of the police station, amount to dereliction of duty. Information about cognizable offence would have to be recorded and forwarded to the police station having jurisdiction **(State of Andhra Pradesh vs. Punati Ramulu And Others, AIR 1993 SC 2644).**

When a police officer-in-charge of a police station or any other police officer, acting under the directions of the officer-in-charge of police station refuses to register information, any person aggrieved by such refusal may send in writing and by post, the substance of such information disclosing a cognizable offence, to the Superintendent of Police under section 154(3) or to the Magistrate concerned under section 156(3) of the CrPC. It is the duty of the officer-in-charge of the police station to register an FIR when investigation under section 156(3) of CrPC is directed by the Magistrate, even when the Magistrate explicitly does not say so **(Mohd. Yoysuf vs. Afaq Jahan, (2006), SCC 627).**

Whether a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same?

The Supreme Court of India, **in Lalita Kumari vs. Govt. of UP on 12 November, 2013** held that 'the police must compulsorily register the FIR on receiving a complaint if the information discloses a cognizable offence, and no preliminary inquiry is permissible in such a situation'.

If the information does not disclose a cognizable offence but indicates the necessity for an inquiry 'a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not'. In cases where preliminary inquiry ends in closing the complaint a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes;

(b) Commercial Offences;

(c) Medical negligence cases;

(d) Corruption Cases;

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. A preliminary inquiry should be made time bound, and in any case it should not exceed seven days.

Punishment for giving false information:

Punishment for giving false information to the police is dealt with by sections 182, 203 & 211 of IPC. Even if such information is not reduced to writing under Section 154(1) of CrPC, the person giving the false information may nevertheless be punished for preferring a false charge under section 211 of IPC. A police officer refusing to enter in the diary a report made to him about the commission of an offence, and instead making an entry totally different from the information given, would be guilty under Sections 166A and 177 of IPC.

Evidentiary value of Statements recorded of witnesses

Examination of witnesses by police

1. Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

2. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

3. The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means.

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section376D, section 376E or section 509 of The Indian Penal Code is alleged to have been committed or attempted, shall be recorded, by a woman police officer or any woman officer.

'Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable.' **(Ref: Appabhai Vs. State of Gujrat AIR 1988 SC 696)**. This observation was made by the Hon'ble Apex Court when prosecution could not produce independent witnesses in that case. In the process of investigation, under Section 161 of Cr.P.C, any Police officer making an investigation is accredited and empowered to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to records statement of witnesses. These statements are predominantly called as section 161 Cr.P.C statements. This task is to gather evidence against accused. After filing charge sheet, these statements will also be perused by the Court to take cognizance of an offence. Such a statement can only be utilized for contradicting the witness in the manner provided by Section 145 of the Evidence Act.

What is a contradiction ?

In case of a witness testifies before the court that a certain fact is existed without stating same before police; it is a case of conflict between the testimony before the court and statement made before the police. This is a contradiction. Therefore statement before the police can be used to contradict his testimony before the court. In **Appabhai .Vs. State of Gujrat AIR 1988 S.C. 694 [1988 Cri.L.J. 848],** The Hon'ble Apex Court has observed as under: "The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

What is an Omission?

An omission is either skip or slip, it means 'exclusion' or 'leaving out'. If a certain fact is testified by a witness in his Examination-in-Chief', such fact, which is testified in Court, had been omitted to state before police, it is called an 'Omission'. Now, it is to be tested by the Court whether it is a material omission or not.

If it is a material omission, it amounts material contradiction. The Hon'ble Apex Court opines that relevant and material omissions amount to vital contradictions, which can be established by cross- examination and confronting the witness with his previous statement. **(Ref; Tahsildar Singh ..Vrs..State of U.P., 1959 SCR Supl. (2) 875; AIR 1959 1012 (1026)).** However, as was held in **Ponnuswamy Chetty v. Emperor (A.I.R. 1957 All. 239),** ' a bare omission cannot be a contradiction'.

Non production of Independent Witnesses

It is settled law of criminal jurisprudence that conviction can be based on the testimony of official witnesses and it is not necessary that in each and every case, public persons must be joined in investigation. In the case of **"Appabhai Vs. State of Gujrat" AIR 1988 SC 696,** it has been held as under, "It is no doubt true that the prosecution has not been able to produce any independent witness to the murder that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum or the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused."

How to know whether it is a contradiction or an omission or not?

" Statement " in its dictionary meaning is the act of stating or reciting. Prima facie a statement cannot take in an omission. A statement cannot include that which is not stated. But very often to make a statement sensible or self-consistent, it becomes necessary to imply words which are not actually in the statement. Though something is not expressly stated, it is necessarily implied from what is directly or expressly stated. To illustrate: ' A' made a statement previously that he saw ' B ' stabbing ' C ' to death; but before the Court he deposed that he saw 'B' and 'D' stabbing ' C' to death: the Court can imply the word "only " after ' B ' in the statement before the police. Sometimes a positive statement may have a negative aspect and a negative one a positive aspect. Take an extreme example : if a witness states that a man is dark, it also means that he is not fair. Though the statement made describes positively the colour of a skin, it is implicit in that statement itself that it is not of any other colour. (See Tahsildar Singh's case (supra)).

The statement of injured which was recorded as a dying declaration which, consequent upon his survival, is to be treated as a statement:-

In **Sunil Kumar and others Vs. State of M.P. (AIR 1997 SC 940)**, in this case the Supreme Court, while dealing with the statement of injured witness, which was then recorded as a dying declaration by the Magistrate, observed that the statement of injured which was recorded as a dying declaration which, consequent upon his survival, is to be treated as a statement under Section 164 of the Criminal Procedure and can be used for "corroboration or contradiction", unlike the statement under Section 161, which can be used only for "contradiction".

If signature of a person obtained on his statement recorded under section 161 of Cr.P.C, whether such statement should be ignored?

Basically, signature of witness on section 161 of Cr.P.C statement is not necessary. However, it is not the law that whenever the signature of the person is obtained in his statement recorded in the course of investigation that statement should be ignored. The law on the point informs me that in such situation the Court must be cautious in appreciating the evidence that the witness who gave the signed statement may give in Court (**See Tilkeshwar Vs. Bihar State (AIR 1956 SC 238), State of U.P VS. M.K Anthoni (AIR**

1985 SC 48), (1985) 1 SCC 505.and State of Rajasthan Vs. Teja Ram and Ors. (AIR 1999 SC 1776). It has been held that obtaining the signature of the witness in the statement recorded under Sec.161 of the Code does not render it inadmissible under Sec.161 of the Code but, it may affect the weight to be attached to the evidence of such witness. Notwithstanding that the statement is signed, it continues to be a statement recorded under Sec.161of the Code, going by the said decisions. **(See also M. Sundaramoorthy vs State Of Kerala, (2011), Hon'ble Kerala High Court, Crl.MC.No. 464 of 2011).**

Improvements in the evidence of prosecution witnesses:-

The Court disbelieves the evidence of prosecution witness, if there are improvements in the deposition of such witness made over his statement recorded under section 161 of Cr.P.C. In the cases of Ashok Vishnu Davare Vs. State of Maharasthra, (2004) 9 SCC 431, Radha Kumar v. State of Bihar (now Jharkhand) [(2005) 10 SCC 216] and Sunil Kumar Sambhudaval Gupta (Dr.) and Others Vs. State of Maharashtra, (2010) 13 SCC 657, in which the Hon'ble Supreme Court has not believed the evidence of prosecution witnesses on account of improvements in the deposition of the witnesses made over their statements recorded under Section 161, Cr.P.C. (See also Baldev Singh vs State Of Punjab, , criminal appeal No. 1303 of 2005, [2013], Baldev Singh vs. State of Punjab (1990 (4) SCC 692 = AIR 1991 SC 31)). However, in Arjun and others ..Vs.. State of Rajsthan, AIR 1994 SC 2507, The Hon'ble Court has held that – A little bit of discrepancies or improvement do not necessarily demolish the testimony. Trivial discrepancy, as is well known, should be ignored. Under circumstantial variety the usual character of human testimony is substantially true. Similarly, innocuous omission is inconsequential.

Even honest and truthful witnesses may differ in some details unrelated to the main incident:-

In State of U.P. Vs. M.K. Anthony AIR 1985 SC 48, the Hon'ble Apex Court laid down certain guidelines in this regard, which require to be followed by the courts in such cases. The Court observed as under :-

technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a

whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer."

Confrontation of Statement:- Dandu Lakshmi Reddi vs. State of A.P. (AIR 1999 SC 3255), it was observed that Section 162 of the Code of Criminal Procedure (for short the Code) interdicts the use of any statement recorded under Section 161 of the Code except for the limited purpose of contradicting the witness examined in the trial to whom such statement is attributed. Of course, this Court has said in Raghunandan Vs. State of U.P., (AIR 1974 SC 463) that power of the court to put questions to the witness as envisaged in Section 165 of the Evidence Act would be untrammeled by the interdict contained in Section 162 of the Code. The following observations in the aforesaid decision, in recognition of the aforesaid power of the court, would be useful in this context: We are inclined to accept the argument of the appellant that the language of Section 162 Criminal Procedure Code, though wide, is not explicit or specific enough to extend the prohibition to the use of the wide and special powers of the Court to question a witness, expressly and explicitly given by Section 165 of the Indian Evidence Act in order to secure the ends of justice. Therefore, we hold that Section 162 Criminal Procedure Code does not impair the special powers of the Court under Sec. 165 Indian Evidence Act. Ultimately, in the said ruling Dandu Lakshmi Reddi (supra), it was held that ' It must now be remembered that the said procedure can be followed only when a witness is in the box. Barring the above two modes, a statement recorded under Section 161 of the Code can only remain fastened up at all stages of the trial in respect of that offence. In other words, if the court has not put any question to the witness with reference to his statement recorded under Section 161 of the Code, it is impermissible for the court to use that statement later even for drawing any adverse impression regarding the evidence of that witness. What is interdicted by the Parliament in direct terms cannot be obviated in any indirect manner.'

A statement under Section 161 Cr. P. C is not a substantive piece of evidence:– As has been held In Rajendra singh vs. State of U.P – (2007) 7 SCC 378, "a statement under Section 161 Cr. P. C is not a substantive piece of evidence. In view of the provision to Section 162 (1) CrPC, the said statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore, the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding that Respondent 2 could not have been present at the scene of commission of the crime."

General Diary and Charge Sheet

Diary of proceeding in Investigation

Under the provision of Section 172 Cr.P.C. every Police Officer conducting investigation shall maintain a record of investigation done on each day in a Case Diary in the prescribed Form. Case Diaries are important record of investigation carried out by an Investigating Officer. Any Court may send for the Case Diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

Facts to be incorporated in Case Diaries:

The Case Diary, which is a record of day by day investigation of a case, shall contain details of the time at which the information reached the Investigating Officer, time at which investigation began and was closed, the place or places visited by him and a statement of the facts and circumstances ascertained through investigation.

Case Diaries should contain only particulars of actual steps taken or progress made in the investigation and such details of investigation which have bearing on the case. Addresses, both present and permanent of the witnesses and all other relevant details should be invariably recorded in the Case Diaries. The following shall not be incorporated in the Case Diaries:

- Opinion of Investigating Officer, opinion of the Supervisory Officers and Law Officers
- Any conflict of opinion between I.O., Law Officers, SP, DIG and Head Office.

- Recommendations made in concluding report of the O., comments of Law Officer(s) and Supervisory Officers.
- Any other facts/circumstances not relating to investigation of the case.

Every Investigating Officer, to whom part investigation of a case is entrusted, will also maintain a Case Diary for the investigation made by him.

