Criminal Procedure and Evidence

Directorate of Distance and Continuing Education

MANONMANIAM SUNDARANAR UNIVERSITY TIRUNELVELI

[0462- 2321614]

[0462- 2322973]

August, 2017

Compiled

by

Dr. Syed Umarhathab

Assistant Professor and Faculty-in-Charge

Department of Criminology and Criminal Justice,

MSU

MANONMANIAM SUNDARANAR UNIVERSITY
TIRUNELVELI

Directorate of Distance and Continuing Education

M.A. Criminology & Police Science

(Effective from the Academic Year 2016-2017 onwards)

PAPER 7: CRIMINAL PROCEDURE AND EVIDENCE

UNIT-I: BASICS OF CRIMINAL PROCEDURE

Introduction: Basics of Criminal Procedure Code

There was no uniform law of criminal procedure for the whole of India. For the guidance of the Courts there were separate Acts which were applicable in erstwhile provinces and the presidency towns. The Acts which were applicable in the presidency towns were first consolidated by the Criminal Procedure Supreme Court Act (16 of 1852). The Acts which were applicable in the provinces were consolidated by the Criminal Procedure Code (25 of 1861). Criminal Procedure Supreme Courts Act was replaced by the High Court Criminal Procedure Act (12 of 1865) and the Criminal Procedure Code was replaced by Act 10 of 1872. A uniform law of procedure for the whole of India was consolidated by the Code of Criminal Procedure of 1882 (10 of 1882). It was replaced by the Code of Criminal Procedure, 1898 (5 of 1898). This Code of 1898 had been amended by various amending Acts In 1955 extensive amendments were made to simplify procedure and to speed up trials.

The State Governments too made a large number of amendments to the Code of 1898. To make the criminal procedure more comprehensive the Law Commission was asked to undertake a detailed examination of the Code of Criminal Procedure, 1898. The Commission submitted its report on 19th February, 1968. In the meanwhile Law Commission was reconstituted and the reconstituted commission made a detailed study of the Code of 1898 and submitted its report in September, 1969. Thereafter a draft Bill (41 of 1970) was introduced in the Rajya Sabha on 10th December, 1970. The Bill was referred to a Joint Select Committee of both the Houses of Parliament Incorporating the recommendations of the Joint Select Committee the Code of Criminal Procedure Bill was taken up for consideration by the Parliament.

The first Law Commission presented its Report (the Fourteenth Report) on the Reform of Judicial Administration, both civil and criminal in 1958; it was not concerned with detailed scrutiny of the provisions of the Code of Criminal Procedure, but it did make some recommendations in regard to the law of criminal procedure, some of which required amendments to the Code A systematic examination of the Code was subsequently undertaken by the Law Commission not only for giving concrete form to the recommendations made in the Fourteenth Report but also with the object of attempting a general revision.

The main task of the Commission was to suggest measures to remove anomalies and ambiguities brought to light by conflicting decisions of the High Courts or otherwise to consider local variations with a view to securing and maintaining uniformity, to consolidate laws wherever possible and to suggest improvements where necessary Suggestions for improvements received from various sources were considered by the Commission A comprehensive report for the revision of the Code, namely, the Forty-first Report, was presented by the Law Commission in September 1969.

This report took into consideration the recommendations made in the earlier reports of the Commission dealing with specific matters, namely, the Fourteenth Twenty-fifth Thirty-second, Thirty-third, Thirty-sixth, Thirty-seventh and Fortieth Reports. The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:

(i) An accused person should get a fair trial in accordance with the accepted principles of natural justice;
(ii) Every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
(iii) The procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal Courts. One of the main recommendations of the Commission is to provide for the separation of the Judiciary from the Executive on an all India basis in order to achieve uniformity in this matter.

To secure this, the Bill seeks to provide for a new set up of criminal Courts In addition to ensuring fair deal to the accused, separation as provided for in the Bill would ensure improvement in the quality and speed of disposal as all Judicial Magistrates would be legally qualified and trained persons working under close supervision of the High Court. Some of the more important changes proposed to be made with a view to speeding up the disposal of criminal cases are-

(a) the preliminary inquiry which precedes the trial by a Court of Session, otherwise known as committal proceedings, is being abolished as it does not serve any useful purpose and has been the cause of considerable delay in the trial of offences;
(b) provision is being made to enable adoption of the summons procedure for the trial of offences punishable with imprisonment up to two years instead of up to one year as at present; this would enable a larger number of cases being disposed of expeditiously;
(c) the scope of summary trials is being widened by including offences punishable with imprisonment up to one year instead of six months as at present; summons procedure will be adopted for all summary trials;
(d) the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases;

(e) the provision for compulsory stoppage of proceedings by a subordinate Court on the mere intimation from a party of his intention to move a higher Court for transfer of the case is being omitted and a further provision is being made to the effect that the Court hearing the transfer application shall not stay proceedings unless it is necessary to do so in the interest of justice;
(f) when adjournments are granted at the instance of either party, the Court is being empowered to order costs to be paid by the party obtaining the adjournments to the other party;
(g) provision is being made for the service of summons by registered post in certain cases;
(h) in petty cases, the accused is being enabled to plead guilty by post and to remit the fine specified in the summons;
(i) if a Court of appeal or revision discovers that any error, omission or irregularity in respect of a charge has occasioned failure of justice it need not necessarily order retrial;
(j) the facility of part-heard cases being continued by successors-in-office now available in respect of Courts of Magistrates is being extended to Courts of Session.

Object of the Criminal Procedure

The object of Criminal Procedure Code is to provide machinery for the punishment of offenders against the substantive Criminal law. In layman's language, the Criminal Procedure Code, 1973 lays (CrPC) the rules for conduct of proceedings against any person who has committed an offence under any Criminal law, whether it is I.P.C or other Criminal law. In addition to the above specific measures, the Commission's recommendations which are intended to resolve conflicts of decisions on various matters or to remove ambiguities have been given effect to and these provisions may, by themselves, help in reducing the time taken in litigation. Some of the more important changes intended to provide relief to the proper sections of the community is-

(a) provisions have been made for giving legal aid to an indigent accused in cases triable by a Court of Session; the State Government may extend this facility to other categories of cases;
(b) the Court has been empowered to order payment of compensation by the accused to the victims of crimes, to a larger extent than is now permissible under the Code;
(c) when a Commission is issued for the examination of a witness for the prosecution, the cost incurred by the defence including pleader's fees may be ordered to be paid by the prosecution;
(d) the accused will be given an opportunity to make representation against the punishment before it is imposed

In addition to these specific provisions, the steps taken to reduce delays would themselves automatically benefit the poorer sections, as it is they who particularly suffer by the prolongation of criminal cases. The notes on clauses explain the more important provisions of the Bill **Act 2 of 1974.** The Code of Criminal Procedure Bill having been passed by both the Houses of Parliament received the assent of the President on 25th January, 1974 It came into force on the 1st day of April, 1974 as THE CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974).

Importance of the Criminal Procedure

The basic purpose of the Criminal Procedure Code, among other things, is to ensure a fair trial where none of the rights of the accused are compromised nor are they unjustifiably favoured. Furthermore, to ensure that the judge concerned hears all parties who are relevant to the trial, their presence at the trial is obviously important. That is why an entire chapter of the Code concerns itself with the process of ensuring the attendance of any person concerned with the case, including an accused or a witness, through various measures, viz. summons, warrant, proclamation and attachment of property. The latter two are used when the former do not yield satisfactory results. Many would argue that the simplest way to ensure the presence of a person, especially an accused, would be to arrest him in all circumstances and detain him so that his presence is beyond doubt. However, such an action would go against the fundamental right that this Constitution provides with, the right to personal liberty under Article 21. Criminal law hinges on that right and no person can be deprived of this right unless very cogent reasons are present which argue against his release. This is why the Code envisages both warrant and summons to procure the attendance of persons concerned.

The extent and applicability of the Code of Criminal Procedure, 1973

The law relating to criminal procedure applicable to all criminal proceedings in India (except those in the States of Jammu and Kashmir and Nagaland the Tribal Areas in Assam) is contained in the Code of Criminal Procedure, 1898. The Code has been amended from time to time by various Acts of the Central and State Legislatures. The more important of these were the amendments brought about by Central legislation in 1923 and 1955. The amendments of 1955 were extensive and were intended to simplify procedures and speed up trials as far as possible In addition; local amendments were made by State Legislatures of which the most important were those made to bring about separation of the Judiciary from the Executive. Apart from these amendments, the provisions of the Code of 1898 have remained practically unchanged through these decades and no attempt was made to have a comprehensive revision of this old Code till the Central Law Commission was set up in 1955.

Section 1. Short title, extent and commencement

(1) This Act may be called the Code of Criminal Procedure, 1973

(2) It extends to the whole of India except the State of Jammu and Kashmir: 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, but the concerned State Government may, by notification apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

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

(3) It shall come into force on the Ist day of April, 1974.

Section 7. Territorial divisions

(1) Every State shall be a session's division or shall consist of session's divisions; and every session's 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 session's 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 session's 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.

Section 8. Metropolitan

(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, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub-section (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

Main segments of the Criminal Procedure

CHAPTER 1 Preliminary
CHAPTER II Constitution of Criminal Courts and Offices
CHAPTER III Power of Courts
CHAPTER IV A Powers of Superior Officers of Police
CHAPTER IV B Aid to the Magistrates and the Police
CHAPTER V Arrest of Persons
CHAPTER VI Processes to Compel Appearance
CHAPTER VI A Summons
CHAPTER VI B Warrant of Arrest
CHAPTER VI C Proclamation and Attachment
CHAPTER VI D Other Rules Regarding Processes
CHAPTER VII Processes to Compel the Production of Things
CHAPTER VII A Summons to Produce
CHAPTER VII B Search-Warrants
CHAPTER VII C General Provisions relating to Searches
CHAPTER VII D miscellaneous
CHAPTER VIIA Reciprocal Arrangements for Assistance in Certain Matters and Procedure for Attachment and Forfeiture of Property
CHAPTER VIII Security for Keeping the Peace and for Good Behaviour
CHAPTER IX Order for Maintenance of Wives, Children and Parents
CHAPTER X Maintenance of Public Order and Tranquillity
CHAPTER X A Unlawful Assemblies
CHAPTER X B Public Nuisances
CHAPTER X C Urgent Cases of Nuisance or Apprehended Danger
CHAPTER X D Disputes as to Immovable Property Section
CHAPTER XI Preventive Action of the Police
CHAPTER XII Information to the Police and their Powers to Investigate
CHAPTER XIII Jurisdiction of the Criminal Courts in Inquiries and Trials
CHAPTER XIV Conditions Requisite for Initiation of Proceedings
CHAPTER XV Complaints to Magistrates
CHAPTER XVI Commencement of Proceedings before Magistrates
CHAPTER XVII The Charge
CHAPTER XVII A Form of Charges
CHAPTER XVII B Joinder of Charges
CHAPTER XVIII Trial before a Court of Session
CHAPTER XIX Trial of Warrant-Cases by Magistrates
CHAPTER XIX A Cases Instituted on a Police Report
CHAPTER XIX B Cases Instituted otherwise than on Police Report
CHAPTER XIX C Conclusion of Trial
CHAPTER XX Trial of Summons-Cases by Magistrates
CHAPTER XXI Summary Trials
CHAPTER XXII Attendance of Persons Confined or Detained in Prisons
CHAPTER XXIII Evidence in Inquiries and Trials

CHAPTER XXIII A Mode of Taking and Recording Evidence
CHAPTER XXIII B Commissions for the Examination of Witnesses
CHAPTER XXIV General Provisions as to Inquiries and Trials
CHAPTER XXV Provisions as to Accused Persons of Unsound Mind
CHAPTER XXVI Provisions as to Offences affecting the Administration of Justice
CHAPTER XXVII The Judgment
CHAPTER XXVIII Submission of Death Sentences for Confirmation
CHAPTER XXIX Appeals
CHAPTER XXX Reference and Revision
CHAPTER XXXI Transfer of Criminal Cases
CHAPTER XXXII Execution, Suspension, Remission and Commutation of Sentences
CHAPTER XXXII A Death Sentences
CHAPTER XXXII B Imprisonment
CHAPTER XXXII C Levy of Fine
CHAPTER XXXII D General Provisions Regarding Execution
CHAPTER XXXII E Suspension, Remission and Commutation of Sentences
CHAPTER XXXIII Provisions as to Bail and Bonds
CHAPTER XXXIV Disposal of Property
CHAPTER XXXV Irregular Proceedings
CHAPTER XXXVI Limitation for Taking Cognizance of Certain Offences
CHAPTER XXXVII Miscellaneous

Classification of Offences

Under the Criminal Procedure Code, offences can be classified on the basis of the following three criterions;

- Cognizable and Non cognizable offences
- Bailable and Non bailable offences
- Offences which will invoke a summons case and Offences which will invoke a warrants case.

a. Cognizable and Non-Cognizable offences

- Cognizable and non-cognizable offences Cognizable offences have been defined in Criminal Procedure Code as follows; " `cognizable offence' means an offence for which, and `cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant".
- A non-cognizable offence has been defined in Criminal Procedure Code as follows, "`non-cognizable offence' means an offence for which, and `non-cognizable case' means a case in which, a police officer has no authority to arrest without warrant".
- **Now which offence falls under the category of cognizable offences and which falls under the category of non-cognizable offences can be determined as per the classification given in the First Schedule of the Criminal Procedure Code.** The First Schedule has classified all acts punishable under the Indian Penal Code, 1860 into Cognizable and non-cognizable offences. Although the Code in itself does not give any reasoning as to this classification, certain patterns can be traced if the First schedule is

studied carefully. All offences which have a punishment of more than 3 years under the Indian Penal Code are considered to be cognizable offences and all offences which have a punishment of less than 3 years are non-cognizable offences. Subsequently, it can be deduced that non-cognizable offences are relatively less serious in nature than cognizable offences.

- Consequently, **in case of cognizable offences, the police officers can arrest the accused person without any warrant** or authority issued by a magistrate. They can initiate investigation on their own accord and they needn't wait for the prior permission of a magistrate. In fact, they have a legal duty to initiate investigations. "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."
- On the other hand, police officers necessarily **need prior permission** of a magistrate to initiate investigations in cases of non-cognizable offences. Non cognizable offences are considered more in the nature of private wrongs and therefore the collection of evidence and the prosecutions of offender are left to the initiative and efforts of private citizens.

b. Bailable and Non-Bailable offences

- Criminal Procedure Code defines bailable and non-bailable offences as "an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence" In here too, the code does not give any reason as to on what criteria has such classification been based upon. It just lays down a seemingly arbitrary classification of the same. However, it can be logically deduced that all serious offences are non-bailable whereas all less serious offences are bailable.
- Similarly, all offences which have a punishment of more than 3 years under the Indian Penal Code are considered to be non-bailable offences and all offences which have a punishment of less than 3 years are bailable offences. This too is subject to the exception of existence of a contrary law. If a person accused of a bailable offence is arrested or detained without warrant he has a right to be released on bail. In case he is accused of a non-bailable offence, then his bail is subject to the discretion by the authorities.

c. Warrant Case and Summons Case

- According to the Criminal Procedure Code, a warrant-case "means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years ".
- According to the Criminal Procedure Code, "a summons case means a case relating to an offence, not being a warrant case".
- This classification helps to determine the type of trial procedure to be adopted in the case. Naturally, the trial procedure in case of a warrant case is much more elaborate than that of a summons case. This classification is also useful at the stage of issuing process to the accused person in the first instance.

Functionaries under the Code

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

Functions, Duties and Powers of these Machineries:

a) 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."

b) 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.

c) 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.

d) 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.

UNIT-II: INVESTIGATION PROCESS

The process of investigation initiates the beginning of the police action in to a criminal case. It is one of the important processes in the criminal justice practices. To start with criminal case police arrest few alleged/ accused to get close to the culprit.

Arrest (section 41 to 60)

This term "Arrest" is very common term that we pick up a lot in our day today life. Normally, we see a person, who do or have done something against the law, get arrested. Generally, the term "arrest" in its ordinary sense, means the apprehension or restraint or the deprivation of one's personal liberty. Let's understand this term in Indian law, Criminal procedure Code, 1973 in its chapter V (section 41 to 60) deals with Arrest of a person. Ironically, Code has not defined the term "Arrest". Every deprivation of liberty or physical restraint is not arrest. Only the deprivation of liberty by legal authority or at least by apparent legal authority, in a professionally competent and adept manner amounts to arrest. Thus, we can say arrest means 'apprehension of a person by legal authority resulting in deprivation of his liberty'.

An arrest consists of taking into custody of another person under authority empowered by law for the purpose of holding or detaining him to answer a criminal charge and preventing the commission of a criminal offence. However, a person against whom no accusation of crime has been made may be arrested /detained under a statute for certain purposes like removal in safe custody from one place to another, for example – removal of a minor girl from a brothel. It is important to note that 'custody' and 'arrest' don't have same meaning in this act. Taking of a person into judicial custody is followed after the arrest of the person by Magistrate on appearance or surrender. In every arrest there is custody but not vice versa. Thus, mere taking into custody of a person an authority empowered to arrest may not necessarily amount to arrest.
This code proposes two types of arrests:
(i) Arrest made in pursuance of a warrant issued by a magistrate
(ii) Arrest made without such a warrant but made in accidence with some legal provision permitting such arrest.

Section 45. Who can Arrest?
Arrest can be made by police officer, Magistrate or any private person, like you or me can also arrest a person but that can made only in accordance with some legal provision permitting such arrest. The code exempts the members of Armed forces from being arrested for anything done by them in discharge of their official duties except after obtaining the consent of the government (Sec. 45).
Any private individual may arrest a person only when the person a proclaimed offender and the person commits a non bailable offence and cognizable offences in his presence (sec. 43). Any magistrate (whether Executive or judicial) may arrest a person without a warrant (sec. 44). Under section 41, Arrest by police officer can be made without warrant only in cognizable offences (sec.2(c)) and with warrant in non- cognizable offence (sec 2 (l)). Cognizable offences

are of more serious nature as compare to non cognizable offences i.e. Murder, kidnapping, theft, etc.