Concept of Case Diary

Section 172 Cr.P.C. lays down that every police officer making an investigation should maintain a diary of his investigation. Each State has its own police regulations or otherwise known as police standing orders and some of them provide as to the manner in which such diaries are to be maintained. These diaries are called case diaries or special diaries. Like in Uttar Pradesh, the diary under section 172 is known as 'special diary' or 'case diary' and in some other States like Andhra Pradesh and Tamilnadu, it is known as 'case diary'. The Section itself indicates as to the nature of the entries that have to be made and what is intended to be recorded is what the police officer did, the places where he went and the places which he visited etc. and in general it should contain a statement of the circumstances ascertained through his investigation. Sub-section (2) is to the effect that a criminal court may send for the diaries and may use them not as evidence but only to aid in such inquiry or trial. The aid which the court can receive from the entries in such a diary usually is confined to utilizing the information given therein as foundation for questions to be put to the witnesses particularly the police witnesses and the court may, if necessary, in its discretion use the entries to contradict the police officer who made them. Coming to their use by the accused, Sub-section (3) clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the courts. But in case the police officer uses the entries to refresh his memory or if the court uses them for the purpose of contradicting such police officer then provisions of Section 161 or Section 145, as the case may be, of the Evidence Act would apply. Section 145 of the Evidence Act provides for cross-examination of a witness as to the previous statements made by him in writing or reduced into writing and if it is intended to contradict him by the writing, his attention must be called to those parts of it which are to be used for the purpose of contradiction. Section 161 deals with the adverse party's rights as to the production, inspection and cross-examination

when a document is used to refresh the memory of the witness. It can therefore be seen that the right of accused to cross-examine the police officer with reference to the entries in the General Diary is very much limited in extent and even that limited scope arises only when the court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to the limitations of Sections 145 and 161 of the Evidence Act and for that limited purpose only the accused in the discretion of the court may be permitted to peruse the particular entry and in case if the court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of accused getting any right to use the entries even to that limited extent does not arise.

As per section 172 deals with in three clauses:

(1). Every police officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2). Any criminal court may send for the police diaries of case under inquiry or trial in such court, and may use such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3). Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of Indian Evidence Act, 1872, shall apply.

It means this section deals with or shows that what a "special" diary of a police-officer making an investigation should contain. Every police-officer making an investigation shall enter his proceedings in a diary which may be used at the trial or inquiry, not as evidence in the case but to aid the court in such inquiry or an investigation started under section-174 of the code.

The object of recording "case diaries" under this section is to enable courts to check the method of investigation by the police. The entries in a police diary should be made with

promptness in sufficient details mentioning all significant facts on careful chronological order and with complete objectivity. The haphazard maintenance of a police case diary not only does no credit to those responsible for maintaining it but defeats the very purpose for which it required to be maintained. So we can say that this section does not deal with the recording of any statement made by witnesses. Oral statements of witnesses should not be recorded in the diary. Similarly the court should not while recording the evidence of investigating office record anything which came to the knowledge of such an officer during the investigation of the other case.

A diary kept under this section cannot be used as evidence of any data, fact or statement contained therein, but it can be used for the purpose of assisting the court in inquiry or trial by enabling it to discover means for further elucidation of points which need clearing up before justice can be done.

Use Of Case Diary

In case Shamushul Kanwar vs State of U.P it was held that It is manifest from its bare reading without subjecting to detailed and critical analysis that the case diary is only a record of day-to-day investigation of the investigating officer to ascertain the statement of circumstances ascertained through the investigation. Under sub-section (2) of Section 172, the Court is entitled at the trial or enquiry to use the diary not as evidence in the case, but as aid to it in the inquiry or trial. Neither the accused, nor his agent, by operation of sub-section (3), shall be entitled to call for the diary, not shall he be entitled to use it as evidence merely because the Court referred to it. Only right given there under is that if the Police Officer who made the entries in the diary uses it to refresh his memory or if the Court uses it for the purpose of contradicting such witness, by operation of Section 145 of the Evidence Act, it shall be used for the purpose of contradicting such witness i.e., Investigation officer or the Court. It is, therefore, clear that unless the investigating Officer or the Court uses it either to refresh the memory or contradicting the investigating Officer as previous statement under Section 161 that too after drawing his attention thereto as is enjoined under Section 145 of the Evidence Act, the entries cannot be used by the accused as evidence.

But the Gujarat high court has confirmed the order of special CBI court, which refused an accused in the Sohrabuddin Sheikh fake encounter case, access to the case diary.

Additional chief judicial magistrate AY Dave declined accused IPS officer Rajkumar Pandian's plea seeking the case diary. The suspended officer had demanded that CBI place a certified copy of the full case diary in court in a sealed cover. But the magistrate observed that pending investigation, the probe agency can't be expected to submit it in court. Pandian later approached the high court, but Justice AS Dave refused to interfere in the CBI court's order. The high court noted that according to Section 172 of CrPC, an accused is not entitled to a copy of the case diary. The trial courts may use such diaries prepared by the investigating officer, but these documents can't be used as evidence. "Sub-section (3) of section 172 of CrPC mandates that neither the accused nor his agents shall be entitled to call for such diaries, nor he or they shall be entitled to see them merely because such diaries are referred to by the court. However, if such diaries or extracts therein are used by the police officer for refreshing the memory or if the court uses them for the purpose of contradicting such police officers, provisions of Evidence Act will apply," the high court observed.

The Supreme Court has ruled that no court should rely on a case diary as evidence and acquit or convict an accused on the basis of that. The judgment could protect the interests of witnesses in criminal cases while keeping under wraps the investigation done by police.

A bench of Justices DK Jain and RM Lodha ruled that a criminal court can use the case diary to help an inquiry or trial but not as evidence. This position is made clear by Section 172(2) of the Code.

In the case of investigation

A police officer, who investigated a criminal case either fully or partly, is entitled to look into the 'case diary' containing the details of the investigation and refresh his memory while deposing as a witness before the trial court, the Madras High Court has said.

A diary kept under this section cannot be used as evidence of any date, fact or statement contained therein, but it can be used for the purpose of assisting the court in the inquiry or trial by enabling it to discover means for further elucidation of points which need clearing up before justice can be done. It can be used as aid in framing a charge though not for founding the charge. The magistrate cannot take cognizance or issue process against

accused on the materials contained in the case diary alone, unless facts contained in the report under section 173 constitutes an offence.

The Supreme Court has held that the police diaries of a case under inquiry or trial can be made use of by a criminal court only for aiding it, in such inquiry or trial. The court would be acting improperly if it uses them in its judgement or seek confirmation of its opinion on the question of appreciation of evidence from statements contained in such diaries entries in police diaries cannot be used as evidence against the accused. They cannot, therefore, used to explain any contradiction in the evidence of a prosecution witness which the defence has brought forth for using any portion of his statement under section 161.

Personal diary of non-investigating officer excluded.- Entries made in a personal diary by a police officer who did not investigate into a case do not fall within section 172.

Diaries to be properly kept. – Though police diaries are not evidence against the accused, it is very essential for criminal trials that they should be properly kept in the manner provided by the Code. But the failure of the police witnesses to keep a diary as required by section 172(1) does not have the effect of making their evidence inadmissible although it lays it open to adverse criticism and may diminish its value.

Non-compliance with the provisions. – Failure on the part of the investigating officer to comply with the provisions of section 172 is a serious lapse which diminishes the value and credibility of the investigation. But it will not affect the finding of guilt unless prejudice to the accused is shown.

Diaries how to be maintained and entries how to be made?- The haphazard maintenance of a document of the status of a case diary not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. Courts think it to be of the utmost importance that entries in a police case diary should be made with promptness, in sufficient detail, mentioning all significant facts in careful chronological order and with complete objectivity. Entries in case diaries must be made with scrupulous completeness and efficiency.

Making false entries in diaries-Offence.- Where a public servant makes a false entry in a diary kept and sent to his superior in pursuance of a departmental order which that public servant is bound to obey, he is guilty of an offence under section 177, I.P.C..

Power of criminal court to send for diaries and use thereof [Sub-section (2)].- Prosecution is not expected to produce daily diary in courts as a matter of course. Such production would seriously impair the working of the police. If required for defence they can be summoned on the application of defence.

No general order by Sessions Judge. – Sessions Judges should not issue general orders that police diaries should be sent to them along with the Magistrate's records in all cases committed for trial, and in all criminal appeals. They can only order for diaries of cases under trial before them, if they think it necessary to peruse them.

No use of police diaries as evidence. -Police diaries are not original evidence of the matters contained in them. But they can be put in evidence, if the persons who wrote them are called as witnesses to prove the facts contained in such reports. A Judge should not take judicial notice of police papers, and he should not consult them 'in order to test evidence' in the case. The diary kept under section 172, cannot be used as containing entries which can by themselves be taken to be evidence of any date, fact or statement contained in it. Under section 172 the police diary cannot be used by any court as a substantive evidence but is intended to be used only for the purpose of assisting the court in the appreciation of the evidence and to clear up any doubtful point arising in the course of the case. A Judge is in error in making use of the police diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in those diaries.

Use only as aid to court . -The power of court under section 172 to look into case diaries should be sparingly exercised and it is necessary for the court to be astute to avoid using it otherwise than as provided by law. Under section 172, any criminal court may send for the special police diary of a case under inquiry or trial in such court, and may use the diary "not as evidence, but to aid it in such inquiry or trial". It may, for instance, be of importance in case that the court should know when a witness first made a statement in connection with the case, or whether any particular person made or did not make a statement. In Khatri, the Supreme Court observes that sub-section (2) of section 172, empowers a criminal court holding an inquiry or trial of a case to send for the police diary of the case and the criminal court can use such diary not as evidence in the case, but to aid in such inquiry or trial.

As pointed out by the Supreme Court in Shamsul Kanwar , where neither the prosecution witnesses nor the court uses the case diary, the free use thereof for contradicting the prosecution evidence is obviously illegal and it is inadmissible in evidence. Thereby the defence cannot place reliance thereon.

Permitting defence counsel to see portions of police diary for use in defence of case- Court's discretion.- Though an accused person is not entitled as of right to see the case diary and his statement to the police recorded in it, there is no prohibition contained in section 172(3) against the court permitting in its discretion defending counsel to see any portion of the case diary, which the court considers in the interests of justice he should see and use in the defence of the case. There is no legal impediment to the committing court permitting in its discretion and in appropriate cases defending counsel at his request to look into a case diary to verify what the accused told the police as recorded there, before formulating his defence. Under the law as it now stands, such a permission cannot be claimed by the accused as a matter of right. It is comparatively of little use for defending counsel being permitted to look at the diary by the Sessions Judge at a belated stage of the trial. Defending counsel should know what the accused told the police in the first instance. There is a heavy responsibility on the courts in the user of case diaries under section 172(3) and on public prosecutors to bring to the notice of the trial Judge anything in the case diary favourable to the accused. In Khatri, the Supreme Court has laid down that if the case diary is used by the police officer who has made it to refresh his memory or if the criminal court uses it for the purpose of contradicting such police officer in inquiry or trial, the provisions of sections 161 and 145, as the case may be, of Indian Evidence Act would apply and the accused would be entitled to see the particular entry in the case diary which has been referred to for either of these purposes and so much of the diary as in the opinion of the court is necessary to a full understanding of the particular entry so used.

Statements of witnesses recorded in special diary not covered by section 172.- Where a police officer records in the special diary statements of witnesses, taken under section 161, the privilege given by this section does not extend to those statements.80 Such statements can be used for the purposes of section 162. A police diary is normally meant for a police officer investigating a criminal case for recording therein his day to day noting regarding the investigation, but he is not debarred from recording the statement of any witness therein and so the privilege in the matter of calling a police diary by an accused person or his agent

contemplated under section 172 of the Code extends only to the noting recorded by a police officer therein and not to the supply of copies of the statements of the witnesses recorded therein as those statements will be covered by sub-section (3) of section 161 of the Code.