Section 41. How Arrest is made?

This section describes the mode in which arrests are to be made (whether with or without warrant). In making an arrest the police officer /other person making the same actually touches or confines the body of the person to be arrested unless there be a submission to custody by words or action. When the police arrests a person in execution of a warrant of arrest obtained from a magistrate, the person so arrested shall not be handcuffed unless the police have obtained orders from the Magistrate in this regard. The person making an arrest may use 'all means' necessary to make arrest if person to be arrested resists or attempts to evade the arrest. A police officer may, for the purpose of arresting without warrant any person whom is authorized to arrest, pursue such person into any place in India (sec 48). Arrested person shall not be subjected to unnecessary restraint and physical inconvenience unless it's necessary to do so to prevent his escape (sec. 49).

Rights of Arrested Persons

Arrest of a person is made in order to ensure his presence at the trial in connection with any offences to which he is directly or indirectly connected or to prevent the commission of a criminal offence. In law, there is principle of "presumption of innocence till he has proven guilty" it requires a person arrested to be treated with humanity, Dignity and respectfully till his guilt is proof. In a free society like ours, law is quite careful toward one's "personal liberty" and doesn't permit the detention of any person without legal sanction. Even article 21 of our constitution provides:

"No person shall be deprived of his life or personal liberty except according to procedure established by law". The procedure contemplated by this article must be 'right, just and fair' and not arbitrary, fanciful or oppressive. The arrest should not only be legal but justified also, Even the Constitution of India also recognize the rights of arrested person under the 'Fundamental Rights 'and here I will inform you about those rights :

- Right to be informed of the grounds of arrest under sec. 50 of CrPC and article 22 of Indian Constitution, it's a fundamental right to be informed. It is the duty of the police officer to inform you and also tell whether the offence is bailable or non bailable. Normally, Bailable offences are those where bailable can be granted and it is right of the person to be granted bail and Non- bailable offences are where bailable can't be granted generally and it's the discretion of the court.
- In non- cognizable cases ,arrest are made with warrant and the person going to be arrested have a right to see the warrant under Sec. 75 of crpc. Warrant of arrest should fulfill certain requirements such as it should be in writing , signed by the presiding officer , should have seal of court , Name and address of the accuse and offence under which arrest is made. If any of these is missing, warrant is illegal.
- Under sec. 41 , police have a power to arrest a person without warrant as prompt and immediate arrest is needed , no time to approach magistrate and obtain a warrant for

example in case where serious crime is has been perpetrated by a dangerous person or where chances of that person absconding unless immediately arrested. Section 41 got amended in 2008/2010 because of misuse of power conferred by this section to police and amendments targeted the power conferred to police officer must be exercised after reasonable care. Some clauses were put to this section such as police officer must act reasonably that such arrest is necessary. Not in all cases arrest in necessary, Notice of appearance before police officer can be made if reasonable complaint has been made ,credible information has been received and suspicion exits of cognizable offence and if concern person continues to comply with such notice and appears then arrest is not necessary but he don't, arrest can be made. (sec 41A)

- The police officer must be wearing a clear, visible and clear identification of his name which facilitate easy identification. A memo of arrest must be prepared at the time of arrest – (i) attested by least one witness, it can be family member or member of locality where arrest is made (ii)counter signed by arrested person.
- Right of arrested person to meet an advocate of his choice during interrogation under sec. 41D and sec. 303 CrPC.
- Arrested person have a right to inform a family member, relative or friend his arrest U/ sec 50 of CrPC.
- Arrested person have right not to be detained for more than 24hrs, without being presented before magistrate, it is to prevent unlawful and illegal arrests. This right is fundamental right under article 22 of Indian constitution and supported under section 57 and 76 of CrPC.
- Arrested person have right to be medically examined (Sec 54,55A) the person who is arrested should be given the right to have his body examined by the medical officer when is produced before a magistrate or at any time under custody, with a view to enabling him to establish that the offence with which he is charged was not committed by him or that he was subjected to the physical torture. With the insertion of 55A, "it shall be duty of a person having custody of an accused to take reasonable care of the health and safety of the accused" and it attempt to take care of "custodial violence"(torture, rape, death in police custody/lock-up) to some extent.
- Arrested person have right to remain silent under Sec. 20(3) of Indian constitution so that police can't extract self – incriminating statement from a person without will or without his consent.

Section 53 (2). Special Protection to Females

- General rule is that Females are not be arrested without the presence of a lady constable and further no female be arrested after sun-set but there are exception in some cases, where crime is very serious and arrest is important then arrest can be made with special orders and it depends on facts and circumstances of each case. Separate lock ups to be provided for them.
- The salutary principle that the medical examination of a female should be made by female medical practitioner has been embodied in sec 53(2).

In case of State of Maharashtra Vs Christian Community Welfare Council of India [(2003) 8 SCC 546]

In this case, SC departing from long tradition of not arresting women at night and not arrest women in the absence of a female constable, The Supreme Court held that "We do agree with the object behind the direction issued by the High court, We think a strict compliance with said direction, in given circumstances, would cause practical difficulties to investing agencies and might even room for evading the process of law by unscrupulous accused. While it is important to protect the female sought to be arrested by the police from police misdeeds but it may not possible and practical to have the presence of lady constable. It is issued to the arresting authority that while arresting a female person , all efforts should be made to keep a lady constable present but in circumstances where that arresting officers are reasonably satisfied that such presence of a lady constable is not available or possible and or the delay is arresting caused by securing the presence of a lady constable would impede the course of investigation, such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable".

- Identification of Person – With new section inserted by the 2005 amendment, sec.54-A it says that where a person is arrested on a charge of committing of offence and his identification by any other person or persons is considered necessary for the purpose of investing of such offence, the court having the jurisdiction , may on the request of the officer in charge of a police station , direct the person so arrested to subject himself to identification by any person or persons in such manner as the court may deem fit".
- Sec 54-A empowers the court to direct specifically the holding of the identification of the arrested person at the request of the prosecution.
- Arrest to be made strictly according to the code (Sec 60A) – "No arrest shall be made except in accordance with provision of this code or any other law for time being in force providing the arrest".

Misuse of Power of Arrest

Although, there have been may safeguard provided by the code and Constitution of India as mentioned above but the fact remain that the power of arrest is being wrongly and illegally used in large no. of cases in all over the country. The power is very often is utilized to extort monies and other valuable property or the instance of the enemy of the person arrested. Even in civil disputes, this power is being restored to a basis of a false allegation against the party to a civil dispute at the instances of the opponent.

The vast discretion given by CrPC to arrest a person even in case of a bailable offence (not only where the bailable offence is cognizable but also where it is non – cognizable) and further power to make preventive arrest (e.g. under section 151 of the CrPC and several city police enactments), clothe the police with extraordinary power which can be easily abused. Neither there is any in-house mechanism in the police department to check such misuse or abuse nor does the complaint of such abuse and misuse to higher police officers bear fruit except in some exceptional cases.

Case Law

In law, there are always precedents that have to be followed. As, in case of "Arrest" we have landmark judgments that have been given by Supreme Court of India which sets some rules in

favour of arrested person and putting some bars on powers of police officers with regard to arrest and also prevent the misuse of this powers.

JOGINDER KUMAR VS STATE OF U.P [(1994) 4 SCC 260]

In this case Apex Court ruled that an arrested person being held in custody is entitled , if he so requests, to have one friend , relative or other person interested in his welfare , told that he has been arrested and where he is being detained. The police officer shall inform the arrested person when is brought to the police station of this right. An entry shall be requested to be made in the diary as to who was informed of the arrest. The Magistrate is obliged to satisfy himself that there requirements have been complied with.

K BASU VS STATE OF WEST BENGAL [AIR 1997 SC 610]

This case is of the landmark in which steps were taken to prevent "Custodial torture". This matter was brought before the court by Dr. D.K Basu, Executive Chairman of the Legal Aid Services, and NGO of West Bengal through a PIL. He addressed a letter to the Chief justice drawing his attention to certain news items published in the newspapers regarding deaths in the police lock – ups and custody. This letter was treated as the writ petition by the Supreme Court. In this case, the Supreme Court took a serious note of Custodial violence and death in police lock-up. To check the abuse of police power, transparency of public action and accountability are two possible safe guards.

The apex court laid down guidelines (as preventive measure) to be followed in all cases of arrest or detention till legislative measures are taken. Some are the recent amendment made to the code codifies some of the Supreme Court guidelines regarding arrest of a person laid down in D. K Basu case. i.e. like amendments to sec. 41 like 41 A (Notice for appearance), 41B (Procedure of arrest and duties of officer making arrest), 41C(control room at district), 41D(Right to arrested person to meet an advocate of his choice during interrogation) section 50A (obligation of person making arrest to inform about the arrest, etc., to nominated person), Right to arrested person to get medically examined, etc. Even Court directed that these directions should be widely circulated as Court mentioned "Creating awareness about the rights of arrestee would be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability".

Section 41. When police may arrest without warrant

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
(f) who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or
(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 365; or
(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of person specified in section 109 or section 110.

Section 42. Arrest on refusal to give name and residence

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.
(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.
(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Section 43. Arrest by private person and procedure on such arrest

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.
(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.
(3) If there is reason to believe that he has committed a non-cognizable offence and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence

which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Section 44. (1) Every person aware of the commission of, or of the intention or any other person to commit, an offence punishable under any of the following sections of the Penal Code (namely), 121, 121A, 122, 123, 124, 124 A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

Section 44. Arrest by Magistrate

(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Section 45. Protection of members of the Armed Forces from arrest

(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "**Central Government**" occurring therein, the expression "**State Government**" were substituted.

Section 47. Search of place entered by person sought to be arrested

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him such free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under
sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purposes, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.
(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Section 48. Pursuit of offenders into other jurisdictions
A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

Section 49. No unnecessary restraint
The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Section 50. Person arrested to be informed of grounds of arrest and of right to bail
(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.
(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Section 51. Search of arrested persons
(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail. The officer making the arrests or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.
(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Section 165. Search by Police Officer
Legal provisions regarding police search during investigation under section 165 of the Code of Criminal Procedure, 1973.
(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 authorized 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 the nearest 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.

To prevent the abuse of police and to restraint the police power, the following provisions have been made:

(i) The power to search without a warrant can be exercised only by a police officer in charge of a police station or any officer authorized is: investigate into that offence. Such a police officer may require a subordinate officer to conduct the search under certain circumstances.
(ii) The search is not to be a general search but must be one for particular thing.
(iii) The place of search must be within the limits of the police station of which the officer is in charge.
(iv) The police officer making the search must have reasonable grounds for believing the necessity of immediate search of the place.
(v) A police officer before proceeding to search a place must record the ground of his belief as to the necessity of such a search and must also specify in such a record the things for which the search is to be conducted.
(vi) The copies of record made prior to the search are required to be sent forthwith to the nearest magistrate.
(vii) The police officer, as far as possible, has to conduct the search in person.
(viii) The provisions relating to search-warrant and the general provisions as to search shall be applied in the search made by a police officer without warrant.
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. 5 Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest 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.

General Provision regarding Search and Seizure

Section 91 with the head note Process to Compel Production of Things of the Code of Criminal Procedure, 1973 states that:
(1) Whenever any Court or any officer in charge of a police station consider that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under this code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.
Whereas section 93 When search warrant may be issued; in sub section (1) provides that:

(1)(a) Where any court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or (b) where such thing or document is not known to the court to be in the possession of any person, or (c) where the Court consider that the purpose of any inquiry, trial or other proceeding under this code will be served by a general search or inspection, it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and provisions hereinafter contained.

This means that an officer in charge of a police station can send a notice or a court can issue a summon under section 91(1) to any person within whose possession the officer or court thinks is the document or a thing necessary for the purpose of investigation. But if the court or officer feels that the person to whom the summons or notice is issued, will not produce the document or thing, the court can issue a warrant of search to the officer, under section 93(1) (a).
From time to time the constitutional validity of the warrant issued under Section 93(1) (a), in context of Article 20(3) has been raised. The contentions were raised that the term “any person” in section 91(1) not only includes witnesses and other persons, but also includes the accused. Therefore if the accused person do not obeys the summons, he will have to face a compelled

search in his house, and this itself shows the compulsion put on the accused. Further, the compelled search made will be an intrusion into the privacy. Also there will be a prosecution for the offence committed under section 174 of the Indian Penal Code, 1860. Therefore in light of all this the summons issued is a compulsion on the accused person to produce self incriminating evidences, thereby completely violating his fundamental right guaranteed under Article 20(3).
However with regard to intrusion into the privacy, it has been settled that the right to privacy is not an absolute right and is subject to reasonable restriction whenever there are co-travelling interest, which requires much weight age than the right to privacy of the person, for the sake of justice.

Now the only question which is left, is: whether the accused will be penalized under section 174 of the IPC, 1860 if he does not comply with the notice or summons is issued to him? Section 174 with head note Non- attendance in obedience to an order from public servant, states that:

- Whoever, being legally bound to attend in person or by agent at a certain place and time in obedience to a summon, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,
- Intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,
- Shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,
- Or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with a simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
-

"To be a witness" real meaning
The protection against self incrimination as has been provided in Article 20(3) is based on the following principle: "**nemo tenetur prodere or nemo tenetur scripsum accusare**" which means that an accused should not be compelled to furnish any evidence against him. It is the duty of the State/ prosecution to prove him guilty, beyond reasonable doubt. This is just to give proper equal opportunity to accused to know what charges has been levelled against him, what case the prosecution has prepared and then on the basis of which he will prepare a proper defence for himself.

Since time it has been stated that the right against self incrimination is actually a privilege provided to an accused and is the major factor in defeating the justice. This is not the first time when such an attempt has been made to change the nature of what has actually been stated in Article 20(3). Malimath Committee Report titled "Reforms in Criminal Justice system" has even held that though the accused has right to remain silent an inference could be well drawn from the silence of the accused, which is also contrary to the principle of the right to remain silent of the accused. After the enactment of the constitution of India in 1950 the India became a sovereign socialist secular democratic republic. It is now well competent to decide its political and economic future. At the time of the enactment of the Constitution this humane right of the accused that is right against self incrimination was included in article 20 of the Constitution of

India, not to insult the right of the accused in this very manner as has been made by narrowly interpreting it. Therefore it is urged to the lawmakers of the country that there should be equal respect of this very right in the manner as the other fundamental rights are respected.

Section 157. 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-in charge of a Police Station can start investigation either on information or otherwise (section 157 CrPC).

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 CrPC,
(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 CrPC), 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 CrPC)
(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 Law - 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 CrPC.),
(b). Crime details form, - (I F.2)
(c). Arrest / court surrender memo
(d). Property seizure memo
(e). Final Report Form (section 173 CrPC.)

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 endeavouring 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.

Section 167. Interrogation
Interrogation is defined as questioning of a suspect or witness by **law** enforcement authorities. Once a person being questioned is arrested (is a "prime" suspect) he/she is entitled to be informed of his/her **legal** rights, and in no case may the **interrogation** violate rules of due process.

Police Interrogation Definition
Questioning put to an accused by the police with the purpose of eliciting a statement. "Police interrogation (is) direct or indirect questioning put to the **accused** by the police with the purpose of eliciting a statement from him." Custodial interrogation implies when an accused is in the custody of enforcement officials or police officers for interrogation. While in custody, several rights of the accused are on hold but some basic human and fundamental rights are nonetheless within his reach.

The conditions for grant of custodial interrogation: (section 167 CrPC**)**

- Investigation not complete within 24 hours as under section 57 CrPC
- The accused is required in custody for further investigation
- The existence of grounds to believe that the information against the accused is well founded.
- A copy of the diary entries as well as the accused shall be forwarded to the nearest judicial magistrate.

Duration of Custody

- Not more than 15 days at a time
- Police custody cannot be more than 15 days *in toto*.
- In case of offences punishable with death, life imprisonment, or 10 years imprisonment, custody for a maximum period of 90 days.
- In case of any other offence for a maximum period 60 days.

Judicial Authorities

Elumalai v. State of Tamil Nadu, 1983 LW (Crl) 121
A few guidelines before granting custodial interrogation:
Section 167(2) CrPC applies to arrest u/s 41(1) CrPC and in exceptional circumstances, to arrest u/s 151(1) CrPC. The magistrate should be very watchful under this section that police does not

violate liberty of citizens, arbitrarily and unreasonably. Section 167 CrPC does not apply to arrest u/s 41 (2) CrPC and court can order remand or extension of remand. The courts cannot mechanically pass orders without verifying the entries in diary and satisfying themselves about the real necessity for granting remand or extension thereof. The production of the accused before the court is mandatory, and no magistrate can order custody in the absence of the accused. The jail authorities shall not withhold the accused even for a minute than the order of detention as detention without proper orders amounts to illegal detention.

Gian Singh v. State (Delhi Administration) 1981 Cr L J 100
It is prudent for the police to allow a lawyer where the accused wants to have one at the time of interrogation if they want to escape the censure that police interrogation is carried on in secrecy by physical and psychic torture.

Citizens for Democracy v. State of Assam (1995) 3 SCC 743
A Remand by a magistrate – Judicial or non-judicial- the accused shall not be handcuffed unless there is a special order to that effect from the magistrate at the time of grant of remand.

Section 54-A. Identification of person arrested
This section empowers the Court to direct specifically the holding of the identification of the arrested person at the request of the prosecution.
Section 54-A of the Code of Criminal Procedure (in short Cr PC) reads as follows:
Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.

Further, Section **53-A** of the Code of Criminal Procedure talks about examination of person accused of rape by medical practitioner which reads as follows:
(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

(i) the name and address of the accused and of the person by whom he was brought,
(ii) the age of the accused,
(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and
(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

Explanation of the term 'examination' and 'registered medical practitioner' as it appeared in the Section 53 of the Code of Criminal Procedure are as follows:

(a) 'examination' shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case.