Evidentiary value of entries in police diary. – A police diary may be an official document, and the entries therein are worth what they are, but they cannot surely be accepted to be absolutely correct for all purposes, in the absence of any definite proof. There may be circumstances which might seriously challenge their correctness. An entry in a record or a document made by a person for his own benefit even if admissible should not always be taken without scanning; other circumstances have to be considered along with the entry. Entry as to time of F.I.R. must be presumed to be true. Entries of the police diary are neither substantive nor corroborative evidence.

Case Laws : There are several cases which are discussing regarding the case diary and use of case diary: In Shamshul Kanwar vs State Of U.P. on 4 May, 1995 case also the High Court took the view that he was in a commanding position and he could have stopped the entire massacre and that he behaved with least reasonableness and therefore the death sentence has to be maintained.

In Jairajsinh Temubha Jadeja vs. State of Gujarat case also deals with the Production of case diary –Petitioner called in question order passed by Additional Sessions Judge, on the application Exhibit 505,filed by Petitioner seeking production of case diary for purpose of effectively cross-examining prosecution witness 44 – Held, entries of police diary are neither substantive nor corroborating evidence and they cannot be used by or against any other witness than the police officer and can only be used to limited extent – On a plain reading of Sub-section (3) of Section 172 of CrPC, it was amply clear that provisions of Section 161 or Section 145, as case may be, of Evidence Act, would be applicable to contents of case diary only in the contingencies laid down there under – Hence, unless police officer who made entries in case diary uses them to refresh his memory or Court uses them for purpose of contradicting such police officer, provisions of Section 161 or Section 145 of Evidence Act would not be applicable – Section 159 of Evidence Act which provides for 'refreshing memory' interalia lays down that a witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned – Hence, it could not be said that right of

Petitioner-accused under Section 145 or Section 155(3) of Evidence Act was in any manner adversely affected by non-supply of extract of the case dairy – Petitioners claim an unfettered right to make roving inspection of tentries in case diary -It could not be said that unless such unfettered right was conferred and recognized, embargo engrafted in Sub-section (3) of Section 172 of CrPC would fail to meet test of reasonableness – Proceeding taken by said witness as narrated in deposition could clearly be said to be during course of investigation and all proceedings taken by him had been noted down in case diary – During course of his cross examination, he had stated that prior to recording his testimony, he had not referred to case diary and did not want to call for case diary to refer to same – Application made by accused not being in consonance with provisions of law, it was not possible to grant the same – No infirmity could be found in view taken by Trial Court – Petition dismissed.

Charge Sheet

When a Police officer gives a Police report under section 173 Cr.P.C. recommending prosecution, it is called a charge sheet. After questioning the accused and hearing the arguments, the magistrate frames charges on the accused for which he is tried. "It is distinct from the First Information Report (FIR) (which is the core document that describes a crime that has been committed), usually refers to one or more FIRs, and charges an individual or organization for (some or all of) the crimes specified in those FIR(s). Once the charge sheet has been submitted to a court of law, the court decides as to who among the accused has sufficient prima facie evidence against him to be put on trial. After the court pronounces its order on framing of charges, prosecution proceedings against the accused begin in the judicial system.

Here is a definition from a case (K.VEERASWAMI vs UNION OF INDIA (1991) 3 SCC 655) "The investigating officer collects material from all sides and prepares a report, which he files in the court as charge-sheet. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the Cr.P.C. The statutory requirement of the report under Section 173(2) would be complied with of the various details prescribed therein are included in the report. This report is intimation to the magistrate that upon investigation into a cognizable offence the Investigation Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being

sent to the court. In fact, the report under Section 173(2), purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence".

Remand

Legal Provisions of Section 167 of Code of Criminal Procedure, 1973 (Cr.P.C.), India.

Procedure when investigation cannot be completed in twenty-four hours

This section lays down the procedure to be adopted when the investigation against accused person cannot be completed within 24 hours of his arrest and there are grounds for believing that the accusations against him are well founded.

The provisions of this section are attracted under the following conditions—

1. When the accused is arrested without warrant and is detained by a police officer in his custody;

2. It appears that more than 24 hours will be needed for his investigation;

3. There are grounds to believe that the accusation or information against him is well founded.

4. The officer-in-charge of the police station or the investigating officer not below the rank of a sub inspector forwards the accused for remand before a Magistrate.

The Judicial Magistrate may either refuse to detain him or he may direct his detention in police custody or judicial custody. The police can interrogate the accused even after his remand to judicial custody.

A new sub-section (2-A) has been inserted in this section by the Cr.P.C. Amendment Act of 1978 which provides that where a Judicial Magistrate is not available, the accused along with the copy of the entries in case diary should be sent to the nearest Executive Magistrate

on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred.

However, the provisions of Section 167 are not to be invoked where the accusation or information is not well founded, or where the investigation can be completed within 24 hours. The Executive Magistrate may authorise detention of the accused in custody for not more than 7 days.

Judicial Remand :

The Judicial Magistrate to whom the accused person is so forwarded, whether he has or has not the jurisdiction to try the case, may authorise the detention of the accused in police custody for a term not exceeding 15 days in the whole. He may order the accused to be forwarded to a judicial Magistrate having jurisdiction to try the case, if he consider detention of the accused beyond 15 days necessary for completion of investigation.

The nature of custody may be altered from police custody to judicial custody and vice versa during the first 15 days period [7 days in case of Executive Magistrate vide subsection (2-A)]. But on expiry of 15 days period, the accused can be ordered to be kept in judicial custody and not in the custody of the police.

The Supreme Court in CBI Special Investigation Cell v. Atiupam Kulkarni, has reiterated that the custody after the expiry of first 15 days can only be judicial custody for the rest of the period of 90 days or 60 days as the case may be.

Thus police custody if found necessary can be ordered only during the first 15 days. However, if the accused is involved in another case he can be re-arrested and remanded to police custody with the permission of the Magistrate.

Where police is not readily available for escort duty, it would be a valid ground for extending the period of remand of an accused under Section 167 (2) of the Code.

The Magistrate is expected to apply his judicial mind while deciding the matter of remand taking into consideration all the available materials including the copy of case diary, and the order of police remand should not be passed in a routine manner merely because the police has so requested.

The Magistrate has the discretion to order detention of the accused in police custody or judicial custody as he thinks fit. He may also remand the accused to Army, Navy or Air Force custody if the accused person is subject to that law. In case of remand by Executive Magistrate under sub-section (2A) the reasons for authorising the detention of accused have to be recorded in writing.

The maximum period of remand in case of offences punishable with death, imprisonment for life or imprisonment for a term not less than ten years is 90 days and for any other offence it is 60 days. If the investigation is not completed within this period the accused person has got to be released on bail without any further detention.

The prescribed statutory period of 90 days or 60 days as mentioned in Proviso (a) to Section 167 (2) is to be computed from the date on which the Magistrate authorises the detention of the accused person.

The Court cannot refuse to pass an order directing the release of accused on bail on the ground that no such written application has been given by the accused. However, after filing charge-sheet the Magistrate is not competent to grant bail under this Proviso to Section 167 (2).

The Supreme Court in State of West Bengal v. Dinesh Dalmia observed that "the whole purpose of Section 167, Cr. P.C. is that the accused should not be detained for more than 24 hours and subject to 15 days' police remand and it can further be extended upto 90/60 days, as the case may be." The Court made it clear- that police custody means the police custody in a particular case for investigation and not judicial custody in another case.

Thus, where two F.I.Rs were lodged against the accused at Calcutta and Chennai and the accused who was arrested and in CBI custody in the case pending before the Court at Chennai, on receiving information that he was also required in case at Calcutta, voluntarily surrenders before the Magistrate of Chennai in case relating to F.I.R. in Calcutta, such notional surrender cannot be treated as police custody so far as counting 90 days, from that surrender as regards case pending in Calcutta.

Explaining the reason, the Court held that a notorious criminal may have number of cases pending against him in various police stations in city or outside city, a notional surrender in pending case for another F.I.R. outside city or of another police-station in same city, if

counted for the purpose of 90/60 days, as the case may be, police will not get an opportunity to get custodial investigation. Therefore, the surrender by the accused in the instant case cannot be deemed to be in the police custody in the case pending in Calcutta.

In State of Rajasthan v. Ravishankar Shrivastaya, it was held that release on bail is not allowed for an accused of corruption charges. In the instant case the accused was not arrested in the F.I.R. filed against him, but was arrested on second F.I.R. being filed against him the next day.

Application for bail was filed by the accused under Section 167 on the ground of his continued detention beyond 24 hours without proper remand in the first F.I.R. (in which he was not arrested). The High Court of Rajasthan held that the arrest of accused on the basis of second F.I.R. could not be treated as deemed custody in first F.I.R. also.

Therefore, failure of filing of charge-sheet in first F.I.R. within stipulated period from the date of so called deemed custody does not entitle the accused to be released on bail under proviso (a) of Section 167 (2) of the Code of Criminal Procedure.

Cognizance by Courts

Criminal law has always been most effective branch of the law which has helped in dealing with most brutal of the crimes and has been there to protect the society from falling in the state of anarchy. It consists of two branches known as substantive law and procedural law. While substantive law defines the various kinds of offences and the punishment to be given to the offenders, the procedural law is intended to provide a mechanism for the enforcement of the substantive criminal law. In the absence of such a procedural law, the substantive law will be rendered worthless as nobody would be able to chart out the way of prosecuting the offenders and they will be let off. So it can be concluded that both the laws complement each other.

In the language of the Hon'ble Apex Court employed in its earliest decision (Ref: R.R.Chari v. State of U.P , "taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of offence".

In India, the procedure to be followed for criminal proceedings is determined by the Code of Criminal Procedure, 1973. It has a full section dedicated to the cognizance of offences by the Magistrates and has also dealt with the restrictions placed on his power of cognizance regarding certain offences. These sections explain in detail the persons who are authorized to make a complaint with regard to any offence against marriage and a Magistrate can take cognizance of the offence only if those certified persons are the complainants. He is not empowered to take suo moto cognizance of these offences unless there is a grave and sudden need to take action.In this project, researcher will be discussing about various the power of Magistrate to take cognizance of various offences and then he will be discussing about the restrictions placed on him under S. 198 & 198A of the code. Then he will be dealing with to the viability of these restrictions and will be analyzing if these restrictions have been useful and have served their purpose or have they been a deterrent for the police and the victims on their way to achieve justice and prosecuting the perpetrators of various marriage related offences.

Scope of Cognizance of Offences by Magistrate

Any Magistrate of the first class and any magistrate of the second class may take cognizance of any offence. Section 190- 199 of the code describe the methods by which, and the limitations subject to which, various criminal courts are entitled to take cognizance of offences. Section 190(1) provides that, subject to the provisions of S. 195-199, any magistrate of the first class and any magistrate of the second class especially empowered in this behalf, may take cognizance of any offences

a)Upon receiving a complaint of facts which constitute such offence.

b) Upon a police report of such facts.

c) Upon information received from any person other than a police officer, or upon his own knowledge, that such an offence has been committed.

S. 190(2) – The Chief Judicial Magistrate may specially empower any magistrate of the second class as mentioned to take cognizance of such offences as are within his competence to inquire into or try. The term complaint has been defined in S. 2(d) as meaning: '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.' It also explain that A report made by a police officer in a case which disclose, after investigation, the commission of a non cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complaint. In the case of P. Kunhumuhammed v. State of Kerala it was said: the report of a police officer following an investigation contrary to S. 155(2)[3] could be treated as complaint under S. 2(d) and S. 190(1)(a) if at the commencement of the investigation the police officer is led to believe that the case involved the commission of a cognizable offence or if there is a doubt about it and investigation establishes only commission of a non- cognizable offence. If at the commencement of the investigation it is apparent that the case involved only commission of a non-cognizable offence, the report followed by the investigation cannot be treated as a complaint under S. 2(d) or 190(1)(a) of the Code. The expression 'police report' has been defined by S. 2(r) as meaning "a report by a police officer to a magistrate under S. 173(2)" i.e., the report forwarded by the police after the completion of investigation.