(b) 'registered medical practitioner' means a medical practitioner who possess any medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a Medical Register.

Relevancy of 'identification' is given under Section 9 of the Indian Evidence Act, 1872.

The object of conducting a 'test identification parade' is twofold. **First** is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. **Second** is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence.

Test identification parade must be held at earliest possible opportunity with necessary safeguards and precaution. At the parade people with similar height and features should be mixed up with the accused in proportion of not less than 1 to 9. Magistrate should also take care that there is no occasion for any police officer to be present at the parade to prompt the witness.

The identification parades belong to the stage of investigation and are essentially governed by the Section 162 of the Code of Criminal Procedure. Where an accused himself refuses to participate in a test identification parade, in such case, it is not open to him to contend that the statement of the eye-witnesses made for the first time in Court, wherein they specifically point towards him as a person who had taken part in the commission of crime should not be relied upon (**Munna vs. State AIR 2003 SC 3805**).

Bail

Bail is a security given for the due appearance of a person arrested or imprisoned to obtain his or her temporary release from legal custody or imprisonment. In common law, an accused person is said to be admitted to bail, when he or she is released from the custody of the officers of court and is entrusted to the custody of persons known as his or her sureties who are bound to produce

him or her at a specified time and place to answer the charge against him or her and who in default of so doing are liable to forfeit such sum as is specified when the bail is granted.

Wharton's Law Lexicon explains 'bail' as:

To set at liberty a person arrested or imprisoned on security being taken for his or her appearance on a day and a place certain, which security is called bail, because the party arrested or imprisonment is delivered into the hands of those who find themselves or become bail for his or her due appearance when required in order that he or she may be safely protected from prison, to which they have, if they fear his or her escape etc, the legal power to deliver him or her.

Hence, the tradition and logical conception of bail in forensic phraseology means release of a person from custody or prison and deliver into the hands of sureties who undertake to produce him or her in court upon an appointed day. In criminal law, 'bail' means to set free, liberate or deliver the accused from arrest or out of custody, to the keeping of other persons, on their undertaking to be responsible for his or her appearance at a certain day and place to answer to the charge against him or her. These persons are called his or her sureties.

Definition of Bail

According to the Cambridge Advanced Dictionary (3rd ed.), a sum of money which a person who has been accused of a crime, pays to a law court so that they can be released until their trial. The payment is a way of making certain that the person will return to court for trial.

Bail is the money a defendant pays as a guarantee that he or she will show up in court at a later date. For most serious crimes a judge or magistrate sets bail during an arraignment, or in federal court at a detention hearing.

For minor crimes bail is usually set by a schedule which will show the amount to be paid before any court appearance (arraignment). For more serious crimes, the amount of bail is set by the judge at the suspect's first court appearance. The purpose of bail is to guarantee the scheduled appearance of the defendant in court. While the Constitution guarantees the right to reasonable bail, a court may deny bail in cases charging murder or treason, or when there is a danger that the defendant will flee or commit mayhem. In some traffic matters the defendant may forfeit the bail by non-appearance since the bail is equivalent to the fine.

Object and Purposes of Bail

The object of keeping an accused person in detention prior to, or during the trial is not punishment but

(i) To prevent repetition of offence with which he is charged; and

(ii) To secure his attendance at the trial.

However, every criminal proceeding is based on a *prima facie* assumption of guilt and again there is a presumption of innocence in favour of the accused of the accused. Bail serves the purpose of presumption of innocence. And at the same time, the conditions of bail like appearance in the court on fixed date and time serves the purpose of *prima facie* assumption of guilt against the accused. There are varieties of purposes behind granting a bail. This may be, for example, for appearance before a court, for presenting appeal; pending reference or revision; or for the purpose of giving evidence etc.

Categories of Bail

In the CrPC the term 'Bail' has not been defined but has been used sometimes singly and more often it has been used in juxtaposition with other terms which are as follows: 'bail', 'security for bail', 'bond with surety' and so on. Chapter XXXIX of *the Code of Criminal Procedure, 1898* **(**Act No. V) deals several sections related to Bail in the following way

The offences and their punishments have been given under Indian Penal Code, 1860 (hereinafter referred as IPC) and the procedure for the same has been given in the Code of Criminal Procedure, 1973 (hereinafter referred as CrPC). Under CrPC, the offences have been mainly classified under two heads- bailable and non-bailable offences.

Bailable offence
Definition
Section 2(a) of CrPC defines bailable offences as *the offence that has been shown in the* First Schedule as bailable or which is made bailable by any other law for the time being in force. The first schedule of the CrPC is divided into two parts wherein the first part deals with the offences given under IPC and the second part deals with the offences under other laws. As per the last item of the First Schedule, an offence in order to be bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only. Some of the common bailable offences are: Simple Hurt (Section 337; IPC), Bribery (Section 171E; IPC), Public Nuisance (Section 290; IPC), Death by Rash or Negligent Act (Section 304A; IPC).

Right to be released on bail

As per *Section 50 of CrPC* Whenever a person is arrested without warrant, it is the duty of the police officer to communicate the full detail of the offence for which the person is arrested. *Also,* if the offence *for which the person is arrested is a* bailable one*, it is the* duty of the police to inform that he is entitled to be released on bail after giving surety.

As per Section 436 of CrPC*, whenever a* person accused of a bailable offence *is* arrested without warrant *and is* prepared to give bail*, such person* shall be released on bail. The discretion to decide the bail amount is with the Court or with the officer, as the case may be.

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

Procedure

In order to apply for a bail in the case of a bailable offence, the person needs to fill a form of bail i.e. Form No. 45which is given in the first schedule and apply for bail and the Court will have to grant bail.

Non-Bailable Offence

Definition

As per Section 2(a) of CrPC*,* non-bailable offence includes all those offences which are not included in bailable offence in the First Schedule. Further, the First Schedule in its Second part at its end has defined non-bailable offence as the offences which are punishable with death, imprisonment of life or imprisonment for more than seven years.

Right to be released on Bail

A person accused of a non-bailable offence doesn't have right to be released on bail *but the* bail can be granted at the discretion of the court, subject to certain conditions given in Section 437 of CrPC. If a person is arrested on accusation of commission of any non-bailable offence, then *the* person will not be released on bail if *there appears a* reasonable ground that the person is guilty of an offence punishable with death or imprisonment of life. A person accused with an offence punishable with death or imprisonment of life can be released on bail if the person is

a. *Below the age of sixteen years*
b. *A woman*
c. *Sick*
d. *Infirm*

Further, if *at any stage* of investigation it *appears to the Court* that there are *reasonable grounds for believing that the person has not committed a non-bailable offence*, the person *may be released on bail at the discretion of Court*on execution of a bond.

In a case a person is accused with commission or abetment or conspiracy or attempt to commit any offence against state or with offences affecting human body or with offences against property may be released on bail but *the Court may impose conditions* that it deems necessary in order to ensure that the person shall

a. *Attend the Court in accordance with the conditions of the bond executed.*
b. *Not commit any offence similar to the offence of which he is accused or suspected.*

In the case triable by Magistrate, if the *trial of a person accused with a non-bailable offence is not concluded within a period of sixty days*, such *person will be released on bail*. The *condition* for granting the bail is that the *person needs to be in custody during whole period.* If the *bail is not granted* to such a person, the *reason for not granting the bail will be recorded in writing by the Magistrate*. Further, if the *person accused of non bailable offence is*

granted bail because of any of the conditions mentioned above, the *authority granting the bail will have to record the reason in writing.*

Anticipatory Bail

In case a person is of the *apprehension* that *he might be arrested on the accusation of a non-bailable offence*, he can *apply to High Court or Court of Session for bail under Section 438* of CrPC. The *grant of bail* will be *on the discretion of the Court* subject to *certain conditions*, including conditions that the person shall:

a. Make himself available for interrogation by Police Officer as and when required.
b. Not make any inducement, threat or promise to any person so as to deter him from disclosing any material facts to the Court or any police officer.
c. Not leave India without prior permission of the Court.

Procedure

In order to apply for Bail under *Section 437 or Section 438 of CrPC*, the accused is required to fill the Form No. 45given in the First Schedule and apply for bail. After that, it will be the discretion of the Court whether it grants or rejects the application for bail.

Section 162. Statements of Police

Statements to police not to be signed: Use of statements in evidence

No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to 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.

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.

Section 173. Final Report- Concept of a Police Report

The term “report" has been defined to mean “To give an account of, to relate, to tell, to convey or disseminate information, communicate; deliver information; make an announcement; make known; speak about, specify. It is a formal oral or written presentation of facts or a recommendation for action

- The expression “police report" has been defined under the Code of Criminal Procedure as meaning a report forwarded by a Police Officer to a Magistrate under sub section (2) of Section 173
- Simply stated, final report culminates the investigation process in a formal recommendation for action. The report under Section 173 is a report on the results of the investigation made under Chapter XIV, which means an investigation made under Section 155 (2) or Section 156. The 'Police report' which Section 173 contemplates cannot therefore be a report of a case in respect of which no investigation under Chapter XIV has taken place or is possible
- Police Report has been interpreted to mean a police report within the meaning of Section 170
- There are three different kinds of reports to be made by police officers at three different stages of investigation.

  (1) Section 157 requires a preliminary report from the officer in charge of a police station to the Magistrate.

  (2) Section 168 requires reports from a subordinate police officer to the officer in charge of the station. These reports are known as forwarding reports.

  (3) Section 173 requires a final report of the police officer as soon as investigation is completed to the Magistrate. The report under Sub section (2) of Section 173 is called Completion Report also known as the Charge Sheet. Such a report is absolutely necessary. The police charge sheet corresponds to the complaint of a private individual on which criminal proceedings are initiated.

- When the charge sheet is sent, the preliminary stage of investigation and preparation is over. The charge sheet is followed by the Final report. As the name suggests, the Final report refers to that document which records the conclusion arrived at by the Police after the investigation process. Final report is deemed to be final as it signifies the culmination of investigation. Nevertheless Police has a statutory right to reinvestigate the matter when some new information comes to light.

Finality of the Report submitted by Police under section 173 of Code of Criminal procedure has been controversial ever since the Code was enacted. This project analyzed the courses available to the Magistrate after the submission of final report. It has been seen that though the final report is deemed to be final since it signifies the culmination of investigation, nevertheless Police has a statutory right to reinvestigate the matter when some new information comes to light. The Courts have leaned in favor of holding that judicial authorities should not interfere with those rights. However, the Courts have also cautioned that reinvestigation cannot be construed to be a routine affair. At the same time there are a series of judicial pronouncements to the effect that Magistrate is not bound by the final report and he can validly differ from the same. It can be concluded that the Code has tried to strike out a balance between the powers of Police on the one hand and

Criminal Courts on the other in the interest of justice. This balance is a signification of “rule of law" that a healthy democracy strives for.

Sections 211-224 and 464. Charge

As per Wharton's law Lexicon, Charge means to prefer an accusation against someone. To charge a person means to accuse that person of some offence. However, charge is not a mere accusation made by a complainant or an informant. A charge is a formal recognition of concrete accusations by a magistrate or a court based upon a complaint or information against the accused. A charge is drawn up by a court only when the court is satisfied by the prima facie evidence against the accused. The basic idea behind a charge is to make the accused understand what exactly he is accused of so that he can defend himself. A charge gives the accused accurate and precise information about the accusation against him. A charge is written in the language of the court and the fact that the charge is made means that every legal condition required by law to constitute the offence charged is fulfilled in the particular case.

It is a basic principle of law that when a court summons a person to face a charge, the court must be equipped with at least prima facie material to show that the person being charged is guilty of the offences contained in the charge. Thus, while framing a charge, the court must apply its mind to the evidence presented to it and must frame a charge only if it is satisfy that a case exists against the accused. In the case of **State vs Ajit Kumar Saha 1988**, the material on record did not show a prima facie case but the charges were still framed by the magistrate. Since there was no application of mind by the magistrate, the order framing the charges was set aside by the High Court. According to Section 2(b) of Cr P C, when a charge contains more than one heads, the head of charges is also a charge.

Section 211. Contents of a Charge- specifies the contents of a Charge as follows:

(1) Every charge under this Code shall state the offence with which the accused is charged.
(2) If the law that creates the offence gives it any specific name, the offence may be described in the charge by that name only.
(3) If the law that creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.
(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.
(6) The charge shall be written in the language of the court.
(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the court may add it at any time before sentence is passed.
A charge must list the offence with which the person is charged. It must specify the law and the section against which that offence has been done. For example, if a person is charged with

Murder, the charge must specify Section 300 of Indian Penal Code. If the law gives a name to that offence, the charge must also specify that name and if the law does not specify any name for that offence, the charge must specify the detail of the offence from the definition of the offence so that the accused is given a clear idea of it.
In many cases, on offender is given a bigger sentence for subsequent offence. In such cases, the charge must also state the date and place of previous conviction so that a bigger punishment may be given.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.
(b) A is charged under section 326 of the Indian Penal Code (45 of 1860) with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it.
(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definition, of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.
(d) A is charged under section 184 of the Indian Penal Code (45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Time and Place of the offence

Further, as per **section 212**, the charge must also specify the essential facts such as time, place, and person comprising the offence. For example, if a person is charged with Murder, the charge must specify the name of the victim and date and place of the murder. In case of **Shashidhara Kurup vs Union of India 1994**, no particulars of offence were stated in the charge. It was held that the particulars of offence are required to be stated in the charge so that the accused may take appropriate defence. Where this is not done and no opportunity is afforded to the accused to defend his case, the trial will be bad in law for being violating the principles of natural justice.
It is possible that exact dates may not be known and in such cases, the charge must specify information that is reasonably sufficient to give the accused the notice of the matter with which he is charged. In cases of criminal breach of trust, it will be enough to specify gross sum or the dates between which the offence was committed.

Manner of committing the offence

Sometimes, even the time and place do not provide sufficient notice of the offence which a person is charged. In such situations, **Section 213**, mandates that the manner in which the offence was made must also be specified in the charge. It says that when the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that Purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place the charge need not set out the manner in which the theft was effected.
(b) A is accused of cheating B at a given time and place. The charge must be set out the manner in which A cheated B.
(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.
(d) A is accused of obstructing B, a public servant, in the discharge or his public functions at a given time and place. The charge must set out the manner obstructed B in the discharge of his functions.
(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.
(f) A is accused of disobeying a direction of the law with intent to save punishment. The charge must set out the disobedience charged and the law infringed.

Sections 154. First Information Report

A First Information Report is a description of the situation and the act that constitutes a cognizable offence as given to the office in charge of a police station by any person. Such information is signed by the person giving the information. If the information is given orally, it is reduced in writing by the officer in charge, read over to the informant, and then signed by the person. The substance of this information is also entered into a register which is maintained by the officer. This is the first time when an event is brought to the attention of the police. The objective of the FIR is to put the police in motion for investigating the occurrence of an act, which could potentially be a cognizable offence.

An FIR is a mere allegation of the happening of a cognizable offence by any person. It provides a description of an event but it may not necessarily provide complete evidence. No judicial mind has to be applied while writing the FIR. However, upon receipt of an FIR, the police investigate the issue, collect relevant evidence, and if necessary, place the evidence before a magistrate. Based on these preliminary findings of the police, the magistrate then formally prepares a charge, with which the perpetrator is charged.

Thus, an FIR is one path that leads to a Charge. An FIR is vague in terms of the offences but Charge is a precise formulation of the offences committed. An FIR is a description of an event,

while a Charge is a description of the offences committed in that event. An FIR may or may not name an offender but a charge is always against a person. An FIR is always of a cognizable offence, but a charge may also include a non-cognizable offence.

Preventive measures under Code of Criminal Procedure

Section 144. How the public order and tranquility can be maintained as per law?

You may have heard about the section 144 of the law but do you know what this section 144 is? Answer is section 144 of the Criminal Procedure Code (CrPC). The section 144 CrPC is implemented when there is an urgent case of nuisance and for the immediate prevention of the nuisance District Magistrate, Sub-divisional Magistrate or some other magistrate proceeds under this section. There are some other sections of the CrPC which are meant for preventive actions for maintaining law and order and peace in the area. Today, we will discuss about various provisions of the law under CrPC as preventive measure along with section 144 CrPC and how these sections are implemented?

Section 135, 143 & 147. Urgent case of public nuisance

When District magistrate or Sub-divisional magistrate or any other magistrate who is specially empowered thinks that there are sufficient grounds to precede under section 144 of CrPC, magistrate will issue written orders stating facts of the case/circumstances in the manner as:

- Order will be served on the person against whom it is.
- If order cannot be served, it shall be notified by proclamation or published and copy of order shall be stuck up at fittest place.
- Magistrate can restrict any person from certain act or to take certain order for property in his possession.
- If order cannot be served in due time due to emergency, order can be passed ex-parte.
- Order remains in force for a maximum period of two months. Only state government, notification, can extend duration up to six months.
- Magistrate by its own motion or on some request can alter the order.
- Magistrate can prohibit carrying arms in procession or mass drill or mass training with arms.

Section 106. Security Proceedings under Code of Criminal Procedure

Security for keeping the peace on conviction.

When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in Sub-Section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit. The offences referred to in Sub-Section (1) are- any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence, punishable under section 153A or section 153B or section 154 thereof; any offence which consists of, or includes, assault or using criminal force or

committing mischief; any offence of criminal intimidation; any other offence which caused, or was intended or known to be likely to cause, a breach of the peace. If the conviction is set aside on appeal or otherwise, the bond so executed prior shall become void or nullified. An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

Section 107. Security for keeping the peace in other cases

When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.
Section 109 – Security for good behaviour from suspected persons
Section 110 – Security for good behaviour from habitual offenders
Section 111 – Order to be made
Section 112 – Procedure in respect of person present in Court
Section 113 – Summons or warrant in case of person not so present
Section 114 – Copy of order to accompany summons or warrant
Section 115 – Power to dispense with personal attendance
Section 116 – Inquiry as to truth of information.
When an order under section 111 has been read or explained under section 112 to a person in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases. After the commencement, and before the completion, of the inquiry under Sub-Section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the Commission of any offence or for the public safety, may, for reason to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:
Provided that-

- no person against whom proceedings are not being taken over under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

- the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.
- For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.
- Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.
- The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:
- Provided that- where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

Where any direction is made under Sub-Section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

Section 117 – Order to give security
Section 118 – Discharge of person informed against
Section 119 – Commencement of period for which security is required
Section 120 – Contents of bond
Section 121 – Power to reject sureties
Section 122 – Imprisonment in default of security
Section 123 – Power to release persons imprisoned for failing to give security
Section 124 – Security for unexpired period of bond.

UNIT-III: COURTS AND TRIALS

The public and victims at large believe and depend on the courts for justice, the major commitment of the court are dispense the justice.

Section 2, 6- 25 A. 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:

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

Section 9. Court of Session

(1) The State Government shall establish a Court of Session for every session's 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 session's 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.

Section 10. Subordination of Assistant Sessions Judges

(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.

Section 11. 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:

1*[Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.]

(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.

Section 12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, 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.

Section 13. 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 1*[of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, 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.

2* [(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.]- District, state and Union Jurisdiction courts, and their powers.

Trail

The criminal trial is when two parties, a prosecutor representing the government and a defense attorney representing the accused, meet in court before a judge or jury in order to present evidence to support their case. In a case tried before a jury, the jury must decide **what** happened on the basis of the evidence presented. The judge is present to inform the jury of the law that applies to the case. This occurs at the end of the trial, but the judge may also rule on questions of law during the trial.

Section 304. Fair Trial

The right to a fair trial is a norm of international human rights law and also adopted by many countries in their procedural law. Countries like U.S.A., Canada, U.K., and India have adopted this norm and it is enshrined in their Constitution. The right to a fair trial has been defined in numerous international instruments. The major features of fair criminal trial are preserved in Universal Declaration of Human Rights, 1948.

The concept of fair trial is based on the basic ideology that State and its agencies have the duty to bring the offenders before the law. In their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of State behaviour and have recourse to extra-legal methods for the sake of detection of crime and even criminals. For how can they insist on good behaviour from other when their own behaviour is blameworthy, unjust and illegal? Therefore the procedure adopted by the State must be just, fair and reasonable. The Indian courts have recognised that the primary object of criminal procedure is to ensure a fair trial of accused persons. Human life should be valued and a person accused of any offence should not be punished unless he has been given a fair trial and his guilt has been proved in such trial.

Case

In Zahira Habibullah Sheikh and ors v. State of Gujarat and ors.
The Supreme Court of India observed "each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated."

The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, most importantly of the right to liberty and security of person.

Principal features of Fair Trial

I. Adversary trial system:
The system adopted by the Criminal Procedure Code, 1973 is the adversary system based on the accusatorial method. In adversarial system responsibility for the production of evidence is placed on the prosecution with the judge acting as a neutral referee. This system of criminal trial assumes that the state, on one hand, by using its investigative agencies and government counsels will prosecute the wrongdoer who, on the other hand, will also take recourse of best counsels to challenge and counter the evidences of the prosecution.
Supreme Court has observed "if a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest."

In Himanshu Singh Sabharwa v. State of M.P. and Ors
The apex court observed that if fair trial envisaged under the Code is not imparted to the parties and court has reasons to believe that prosecuting agency or prosecutor is not acting in the requisite manner the court can exercise its power under section 311 of the Code or under section 165 of the Indian Evidence Act, 1872 to call in for the material witness and procure the relevant documents so as to sub serve the cause of justice.

II. Presumption of Innocence:
Every criminal trial begins with the presumption of innocence in favour of the accused. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. This presumption is seen to flow from the Latin legal principle ei incumbit probatio qui dicit, non qui negat, that is, the burden of proof rests on who asserts, not on who denies.

Case
In State of U.P. v. Naresh and Ors
The Supreme Court observed "every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right subject to the statutory exceptions. The said principle forms the basis of criminal jurisprudence in India."

In Kali Ram v. State of H.P.
The Supreme Court observed "it is no doubt that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse; however is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot be felt in a civilized society." It is the duty of the prosecutor and defence counsel as well as all public authorities involved in a case to maintain the presumption of innocence by refraining from pre-judging the outcome of the trial.

III. Independent, impartial and competent judges:
The basic principle of the right to a fair trial is that proceedings in any criminal case are to be conducted by a competent, independent and impartial court. In a criminal trial, as the state is the prosecuting party and the police is also an agency of the state, it is important that the judiciary is unchained of all suspicion of executive influence and control, direct or indirect. The whole burden of fair and impartial trial thus rests on the shoulders of the judiciary in India.

The primary principle is that no man shall be judge in his own cause. Section 479 of the Code, prohibits trial of a case by a judge or magistrate in which he is a party or otherwise personally interested. This disqualification can be removed by obtaining the permission of the appellate court.

Case
In Shyam Singh v. State of Rajasthan
The court observed that the question is not whether a bias has actually affected the judgment. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case.
In this regard section 6 of the Code is relevant which separates courts of Executive Magistrates from the courts of Judicial Magistrates. Article 50 of the Indian Constitution also imposes similar duty on the state to take steps to separate the judiciary from the executive.

IV. Autrefois Acquit and Autrefois Convict:

According to this doctrine, if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts for any other offence. This doctrine has been substantially incorporated in the article 20(2) of the Constitution and is also embodied in section 300 of the Cr. P.C.
Case
In Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao
The Supreme Court observed that Section 300(1) of CrPC. is wider than Article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', Section 300(1) of CrPC. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. In the present case, although the offences are different but the facts are the same. Hence, Section 300(1) of CrPC. applies. Consequently, the prosecution under Section 420, IPC was barred by Section 300(1) of CrPC The impugned judgment of the High Court was set aside.

Pre-Trial Rights

The Cr. P.C. entitles an accused of certain rights during the course of any investigation, enquiry or trial of an offence with which he is charged.

I. Knowledge of the accusation:
Fair trial requires that the accused person is given adequate opportunity to defend himself. But this opportunity will have no meaning if the accused person is not informed of the accusation against him. The Code therefore provides in section 228, 240, 246, 251 in plain words that when an accused person is brought before the court for trial, the particulars of the offence of which he is accused shall be stated to him.
In case of serious offences, the court is required to frame in writing a formal charge and then read and explain the charge to the accused person. A charge is not an accusation in abstract, but a concrete accusation of an offence alleged to have been committed by a person. The right to have precise and specific accusation is contained in section 211, Cr. P.C.

II. Right to open trial:
Fair trial also requires public hearing in an open court. The right to a public hearing means that the hearing should as a rule is conducted orally and publicly, without a specific request by the parties to that effect. A judgment is considered to have been made public either when it was orally pronounced in court or when it was published, or when it was made public by a combination of those methods.
Section 327 of the Code makes provision for open courts for public hearing but it also gives discretion to the presiding judge or magistrate that if he thinks fit, he can deny the access of the public generally or any particular person to the court during disclosure of indecent matter or when there is likelihood of a disturbance or for any other reasonable cause.

Case
In the case of **Naresh Sridhar Mirajkar v. State of Maharashtra**
The apex court observed that the right to open trial must not be denied except in exceptional circumstances. High court has inherent jurisdiction to hold trials or part of a trial in camera or to prohibit publication of a part of its proceedings.

In **State of Punjab v. Gurmit**
The court held that the undue publicity is evidently harmful to the unfortunate women victims of rape and such other sexual offences. Such publicity would mar their future in many ways and may make their life miserable in society. Section 327(2) provide that the inquiry into and trial of rape or an offence under Section 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code shall be conducted in camera.

III. Aid of counsel:
The requirement of fair trial involves two things: a) an opportunity to the accused to secure a counsel of his own choice, and b) the duty of the state to provide a counsel to the accused in certain cases. The Law Commission of India in its 14th Report has mentioned that free legal aid to persons of limited means is a service which a Welfare State owes to it citizens.

In India, right to counsel is recognised as fundamental right of an arrested person under article 22(1) which provides, inter alia, no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Sections 303 and 304 of the Code are manifestation of this constitutional mandate.

Case
In Khatri v. State of Bihar
The court held that the accused is entitled to free legal services not only at the stage of trial but also when first produced before the Magistrate and also when remanded.

Further, article 39-A was also inserted in the Constitution as per 42nd Amendment, 1976, which requires that the state should pass suitable legislations for promoting and providing free legal aid. To fulfill this Parliament enacted Legal Services Authorities Act, 1987. Section 12 of the Act provides legal services to the persons specified in it.

In Suk Das and Ors. v. Union Territory of Arunachal Pradesh

The court strengthens the need for legal aid and held that "free legal assistance at state cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty. The exercise of this fundamental right is not conditional upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him. On the other hand the Magistrate or the Sessions Judge before whom the accused appears is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty is entitled to obtain free legal services at the cost of the State.

In Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi
The appellant an illiterate foreign national was tried, convicted and sentenced to death by the trial court without assignment of counsel for his defence. Such a result is confirmed by the High Court. The convict, is charged, convicted and sentenced under Sections 302/307 of Indian Penal Code and also under Section 3 of The Explosive Substances Act, 1908. Fifty six witnesses and investigating officer were examined without appellant having a counsel and none were cross-examined by appellant. Only one witness cross-examined to complete the formality.
Therefore it was held that every person has a right to have a fair trial. A person accused of serious charges must not be denied of this valuable right. Appellant was provided with legal aid/counsel at the last stage which amounted to denial of effective and substantial aid. Hence appellant's conviction and sentence was set aside. Section 304 does not confer any right upon the accused to have a pleader of his own choice for his defence at State expenses. If, however. He objects to the lawyer assigned to him, he must be left to defend himself at his own expense.

IV. Expeditious trial:
Speedy trial is necessary to gain the confidence of the public in judiciary. Delayed justice leads to unnecessary harassment. The concept of speedy trial is an integral part of article 21 of the Constitution. The right to speedy trial begins with actual restraint imposed by arrest and

consequent incarceration, and continues at all stages namely, the stage of investigation, inquiry, trial, appeal and revision.
Section 309(1) provides "in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded."

Case
In Hussainara Khatoon (IV) v. State of Bihar
The Supreme Court declared that speedy trial is an essential ingredient of 'reasonable just and fair' procedure guaranteed by article 21 and it is the constitutional obligation of the state to set up such a procedure as would ensure speedy trial to the accused. The state cannot avoid its constitutional obligation by pleading financial or administrative inadequacy.

The Supreme Court in **A.R. Antulay v. R.S. Nayak** issued guidelines for the time period during which different classes of cases are to be concluded. It was held "it is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc.- what is called systematic delay." The aforesaid decision came up for consideration in the case of P. Ramachandra Rao and was upheld and reaffirmed.

In **Ranjan Dwivedi vs C.B.I Tr.Director General**
The accused was tried for the assassination of Shri. L.N. Mishra, the then Union Railway Minister. The trial was pending for the past 37 years. In view of delay in completion of trial for more than 37 years from date of the trial the Petitioners presented Writ Petitions praying for quashing of the charges and trial. But it was held that the trial cannot be terminated merely on the ground of delay without considering the reasons thereof. Hence the petition was dismissed.

V. Protection against illegal arrest:
Section 50 provides that any person arrested without warrant shall immediately be informed of the grounds of his arrest. The duty of the police when they arrest without warrant is to be quick to see the possibility of crime, but they ought to be anxious to avoid mistaking the innocent for the guilty. The burden is on the police officer to satisfy the court before which the arrest is challenged that he had reasonable grounds of suspicion.

Case
In Pranab Chatterjee v. State of Bihar
The court held that Section 50 is mandatory. If particulars of offence are not communicated to an arrested person, his arrest and detention are illegal. The grounds can be communicated orally or even impliedly by conduct.

Section 57 of Cr.P.C. and Article 22(2) of Constitution provides that a person arrested must be produced before a Judicial Magistrate within 24 hours of arrest. In State of Punjab v. Ajaib Singh[xxii] the court held that arrest without warrant call for greater protection and production within 24 hours ensures the immediate application of judicial mind to the legality of the arrest. The decisions of the Supreme Court in **Joginder Kumar v. State of Uttar Pradesh** and **D.K. Basu v. State of West Bengal**, were enacted in Section 50-A making it obligatory on the part of the police officer to inform the friend or relative of the arrested person about his arrest and also to make an entry in the register maintained by the police. This was done to ensure transparency and accountability in arrest. Sec.160 of Cr. P.C provides that investigation by any police officer of any male below 15 years or any woman can be made only at the place of their residence.

Section 46(4) provides that no woman shall be arrested after sunset and before sunrise, save in exceptional circumstances and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

VI. Proceedings in the presence of the accused:

For the conduct of a fair trial, it is necessary that all proceedings related to the case should take place in the presence of the accused or his counsel. The underlying principle behind this is that in a criminal trial the court should not proceed ex parte against the accused person. It is also necessary for the reason that it facilitates the accused to understand properly the prosecution case and to know the witnesses against him so that he can prepare his defence.

The Code does not explicitly provide for mandatory presence of the accused in the trial as section 317 provides that a magistrate may dispense with the attendance and proceed with the trial if personal presence of the accused is not necessary in the interests of justice or that the accused persistently disturbs the proceedings in court. The courts should insist upon the appearance of the accused only when it is in his interest to appear or when the court feels that his presence is necessary for effective disposal of the case. Court should see that undue harassment is not caused to the accused appearing before them. Section 273 of the Code provides that all evidence taken in the course of the trial shall be taken in the presence of the accused or if the personal attendance of the accused is dispensed with then the evidence shall be taken in the presence of his pleader.

For fair trial, the accused person has to be given full opportunity to defend himself. This is possible only when he should be supplied with the copies of the charge sheet, all necessary documents pertaining to the investigation and the statements of the witnesses called by the police during investigation. Section 238 makes it obligatory on the Magistrate to supply copies of these documents to the accused free of cost.

Article 14 of the Constitution ensures that the parties be equally treated with respect to the introduction of evidences by means of interrogation of witnesses. The prosecution must inform the defence of the witnesses it intends to call at trial within a reasonable time prior to the trial so

that the defendant may have sufficient time to prepare his/her defence. In fairness to the accused, he or his counsel must be given full opportunity to cross-examine the prosecution witness.

In Mohd. Hussain @ Julfikar Ali Vs. The State (Govt. of NCT) Delhi
It was held that every person has a right to have a fair trial. A person accused of serious charges must not be denied of this valuable right. Appellant was not provided an opportunity to cross examine the fifty six witnesses. Only one witness was cross-examined to complete the formality. Hence appellant's conviction and sentence was set aside.

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

VII. Right to bail:

By virtue of Section 436 the accused can claim bail as a matter of right in cases which have been shown as bailable offences in the First schedule to the Code. Bail is basically release from restraint, more particularly, release from custody of the police. An order of bail gives back to the accused freedom of his movement on condition that he will appear to take his trial. If the offence is bailable, bail will be granted without more ado. But bail under Section 389(1) after conviction is not a matter of right whether the offence is bailable or non-bailable.[xxvii] If no charge -sheet is filed before the expiry of 60/90 days as the case may be; the accused in custody has a right to be released on bail. In non-bailable offences, the Magistrate has the power to release on bail without notice to the other side if charge sheet is not filed within a period of sixty days. The provision of bail to women, sick and old age persons is given priority subject to the nature of the offence.

VIII. Prohibition on double jeopardy:

The concept of double jeopardy is based on the doctrine of '**autrefois acquit' and 'autrefois**' convict' which mean that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts for any other offence. This clause embodies the common law rule of **nemo debet vis vexari** which means that no man should be put twice in peril for the same offence.
Section 300 of the Code provides that persons once convicted or acquitted not to be tried for the same offence or on the same facts for any other offence. Plea of double jeopardy is not applicable in case the proceedings for which the accused is being tried are distinct and separate from the offence for which the accused has already been tried and convicted.

Case
In **Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao**
The Supreme Court differentiated between Section 300(1) of Cr. P.C. and article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that 'no one can be prosecuted

and punished for the same offence more than once', Section 300(1) of Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. Therefore the second prosecution would be barred by Section 300(1) of Cr.P.C.

In S.A. Venkataraman v. Union of India
The appellant was dismissed from service as a result of an inquiry under the Public Servants (Inquiries) Act, 1960, after the proceedings were before the Enquiry Commissioner. Thereafter, he was prosecuted before the Court for having committed offences under the Indian Penal Code, and the Prevention of Corruption Act. The Supreme Court held that the proceeding taken before the Enquiry Commissioner did not amount to a prosecution for an offence. It was in the nature of a fact finding to advise the Government for disciplinary action against the appellant. It cannot be said that the person has been prosecuted.

IX. Right against self-incrimination:

Clause (3) of Article 20 provides: "No person accused of any offence shall be compelled to be a witness against himself." This Clause is based on the maxim **nemo tenetur prodere accussare seipsum**, which means that "no man is bound to accuse himself.

Case
In State of Bombay vs. Kathi Kalu
The Supreme Court held that "to be a witness" is not equivalent to "furnishing evidence". Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in Court which may throw a light on any of the points in the controversy, but which do not contain any statement of the accused based on his personal knowledge. Compulsion means duress which includes threatening, beating or imprisoning the wife, parent or child of a person. Thus where the accused makes a confession without any inducement, threat or promise article 20(3) does not apply.

The Apex Court in **Selvi v. State of Karnataka** drew following conclusions:
The taking and retention of DNA samples which are in the nature of physical evidence, does not face constitutional hurdles in the Indian context.

Subjecting person to Narco- analysis, Polygraph and Brain fingerprinting tests involuntarily, amounts to forcible interference with person's mental processes, and hence violates the right of privacy as well as Article 20(3).