Ajit Kumar Palit v. State of W.B.: What is taking cognizance has not been defined in the Code. The word 'cognizance' has no esoteric or mystic significance in Criminal Law or procedure. It merely means 'become aware of' and when used with reference to a court or judge. 'to take notice judicially'.

If cognizance is to be taken on a police report under S. 190(1)(b) the report must be one as defined in S. 2(r). That is the report must be one forwarded by a police officer to a magistrate under S. 173(2) and not any other report like preliminary report or an incomplete challan. And it is for the magistrate to decide whether the police report is complete. His power cannot be controlled by the investigating agency. On receiving police report the magistrate may take cognizance of the offence under S. 190(1) (b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The magistrate has not to proceed mechanically in agreeing with the opinion formed by the police, but has to apply his mind and peruse the papers placed before him. He has to apply his mind to all the details embodied in the police report and to other documents and papers submitted along with the report. It may be noted that the magistrate takes cognizance of the offences and not the offender. The magistrate is not bound by the conclusion drawn by the police and it is open to him to take cognizance of an offence under S. 199(1)(b) on the basis of the police

report even though the police might have recommended in their report that there were was no sufficient ground for proceeding further or that it was not a fit case where cognizance should be taken by the magistrate. It has been ruled that the magistrate can take cognizance of an offence if he is satisfied about the material.

According to S. 190(1)(c) the magistrate can take cognizance of any offence upon the information received from any person other than a police officer or upon his knowledge. The object is to enable magistrate to see that justice is vindicated notwithstanding that the persons individually aggrieved are willing or unable to prosecute. Hence the proper use of the power conferred by this provision is to proceed under it when the magistrate has reason to believe the commission of a crime but is unable to proceed ordinary way owing to absence of any complaint or police report about it. Therefore the word 'knowledge' as used in the clause (c) should be interpreted rather liberally so as to subserve the real object of the provision. It has been opined that if a magistrate takes action under S. 190(1)(c) without having jurisdiction then such trial would be vitiated.

S. 190 provide that under the condition specified in the section certain magistrate 'may' take cognizance of offences. There are varying opinions of the Courts on this point. Considering the observation of the Supreme Court in this connection it may be fairly concluded that 'a magistrate has certain discretion but it must be judicial in nature, it is limited in scope'. And taking cognizance does not depend upon the presence of the accused in the court. In fact he does not have any role at this stage. There is no question of giving him a hearing when final report of the police is considered. Nor does refusal to take cognizance of an offence leads to discharge of the accused. It may be noted that a magistrate can take cognizance of any offence only within the time-limits prescribed by law. Even after the period of limitation such offences can be taken cognizance of by the court if the delay is condoned prior to taking cognizance. The power to take cognizance of an offence may not be confused with the power to inquire into or try a case.

Cognizance taken by a Magistrate not empowered:

If any magistrate not empowered to take cognizance of an offence under S. 190(1)(a) and 190(1)(b), does erroneously in good faith take cognizance of an offence, his proceeding shall not be set aside merely on the ground of his not being empowered.

Purshottam Jethanand v. State of Kutch [9]: If a magistrate takes cognizance of an offence and proceeds with a trial though he is not empowered in that behalf and convicts the accused, the accused cannot avail himself of the defect and cannot demand that his conviction be set aside merely on the ground of such irregularity, unless there is something on the record to show that the magistrate had assumed the power, not erroneously and in good faith, but purposely having knowledge that he did not have any such power. On the other hand if a magistrate who is not empowered to take cognizance of an offence takes cognizance upon information received or upon his own knowledge under S. 190(1)(c) his proceeding shall be void and of no effect. In such a case it is immaterial whether he was acting erroneously in good faith or otherwise.

Transfer of Cases after taking Cognizance :

This includes Transfer on application of the accused under S.191, Power of the Chief Judicial Magistrate to transfer a case under S.192 (1) and Magistrate empowered to transfer a case under S. 192(2) of Code of Criminal Procedure.

1. Transfer on application of the accused- when a magistrate takes cognizance of an offence under clause (c) of subsection (1) of S. 190, the accused shall, before any evidence is taken, be

informed that he is entitled to have the case inquired into or tried by another magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the magistrate taking cognizance, the case shall be transferred to such other magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

2. Power of the Chief Judicial Magistrate to transfer a case- S. 192(1) provides that any chief judicial magistrate may after taking cognizance of offence, make over the case for inquiry or trial to any competent magistrate subordinate to him. The section enables the chief judicial magistrate to distribute the work for administrative convenience. This section has conferred special power on the CJM as normally the magistrate taking cognizance of the offence has himself to proceed further as enjoined by the Code. But an exception has been made in the case of CJM, may be because he has some administrative functions also to perform. The transfer can be ordered only after taking cognizance by the transferring magistrate. The object of this section is that senior magistrate may find it convenient to

when a magistrate transfers a case under S.192, it is not an administrative order. It is judicial order in as much as there should be application of mind by the magistrate before he passes the order look at most of the cases in the first instance but after taking cognizance send them for disposal to their subordinates.

3. Magistrate empowered to transfer a case- According to S. 192(2) "Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial." This subsection enables the CJM to clothe a first class magistrate with powers like his own under S. 192(1). This again is useful in order to relieve the CJM of unnecessary burden.

Cognizance of Offences by Court of Session:

No court of session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a magistrate under S. 193 of the Code. When an offence is exclusively triable by a court of session according to S.26 read with the First Schedule the Magistrate taking cognizance of such offence is required to commit the case for trial to the Court of Session after completing certain preliminary formality. Sometimes the posts of CJM and ADJ are held by one individual. In such a case the CJM was required to take cognizance and try economic offences. It was ruled that S. 193 did not apply to that case. For proper distribution of the work in the court of session and for administrative convenience, it has been provided that an Additional Session Judge or Assistant Session Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try under S.194 of the Code.

Limitation on the Power to take Cognizance:

Sections 195-199 are exceptions to the general rule that any person having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. The general rule is that any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he is not personally interested in, or affected by the offence. To this

general rule, Sections 195 to 199 of Cr. P.C. provide exceptions, for they forbid cognizance being taken of the offences referred to therein except where there is a complaint by the Court or the public servant concerned. The provisions of these sections are mandatory and a Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required by the section concerned. There is absolute bar against the Court taking cognizance of the case under Section 182 of IPC except in the manner provided in Section 195 of Cr.P.C. Where the complaint is not in conformity with the provisions of this section, the Court has no power even to examine the complainant on oath because such examination could be made only where the Court has taken cognizance of the case. The absence of complaint as required by the section is fatal to the prosecution and it is an illegality which vitiates the trial and conviction.

The Supreme Court, in Bashir-ul-Haq v. State, held that Section 195 of Cr.P.C. requires that without a written complaint of the public servant concerned no prosecution for an offence under Section 182, IPC can be launched nor any cognizance of the case taken by the Court.

Since Section 195 and the succeeding four sections i.e., Sections 196, 197, 198 & 199 impose restrictions on the power of Magistrate to take cognizance of offence under Section 190, therefore, at the stage of taking cognizance of an offence, the Magistrate should make sure whether his power of taking cognizance of the offence has or has not been taken away by any of the clauses of Sections 195-199 of the Code. Any person may set the criminal law in motion by filing a complaint even if he is not personally affected by the offence committed. However, certain restrictions or limitations have been imposed on the wider powers of the magistrate's power to take cognizance under S. 190 of the code and these restrictions have been placed under S. 195-199 of CrPC. Sub-section 1(a) of Section 195 provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188, IPC or of abetment or attempt or criminal conspiracy to commit such offence. Sections 172-188, IPC relate to offence of contempt of lawful authority of public servants, for example absconding to avoid service of summons, preventing service of summons, not producing a document when so required by a public servant, knowingly furnishing false information, refusing to take oath etc.

The provision of Section 195(1)(a) being mandatory, any private prosecution in respect of the said offences is totally barred. Only the concerned public servants can make a complaint and initiate proceedings in respect of these offences. The power to make the complaint can be exercised only by the public servant who is for the time being holding the office or is a successor-in-office of the public servant whose order is disobeyed or lawful authority disregarded and thus an offence under Sections 172 to 188, IPC has been committed. The bar or limitation imposed by sub-section 1(a) of Section 195 equally extends to both cognizable as well as non-cognizable offences. It may be noted that all the offences covered by Sections 172 to 188 of IPC except the one under Section 188, are non-cognizable offences. It may be noted that Section 195 being mandatory taking cognizance of any offence referred to therein without a proper complaint by the concerned public servant would be an illegality which cannot be cured by Section 465 of Cr.P.C. Clause (b) of Section 195(1) relates to prosecution for offences against public justice. No Court shall take cognizance of any such offence or of attempt or abetment or of any criminal conspiracy to commit any such offence, when such offence is alleged to have been committed in, or relation to, any proceeding in any Court, except on a complaint in writing of that Court or of some other Court to which that Court is subordinate.

The Supreme Court, in Santosh Singh v. Izhar Hussain, observed that every incorrect or false statement does not make it incumbent upon the Court to order prosecution. The Court should exercise judicial discretion taking into consideration all the relevant facts and circumstances. It should order prosecution in the larger interest of justice and not gratify the feelings of personal revenge or vindictiveness or serve the ends of a private party.

The Supreme Court in Sachidanand Singh v. State of Bihar, has clarified that a prosecution for the offence of forgery would be possible under Section 195 (1) (b) (ii) only where the forgery was committed while the document was in custody of Court, i.e., custodia legis, but mere production of the document would not attract the bar of this section and in that case prosecution may be launched by any person.

Section 195 (4) deals with the subordination of Courts. It is different from the subordination of Courts generally for the purpose of Cr.P.C. which is dealt with in Sections 15 and 23 of the Code. Under this section, the Court to which appeal ordinarily lies from the appealable decrees or sentences of the Court, is the Court to which such Court is

subordinate and in case of Civil Court from whose decrees no appeal lies, it is subordinate to the principal Court having ordinarily original Civil jurisdiction, within whose local jurisdiction such Civil Court is situate. It has been held that the Court of single Judge of the High Court is subordinate to the Division Bench of the High Court which hears appeals from such Court in certain cases.

The two provisos to sub-section (4) deal with (1) subordination of Court whose appeal to more than one Court lies; and (2) subordination when there is dual jurisdiction i.e. where appeals from a Court may in certain cases go to a Civil Court and in other cases to revenue Court. In such cases the subordination must be decided according to the nature of the case in connection with which the offence is alleged to have been committed.

These restrictions have been placed on sound policy considerations and have been considered important for faster disposal of cases. S. 198 lays down an exception to the general rule that a complaint can be filed by anybody even if not connected to the victim and modifies this by saying that only aggrieved person or person specified under the section can file a complaint relating to offences relating to marriage. The object of this section is to prevent a Magistrate of his own motion inquiring into cases of marriage, unless the husband or other authorized person complains so, but once a case has been placed before him, a Magistrate is free to proceed against any person implicated. It must be understood that this section neither confer any power of cognizance on the court nor a right to complain on the aggrieved person.

Summary Trial and Sessions Trial

Summary Trial is dealt in section 260 -265 of Code of Criminal Procedure, 1973.

260 .Power to try summarily.-

(1) Notwithstanding anything contained in this Code-

(a) any Chief Judicial Magistrate;

(b) any Metropolitan Magistrate;

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

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code, (45 of 1860) where the value of the property stolen does not exceed two hundred rupees;

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code, (45 of 1860) where the value of the property does not exceed two hundred rupees;

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

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

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

(vii) abetment of any of the foregoing offences;

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

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

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

261.Summary trial by Magistrate of the second class.-

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

262.Procedure for summary trials.-

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

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

263.Record in summary trials.-

In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct,

the following particulars, namely:-

(a) the serial number of the case:

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause

(iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(h) the finding;

(i) the sentence or other final order

(j) the date on which proceedings terminated.