A person administered the narco-analysis technique is encouraged to speak in a drug-induced State and there is no reason why such an act should be treated any differently from verbal answers during an ordinary interrogation.

In **Dinesh Dalmia v. State of Madras**, the court held that the scientific tests resorted to by the investigating does not amount to testimonial compulsion. Hence, the petition was dismissed.

Post-Trial Rights

I. Lawful punishment:
Article 20(1) explains that a person can be convicted of an offence only if that act is made punishable by a law in force. It gives constitutional recognition to the rule that no one can be convicted except for the violation of a law in force.

Case
In Om Prakash v. State of Uttar Pradesh, offering bribe was not an offence in 1948. Section 3 of the Criminal Law (Amendment) Act, 1952 inserted Section 165A in the Indian Penal Code, 1860, declaring offering bribe as punishable. It was held that the accused could not be punished under Section 165A for offering bribe in 1948. Article 20(1) provides that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It prohibits the enhancement of punishment for an offence retrospectively. But article 20(1) has no application to cases of preventive detention.

II. Right to human treatment:

A prisoner does not become a non-person. Prison deprives liberty. Even while doing this, prison system must aim at reformation. In prison, treatment must be geared to psychic healing, release of stress, restoration of self-respect apart from training to adapt oneself to the life outside. Every prisoner has the right to a clean and sanitized environment in the jail, right to be medically examined by the medical officer, right to visit and access by family members, etc. Recognizing the right to medical facilities, the National Human Rights Commission recommended the award Rs. 1 Lakh to be paid as compensation by the Govt. of Maharashtra to the dependents of an under trial prisoner who died in the Nasik Road Prison due to lack of medical treatment.

III. Right to file appeal:

Section 389(1) empowers the appellate court to suspend execution of sentence, or when the convicted person I in confinement, to grant bail pending any appeal to it. Court need not give notice to the public prosecutor before suspending sentence or releasing on bail. Existence of an appeal is a condition precedent for granting bail. Bail to a convicted person is not a matter of right irrespective of whether the offence is bailable or non-bailable and should be allowed only when after reading the judgement and hearing the accused it is considered justified.

IV. Proper execution of sentence:

The hanging of Afzal Guru was criticised by human rights activists, legal experts all over the country. In carrying out Afzal Guru's death sentence, the government deliberately ignored the view of the Supreme Court and courts across the world that hanging a person after holding him in custody for years is inhuman. Mohammad Afzal Guru was convicted by Indian court for the December 2001 attack on the Indian Parliament, and sentenced to death in 2003 and his appeal was rejected by the Supreme Court of India in 2005. The sentence was scheduled to be carried out on 20 October 2006, but Guru was given a stay of execution after protests in Jammu and

Kashmir and remained on death row. On 3 February 2013, his mercy petition was rejected by the President of India, Pranab Mukherjee. He was secretly hanged at Delhi's Tihar Jail around on 9 February 2013.

The judge is not to draw any inferences against the defendant from the fact that he has been charged with a crime and is present in court and represented by a counsel. He must decide the case solely on the evidence presented during the trial. **State of U.P. v. Naresh and Ors** In this case it was held that the law in this regard is well settled that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable.

Types of Trials: Summary, Summon, and warrant trials

Section. 260. **Summary Trial**

1. A kind of fast track proceeding where a case is resolved in one sitting.
2. Meant for petty offenses, to reduce the burden of court.

Section. 260 - When a case involving the following offenses comes to CJM, MM, and JMFC for hearing, they have the discretionary power to decide whether they want to try the case summarily or not. There are 9 such offences - any offence that does not have death, life imprisonment or imprisonment of more than 2 yrs as punishment, **theft, lurking house trespass, receiving stolen property, assisting in concealment of stolen property, abetment of the offences covered under this section, attempt of these offences**. If at any point in while trying the matter in this manner, if the court thinks that it is undesirable to try the case summarily, it shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided in this code (i.e. as a summons trial or warrant trial).

Section 261 - High Court may give power to Judicial Magistrate Second class to try offences involving imprisonment of less than 6 months summarily.

Section 262 - Sentence of imprisonment of more than 3 months cannot be passed in a summary trial and the procedure adopted in a summary trial will be same as the procedure adopted in a Summons case.

Section 263 - The judge must record the following particulars in the prescribed format - serial number of the case, date of offence, date of complaint, name of complainant, name, age, address, parentage of accused, offence complained and offence proved, plea of the accused and his examination, findings, sentence, and date of termination of the proceeding.

Section 264 - If the accused does not plead guilty, the judge must record the substance of the evidence and give reasons for the judgment.

Section 265 - Every such record and judgment shall be in the language of the court.

In **Ram Lochan vs State, 1978,** it was held that although trying a govt. servant summarily is legal, it should not be done so because upon conviction, govt. servant may lose his job, which is a serious loss.

Appeal and Revision in Summary Trials

No appeal lies if only a sentence of fine not exceeding 200/- is awarded. A revision application would lie to the High Court in such a case.

Summons Case and Warrant Case

As per **Section 2(w)**, "summons-case" means a case relating to an offence, and not being a warrant-case and as per **Section 2 (x)**, "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
CrPC classifies an offence as either cognizable or non-cognizable, and a trial procedure as summons case or warrant case. Thus, the terms summons case and warrant cases are in reference to the procedure adopted for the trial of the case. Thus, the difference between the two can be seen from the point of view of their trial procedures as highlighted below

Table 3.1 Summon Case VS Warrant Case

Summons Case	Warrant Case
Cr P C prescribes only one procedure for all summons cases, whether instituted upon a police report or otherwise.	Cr PC prescribes two procedures for the trial of a warrant case my magistrate - one for case instituted upon a police report and one for case instituted otherwise than on a police report.
No charge needs to be framed only the particulars of the offence need to be conveyed to the accused.	A charge needs to be framed against the accused.
As per S. 252, if the accused pleads guilty, the magistrate must record the plea of the accused and may, in his discretion, convict him on such plea.	As per S. 241, After the charge is framed, the accused may plead guilty and the magistrate may convict him on his discretion.
Accused my plead guilty by post without appearing before the magistrate.	Accused must appear personally.
The accused may be acquitted, if the complainant is absent or if the complainant dies.	Magistrate can discharge the accused if complainant is absent, or no charge is framed, or if the offence is compoundable and non cognizable.
The complainant may, with the permission of the court, withdraw the complaint against the accused.	The complainant may, with the permission of the court, withdraw the remaining charges against an accused, if he is charged with several offences and convicted on one or more of them.
When a warrant case is tried as a summons case and if the accused is acquitted under S.	When a summons case is tried as a warrant case and if the accused is discharged under S 245, the

255, the acquittal will only amount to discharge.	discharge will amount to acquittal.
Trial of a warrant case as a summons case it is a serious irregularity and the trial is vitiated if the accused has been prejudiced.	Trial of a summons case as a warrant case is an irregularity which is curable under Section 465.
A summons case cannot have charges that require a warrant case.	A warrant case may contain charges that reflect a summons case.
Accused gets only one opportunity.	Accused may get more than one opportunity to cross-examine the prosecution witness.
	A charge under a warrant case cannot be split up into its constituents for trial under summons case.
No such power to the magistrate in summons case.	After convicting the accused, the magistrate may take evidence regarding previous conviction not admitted by the accused.
All cases which are not punishable by death, imprisonment for life, or for more than two years are summons cases.	All cases which are punishable by death, imprisonment for life, or for more than two years are warrant cases.
Conversion As per **Section 259**, a summons case can be converted into a warrant case if the case relates to an offence that entails more than 6 months of imprisonment as punishment and the judge feels that in the interest of justice it the case should be tried as a warrant case.	A warrant case cannot be converted into a summons case.

It is important to note that the question whether a summons or a warrant should be issued in the case is not related to whether the case is a summons case or a warrant case.

Section 320. **Compoundable and Non Compoundable Offences**

Some offences largely affect only the victim and no considerable harm is considered to be done to the society. In such offences, if the offender and victim compromise, there is no need to waste court's time in conducting a trial. The process of reaching a compromise is called Compounding. Conceptually, such offences, in which a compromise can be done and a trial can be avoided, are called Compoundable offence. Rests of the offences are non-compoundable.

Technically, offences classified as Compoundable by Section 320 of Cr P C are compoundable. Section 320 specifies two kinds of Compoundable offences - one where permission of court is required before compounding can be done for example, voluntarily causing grievous hurt, Theft, criminal breach of trust, assault on a woman with intention to outrage her modesty, etc. and one where permission of the court is not required for example, causing hurt, adultery, defamation, etc. As per S. 320(3), if the abetment of an offence is an offence and if the offence is compoundable then abetment is also compoundable.

Only the person, who is specified in the classification tables in Section 320, has the right to compound the offence. The person is usually the victim. The offender cannot demand compounding as a right. However, when an offender has been committed to trial or when he has been convicted and his appeal is pending, compounding can only be done with the leave of the court to which he is committed or to which the trial is pending. If an offender is liable for enhanced punishment or a different punishment on account of a previous conviction, compounding cannot be done. High Court and Court of Session may, under their power of revision in Section 401, can allow any person to compound any compoundable offence.
When an offence is compounded, it is equivalent to an acquittal.

Table 3.2 Compoundable Offence VS Non Compoundable Offence

Compoundable Offence	Non Compoundable Offence
Offences classified as compoundable by S. 320 of CrPC	Rest of the offences
Offence mostly affects a private party.	Private party as well as society both are considerably affected by the offence.
The victim and the offender may reach compromise with or without the permission of the court depending on the offence.	No compromise is allowed. Even court does not have the power to compound the offence.
Upon compromise, the offender is acquitted without any trial.	Full trial is held and acquittal or conviction is given as per the evidence.

In **Bhima Singh vs State of UP, AIR 1974, SC** held that when an offence is compoundable with the permission of the court, such permission may be granted by SC while an appeal is made against the conviction provided the parties have settled the matter amicably.

In **Ram Lal vs State of J&K, 1999, SC** held that when an offence is declared non-compoundable by law, it cannot be compounded even with the permission of the court. However, the court may take the compromise into account while delivering judgment.

The case of **B S Joshi vs State of Haryana, AIR 2003** is interesting in this regard. The case was about the matter related to Section 498A, which is non-compoundable offence. In this case, the parties reached a compromise but the High Court refused to quash the FIR, on the ground that the offence is non-compoundable.

However, SC held that in the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code, such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power

should be exercised. It further observed that in this case, the parties were not asking for compounding the offence but for quashing the FIR. It observed that since because of the amicable settlement, there is no chance of conviction and in such a case the court has the power to quash the proceeding.

Table 3.3 Information and Complaint

Information	Complaint
No legal definition. It is used in its regular English meaning.	As per **Section 2(d)**, a complaint means any allegation made orally or in writing to a magistrate, with a view to his taking action under this code (CrPC), that some person, whether known or unknown, has committed an offence, but does not include a police report.
No action from the magistrate is expected.	The purpose of complaint is that the magistrate takes action on it and provides relief.
No cognizance is taken.	Magistrate takes cognizance of the offence as per Section 190.
It may include information about commission of offences, apprehension about breach of peace, and presence of absconder and suspected persons to police officers or magistrate. Thus, information may not necessarily about an offence.	It is always about commission of an offence.

Table 3.4 Sufficient grounds for commitment and Sufficient grounds for conviction

Sufficient Grounds for Commitment	Sufficient Grounds for Conviction
When a magistrate takes cognizance of an offence under Section 190 (upon receipt of a complaint or otherwise), he examines the complaint in accordance with Section 200 by examining the facts and the witnesses. If he finds that the complaint is with merits, the case is deemed committed for trial and the magistrate issues the process under Section 204. If the offence is exclusively triable by Court of Session, the magistrate commits the case to Court of Session under Section 209.	Upon holding the trial, if the court is satisfied with the evidence provided by the prosecute that the accused is guilty of the alleged offence, he convicts the offender.
At this stage it is not considered whether the grounds are sufficient for conviction.	The evidence must prove the guilt of the accused without any doubt.

Table 3.5 Discharge and Acquittal

Discharge	Acquittal- Section
Session Trial As per **Section 227**, if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.	**Session Trial** If after evaluating the evidence given by the prosecute, the judge considers that there is no evidence that the accused has committed the offence, the judge acquits the offender under **Section 232**. However, if the offender is not acquitted under Section 232, he is permitted to give his defense and evidence. After hearing the arguments of both the parties, the court may acquit of convict the person under **Section 235**.
Warrant Trial By Magistrate As per **Section 239**, if, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing	**Warrant Trial By Magistrate** As per Section 248, if, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.
Discharge does not mean that the accused has not committed the offence. It just means that there is not enough evidence to proceed with the trial.	Acquittal means that the accused has been held innocent.
If further evidence is gathered later on, the accused may be tried again.	The accused cannot be tried again for the same offence once he has been acquitted.

Table 3.6 Cognizable offence and Non-cognizable offence

Cognizable offence	Non Cognizable offence
Defined in Section 2(c) - "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. Examples - Murder, Dowry death, grievous hurt, theft.	Defined in Section 2(l) - "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant. Example - keeping a lottery office, voluntarily causing hurt, dishonest misappropriation of property.
Police has to record information about a cognizable offence in writing as per Section 154.	As per Section 155, Police has to enter information in register prescribed for it and refer the informant to a magistrate.
Police can start investigation without the order of a magistrate.	Police officer cannot investigate the case without the order of a magistrate.
In general, cognizable offences are of serious nature which involves imprisonment of more than three years. However, there is no such precise rule. To be cognizable, an offence must be declared so by the law defining that offence. Several offences which carry less prison term such as rioting (2 yrs) have been declared cognizable, while several with bigger prison term such as False Evidence (7 yrs) or Rape by a man with his own wife of not less than 12 yrs have been declared non-cognizable.	

Section 154. First Information Report

The name FIR is given to the information given by any person about a cognizable offence and recorded by the police in accordance with Section 154. As per this section, 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.

SC in the case of **State of Bombay vs Rusy Mistry, AIR 1960,** defined FIR as so - A 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.

Thus, FIR is nothing but information of the nature of a complaint or accusation about a cognizable offence given by any person to the police so that the police can start investigation. When a person reports any information about a cognizable offence to the police, the police is bound to register a case and proceed with investigation. However, for police to investigate the matter, the offence must be a cognizable offence. The police is not allowed to investigate a non-cognizable offence without an order from a magistrate. So, once the duty officer is certain that the offence alleged to have been committed is a cognizable offence, he directs the complainant to put his statement in writing. In the presence of the complainant, the duty officer shall complete all the columns in the FIR register with the information given by the complainant. He shall then read out all the contents of the FIR registered to the complainant. Once the complainant is certain that all the details have been correctly written, he should sign the FIR.

FIR merely contains the facts of the offence as known by the informant. The FIR is a statement by the complainant of an alleged offence. The informant is not required to prove his allegations in any manner at the police station. It is the job of the police to ascertain facts, verify details and substantiate the charges or otherwise.

However, the facts must not be vague. The facts must divulge at least some concrete information about the offence committed. In case of **Tapinder Singh vs State, 1972**, SC held that when a telephone message did not disclose the names of the accused nor did it disclose the commission of a cognizable offence, it cannot be called a FIR.

In case of **State of UP vs R K Shrivastava, 1989**, SC held that if the allegations made in an FIR do not constitute a cognizable offence, the criminal proceeding instituted on the basis of the FIR should be quashed.

Sometimes multiple persons may report the same incident and in such situation the police must use commonsense and record one statement as FIR. Usually, the statement that contains enough information to allow the police to proceed with investigation is recorded as FIR.

Evidentiary Value of FIR

A FIR is not substantive evidence that, it is not evidence of the facts which it mentions. However, it is very important since it conveys the earliest information about the occurrence of an offence and it can be used to corroborate the information under Section 157 of Indian Evidence Act or to contradict him under Section 145 of Indian Evidence Act, if the informant is called as a witness in a trial. It is considered that FIR has a better corroborative value if it is recorded before there is time and opportunity to embellish or before the memory of the information becomes hazy. There must be a reasonable cause for the delay. For example, in case of **Harpal Singh vs State of HP, 1981,** involving rape, the FIR was registered after 10 days. It was held that the delay was reasonable because it involved considerable matter of honor for the family and that required time for the family to decide whether to take the matter to court or not. As FIR can also be used in cross examination of the informant. However, if the FIR is made by the accused himself, it cannot be used against him because of Section 25 of Evidence act which forbids any confession made to the police to be used against the accused.

Section 353 Judgement of Criminal Cases

After hearing both the parties the Judge give a judgment in the case. The judgement in every trial in any criminal court of its own jurisdiction shall be pronounced in the open court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders.

➢ **Section 353 of the cr. procedure code-1973 provides:-**The judgment in every trial in any criminal court in its own jurisdiction shall be pronounced in open court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. Case **Anthony v/s State-1993.** It was also held in a case of **Yelchuri Manohar v/s State of A.P-2005**, that electronic media cannot provide any guiding factors.

➢ **Language and contents of Judgment: -** That every judgment shall be written in the language of the Court. It may also contain the point or points for determination, the decision thereon and the reasons for the decision, as provided in **sec. 354** of the code. Case of **Ram Bali v/s State of U.P. -2004**. The language and the contents of the judgment must b self-contained and must also show that the court has applied its mind to the facts and the evidence, as held in case of **Niranjan V/s State -1978**. **Failure to signing** of judgment at the time of pronouncing it is only a procedural irregularity curable as per instructions provided in the code.

➢ **Judgment of Metropolitan Magistrate:** - That instead of recording a judgment in the manner provided a metropolitan magistrate shall record the serial number of the case, the date of commission of the offence along-with the name of the complainant. The name of the accused person his parentage and residence mentioning the plea and examination of accused. The date of final order may also be recorded as provisions laid down in **sec.355**.

➢ **Order for notifying address of previously convicted offender**: - **Sec. 356** of the code provides that, when any having been convicted by a court in India of an offence punishable. If such conviction is set aside on appeal or otherwise such order shall become void. State Govt., can make rules to carry out the provisions relating to the notification of residence.

➢ **Order to pay compensation**:-The quantum of compensation is to be determined by taking into consideration the nature of the crime, injury suffered and the capacity of the convict to pay in case of **Manish Jalan v/s State of Karnatka-2007.** These are the provisions of the **section 357.**

➢ **Scheme for compensation to victim:-**In every state with the coordination with the central Govt., shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation **under sec.357A**.

➢ **Compensation to persons groundlessly arrested: - Sec. 358** provides that whenever any person causes a police officer to arrest another person if it appears to the Magistrate by whom the

case is heard that there was no sufficient ground of causing such arrest. The Magistrate may award such compensation not exceeding 1000/- rupees as held in case **of Parmod Kumar v/s Golekha1986.**

➢ **Order to pay costs in non-cognizable cases: - Sec.359** says that whenever any complaint of a non-cognizable offence is made to a court, the court if it convicts the accused can order to pay the penalty along-with cost incurred by the complainant and in case of default of payment the accused can sentence simple imprisonment for a period not exceeding 30 days.

➢ **Order to release on probation of good conduct after admonition:-Sec.360** says that this section is a piece of beneficent legislation. It applies only to first offenders. It enables the court under certain circumstances to release the accused who has been convicted on probation of good conduct as in a case of **Ved Parkash v/s State of Haryana-1981.**

➢ **Special reasons to be recorded in certain cases: -** Where in any case the court could have dealt with an accused person under the provisions of offenders Act a youthful offender may tried by any other law for the time being in force for the treatment training or rehabilitation of youthful offenders as held in case of **Nanna v/s State of Rajasthan-1989, under sec. 361.**

➢ **Court not to alter Judgment:- According to section 362** of the code that any other law for the time being in force no court when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error**, case of Naresh & others v/s State of U.P.-1981.**

➢ **Copy of the judgment to be given to the accused and other persons: - Section 363** says that a copy of the judgment shall immediately after the pronouncement of the judgment be given to him free of cost, as held in case of **Ladli Parsad Zutsi-1932.**

➢ **Judgment when to be translated: - Sec.364** provides that the original judgment shall be filed with the record of proceedings and where the original is recorded in different language from that of court and so requires it may be translated in to the language of the Court.

➢ **Court of Session to send copy of finding and sentence to District Magistrate: -** In the case tried by the court of session or a CJM the court or such magistrate as the case may be shall forward a copy of its or his finding and sentence if any to the District Magistrate as said in **sec. 365 of the code.**

➢ **Submission of death sentences for confirmation:-Sec.366**When a Court of Session passes a sentence of death the proceedings shall be submitted to H/C, it cannot be executed unless it is confirmed by H/C. **Sec. 371** procedure laid down that the Proper officer without delay after the order of confirmation or other order has been made by H/C send a copy of the order under seal of H/C duly attested to Supreme Court.

Appeal of Criminal Cases

Appeal is an important remedy for person's dissatisfied from judgment finding and orders of the trial court. **Under section 372** of the Cr.P.C., it is provided that relation to appeal it is necessary to know that no appeal shall lie from any judgment or order of a criminal court except as provided by this code or any other law for time being in force, case **Garikapati v/s Subhash coudhari-1957.** However the provisions regarding making an appeal are the following:

1. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behavior: - Any person who has been ordered to give security for keeping the peace or for good behavior or who is aggrieved by any order refusing to accept or rejecting a surety on the basis of **section 373**.

2. Appeals from Convictions: - According **to section 374** of code that any person convicted on a trial by a H/C in its extraordinary original criminal jurisdiction may appeal to Supreme Court similar any person convicted by session judge or on a trial held by any other court which sentence or imprisonment is more than **7** years may appeal to High court. Case **Panchi v/s State of U.P.-1998**, In **C. Gopinathan v/s State of Kerala-1991.**

3. **Appeal by State against sentence**: - Under sec.377, the state Government may in any case of conviction on a trial held by any court other than a H/C direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy to Court of Session if the sentence is passed by the Magistrate or to the H/C if the sentence is passed by any other Court. When an appeal is filed against the sentence on the ground of its inadequacy court shall not enhance the sentence except after giving to the accused a reasonable opportunity of sowing cause against such enhancement. Case of **Nadir Khan v/s State-1976.**

4. Appeal in case of Acquittal: In an appeal against acquittal under**sec.378** the H/C has full power to review at large the evidence on which the acquittal is based and to reach the conclusion that the order of acquittal should be reversed as held in case of **Mohandas v/s State of MP-1973**, but exercising his power the H/C should give proper weight and consideration to the view of the trial judge as to the credibility of witnesses, presumption of innocence in favour of the accused.
During the hearing of appeal from the order of acquittal it should be taken into consideration that there is no miscarriage of justice, case **Allahrakha K. Mansuri v/s State of Gujrat-2002. The order of acquittal cannot be dismissed** merely on the ground that a second approach could have been applied in the case and it means that the accused could have been convicted on considering another view a case of **Chandra Singh v/s State of Gujrat-2002**.

5. Appeal against conviction by H/C in certain cases: Where an H/C has on appeal reversed an order of manifest on record of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court **under sec. 379.**

6. **Special right of appeal in certain cases:- In Shingara Singh v/s State of Haryana-2004,** when more persons than one are convicted in one trial and an appealable judgment or order has been passed in respect of any of such persons, **under section 380**.

7. **Appeal to court of session how heard:** Appeal to the court of session shall be heard by the sessions judges or by ASJ u/s 381**.**

8. **Petition of appeal:-**Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader u/s 382.

Section 397. Revision of Criminal Cases

Revision is also a judicial remedy which has been mentioned in **sec.397** of the code. The main object of revision is to examine the purity, validity, relevancy or regulation or any order, finding or sentence. This section gives powers to High Court and the Session Judge to call for and examine the record of any proceeding before any inferior Criminal Court within its or his local jurisdiction. The followings are the provisions regarding **when the revision shall be done**:

Calling for records to exercise powers of revision: - The High court or the Session Judge may call for and examine the record of any proceeding before any inferior criminal court of his jurisdiction for the purpose of satisfying as to the correctness, legality or propriety of any finding, sentence or order recorded or passed **u/s 397** of the code. Case **Johar & Others v/s Mangal Prasad and another-2008,** it was held that trial court is not found to be passed without considering relevant evidence or by considering irrelevant evidence.
In a case of **Badri Lal v/s State of M**.P.-**1989**: The powers under this section are undoubtedly wide and the Session Judge can take up the matter suo motu, it must be seen that the criminal law is not used as an instrument of private vengeance.

Kuldeep Singh v/s State of M.P.-1989: It was held that the order framing charge could not be lightly interfered with in revision.

In Vinod kumar v/s Mohawati-1990: That the court of Session has similar powers as of High Court in revision and as the High Court is authorized to take additional evidence in revision.

In **Gram Sabha Lakhanpur v/s Ram Dev-1993**:- It was held that the complainant may or may not have a legal right of being heard but the rule of prudence and natural justice requires that the aggrieved party must be afforded an opportunity of hearing.

In a case of **Mahavir singh v/s Emperor-1944:** The regularity of any proceedings of such inferior court where the finding sentence or order is illegal or improper and where the proceedings are irregular.

Case of **T.B. Hariparsad v/s State-1977**, it was held that the powers of revision cannot be used through interlocutory orders passed in any appeal inquiry, trial or other proceedings under **sec. 397(2).**

In a case of **Paul George v/s State-2002**, it was held that during the hearing of Revision argue the person applying for revision should be considered seriously even though if they are too brief.

Order of Inquiry:- Sec. 398 of the code provides powers of issuing order of inquiry to High Court or court of Session. Accordingly on examining any record under **sec.397** or otherwise the High Court or Session Judge may direct CJM by himself or by any of Magistrate subordinate to him to make inquiry of any complaint which has been dismissed under sec.203 or the case of any person accused of an offence who has been discharged.

Powers of Revision of Court of Session: - Sec.399 provides powers of revision to Court of Session in the case of any proceeding the record of which has been called for by him. The session judge may exercise all or any of the powers which may he exercised by the High Court. Where an application for revision is made by or on behalf of any person before the session judge the decision of the session judge shall be final and no further proceedings by way of revision a the instance of such person shall be entertained by the High Court or any other court. These powers of revision have been provided to the Addl. Session Judge under sec.400.

Powers of Revision of High Court: - Sec.401 of the code provides powers of revision to High Court that in case of any proceeding the record of which has been called by itself or which otherwise comes to its knowledge, the High Court may exercise any of the powers conferred on a court of appeal by sec. 386, 389, 390 and 391 or on court of session by sec. 307. Thus during revision High Court shall be able to exercise all powers which an appellate court can do. In case of **Vimal Singh v/s Khuman Singh-1998**: Supreme Court restricted the area of revision generally the order of acquittal is not interfered. Powers of revision can be exercised in following situations:

i) Where severe illegality has occurred by trial court.
ii) Where the order of trial court has failed to provide justice.
iii) Where the trial court has tried a case which fall beyond its jurisdiction.
iv) Where the trial court has stopped taking evidence unlawfully.

Here it is pertinent to mention that any party has applied for revision believing that no appeal lies there but an appeal lies there then the court shall consider such application for appeal in the interest of justice u/s 401(2). The order of acquittal cannot be reversed into an order of conviction in revision as held in case of **Singher Singh v/s State of Haryana-2004, u/s 401(3).**

Power of High Court to withdraw or transfer revision cases:-whenever one or more persons convicted at the same trial makes an application to High Court for revision. The High Court shall direct that the applications for revision made to it be transferred to the Session Judge who will deal with the same as if it were an application made before him, under sec. 402 of this code.

Copy of the order to be send to lower court:- **Sec. 405** of the code provides that where any case is revised by High Court or court of session, it or he shall in the manner provided by **sec.388**, certify its decision or order to the court of by which the finding, sentence or order revised was recorded or passed and the court to which decision or order is so certified shall thereupon make

such orders as are confirmable to the decision so certified and if necessary record shall be amended in accordance there with.

Table 3.7 Difference between Appeal & Revision

APPEAL	REVISION
1. Any person convicted on a trail held by H/C may appeal to S/C. 2. Any person convicted on a trial by a Session judge or on a trial held by any other court for more than 7 years may appeal to the High Court 3. Any person convicted on a trial held by metropolitan Magistrate or Magistrate 1st. Class may appeal to Session Judge. 4. If the appellant is in jail he presents his petition of appeal through Officer I/c jail. 5. Pending an appeal by accused person the appellate court shall suspend the execution of order of sentence & if he is in confinement he be released on bail.	1. The correctness, legality or proprietary of any finding sentence or order of any lower court. 2. The regularity of any proceedings of such court. 3. The powers of revision cannot be used through interlocutory orders. 4. During the hearing of Revision argue of the person applying for revision should be considered seriously even though it they are too brief. Case Pal George v/s state-02.

Section 395. Reference of Criminal Cases

Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court and the High Court may make such order thereon as it thinks fit: Provided that where the 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 there for, and refer the same for the opinion of the High Court.
Explanation:- In this section "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

Order XLVI, Rule 1, C.P.C., prescribes the conditions to be satisfied to enable a subordinate court to make a reference, either of its own motion or on the application of any of the parties. It reads: It is serious error on record to grant relief to the plaintiff in suit for ejectment based on disputed title and possession merely on the basis of entries in revenue records without making inquiry or investigation of title to suit land and rewarding finding in that regard. Validity of interlocutory order can be challenged in an appeal against final decree unless such on order was appealable. The illegality of interlocutory order vitiating the disposal of suit cannot be ignored on the ground of non-filing of revision against it.

Reference of question to High Court:

Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court. The conditions which permit a reference are:
(1) There arises a question of law in any suit, appeal or execution from which no appeal lies;
(2) There is reasonable doubt on such question;
(3) The court draws up a statement of the facts of the case and the point on which doubt is entertained; and
(4) The court expresses its own opinion on the point.

A reference can be made to the High Court under this rule only in suit or appeal arising out of a suit or in the execution of any such decree, and not in every matter before the court in which a point arises on which the court entertains a reasonable doubt. The object of S. 113 is to enable the subordinate court to obtain, in non-appealable cases, the opinion of the High Court in advance on a question of law and thereby avoid the commission of an error which could not be remedied later on.

The court making a reference may either stay the proceedings or pass a decree contingent upon the decision of the High Court on the point referred, such decree or order not being executable until the receipt of a copy of the judgment of the High Court upon the reference. (Order XLVI, Rule 2). The High Court after hearing the parties, if they desire to be heard, shall decide the points and transmit a copy of its judgment to the court which made the reference. Such court shall then dispose of the case in conformity with the decision of the High Court. The costs consequent on a reference for the decision of the High Court shall be costs in the case. (Order XLVI, Rules 3 and 4).

Reference to High Court was for decision of the vires of the provisions of Bombay Provincial Municipal Corporation Act for not providing hearing to tenant/occupant of premises likely to be demolished/acquired. High Court rejected the reference but suggested that notice may be fixed by Municipality on some conspicuous part of premises. Reference must be decided within four corners of S. 113 and Order XLVI, Rule 3 and once reference was rejected there nothing survived for the High Court to decide and observations were unnecessary for decision of reference.

Power of the High Court

The High Court may on reference return the case for amendment, or alter, cancel or set aside any decree or order which the court making the reference has passed or made, and make such order as it thinks fit (Order XLVI, Rule 5).The above provision shows that when the High Court hears a reference it acts like a court of appeal.

Power to refer to High Court questions as to jurisdiction in small causes
At any time before judgment a court in which a suit has been instituted may refer to the High Court questions as to jurisdiction in small causes where it entertains doubts whether the suit is cognizable by a court of small causes or not. (Order XLVI, Rule 6).

Reference to High Court regarding validity of Act
Where conviction suit was filed under the Maharashtra Rent Control Act against nationalised Bank. Validity of Section 3 of Maharashtra Act was already upheld by High Court. Held, that in such a situation Small Causes Court or Appellate Court could not have referred question regarding validity of Section 3 of Maharashtra Act to High Court under Section 113, C.P.C.

Transfer of Criminal Cases- Chapter 31
Section 406 – Power of Supreme Court to transfer cases and appeals
Section 407 – Power of High Court to transfer cases and appeals
Section 408 – Power of Sessions Judge to transfer cases and appeals
Section 409 – Withdrawal of cases and appeals by Sessions Judges
Section 410 – Withdrawal of cases by Judicial Magistrates
Section 411 – Making over or withdrawal of cases by Executive Magistrates
Section 412 – Reasons to be recorded

Power of High Court re-transfer of cases-Under Section 526

Criminal Procedure Code [See Section 407 of new Code], the High Court has power to transfer any case from one Court, subordinate to it to another on any of the grounds specified therein. This power of transfer extends to all classes of cases. In view of the amendments made in Sections 526 and 528 of the Code [See Sections 408-412 of new Code] by Act No. 26 of 1955 no application shall now lie to the High Court for the transfer of a case from one Court to another Court in the same Sessions division unless an application for such transfer has been made to the Sessions Judge and has been rejected by him.

Power of transfer of Sessions Judge and District Magistrate-Under Section 528(2) of the Code [Sections 410(1) and 411(b) of new Code], a District Magistrate also has general power to withdraw any case from any subordinate Magistrate and either try it himself or refer it for trial to another subordinate Magistrate. The new sub-section (1C) enables any Sessions Judge to transfer a case from one Criminal Court to another Criminal Court in the same Sessions division when an application has been made to him in this behalf and when he is of the opinion that it is expedient for the ends of justice to do so. It may be noticed that in sub-section (1C) the words used is „Court‟ and in sub-section (2) the word used is „Magistrate‟.

Section 528(5) of the Code [See Section 412 of new Code] requires that a Magistrate making an order under the section shall record in writing his reasons for making the same. This applies to all cases whether the order of transfer is made as a result of application or on the Magistrate's own motion or on administrative grounds.

Note-In districts in which the experiment of separation of the Judiciary from the Executive is being tried, the work of transfer of cases from one Judicial Court to another is to be performed by the Additional District Magistrate (Punjab Government Letter No. 9062-G (C)-54/35339, dated the 8th December 1954).

Cases triable in more than one district Forum to be determined with regard to public convenience-The necessity for transfer of a case may arise purely on grounds of jurisdiction or in the ends of justice. As regards the former, Sections 179 to 183 of the Code should be consulted when a case is to be instituted in Court. In carrying out the provisions of these sections, cases which are triable in more than one district should not be transferred unnecessarily from one district to another. A Magistrate or Court should act under these sections solely with reference to the public convenience. Ordinarily, the proper district for the enquiry into, and trial of, offences falling under those sections would be the district in which the witnesses could, with the least inconvenience, attend.

Procedure when a Magistrate thinks the case should be tried in another district-If a Magistrate is of opinion that it would be more convenient if an enquiry or trial were held in another district he should at once address the District Magistrate. If the District Magistrate considers the transfer of the case to another district desirable, he will forward the paper to the District Magistrate of the latter district. If the District Magistrate so addressed concurs; the case should be transferred to that district accordingly. If he dissents, the Magistrate should either proceed with the enquiry, or refer the question to the High Court, which will, under the provisions of Section 185 of the Code of Criminal Procedure [See Section 186 of new Code], decide in what district the enquiry or trial should be held.

Reasons to be given for proposal to transfer-When a transfer is proposed by any Magistrate his proposal should always be accompanied by a short statement of the case and of the reasons for making the proposal.

Common grounds on which applications for transfer are made-Applications for transfer of criminal cases are frequently made by accused persons on the allegation that such transfer is necessary in the interest of justice. The most common grounds on which such applications for transfer are made are
(a) that the Judge or Magistrate is personally interested in the case, or
(b) that he is connected with one or the other party to the case by relationship, friendship, etc., and is therefore, likely to be partial, or
(c) that he has already formed or expressed an opinion on the subject matter of the enquiry or trial, or (d) that he has conducted himself in such a manner that no fair or impartial enquiry or trial can be expected from him.