264.Judgment in cases tried summarily.-

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

265. Language of record and judgment.-

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

(2) The High Court may authorize any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

Sessions Trial :

It is dealt in Section 225 – 237 of Code of Criminal Procedure, 1973.

Section 225 states that for every trial the prosecution will be conducted by the Public Prosecutor., appointed under section 24 of the code. It was held in Niranjan Singh v J.B. Bijja the PP so appointed shall evaluate the material and documents necessary for the prosecution.

Section 226 states that the prosecution shall start the case by describing the facts, the charge against the accused and the evidence he is going to use for the case, to prove the accused guilty. After such submission of the PP if the court finds that the evidences are not sufficient then he can discharge the accused. The SC laid various guidelines in the Alamoham Das v State of West Bengal as under:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. We shall now apply the principles enunciated above to the present case in order to find out whether or not the courts below were legally justified in discharging the respondents.

Section 228 deals with framing of charges. When the person is not discharged under section 227, charges would be framed against him next. In the section 229 the accused can plead guilty that is, he can accept that he has committed the offence. The judge can then provide for a sentence according to his discretion. However, such a plea should be made by the accused himself and not by his advocate. If the accused does not plead guilty the trial goes on and the dates of the prosecution evidence are set. And under section 231 such evidence has to be provided by the prosecution. After that if there are no substantial evidences provided the person can be acquitted. And if such an acquittal doesn't take place the accused is allowed to defend him by virtue of section 233. Under section 234 the arguments have to be submitted and u/s 235 a judgement of acquittal or conviction has to be given.

In case there is previous conviction charged the accused does not admit that he was convicted earlier then after the conclusion of the trial the judge can take step he wants to. Section 237 lays provision for the procedure to be followed in cases instituted u/s 199(2) which deals with defamation. Such cases have to be tries in camera and the procedure laid in section 244-247 have to be followed.

Bail and Bonds

Bail : The bail under CrPC is divided according to the types of offence alleged against the accused.

The basic rules for grant or denial of bail may simply be summarized as:

1. There are only two kinds of offences under the criminal law, bailable offence and non-bailable offence.

2. In case of bailable offences, as per section 436 CrPC (criminal procedure code 1973) bail has to be granted to the accused as it is a matter of right for the accused to demand and be granted bail.

3. In case of non-bailable offences, as per section 437 CrPC and Section 439 CrPC, the grant or refusal of the bail is a matter of discretion of the court which means bail can be granted by the court. Only condition is that it cannot be demanded as a right by the accused.

4. The section 437 CrPC (Code of Criminal Procedure 1973) lays out certain basic criteria for the court while exercising its judicial discretion for grant or refusal of the bail in case of non-bailable offences, some of the criteria are the nature of offence, past criminal record, the probability of guilt, etc. and carves out exceptions for minors , women etc.

5. Section 438 CrPC also lays down the concept of Anticipatory Bail where the accused may seek bail if they apprehend arrest, so as to prevent even the otherwise brief incarceration. It must be noted that the grant or refusal of anticipatory bail is also a matter of discretion for the court.

The Hon'ble Supreme Court of India has mentioned several other criteria as factors to be taken into consideration when granting bail in non-bailable offences, these factors includes but not limited

to probability of recommission of the offence, possibility of frightening witnesses, probability of evidences being tampered, the seniority of the accused and his consequent circles of influence in affecting the investigation if released.

Landmark cases on the factors to be taken into consideration while hearing bail application are State through CBI v. Amarmani Tripathi AIR 2005 SC 3490, Gurcharan Singh v. State of Delhi, AIR 1978 SC 179. there are catena of judgement which specifically states that "bail is a rule and jail is the exception". That means apart from the above noted factors 'bail not jail' should be the thumb rule, implying that as far as possible the Courts must try and grant bail and only in exceptional circumstances can bail be refused.

Bonds : It deals with section 440 – 450 of Code of Criminal Procedure, 1973

440. Amount of bond and reduction thereof.-

(1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

441. Bond of accused and sureties.-

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency of fitness.

442. Discharge from custody.-

(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

443.Power to order sufficient bail when that first taken in insufficient.-

If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

444. Discharge of sureties.-

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

445. Deposit instead of recognizance.-

When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behavior, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

446. Procedure when bond has been forfeited.-

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code.

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence is proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

447. Procedure in case of insolvency or death of surety or when a bond is forfeited.-

When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 446, the Court by whose order such bond was

taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

448. Bond required from minor.-

When the person required by any Court, or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

449. Appeal from orders under section 446.-

All orders passed under section 446, shall be punishable,-

(i) in the case of an order made by a Magistrate, to the Sessions Judge;

(ii) in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

450. Power to direct levy of amount due on certain recognizances.-

The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court or Court of Session.

Appeals , Reference and Revision

Appeal : - An appeal is a request to a higher (appellate) court for that court to review and change the decision of a lower court. Because post-trial motions requesting trial courts to change their own judgments or order new jury trials are so seldom successful, the defendant who hopes to overturn a guilty verdict must usually appeal. The defendant may challenge the conviction itself or may appeal the trial court's sentencing decision without actually challenging the underlying conviction.

Section 374: Appeals from convictions

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years 149 [has been passed against him or against any other person convicted at the same trial]; may appeal to the High Court

(3) Save as otherwise provided in sub-section (2), any person,

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class,

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.

Section 382: Petition of appeal

Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Section 383: Procedure when appellant in jail

If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Section 384: Summary dismissal of appeal

(1) If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that

(a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

Section 385: Procedure for hearing appeals not dismissed summarily

(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given

(i) to the appellant or his pleader;

(ii) to such officer as the State Government may appoint in this behalf;

(iii) if the appeal is from a judgment of conviction in a case instituted upon complaint to the complainant;

(iv) if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.

Section 386: Powers of the Appellate Court

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Section 387: Judgments of subordinate Appellate Court

The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate:

Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Section 388: Order of High Court on appeal to be certified to lower Court

(1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate; and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

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

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against

be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor/ to file an application for the cancellation of the bail.

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

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

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

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

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

Section 391: Appellate Court may take further evidence or direct it to be taken

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it finds additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

Section 393: Finality of judgments and orders on appeal

Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the case provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX:

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits.

(a) an appeal against acquittal under section 378, arising out of the same case, or

(b) an appeal for the enhancement of sentence under section 377, arising out of the same case.

However, once the conviction has taken place the presumption of innocence is not available to the accused, and in fact the court would presume the accused to be guilty. Popular Muthiah Vs State rep by Inspector of Police 2006 6 SCALE 417 Reference : Reference to High court (s. 395)

1. Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by 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 therefore, and refer the same for the decision of the High Court.

2. 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) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

3. Any Court making a reference to the High Court under Sub-Section (1) or Sub-Section (2) 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.

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 thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

(1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

397.Calling for records to exercise powers of revision.-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local 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, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

398. Power to order inquiry.-

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 Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 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 discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Revision : it deals with section 399 – 405 code of Criminal Procedure, 1973

In cases where no appeal has been provided by law or in cases where the remedy of appeal has for any reason failed to secure fair justice the criminal procedure code (in short Cr PC) provides for another kind of review procedure, viz. revision. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Session. Very wide discretionary powers have been conferred on the Sessions Court and the High Court.

The object of the revision is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals.

The purpose of revision is to enable the revision court to satisfy itself 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 the inferior criminal court.

Under Section 397(1) of the Cr PC, the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local 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 order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Under Section 398 Cr PC, the revision Court may make an order for further inquiry. Further inquiry entails supplemental inquiry upon fresh evidence. The power under Section 398, Cr PC is not co-extensive with Section 397, Cr PC but extends far wider as the record can 'otherwise' be examined by the revision Court without recourse to Section 397, Cr PC.

Section 399, Cr PC deals with Sessions Judge's power of revision. Under sub section (1), the Sessions Judge, in the case of any proceeding the record of which has been called for by himself under Section 397(1), may exercise all or any of the powers which are exercisable by the High Court under Section 401(1) of the Code of Criminal Procedure.

Section 401(1) of the Cr PC reads as follows: - In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of 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 Section 392.

The Allahabad High Court in Om Pratap Singh vs. State 1995 Cr LJ 3887 has observed: - the revisional power of this Court under Sections 397 and 401, Cr PC is a kind of supervisory jurisdiction in order to prevent miscarriage of justice arising from the mis-conception of law or irregularity of procedure committed by the subordinate Courts. These two Sections do not confer unfettered jurisdiction on this Court for reappraisal of evidence. In fact, the revisional power of this Court is to see that justice is done in accordance with the recognized rules of criminal jurisprudence and the subordinate Courts do not exceed their jurisdiction or abuse their powers vested in them under the Code of Criminal Procedure.

High Court in a revision is empowered to interfere with an order of acquittal and direct fresh trail. While High Court sitting in appeal under Section 386 of the code, can convert finding of acquittal into one conviction, Section 401, subsection (3) debars conversion of acquittal into conviction. High Court, however, would not disturb a finding of fact unless it appears that trail court shut out any evidence, or overlooked any material evidence or admitted inadmissible evidence or where there has been manifest error on a point of fact.

Who can invoke the revisional jurisdiction?

Section 397(1) of the Cr PC does not say on whose motion Court may call for the records of the lower Court, but subsection (3) indicates that an aggrieved party may make an application. So far as High Court is concerned, Section 401(1) expressly authorizes the court to exercise power of revision suo motu apart from the application from a party. The complainant is entitled to move a revision even if state does not.

When there was acquittal of the accused that was charged on a police report and the state did not file an appeal against it, the informant, since he had no right of appeal against the order, was held to be competent to apply for a revision.

The revisional jurisdiction when involved by a private complainant against an order of acquittal ought not to be exercised lightly and that it could be exercised only in exceptional case where the interest of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice (Kaptan Singh vs. State of Madhya Pradesh (1997) 4 supreme 211).

However there are two limitations: -

(1) Section 399(3) of Cr PC provides that in a case where any application for revision is made by or on behalf of any person before the Sessions Judge, no further proceeding by way of revision at the instance of such person shall be entertained by the High Court.

Suppose a proceeding under Section 145 Cr PC between X and Y terminated before the magistrate in favor of X. The criminal revision of Y before the Sessions Judge was dismissed. A criminal revision before the High Court at the instance of Y shall not be entertained. In the same illustration if Y's criminal revision before the Sessions Judge was

allowed, a criminal revision to the High Court against the order of the Sessions Judge at the instance of X is maintainable.

(2) In a case where under the Code of Criminal Procedure an appeal lies but no appeal is brought, then according to Sub-section (4) of Section 401, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. While Courts might have expressed different view on the scope of the bar under Sub-section (4) of Section 401, there can be no dispute that suo motu power of the court is not at all affected by the bar in sub-section (4) of Section 401.

Whether where a power is exercised under Section 397 of Cr PC, the High Court could exercise those very powers under Section 482, Cr PC. In the case of Raj Kapoor vs. State (1980) 1 SCC 43; Justice Krishna Iyer, while distinguishing the power of the High Court under Section 397 vis-a-vis Section 482 of Cr PC observed that Section 397 or any of the provisions of Cr PC will not affect the amplitude of the inherent power preserved in Section 482.

The Apex Court in Mohit vs. State of UP (2013) 7 SCC, 789, observed that any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order. Orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trail cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

Juvenile Justice Care and Protection Act

On December 22, 2015, the Juvenile Justice (Care and Protection of Children) Act, 2015 received parliamentary approval, bringing forth an entirely new regime with respect to juveniles above the age of sixteen, accused of committing heinous offences. The background for its introduction was set by the horrific rape of a young student in 2012. The government justified the law as a measure which would have a deterrent effect on potential juvenile offenders. However, the opponents argue that the law would defeat the objective

of having a separate juvenile justice system, and would not serve the goal of deterrence. They instead suggest that efforts be expended in ensuring more effective implementation of the Juvenile Justice (Care and Protection) Act, 2000. The paper analyses the viability of the mechanism proposed by the new measure. It also evaluates the potency of the counter claim which proposes that the existing law be better implemented, and thereby examines the necessity for the introduction of a new approach governing juvenile policy in India.