Section 413-16. Execution of Sentence

Part A Realization of Fines
For instructions regarding the realization of fines, see Volume IV Chapter 11.

Part B Warrants for Execution

1. Filling in warrants-Warrants of commitment issued by European Magistrates should, as a rule, and especially in cases where more than six month's imprisonment is awarded, be filled up in English; but cases need never be delayed on this account, as the printed forms leave very little to be filled up in writing. Note-Instructions have been issued to Superintendents of jails that in cases in which more than six months imprisonment is awarded by a European Magistrate and the warrant is not filled up in English, a fresh warrant in due form should be called for and substituted for that originally sent.

2. Officer signing the warrant is responsible for its accuracy-Warrants issued by an Indian Magistrate should be in Urdu unless he is well acquainted with English. The objects to be attained are that the officer who signs a warrant should be responsible for its contents, and that all warrants should, as far as possible, be uniform.

3. (i) Signature by means of a stamp not permissible-The Code of Criminal Procedure enacts that every warrant should be signed by the Magistrate with his own hand, and the practice of affixing a signature by means of stamp is strictly and should never be resorted to. An officer in charge of a jail would be justified in refusing to receive or detain a prisoner in jail on a warrant to which is affixed a signature by means of a stamp. (ii) Warrants should be signed, sealed and in the prescribed form-Warrants of commitments should be in the form prescribed by Schedule V to the Code of Criminal Procedure, and should be signed in full (not initialed) by the Judge or Magistrate who issues it, and should be sealed with the seal of the Court. (iii) Separate warrants for each person-In the case of under-trial prisoners, the warrant of commitment for intermediate custody should be prepared with the greatest care possible with reference to the above instructions. A separate warrant should be issued in respect of each person committed to jail. (iv) Superintendent of Jail should not refuse to admit a prisoner owing to defect in the warrant-

Except in cases falling under clause

- Of this rule the Superintendent of a Jail not refuse to admit a person where the above instructions have not been carried out, but he should draw the immediate attention of the Magistrate concerned to the defect, and ask for its rectification at once, sending at the same time a copy of his letter to the Magistrate of the district for his information.
- Leper convicts to be sent to Tarn Taran Jail-Persons sentenced to imprisonment who are found to be suffering from leprosy in a communicable form should be sent to the Leper Asylum at Tarn Taran.
- Class of prisoner when other than C to be noted in the warrant-When a Court places a prisoner in a class other than C, it should make an endorsement to this effect on the warrant of commitment.

4. Warrants for release or remission of sentence-Warrants for the release or remission of sentences of prisoners confined in jail warrants for the release of prisoners on bail, and intimations of payment of fine sent to jail authorities should always be drawn up in Urdu or in

English, and should be signed in full by such officer and sealed with the seal of his Court. On receipt of a warrant for the release of a prisoner it should be forwarded without delay by registered cover to the jail in which the prisoner is confined, if it is necessary to send it through the agency of the post.

5. (i) In case of dacoity or other organised crime, Court should note on the warrant the nature of the crime and convict-In accordance with the request of the State Government communicated in the letter from the junior Secretary to Government, Punjab, No. 35, dated the 31st January, 1898, it is directed that, in every case of a sentence for dacoity, or other organized crime, the convicting Court shall enter on the warrant of commitment, for the information of the jail authorities, the nature of the crime, and whether the prisoner is a professional, hereditary or specially dangerous criminal.

(ii) If this is not note the jail authorities should take steps to have this noted-If in any case this information is not given, the jail authorities will refer the warrant to the Court, which should then have the proper entry made on it.

(iii) Court should consult record if required-If there is any doubt as to the entry to be made, the Court should decide the question by a reference to the record of the case, or by further inquiry, if necessary.

6. Rules about classification and treatment of convicted and under trial prisoners-The following rules have been made by the Punjab Government under Section 60 of the Prisons' Act, 1894, to regulate the classification and treatment of convicted and under-trial prisoners :- Section I Rules for the classification of convicted and under-trial prisoners 1.

Three classes-

(1) Convicted persons shall be divided into three classes, namely, A, B, and C, Class 'A' will contain all prisoners who are- (a) non-habitual prisoners of good characters. (b) by social status, education and habit of life been accustomed to a superior mode of living, and (c) have not been convicted of- (i) offences involving elements of, cruelty, moral degradation or personal greed;

(ii) serious or premeditated violence; (iii) serious offences against property; (iv) offences relating to the possession of explosives, firearms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed; (v) abetment or incitement of offences falling within these sub-clauses.

(2) Class 'B' will consist of prisoners who by social status, education or habit of life have been accustomed to a superior mode of living. Habitual prisoners may be included in this class by order of the State Government.

(3) Class 'C' will consist of prisoners who are not classified in classes A and B.

Classifying authority-In the case of classes A and B the classifying authority will be the State Government. Class C will be classified by the trying Courts, but such prisoners will have a right to apply for revision to the State Government.

Part C IMPRISONMENT FOR LIFE: Record of the case in which a woman has been sentenced to imprisonment for the murder of her child should be sent to Government through High Court-In every case in which a sentence of Imprisonment for life is passed on a woman for the murder of her infant child, and the sentence is not appealed against, the record of the case shall, after the expiration of the period allowed for appeal, be forwarded to the High Court for submission to Government, with a view to the consideration of the question whether any commutation or reduction of the sentence should be allowed.

Part D SENTENCE OF DEATH: Order of High Court to be sent to Sessions Judge for carrying out sentence-After a death sentence has been confirmed or other order has been made by the High Court, the Registrar will return the record, with a duplicate or an attested copy of the order under the seal of the Court, to the Sessions Judge, who will take the steps prescribed by Section 381 of the Code of Criminal Procedure to cause the sentence or order to be carried into effect. For the procedure in issuing a warrant for the execution of a sentence of death, reference should be made to rule (ii) of Part E of this Chapter. 2. Record of case wherein death sentence has been confirmed should be forwarded to Government-The record of every case, as prepared for the use of the High Court, in which the sentence of death has been confirmed by the High Court, should as soon as orders have been passed confirming the death sentence, be forwarded to the State Government together with the Court's order thereon, and the English record of the Sessions Court

UNIT-IV EVIDENCE

Evidence is fundamentally observed for justice dispensing for several centuries. The Hindu system of the law of evidence, the Muslim system and finally the British system as applied in India. While the Hindu system seems to be more elaborate, the Muslim system was free from the superstitious trial by ordeal. But what should strike the reader (it has struck me as a pleasant surprise) is the extreme modern flavour which both the earlier systems, namely, the Hindu and the Muslim, had. Both these systems were not fanatic about excluding hearsay evidence, which is a great advance when compared with the systems now prevalent in the U.K. and in the United States. The British system was introduced into India by a series of progressive legislations, sometimes keeping pace with the law of England and sometimes leaping forward, and it has now reached, in the present Evidence Act, a happy stage which even today is full of vitality and vigour, capable of meeting modern situations.

Indian Evidence Act – History in India

The Indian Evidence Act, originally passed in India by the Imperial Legislative Council in 1872, during the British Raj, contains a set of rules and allied issues governing admissibility of evidence in the Indian courts of law. The Indian Evidence Act, identified as Act no. 1 of 1872, and called the Indian Evidence Act, 1872, has eleven chapters and 167 sections, and came into force 1 September 1872. At that time, India was a part of the British Empire. On those days evidence was the important to punish anyone, because evidence could answer the following questions. Evidence Act may be divided in four questions.

Question 1: Evidence is Given of What
Answer 1 of Facts ("Issue of Facts" or "Relevant Facts")
Question 2: How the Evidence of such Facts are Given
Answer 2 The Evidence of Such Facts is Given Either by way of "Oral Evidence" or "Documentary Evidence'.
Question 3: On whom the Burden to Prove Facts lies
Answer 3 "Burden of Proof"(of particular fact) or "Onus of proof" (to prove whole case) lies on the Prosecution in charge.
Question 4: What are the Evaluation of the Facts.
Answer 4 The Evaluation is "Prove" or "Presumption"(of prove); The fact is either 'proved', 'disproved', or 'Not proved'; or there may be presumption that proof of facts "may presume', 'shall presume', or 'conclusive proof'.

The Act

The Indian Evidence Act, identified as Act no. 1 of 1872, and called the Indian Evidence Act, 1872, has eleven chapters and 167 sections, and came into force 1 September 1872. At that time, India was a part of the British Empire. Over a period of more than 125 years since its enactment, the Indian Evidence Act has basically retained its original form except certain amendments from time to time. The law is mainly based upon the firm work by **Sir James Fitzjames Stephen**, who could be called the founding father of this comprehensive piece of legislation.

Importance

The enactment and adoption of the Indian Evidence Act was a path-breaking judicial measure introduced in India, which changed the entire system of concepts pertaining to admissibility of evidences in the Indian courts of law. Until then, the rules of evidences were based on the traditional legal systems of different social groups and communities of India and were different for different persons depending on caste, religious faith and social position. The Indian Evidence Act and introduced a standard set of law applicable to all Indians.

Applicability

When India gained independence on 15 August 1947, the Act continued to be in force throughout the Republic of India and Pakistan, except the state of Jammu and Kashmir. Then, the Act continues in force in India, but it was repealed in Pakistan in 1984 by the Evidence Order 1984 (also known as the "Qanun-e-Shahadat"). It also applies to all judicial proceedings in the court, including the court martial. However, it does not apply on affidavits and arbitration.

Contents of Indian Evidence Act

This Act is divided in to three parts and there are 11 chapters in total under this Act.

Part-1

Part 1 deals with relevancy of the facts. There are two chapters under this part. First chapter is preliminary chapter which introduces to the evidence Act. Second chapter specifically deals with the relevancy of the facts.

Part-2

Part 2 consists of chapters from 3 to 6. under which chapter 3 deals with facts which need not be proved , chapter 4 deals with oral evidence, chapter 5 deals with documentary evidence and chapter 6 deals with circumstances when documentary evidence has been given preference over the oral evidence.

Part-3

Last part that is part 3 consists of chapter 7 to chapter 11. Chapter 7 talks about the burden of proof. Chapter 8 talks about estoppels, chapter 9 talks about witnesses, chapter 10 talks about examination of witnesses, and last chapter which is chapter 11 talks about improper admission and rejection of evidence.

Evidence Principles (important terms)

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

"Court". -"Court" includes all Judges[1] and Magistrates, [2]and all persons, except arbitrators, legally authorized to take evidence.

"Fact".-"Fact" means and includes

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;
(2) any mental condition of which any person is conscious.
(a) That there are certain objects arranged in a certain order in a certain place, is a fact.
(b) That a man heard or saw something, is a fact.
(c) That a man said certain words, is a fact.
(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
(e) That a man has a certain reputation is a fact.

"Relevant".-One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue".-The expression "facts in issue" means and includes- any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.-Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations

A is accused of the murder of B.
At his trial the following facts may be in issue:-
That A caused B's death;
That A intended to cause B's death;
That A had received grave and sudden provocation from B;
That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document".-"Document"[4] means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing[5] is a document;
Words printed, lithographed or photographed are documents;
A map or plan is a document;
An inscription on a metal plate or stone is a document;
A caricature is a document.

"Evidence".-"Evidence" means and includes-
(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) [all documents including electronic records produced for the inspection of the Court], such documents are called documentary evidence.
"Proved".-A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved".-A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Not proved".-A fact is said not to be proved when it is neither proved nor disproved.

"India".-"India" means the territory of India excluding the State of Jammu and Kashmir.]
[the expressions "Certifying Authority", "digital signature", "Digital Signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act, 2000.]

Admissibility of Contemporaneous Tape-Record
A contemporaneous tape-record is admissible under section 8 if (i) the conversation is relevant to the matters in issue; (ii) there is identification of the voice; (iii) the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record; **R.M. Malkani v. State of Maharashtra, AIR 1973 SC 157.**

Court to Scrutinize Evidence
(i) It is the duty of court to scrutinize the evidence carefully and to see that acceptable evidence is accepted; **State of Gujarat v. Gandabhai Govindbhai, 2000 Cr LJ 92 (Guj)**.
(ii) Court should adopt cautious approach for basing conviction on circumstantial evidence; State of **Haryana v. Ved Prakash, 1994 Cr LJ 140 (SC).**

Evidence of Eye Witness

(i) Having examined all the eyewitnesses even if other persons present nearby, not examined, the evidence of eyewitness cannot be discarded , courts are concerned with quality of evidence in a criminal trial. Conviction can be based on sole evidence if it inspires confidence;
Sheelam Ramesh v. State of Andhra Pradesh, AIR 2000 SC 718: 2000 Cr LJ 51 (SC).

(ii) Where there are material contradictions creating reasonable doubt in a reasonable mind, such eye witnesses cannot be relied upon to base their evidence in the conviction of accused;
Nathia v. State of Rajasthan, 1999 Cri LJ 1371 (Raj).

(iii) Evidence of an eye witness cannot be disbelieved on ground that his statement was not recorded earlier before he was examined in motor accident claim case by police;
Fizabai v. Namichand, AIR 1993 MP 79.

(iv) Where court acquitted accused by giving benefit of doubt, it will not affect evidence of eye witnesses being natural witnesses; **Krishna Ram v. State of Rajasthan, AIR 1993 SC 1386**.

Identification by Photo Admissible

There is no legal provision that identification by photo is not admissible in evidence; **Umar Abdul Sakoor Sorathia v. Intelligence Officer M.C. Bureau, 1999 Cr LJ 3972 (SC)**.

Interested Witness

(i) It has been held regarding "interested witness" that the relationship is not a factor to affect credibility of witness; **Rizan v. State of Chhattisgarh, AIR 2003 SC 976.**
(ii) Testimony of injured eye witnesses cannot be rejected on ground that they were interested witnesses; **Nallamsetty Yanasaiah v. State of Andhra Pradesh, AIR 1993 SC 1175.**
(iii) The mechanical rejection of evidence on sole ground that it is from interested witness would invariably lead to failure or justice; **Brathi alias Sukhdev Singh v. State of Punjab, 1991 Cr LJ 402 (SC).**

Maxim "Falsus in uno falsus in omnibus"

(i) "Falsus in uno, Falsus in Omnibus" is not a rule of evidence in criminal trail and it is duty of the Court to engage the truth from falsehood, to shift grain from the chaff; **Triloki Nath v. State of U.P., AIR 2006 SC 321**.
(ii) The maxim "**falsus in uno falsus in omnibus**" has not received general acceptance nor has this maxim come to occupy the status of rule of law. The maxim merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence"; **Israr v. State of Uttar Pradesh, AIR 2005 SC 249.**

Natural Witness

Witnesses being close relations of deceased living opposite to house of deceased, are natural witnesses to be believed; **Om Parkash v. State of Punjab, AIR 1993 SC 138**.

Testimony: when to be relied

(i) The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds; **Karamjit Singh v. State (Delhi Administration), AIR 2003 SC 1311.**
(ii) Rejection of whole testimony of hostile witness is not proper; **Ashok Kumar v. P.M.A. Chanchal, AIR 1999 Guj 108.**

(iii) Where evidence of some witnesses was found not safe for conviction, whole of their testimony should not be rejected; **Nadodi Jayaraman v. State of Tamil Nadu, AIR 1993 SC 777.**
(iv) The testimony of a single witness if it is straightforward, cogent and if believed is sufficient to prove the prosecution case; **Vahula Bhushan alias Vehuna Krishna v. State of Tamil Nadu, 1989 Cr LJ 799: AIR 1989 SC 236.**

Section4. "May Presume" –

Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume" – Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Conclusive proof" – Where one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Evidence – Meaning

"Evidence".-"Evidence" means and includes-

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;
(2) all documents including electronic records produced for the inspection of the Court], such documents are called documentary evidence.

Section 1. Short Title, Extent, Commencement

This Act may be called the **Indian Evidence Act, 1872.** It extends to the whole of India [1][except the State of Jammu and Kashmir] and applies to all judicial proceedings in or before any Court, including Courts-martial, [2][other than Courts-martial convened under the Army Act] (44 & 45 Vict., c. 58) 3[the Naval Discipline Act (29 & 30 Vict., c. 109) or [4][***] the Indian Navy (Discipline) Act, 1934 (34 of 1934)[5] [6][or the Air Force Act] (7 Geo. 5, c. 51) but not to affidavits [7]presented to any Court or Officer, nor to proceedings before an arbitrator; and it shall come into force on the first day of September, 1872.

Concept of Relevancy

"Relevant".-One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue".-The expression "facts in issue" means and includes- any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.-Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations
A is accused of the murder of B.
At his trial the following facts may be in issue:-
That A caused B's death;
That A intended to cause B's death;
That A had received grave and sudden provocation from B;
That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

Admissibility
Section 46. Facts bearing upon opinions of experts
The science of identification of footprints is not a fully developed science and therefore if in a given case, evidence relating to the same is found satisfactory it may be used only to reinforce the conclusions as to the identity of a culprit already arrived at on the basis of other evidence; **Mohd. Aman v. State of Rajasthan, (1997) 4 Supreme 635.**

Admissibility of Secondary Evidence
Application moved for permission to lead secondary evidence based on ground of loss of document. Presence of document proved from the facts pleaded – Allowing secondary evidence not illegal; **Sobha Rani v. Ravikumar, AIR 1999 P&H 21.**

Tape-recorded statements are admissible in evidence; **K.S. Mohan v. Sandhya Mohan, AIR 1993 Mad 59.**

Certified copies of money lender's licences are admissible in evidence;
K. Shivalingaiah v. B.V. Chandrashekara Gowda, AIR 1993 Kant 29.