India has had a chequered history with regard to the determination of the age of juveniles in conflict with law. The Children Act, 1960 ('1960 Act') was the first central legislation post-independence that aimed at conceptualising a system, separate from the criminal justice system under the Code of Criminal Procedure, 1973, for the treatment of juvenile delinquents. It defined a "child" to be a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. However, during this period, each state was allowed to frame its own laws on the subject as the 1960 Act extended only to the Union Territories. This resulted in similar cases of juvenile delinquency being dealt with differently by courts of each state, thereby leading to discrepancy in judicial practice.

This discrepancy prompted the Supreme Court to observe that a parliamentary legislation on the subject of juvenile justice was desirable. It would not only bring about uniformity in provisions relating to children but also ensure better and more effective implementation of the same. This led to the enactment of the Juvenile Justice Act, 1986, the first comprehensive legislation, which had countrywide application, except the state of Jammu and Kashmir. Notably, the provision relating to the age limit of juveniles was carried forward from the 1960 Act and was kept unchanged.

In 1992 India signed the United Nations Convention on the Rights of the Child, 1989 ('CRC'). The CRC defined a child as "every human being below the age of eighteen". Being a signatory, India sought to fulfil its international obligation by enacting the Juvenile Justice (Care and Protection of Children) Act, 2000 ('2000 Act'). Importantly, this led to the age of juvenile irrespective of gender, being fixed at eighteen years.

The brutal gang rape and murder of a female physiotherapy intern in Delhi in December, 2012, by six men, one of whom was a seventeen-year old juvenile, retriggered the debate on the age limit of juveniles. Under the existing law, the maximum punishment that could be awarded to juveniles was three years of detention in a remand home, irrespective of the

gravity of the offence. This led to tremendous public outcry demanding a change in the juvenile justice laws, lowering the age limit of juveniles, and stricter punishment for juveniles committing grave offences like rape and murder. The Committee on Amendments to Criminal Laws, headed by Justice J.S. Verma, was constituted to examine the deficiencies in the existing criminal law regime governing sexual assault against women. The Committee categorically rejected the demand for lowering the age of juveniles to sixteen. Instead, it opined that there was a pressing need to reform and restructure the existing juvenile justice and welfare system and called for stricter implementation of the 2000 Act. It found no merit in reducing the age of juveniles for certain offences and relied, among others, on the fact that recidivism had fallen from 8.2 percent in 2010 to 6.9 percent in 2011.

However, the government disregarded these recommendations and heeded to popular demand by introducing the Juvenile Justice (Care and Protection of Children) Act, 2015 ('2015 Act'), with the twin objectives of setting deterrence standards for juvenile offenders and protecting the rights of the victims. The 2015 Act differentiates between petty, serious, and heinous offences, and proposes to treat juvenile offenders who commit "heinous offences" between the ages of sixteen and eighteen as adults by putting them to trial under the criminal justice system.

The 2015 Act legitimises the transfer of juveniles above the age of sixteen to adult courts, if the Juvenile Justice Board ('Board') concludes that the level of maturity of the juvenile indicates that he committed the heinous offence as an adult and not as a child. We believe that such a system, which establishes a link between the gravity of the offence committed and the maturity of the child, defeats the objectives of juvenile justice law as it lets the crime overshadow the child. We thus argue that the transfer mechanism envisaged by the 2015 Act is contrary to principles of constitutional law and international principles governing juvenile policy. However, we acknowledge that a child committing a "heinous crime" would require more intensive scrutiny, and ought not be treated similarly to children committing less serious crimes.

Therefore, we propose a mid-way approach, which envisages differential treatment to the former within the juvenile justice system itself. While this model encapsulates the rehabilitative ideals of the 2000 Act, it goes beyond it, seeking to remedy its shortcomings.

We refer to international best practice where appropriate, to illustrate working models India could adopt . However, a purely rehabilitative approach towards juvenile offenders committing heinous offences may not be ideal and thus we propose the adoption of principles of restorative justice as the second limb of juvenile policy in India. Therefore, a rehabilitative system, complemented by restorative principles would be an effective approach to dealing with juvenile offenders above the age of sixteen who have committed heinous offences.

The relevant features of The Juvenile Justice (Care and Protection of Children) Act – 2015

This Act come into force since 15th of January 2016 extends to the whole of India except the Statw of Jammu and Kashmir.

Juvenile Justice Act mainly divided into four parts

- Functioning of Juvenile Justice Board.
- Functioning of Child welfare committee
- Adoption through court as well as through Specialized Adoption Agencies (SAA)
- Rehabilitation and social Re-integration of children

Fundamental Principles of J.J. Act

- Principle of presumption of innocence.
- Age of innocence.
- Procedural protection of innocence.
- Provisions of Legal aid and guardian ad-item.
- Principle of dignity and worth.
- Principle of Right to be heard.
- Principle of family responsibility.
- Principle of safety.
- Positive measures.
- Principle of Non-stigmatizing semantics, decisions and actions.
- Principle of non –waiver of rights.
- Principle of equality and non-discrimination.
- Principle of right to privacy and confidentiality.

- Principle of last resort.
- Principle of repatriation and restoration.
- Principle of Fresh Start.

(Ref: Sec. 3 of J.J. Act)

Definitions

"Abandoned Child" means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry.

"Authorised Foreign Adoption Agency" means a foreign social or child welfare agency that is authorised by the Central Adoption Resource Authority on the recommendation of their Central Authority or Government department of that country for sponsoring the application of non-resident Indian or overseas citizen of India or persons of Indian origin or foreign prospective adoptive parents for adoption of a child from India

"Best interest Of Child" means the basis for any decision taken regarding the child, to ensure fulfilment of his basicrights and needs, identity, social well-being and physical, emotional and intellectual development.

"Child" means a person who has not completed eighteen years of age;

"Child In Conflict With Law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

"Child In Need Of Care And Protection" means a child—

• who is found without any home or settled place of abode and without any ostensible means of subsistence; or

• who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

• who resides with a person (whether a guardian of the child or not) and such person—

• has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or has threatened to kill, injure, exploit or abuse the child and there

• is a reasonable likelihood of the threat being carried out; or has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

• who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

• who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

• who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

• who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

• who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

• who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

• who is being or is likely to be abused for unconscionable gains; or

• who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

• who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

"Child Friendly" means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;

"Child Legally Free For Adoption" means a child declared as such by the Committee after making due inquiry under section 38;

"Child Welfare Officer" means an officer attached to a Children's Home, for carrying out the directions given by the Committee or, as the case may be, the Board with such responsibility as may be prescribed;

"Child Welfare Police Officer" means an officer designated as such under sub-section (1) of section 107;

"Children's Court'' means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

"Child Care Institution" means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services;

"Childline Services" means a twenty-four hours emergency outreach service for children in crisis which links them to emergency or long-term care and rehabilitation service;

"District Child Protection Unit" means a Child Protection Unit for a District, established by the State Government under section 106, which is the focal point to ensure the implementation of this Act and other child protection measures in the district;

"Heinous Offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more

"Serious Offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years;

"Petty Offences" includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;

"Inter-Country Adoption" means adoption of a child from India by non resident Indian or by a person of Indian origin or by a foreigner;

"Observation Home" means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such, for the purposes specified in sub-section (1) of section 47;

"Place of Safety" means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order;

"Registered", with reference to child care institutions or agencies or facilities managed by the State Government, or a voluntary or non-governmental organisation, means observation homes, special homes, place of safety, children's homes, open shelters or Specialised Adoption Agency or fit facility or any other institution that may come up in response to a particular need or agencies or facilities authorised and registered under section 41, for providing residential care to children, on a short-term or long-term basis;

"Special Juvenile Police Unit" means a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 107.

"Specialised Adoption Agency" means an institution established by the State Government or by a voluntary or non-governmental organisation and recognize under section 65, for housing rphans, abandoned and surrendered children, placed there by order of the Committee, for the purpose of adoption.

(Ref. Sec. 2 of J.J. Act)

The functions and responsibilities of the Board

Ensuring the informed participation of the child and the parent or guardian, in every step of the process Ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation; Ensuring availability of legal aid for the child throughthe legal services institutions; Wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings; Directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a Social Investigation Report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed; Adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14; Transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved; Disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a nongovernmental organisation, as may be required; Conducting inquiry for declaring fit persons regarding care of children in conflict with law;

Conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

Order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;

Order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

Conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and any other function as may be prescribed.

(Ref. Sec 8(3) of J.J. Act)

Procedure of age determination by a magistrate who has not been epowered under this Act

When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made there under even if the person has ceased to be a child on or before the date of commencement of this Act.

(Ref. Sec 9 of J.J. Act)

Procedure in relation to child in conflict with law (CCL)

As soon as a child alleged to be in conflict with law is apprehended by the police such child shall be produce before the board within 24 hours under the charge special juvenile police unit. (SJPU)

Ref: Sec. 10

Any person, who is apparently a child and is alleged to have committed a bailable or non bailable offence is apprehended or detained by the police or appears or brought before a

board such person shall, notwithstanding any thing contained in the Cr.P.C. Or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person.

Ref Sec. 12

When a CCL is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produce before the court for the modification of the condition of bail.

Time Bound Proceedings

The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension. A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated.

Speedy Justice

The Board shall take the following steps to ensure fair and speedy inquiry namely :—

At the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment.

In all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

Every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

Cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973;

Inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973;

inquiry of heinous offences,—

- for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);
- for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

(Ref. Sec 14 of J.J. Act)

Now Child to be tried as an Adult : A Child No More

In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973: (Ref Sec. 15 of J.J. Act)

Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offence. (Ref Sec. 18(3)of J.J. Act)

Procedure for Children's Court

After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

There is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

There is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(Ref. Sec. 19 of J.J. Act)

Now Graver Punishment for Juvenile

When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformative changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration. (2) After the completion of the procedure specified under sub-section (1), the Children's Court may—

Decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

Decide that the child shall complete the remainder of his term in a jail: Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed. (Ref. Sec 20 of J.J. Act)

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

(Ref. Sec. 21 of J.J. Act)

Old Law for Old Cases

Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.

(Ref. Sec. 25 of J.J. Act)

Punishment for non- registration of CCI

Any person, or persons, in-charge of an institution housing children in need of care and protection and children in conflict with law, who fails to comply with the provisions of sub-section (1) of section 41, shall be punished with imprisonment which may extend to one year or a fine of not less than one lakh rupees or both: Provided that every thirty days delay in applying for registration shall be considered as a separate offence.

(Ref. Sec. 42 of J.J. Act)

Compensation provision for child

Any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child's re-integration into the mainstream of the society in the manner as may be prescribed.

(Ref. Sec. 46 of J.J. Act)

Inspection committee

The State Government shall appoint inspection committees for the State and district, as the case may be, for all institutions registered or recognised to be fit under this Act for such period and for such purposes, as may be prescribed. Such inspection committees shall mandatorily conduct visits to all facilities housing children in the area allocated, at least once in three months in a team of not less than three members, of whom at least one shall be a woman and one shall be a medical officer, and submit reports of the findings of such visits within a week of their visit, to the District Child Protection Units or State Government, as the case may be, for further action.

On the submission of the report by the inspection committee within a week of the inspection, appropriate action shall be taken within a month by the District Child Protection

Unit or the State Government and a compliance report shall be submitted to the State Government.

(Ref. Sec. 54 of J.J. Act r/w Rule 41 of J.J. Rules-2016)

Evaluation of CCI board and CWC by the Government

The Central Government or State Government may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government. In case such independent evaluation is conducted by both the Governments, the evaluation made by the Central Government shall prevail

(Ref. Sec. 55 of J.J. Act r/w Rule 42 of J.J. Rules-2016)

Offence against children

No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

Ref. Sec 74 of J.J. Act

Cruelty with children : shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees.

(Ref. Sec 75 of J.J. Act)

Employment of child for begging : shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees.

(Ref. Sec 76 of J.J. Act)

For giving intoxicating liquor or narcotic drug or psychotropic substance to a child : shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

(Ref. Sec 77 of J.J. Act)

Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance : shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees.

(Ref. Sec 78 of J.J. Act)

Exploitation of a child employee : shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

(Ref. Sec 79 of J.J. Act)

Punitive measures for adoption without following prescribed procedures : shall be punishable with imprisonment of either description for a term which may extend upto three years, or with fine of one lakh rupees, or with both

(Ref. Sec 80 of J.J. Act)

Sale and procurement of children for any purpose : shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees

(Ref. Sec 81of J.J. Act)

Corporal punishment : shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both

(Ref. Sec 82of J.J. Act)

Use of child by militant groups or other adults : shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees. Individually or as a gang shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.

(Ref. Sec 83 of J.J. Act)

Kidnapping and abduction of child : shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

(Ref. Sec 84 of J.J. Act)

Offences committed on disabled children : shall be liable to twice the penalty provided for such offence.

(Ref. Sec 85 of J.J. Act)

Abetment : Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment shall be punished with the punishment provided for that offence.

(Ref. Sec 87of J.J. Act)

Classification of offences and designated court

(1) Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children's Court.

(2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Magistrate of First Class.

(3) Where an offence, under this Act, is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable, bailable and triable by any Magistrate.

(Ref. Sec 86 of J.J. Act)

Miscellaneous provisions of JJ Act

Presence of parent or guardian having the actual charge of the child to be present at any proceeding in respect of that child.

(Ref. Sec 90 of J.J. Act)

If, at any stage during the course of an inquiry, the Committee or the Board may be, shall dispense with the attendance of a child and limit the same for the purpose of recording the statement and subsequently, the inquiry shall continue even in the absence of the child concerned, unless ordered otherwise by the Committee or the Board.

(Ref. Sec 91of J.J. Act)

When a child, who has been brought before the Committee or the Board, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the Committee or the Board, as the case may be, may send the child to any place recognised as a fit facility as prescribed for such period as it may think necessary for the required treatment.

(Ref. Sec 92of J.J. Act)

Procedure of age determination of child by the board

On first production of a child before the board

Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; the birth certificate given by a corporation or a municipal authority or a panchayat; and only in the

absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(Ref. Sec. 94 of J.J. Act)

Leave of absence to a child placed in an institution

The Committee or the Board, as the case may be, may permit leave of absence to any child, to allow him, on special occasions like examination, marriage of relatives, death of kith or kin or accident or serious illness of parent or any emergency of like nature, under supervision, for a period generally not exceeding seven days in one instance, excluding the time taken in journey.

(Ref. Sec 98 of J.J. Act)

All reports related to the child and considered by the Committee or the Board shall be treated as confidential:

Appeal and Revision under JJ Act 2015

Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court. An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

No appeal shall lie from,— any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

No second appeal shall lie from any order of the Court of Session, passed in appeal under this section. Any person aggrieved by an order of the Children's Court may file an appeal

before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

(Ref. Sec. 101 of J.J. Act)

The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

(Ref. Sec. 102 of J.J. Act)

JUDGEMENTS

- Sampurna Behrua case,
- Bachpan Bachao Andolan case,
- Arsheeran Bahmeech Vs. State of Delhi passed in WP (CRL) 1820/2015 by Hon'ble Delhi High Court pertaining to Role of Panel Lawyer in the matter involving the child victim and witnesses of crime
- State vs. Jagtar and ors. passed by Hon'ble Mrs. Justice Geeta Mittal of Delhi High Court pertaining to various provisions of JJ Act, 2000 specially the Role of Probation Officers
- Abdul Razzaq vs State of U.P., 2015 SCC Online SC 217 (Pertaining to section 7 A of J.J. Act - Accused was convicted and sentenced in 1980, but as per J.J. Act 200, he was a juvenile at the time of occurrence held he is entitle to get benefit of J.J. Act- finally released after 14 years of imprisonment.)
- Darga Ram vs State of Rajasthan, (2015) 2 SCC 775 (Pertaining to Rule 12 of J.J. Rules 2007 - age determination - giving benefit of lower margin in age determination on the basis of medical.)
- Upendra Pradhan vs State of Orissa, 2015 SCC On-Line SC 397
- Ram Narain vs State of U.P., 2015 SCC On-Line SC 696 (Above three case laws are pertaining to section 15, 64 (2)(k) & (i) of J.J. Act - juvenile had already suffered more than maximum period of detention as provided under J.J. Act - Hence - not be detained any further in instant case.)

- Gaurav Kumar vs State of Haryana, 2015 SCC On-Line SC 28 (Pertaining to need of re-look, re-scrutinize and re-visit - the relevant provisions under the J.J. Act 2000, at least in respect of offences, which are heinous in nature.)
- Sikander Mahto vs Tunna, (2014) 4 SCC 28 (Pertaining to section 7A of J.J. Act - accused relying on certificate issued by school proved to be false by principle - other school certificate produced by victim side showing that accused was 21 years old on date of incident - claim of juvenility liable to be rejected.)
- Shabnam Hashmi vs Union of India, (2014) 4 SCC 1 (Pertaining to article 14, 15 & 44 of the Constitution of India and section 41 of J.J. Act - Held – adoption by any person irrespective of religion, caste, creed etc. - permissible – further held - J.J. Act is a secular law.)
- Mahesh Jogi vs State of Rajasthan, 2014 SCC On-Line SC 1055
- Nand Kishore vs State of M.P., 2014 SCC On-Line SC 1068
- Indradeo Sao vs State of Bihar, 2015 SCC On-Line SC 399
- Jitendra Singh @ Babboo Singh vs State of U.P., (2013) 11 SCC 193 (Above four case laws are pertaining to section 7A of J.J. Act - accused was aged above 16 years and not a juvenile under J.J. Act 1986 - after commencement of J.J. Act 2000, trial court held that accused was not a juvenile - Held - not a juvenile is not correct - he is entitle to get benefit of J.J. Act 2000.)
- State of M.P. vs Anoop Singh, 2015 SCC On-Line SC 603 (Pertaining to age determination of rape victim - Held that rule 12 (3) of J.J. Rules 2007 is also applicable in determining the age of the rape victim.)
- Subramanian Swamy vs Raju, (2014) 8 SCC 390 (Hon'ble Court held that - the aim of J.J. System is to reform and rehabilitate the errant juvenile, in other hand criminal trial aims at finding guilt or innocence with object to punish guilty - J.J. System and criminal justice system is therefore different.)
- Ashwani Kumar Saxena vs State of M.P. (Pertaining to age determination of Juveniles under Rule 12 of J.J. Rules

- Shah Nawaz v. State of UP& &Anr, AIR 2011 SC3107 (Pertaining to age determination of juveniles - Held - school leaving certificate and marks sheet are also relevant documents for proof of age.)`
- Kulai Ibrahim @ Ibrahim vs State, (2014) 12 SCC 332 (Pertaining to section 2(k), (1), 7A, 20 and 49 of J.J. Act - age determination of juvenile - only in cases where documents mentioned in Rule 12 (3)(a)(i) to (iii) of J.J. Rules are unavailable or where it found to be fabricated or manipulated - it is necessary to obtain medical assessment.)
- Hakkim vs State, (2014) 13 SCC 427

Probation of Offenders Act

The earlier penological approach held imprisonment, that is, custodial measures to be the only way to curb crime. But the modern penological approach has ushered in new forms of sentencing whereby the needs of the community are balanced with the best interests of the accused:

compensation, release on admonition, probation, imposition of fines, community service are few such techniques used. Through this paper, the advantages of probation are highlighted along with how it could be made more effective in India.

The term Probation is derived from the Latin word probare, which means to test or to prove. It is a treatment device, developed as a non-custodial alternative which is used by the magistracy where guilt is established but it is considered that imposing of a prison sentence would do no good. Imprisonment decreases his capacity to readjust to the normal society after the release and association with professional delinquents often has undesired effects.

According to the United Nations, Department of Social Affairs, The release of the offenders on probation is a treatment device prescribed by the court for the persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to the supervision by a probation officer. The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides

necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality. The United Nations recommends the adoption and extension of the probation system by all the countries as a major instrument of policy in the field of prevention of crime and the treatment of the offenders.

Law of Probation In India

Section S.562 of the Code if Criminal Procedure, 1898, was the earliest provision to have dealt with probation. After amendment in 1974 it stands as S.360 of The Code of Criminal Procedure, 1974. It reads as follows:- When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment fro a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

S.361 makes it mandatory for the judge to declare the reasons for not awarding the benefit of probation. The object of probation has been laid down in the judgment of Justice Horwill in In re B. Titus : S. 562 is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of mature years who for the first time may have committed crimes through ignorance or inadvertence or the bad influence of others and who, but for such lapses, might be expected to make good citizens. In such cases, a term of imprisonment may have the very opposite effect to that for which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve.

In 1958 the Legislature enacted the Probation of Offenders Act, which lays down for probation officers to be appointed who would be responsible to give a pre-sentence report to the magistrate and also supervise the accused during the period of his probation. Both the Act and S.360 of the Code exclude the application of the Code where the Act is applied. The Code also gives way to state legislation wherever they have been enacted.

Section 4 of the Act provides for probation.

S.4 Power of Court to release certain offenders on probation of good conduct

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

S. 6 of the same Act lays special onus on the judge to give reasons as to why probation is not awarded for a person below 21 years of age. The Court is also to call for a report from the probation officer before deciding to not grant probation.

The provision under the Code and the Act are similar, as they share a common intent, that, punishment ought not to be merely the prevention of offences but also the reformation of the offender. Punishment would indeed be a greater evil if its effect in a given case is likely to result in hardening the offender into repetition of the crime with the possibility of irreparable injury to the complainant instead of improving the offender.

Yet there are a few differences, which have been enumerated below. S.4 of Probation of Offenders Act S.360 of The Cr.P.C.

Any person may be released on probation, if he has not committed an offence punishable with death or imprisonment for life.(No distinction is made on ground of sex or age) Any person not under 21 years of age, if convicted of an offence punishable with imprisonment

for not more than 7 years or when any person under 21 years of age or any woman is convicted of an offence not punishable with death or imprisonment for life may be released on probation. It is not necessary that the person must be a first offender. This section applies only when no previous conviction is proved against the offender.

Any magistrate may pass an order under this section. Magistrate of the third class or of the second class not specifically empowered by the state government had to submit the proceeding to Magistrates of the first class or Sub-Divisional magistrates. Supervision order may be passed directing that the offender shall remain under the supervision of a Probation Officer. No such provision.

Besides these two enactments, the Juvenile Justice (Care and Protection of Children) Act, 2000 also provides for the release of children who have committed offences to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, or any fit institution as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years.

Procedure For Probation Service

S. 4(2) and S. 6(2) of the Probation of Offenders Act provide that the judge would consider the report of the probation officer before deciding on whether to grant probation. S. 14 of the said Act lays down the duties of the Probation Officers.

The pre-sentence report of the Probation Officer is the fundamental document for the guidance of the Court whether to grant the benefit of probation to the accused or not. The object of the pre-sentence report is to appraise the court about the character of the offender, exhibit his surroundings and antecedents and throw light on the background which prompted him to commit the offence and give information about the offenders conduct in general and chances of his rehabilitation on being released on probation.

The judge may also pass a supervision order under section 4(3) of the Act, whereby the offender is placed under the supervision of a probation officer and certain conditions are imposed upon him. This is mostly in the form of regular visits to the supervising officer. Some of the conditions which must be followed have been laid down in S. 4(4). On the

application of the probation officer such conditions may be varied- S. 8(2) and also the offender may be discharged- S. 8(3). If the offender fails to follow the conditions laid down by the Court, the original sentence against him may be revived S. 9.

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the report of a probation officer or a recognized voluntary organization to be considered before passing a sentence. The Magistrate appointed as a member of the Board constituted under this Act must know something of child psychology. The Board would pass orders against a juvenile. The Act provides for the setting up of Observation and Special Homes by the State Government where the juvenile could be placed. Here the rehabilitation and social integration of the child would take place. It also provides for an After care programme which would take care of the delinquent child after he has been discharged from these homes, based on the report of the Probation Officer. The Probation officers appointed under the probation of Offenders Act would also function under the Juvenile Justice (Care and Protection of Children) Act.

Probation in India is mostly dependent on the policies of the State rather than a uniform Central Policy. In Karnataka a State level Probation Advisory Committee has been constituted with High Court Judge as Chairman with official and non-officials as members. A District level Probation Advisory Committee has been constituted in each district consisting of the District and Sessions Judge as Chairman with official and non-officials as members. After Care Programmes have been set up to improve the lives of those released on probation.

The After Care Programme, in Kerala, is intended to rehabilitate released prisoners and probationers coming under the supervision of District Probation Officers. By utilizing this amount they can engage in small scale income generating activities. The amount of assistance is Rs.10,000/- per head. If the amount is insufficient for meeting the expenses this can be attached with some bank loan. Department of Juvenile Welfare and Correctional Services was set up in Andhra Pradesh in 1990. It gives the following probation services taking care of probationers released by the courts and ex-convicts, released juveniles, after-care work, counseling and guidance to reform themselves and not to revert to crime and for their rehabilitation through Govt. Welfare Agencies.

Benefits of Probation Service

It serves the needs of the probationer in the following manner: -

Probation keeps the offender away from the criminal world. Further, the fear of punishment in case of violation of probation law has a psychological effect on the offender. It deters him from law breaking during the period of probation. Thus probation indirectly prevents an offender from adopting a revengeful attitude towards the society. Moreover, sentencing an offender to a term of imprisonment carries with it a stigma, which makes his rehabilitation in society difficult. The release of the offender on probation saves him from stigmatization and thus prepares him for an upright living. The shame of going through a trial process would have sufficiently chastised him. According to the labeling theory, a stigmatizing label once applied, is very likely to cause further deviance or create the deviance. People tend to conform to the label even when they didn't set out that way.

Probation seeks to socialize the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The Probation Officer would guide the offender to rehabilitate himself and also try and wean him away from such criminal tendencies.

Before the implementation of probation law, the courts were often confronted with the problem of disposing of the cases of persons who were charged with neglect of their family. In such cases there was no alternative but to send them to prison, which was an unnecessary burden on the State exchequer. With the introduction of probation as a method of reformative justice, the courts can now admit such offenders to probation where they are handled by the competent probation officers who impress upon them the need to work industriously and avoid shirking their family responsibilities.

An analysis of crime statistics would show that a large segment of offenders consists of the poor, the illiterate and the unskilled. Such offenders are seen to be victimized twice: once, when they are denied of their basic human needs in open society and forced to live in a sub-culture of social marginality, and, again, when they are grinded in the mill of criminal

justice for having infringed the law. Probation would thus be an effective means to deliver justice to them, they would not be incarcerated and also they would be trained which would improve their life later.

The society is also served. The object of society that all its members playing a positive role by seeking their self-rehabilitation is achieved by the probation system, it is indeed an effective method of preserving social solidarity by keeping the law-breakers well under control. Also, during the probation period, the offender is sent to various educational, vocational and industrial institutions where he is trained for a profession which may help him in securing a livelihood for himself after he is finally released and thus lead an absolutely upright life. And whatever work an offender is doing as a probationer, he is contributing to the national economy. Thus, he no longer remains a burden on the society.

Further, correctional task of probation staff requires closer contact with inmates during his period of probation. This helps the probation supervisor to get a deeper insight into the real causes of crime and suggests remedies for their eradication.

Criticisms Against the Concept of Probation and Their Counter

There are some critics who look at probation as a form of leniency towards the offenders. To quote Dr. Walter Reckless , probation like parole, seems to the average laymen a sap thrown to the criminal and a slap at society. Probation is still generally perceived as a lenient approach rather than a selective device for the treatment of offenders who are no threat to public safety. Probation system lays greater emphasis on the offender and in the zeal of reformation the interests of the victim of the delinquents are completely lost sight of. This obviously is against the basic norms of justice. Keeping in view the increasing crime rate and its frightening dimensions, it is assumed that undue emphasis on individual offender at the cost of societal insecurity can hardly be appreciated as a sound penal policy. Some criticize probation because it involves undue interference of non-legal agencies in the judicial work which hampers the cause of justice.

Further, when non-custodial correctional measures are used arbitrarily, without being resorted to on objective grounds, there is danger of men of means taking undue advantage and abusing the system as against those who would really deserve but have no advocacy or

support, and of the whole approach becoming counter-productive and coming into public disrepute.

The answers to these criticisms would lie in the fact that the aim of the criminal justice system is to correct the offender and for some offences this would be best done outside the prison. Further, laying down strict guidelines to determine when probation should be awarded would defeat the very purpose of the concept. The broad parameters laid down age of the offender, surrounding circumstances, nature of the offence, etc. provide a broad framework for the judge to apply his discretion. It would also defeat the purpose if probation has to be granted when certain conditions are satisfied, if for example the facts on record show clear pre-meditation to do a wrongful act.

Responding to the other criticism, it is essential that non-legal agencies, namely probation officers, interference is only meant for smooth functioning, and also it is not mandatory for the judge to consider using the probation officer always. He may not ask for a pre-sentence report, may not put the offender under supervision.

Problems in the Practical Implementation of Probation in India

S. 6 of the Probation of Offenders Act, which makes it easier for a person below 21 years of age to benefit from probation. This is regardless of their antecedents, personality and mental attitude. It might lead to recidivism because many of them may not respond favourably to this reformative mode of treatment. Also, in many cases it is difficult to ascertain whether the delinquent is a first offender or a recidivist.

The Probation of Offenders Act, in sections 4(2) and 6(2), lays down that report of the probation officer is considered before awarding probation. But, the Courts generally have shown scant regard for the pre-sentence report of the probation officer because of lack of faith in integrity and trustworthiness of the Probation Officers. In their view calling for the pre-sentence report would mean unnecessary delay, wastage of time, undue exploitation of the accused by the probation officer and likelihood of biased report being submitted by him, which would jeopardize the interest of the accused and would be contrary to the object envisaged by the correctional penal policy.

Section 4 of the Probation of Offenders Act does not make supervision of a person released on probation mandatory when the court orders release of a person on probation on his entering into a bond with or without sureties. This is not in accordance with the probation philosophy, which considers supervision essential in the interests of the offender, against corrective justice.

The lower judiciary in India has not at all taken into consideration the objects and reasons of this act, while applying its discretion in regard to grant of probation. In an umpteen number of cases the accused had to move the High Court and even the Supreme Court to get the relief of probation. If an accused gets relief of probation only in the High Court or the Supreme Court after passing through the turmoil of a long and cumbersome judicial process, he would, psychologically, be diverted towards hardened ness and the whole purpose of the Act would be forfeited.

Variation or discharge of the probationer is based solely on the report of the probation officer; this leaves the probationer at the mercy of the Probation Officer.

The after probation services are not very effective. Thus, even considering that a sentence of probation has been passed and the offender is placed under supervision it is nothing more that a regular visit to the officer. There is no scientific process of rehabilitation and the Probation Officers arent adequately trained. They are recruited between 20 and 26 years of age. They are grouped into districts and supervised by a state/provincial chief. There is no in-service training and occasional refresher courses, and thus they are not adequately trained.

Further, often there is a lack of interest for social service among the probation personnel. Lack of properly qualified personnel, want of adequate supervision and excessive burden of casework are attributed as the three major causes of inefficiency of the probation-staff.

The object of the criminal justice system is to reform the offender, and to ensure the society its security, and the security of its people by taking steps against the offender. It is thus a correctional measure. This purpose is not fulfilled only by incarceration, other alternative measures like parole, admonition with fine and probation fulfill the purpose equally well.

The benefit of Probation can also be usefully applied to cases where persons on account of family discord, destitution, loss of near relatives, or other causes of like nature, attempt to put an end to their own lives.

Its aim is to reform the offender and to make him see the right path. This can be achieved as has been said previously, not only by legislative action but also by sincerity on the part of the administration. In some parts of the country it is being implemented in the right spirit. The example of Kerala and Andhra Pradesh have been described in the project.

The success of probation is entirely in the hands of the State Government and the resources it allots to the programmes. Resources are needed to employ trained probation officers, to set up homes for those on probation and also for their training besides others.

Thus while concluding it can be said that the concept of Probation would be effective only where the judiciary and the administration work together there must be a common understanding between the Magistrate (or) Judge and the Probation Officer. Probation would be effective only when there is a sincere attempt made to implement it. It would be of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person. Probation is an affirmation of the human inside every being and it must be given de importance.

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MODEL QUESTION PAPER

LAW OF CRIMES – II
(CODE OF CRIMINAL PROCEDURE)

(Including Juvenile Justice Care and Protection Act and Probation of Offenders Act)

PART - A (2 X 12 = 24 marks)
Answer TWO of the following in about 500 words each

1) Explain the principle features of a Fair Trial.

Synopsis:

- Introduction
- General principles of Fair Trial
- Arrest and Pre-Trial Detention -Role of Judge/Magistrate
- From Investigation to the Trial Stage
- From Trial to Final Judgment
- Conclusion and Suggestion

2) How a bail works and what is the working procedure to get it?

Synopsis:

- Introduction
- On what basis an accused may get Bail?
- Who can issue the Bail to the accused?
- Procedure for obtaining bail?
- What are the usual Bail conditions?
- Types of Bails
- Cash Bail
- Surety Bond
- Property Bond
- Release on own personal recognizance
- Release on citation
- Conclusion and Suggestion

3) What is charge and what are its contents? State the exception if any.

Synopsis:

- Introduction
- Relevant Provisions
- Meaning of Charge

- Framing of Charge
- Particulars / Contents / Essentials of a Charge
- Purpose of Framing of Charge
- When can Charge be changed & altered / Amendment?
- Conclusion and Suggestion

PART - B (4 X 5 = 20 marks)
Answer FOUR of the following in about 100 words each

4) Explain the concept of Parole.

5) Define the term 'Cognizance'.

6) Explain the Judicial Powers in the disposal of Appeals.

7) Classify the various criminal courts and their jurisdiction.

8) Explain the salient features of Probation of offenders Act, 1958.

9) Explain the salient features of Juvenile Justice Act of 2015.

PART - C (1 X 6 = 6 marks)
Answer ONE of the following by referring to provisions of law and decided cases with cogent reasons

10) Nirmal, an accused was arrested for offence under Section 302 IPC on 1st January, 2002, and remanded to judicial/police custody on 2nd January, 2002. Will the day of arrest and day of remand both have to be excluded for compounding the period of 90 days of Section 167(2) CrPC ?

Answer: Yes, For the purpose of section 167(2) CrPC, the day of arrest i.e., 1st January, 2002 and the day remand i.e., 2nd January, 2002, both have to be excluded and the 90th day shall fall on 2nd April 2002.

11) Can a women be given bail, when there is reasonable grounds for beliving that she has been guilty of an offence punishable with death or life imprisonment?

Answer: No, No gender alone is not the consideration for grant or refusal of bail.

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