Section 65B. Admissibility of electronic records

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the

purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) Information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer

operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
(c) A computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.-For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

Section 67. Proof of signature and handwriting of person alleged to have signed or written document produced

Non-examination of executants of receipt, admissibility of receipts not proper; **Ramkrishna Dode v. Anand, AIR 1999 Bom 89.**

Section 136. Judge to decide as to admissibility of evidence

When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.
If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.
If the relevancy of the alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved or acquire evidence to be given of the second fact before evidence is given of the first fact.

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.
The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.
(b) It is proposed to prove, by a copy, the contents of a document said to be lost.
The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.
(c) A is accused of receiving stolen property knowing it to have been stolen.
It is proposed to prove that he denied the possession of the property.
The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

Section 162. Production of document

A witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.
The Court, if it sees, fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents
If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).

Confessions

Section 24. Confession by inducement, threat or promise when irrelevant in criminal proceeding

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Extra judicial confession

Extra-judicial confession made to village Administrative Officer by accused is admissible; **Shiv Kumar v. State by Inspector of Police, AIR 2006 SC 653**. It is difficult to rely upon the extra judicial confession as the exact words or even the words as nearly as possible have not been reproduced. Such statement cannot be said to be voluntary so the extra judicial confession has to be excluded from the purview of consideration for bring home the charge**; C.K. Raveendran v. State of Kerala, AIR 2000 SC 369**. The extra-judicial confession cannot be sole basis for recording the confession of the accused, if the other surrounding circumstances and the materials available on the record do not suggest his complicity; **Chaya Kant Nayak v. State of Bihar, (1997)**. An extra-judicial confession, if it is voluntary truthful, reliable and beyond reproach, is an efficacious piece of evidence to establish the guilt of the accused and it is not necessary that

the evidence of extra-judicial confession should be corroborated on material facts; **Laxman v. State of Rajasthan, (1997) 2 Crimes 125 (Raj).**

Where confession was not disclosed to the wife of deceased but it was disclosed to the police officer and was not corroborated, the extrajudicial confession is not reliable; **Surinder Kumar v. State of Punjab, AIR 1999 SC 215.** An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extra-judicial confession; **Balwinder Singh v. State of Punjab, (1995) Supp (4) SCC 259.**

It is well settled now that a retracted extra-judicial confession, though a piece of evidence on which reliance can be placed, but the same has to be corroborated by independent evidence. If the evidence of witness before whom confession made was unreliable and his conduct also doubtful and there is no other circumstance to connect accused with crime, conviction based solely on retracted extra-judicial confession is not proper and the accused is entitled to acquittal; **Shakhram Shankar Bansode v. State of Maharashtra, AIR 1994 SC 1594.**
The extra-judicial confession not trustworthy cannot be used for corroboration of any other evidence; **Heramba Brahma v. State of Assam, AIR 1982 SC 1595**. Where confessional statement is inconsistent with medical evidence, conviction of accused solely based on extra-judicial confession is not proper; **Chittar v. State of Rajasthan, 1994 Cr LJ 245 (SC).**

Tape-recording of confession denotes influence and involuntariness. Accused is entitled to be acquitted; **State of Haryana v. Ved Prakash, 1994 Cr LJ 140 (SC).** The confessional statement recorded by 1st Class Magistrate rightly held to be correct; **Manguli Dei v. State of Orissa, 1989 Cr LJ 823: AIR 1989 SC 483.** The general trend of the confession is substantiated by some evidence, tallying with the particulars of confession for conviction of the accused; **Madi Ganga v. State of Orissa, AIR 1981 SC 1165: 1981 Cr LJ 628: (1981) 2 SCC 224: 1981 SCC (Cr) 411.**

When statement Amounts to confession

A statement in order to amount to a 'confession' must either admit in terms of offence, or at any rate substantially all the facts which constitute the offence; **Veera Ibrahim v. State of Maharashtra, AIR 1976 SC 1167.**
–
1. For prohibition of such inducements, etc., see the Code of Criminal Procedure, 1973 (2 of 1974), section 316.

Section 25. Confession to police officer not to be proved -
No confession made to police officer[1] shall be proved as against a person accused of any offence.
Admissibility

Any confessional statement given by accused before police is inadmissible in evidence and cannot be brought on record by the prosecution and is insufficient to convict the accused; **Ram Singh v. State of Maharashtra, 1999 Cr LJ 3763 (Bom).**

Scope

If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by section 25; **Aghnu Nagesia v. State of Bihar, AIR 1966 SC 119.**

---

1. As to statements made to a police officer investigating a case, see the Code of Criminal Procedure, 1973 (2 of 1974), section 162.

Section 26. Confession by accused while in custody of police not to be proved against him -

No confession made by any person whilst he is in the custody of a police-officer, unless it is made in the immediate presence of a Magistrate[1], shall be proved as against such person.

Explanation.-In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George [3][***] or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)[4]].

COMMENTS

The confession made while in custody is not to be proved against the accused as the provisions of sections 25 and 26 do not permit it unless it is made before a magistrate; **Kamal Kishore v. State (Delhi Administration), (1997) 2 Crimes 169 (Del).**

---

1. A Coroner has been declared to be Magistrate for the purposes of this section, see the Coroners Act, 1871 (4 of 1871), section 20.
2. Ins. by Act 3 of 1891, sec. 3.
3. The words "or in Burma" omitted by the A.O. 1937.
4. See now the Code of Criminal Procedure, 1973 (2 of 1974).

Section 27. How much of information received from accused may be proved

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Applicability

For the application of section 27 the statement must be split into its components and to separate the admissible portion. Only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excised and rejected; **Mohd. Inayatullah v. State of Maharashtra, AIR 1976 SC 483.**

Condition for operation

The condition necessary to bring the section 27 into operation is that the discovery of a fact in a consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved; **Pulukuri Kottaya v. Emperor, AIR 1947 PC 119.**

Discovered fact

A fact discovered in an information supplied by the accused in his disclosure statement is a relevant fact and that is only admissible in evidence if something new is discovered or recovered from the accused which was not within the knowledge of the police before recording the disclosure statement of the accused; **Kamal Kishore v. State (Delhi Administration), (1997) 2 Crimes 169 (Del).** Where a witness was related to deceased and resident of another place, even then his evidence regarding recovery of weapons and clothes cannot be discarded; State of **Madhya Pradesh v. Rammi, 1999 (1) JLJ 49.**

Scope

Under section 27 it is not necessary that a disclosure statement must be signed by maker of the same or that thumb impression must be affixed to it; **K.M. Ibrahim alias Bava v. State of Karnataka, 2000 Cr LJ 197 (Karn).**

A confession made by an accused person while he is in custody must be excluded from evidence and permits the admission of such a confession under the condition prescribed by this section; **Kamal Kishore v. State (Delhi Administration), (1997) 2 Crimes 169 (Del).**

Section 28. Confession made after removal of impression caused by inducement, threat or promise, relevant

If such a confession as is referred to in Section 24 is made after the impression caused by any inducement, threat or promise has, in the opinion of the Court been fully removed it is relevant.

Section 29. Confession otherwise relevant not to become irrelevant because of promise of secretary etc.

If such a confession is otherwise relevant, it does not become it was made under a promise of secrecy. or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to question which he need not have answered, whatever may have been the form of those question, or because he was not warned that he was bound to make such confession, and that the evidence of it might be given against him.

Section 30. Consideration of proved confession affecting person making it and others jointly under trail for same offence

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation – "Offence" as used in this Section, includes the abutment of, r attempt to commit, the offence.

Illustrations
(a) A and B are jointly tried for the murder of C. It is proved that A said – "B and I murdered C". the court may consider the effect of this confession as against B.
(b) A is on his trail for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C". The statement may not be taken into consideration by the Court against A as B is not being jointly tried.

Accused's confession cannot be used against co-accused
The statement of the accused leading to the discovery, or the informatory statement amounting to confession of the accused, cannot be used against the co-accused with the aid of section 303; **Kamal Kishore v. State (Delhi Administration), (1972) 2 Crimes 169 (Del).**

The word "confession" appears for the first time in Section 24 of the Indian Evidence Act. This section comes under the heading of Admission so it is clear that the confessions are merely one species of admission. Confession is not defined in the Act. Mr. Justice Stephen in his Digest of the law of Evidence defines confession as "confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime."

In **Pakala Narayan Swami v Emperor Lord Atkin** observed
"A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not in itself a confession".
In the case of **Palvinder Kaur v State of Punjab** the Supreme Court approved the Privy Council decision in Pakala Narayan Swami case over two scores.

Firstly, that the definition if confession is that it must either admits the guilt in terms or admit substantially all the facts which constitute the offence. Secondly, that a mixed up statement which even though contains some confessional statement will still lead to acquittal, is no confession. Thus, a statement that contains self-exculpatory matter which if true would negate the matter or offence, cannot amount to confession.

However in the case **Nishi Kant Jha v State of Bihar** the Supreme Court pointed out that there was nothing wrong or relying on a part of the confessional statement and rejecting the rest, and for this purpose, the Court drew support from English authorities. When there is enough evidence to reject the exculpatory part of the accused person's statements, the Court may rely on the inculpatory part.

Admission and confession

Section 17 to 31 deals with admission generally and include Section 24 to 30 which deal with confession as distinguished from admission.

Table 4.1 Confession VS Admission

Confession	Admission
1. Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.	1. Admission usually relates to civil transaction and comprises all statements amounting to admission defined under section 17 and made by person mentioned under section 18, 19 and 20.
2. Confession if deliberately and voluntarily made may be accepted as conclusive of the matters confessed.	2. Admissions are not conclusive as to the matters admitted it may operate as an estoppel.
3. Confessions always go against the person making it	3. Admissions may be used on behalf of the person making it under the exception of section 21 of evidence act.
4. Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (section 30)	4. Admission by one of the several defendants in suit is no evidence against other defendants.
5. Confession is statement written or oral which is direct admission of suit.	5. Admission is statement oral or written which gives inference about the liability of person making admission.

The acid test which distinguishes a confession from an admission is that where conviction can be based on the statement alone, it is confession and where some supplementary evidence is needed to authorize a conviction, then it is an admission as stated in Ram Singh v. State Another test is that if the prosecution relies on the statement as being true it is confession and if the statement is relied on because it is false it is admission. In criminal cases a statement by accused, not amounting to confession but giving rise to inference that the accused might have committed the crime is his admission.

Forms of confession

A confession may occur in many forms. When it is made to the court itself then it will be called judicial confession and when it is made to anybody outside the court, in that case it will be called extra-judicial confession. It may even consist of conversation to oneself, which may be produced in evidence if overheard by another.

For example, in **Sahoo v. State of U.P.** the accused who was charged with the murder of his daughter-in-law with whom he was always quarreling was seen on the day of the murder going out of the house, saying words to the effect : "I have finished her and with her the daily quarrels." The statement was held to be a confession relevant in evidence, for it is not necessary for the relevancy of a confession that it should be communicated to some other person.

Judicial confession- Are those which are made before a magistrate or in court in the due course of legal proceedings. A judicial confession has been defined to mean "plea of guilty on arrangement (made before a court) if made freely by a person in a fit state of mind.

Extra-judicial confessions- Are those which are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may have taken place in the form of a prayer. It may be a confession to a private person.

An extra-judicial confession has been defined to mean "a free and voluntary confession of guilt by a person accused of a crime in the course of conversation with persons other than judge or magistrate seized of the charge against himself.

A man after the commission of a crime may write a letter to his relation or friend expressing his sorrow over the matter. This may amount to confession. Extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

Extra-judicial confession is generally made before private person which includes even judicial officer in his private capacity. It also includes a magistrate not empowered to record confessions under section 164 of the Cr.P.C. or a magistrate so empowered but receiving the confession at a stage when section 164 does not apply.

Section 164 of the Criminal Procedure Code

Table 4.2 Difference between Judicial and Extra-judicial confession

Judicial confession	Extra-judicial confession
1. Judicial confessions are those which are made to a judicial magistrate under section 164 of Cr.P.C. or before the court during committal proceeding or during trial.	1. Extra-judicial confession are those which are made to any person other than those authorized by law to take confession. It may be made to any person or to police during investigation of an offence.
2. To prove judicial confession the person to whom judicial confession is made need not be called as witness.	2. Extra-judicial confession are proved by calling the person as witness before whom the extra-judicial confession is made.
3. Judicial confession can be relied as proof of guilt against the accused person if it appears to the court to be voluntary and true.	3. Extra-judicial confession alone cannot be relied it needs support of other supporting evidence.
4. A conviction may be based on judicial confession.	4. It is unsafe to base conviction on extra-judicial confession.

Voluntary and non-voluntary confession

A confession to the police officer is the confession made by the accused while in the custody of a police officer and never relevant and can never be proved under Section 25 and 26. Now as for the extra-judicial confession and confession made by the accused to some magistrate to whom he has been sent by the police for the purpose during the investigation, they are admissible only when they are made voluntarily. If the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the change against the accused person proceeding from a person in authority and sufficient in opinion of the court to give the accused person grounds, which would appear to him reasonable for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him, it will not be relevant and it cannot be proved against the person making the statement. Section 24 of the Evidence Act lays down the rule for the exclusion of the confession which is made non-voluntarily.

Section 24 of Indian Evidence Act - confession caused by inducement, threat or promise, when irrelevant in criminal proceeding- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supporting that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceeding against him.

If a confession comes within the four corners of Section 24 is irrelevant and cannot be used against the maker.

Ingredients of Section 24

To attract the prohibition enacted in Section 24 the following facts must be established:

- That the statement in question is a confession,
- That such confession has been made by the accused,
- That it has been made to a person in authority,
- That the confession has been obtained by reason of any inducement, threat or promise, proceeding from a person in authority,
- Such inducement, threat or promise must have reference to the charge against the accused, and
- The inducement, threat or promise must in the opinion of the court be sufficient to give the accused ground, which would appear to him reasonable, for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

1. Confession made by inducement, threat or promise- a confession should be free and voluntary. "If it proceeds from remorse and a desire to make reparation for the crime, it is

admissible. If it flows from hope or fear, excited by a person in authority, it is inadmissible." The term inducement involves a threat of prosecution if the guilt is not confessed and a promise of forgiveness if it is so done. It is very difficult to lay down any hard and fast rule as to what constitutes inducement. It is for the judge to decide in every case. An inducement may be express or implied; it need not be made to the accused directly from the person in authority. Before a confession can be received as such, it must be shown that it was freely and voluntarily made. This means that the confession must not be obtained by any sort of threat or violence, not by any promise either direct or indirect, expressed or implied, however slight the hope or fear produced thereby, not by the exertion of an influence. The ground on which confessions made by the accused under promises of favour or threats of injury are excluded from evidence is not because any wrong is done to the accused in suing than but because he may be induced by pressure of hope or fear to confess the guilt without regard to their truth in order to obtain relief or avoid the threatened danger. Thus it is clear that if threat or promise from persons in authority is used in getting a confession it will not be taken into evidence. Every threat or inducement may not be sufficient to induce the accused to confess guilt. The proper question before excluding a confession is whether the inducement held out to the prisoner was calculated to make his confession untrue one. The real enquiry is whether there had been any threat of such a nature that from fear of it the prisoner was likely to have told an untruth. If so, the confession should not be admitted. In case of an ordinary confession there is no initial burden on the prosecution to prove that the confession sought to be proved is not obtained by inducement, threat, etc. It is the right of the accused to have the confession excluded and equally the duty of the court to exclude it even suo moto. It is idle to expect that an accused should produce definite proof about beating or pressure. But he must point out some evidence or circumstances on which a well-sounded conjectures at least, that there was beating or pressure may reasonably be based.

2. Inducement must have reference to the charge- the inducement must have reference to the charge against the accused person that is the charge of offence in the criminal courts and inference the mind of the accused with respect to the escape from the charge. The inducement must have reference to escape from the charge. Thus, it is necessary for the confession to be excluded from evidence that the accused should labour under influence that in reference to the charge in question his position would be better or worse according as he confesses or not. Inducements in reference to other offences or matters or offences committed by others will not affect the validity of the confession thus, where a person charged with murder, was made to confess to a Panchayat which threatened his removal from the caste for life, the confession was held to be relevant, for the threat had nothing to do with the charge.
The inducement need not be necessarily expressed. It may be implied from the conduct of the person in authority, from the declaration of the prisoner or the circumstances of the case. Similarly it need not be made to the prisoner directly; it is sufficient to have come to his knowledge provided it appears to have induced to confession.

3. **Threat, inducement and promise from a person in authority- the threat, inducement and promise on account of which the accused admits the guilt must come from a person who has got some authority over the matter.** To be clear the person giving different promises, threatening the accused or inducing him to make the confession must be a person in authority as stated in the **Pyare Lal v. State of Rajasthan**. If a friend of the accused induces him to make a

confession or a relation if he makes him a promise that if he confesses he will get him released or even if he threatens him and the accused on that account admits his guilt this statement will not be excluded by Section 24 as the threat, inducement or promise do not emanate from a person in authority.
If the accused makes the confession thinking that by doing so the authorities would soften the attitude towards him the confession cannot be said to be non-voluntary.
The term "person in authority" within the meaning of Section 24 was held to be one who has authority to interfere in the matter charge against the accused. If this definition is to be accepted that term "a person in authority" would mean only the police who are in charge of the investigation and the magistrate who is to try the case. This view appears to be too restrictive. It appears that a person in authority within the meaning of Section 24 should be one who by virtue of his position wields some kind of influence over the accused.
The question as to whether a person to whom a confession has been made is a person in authority would naturally depend on the circumstances of each case having regard to the status of the accused in relation to the person before whom the confession is made. A house surgeon is a person in authority in relation to nurse of the same hospital.

4. Sufficiency of the inducement, threat or promise- before a confession is excluded, inducement, threat or promise would in the opinion of the court be sufficient to give the accused person ground which would appear to the accused reasonable for supposing that by making the confession he would gain an advantage or avoid an evil of the nature contemplated in the section. Consequently the mentality of the accused has to be judged and not the person in authority. That being the case, not only the actual words, but words followed by acts or conduct on the part of the person in authority, which may be taken by the accused person as amounting to an inducement, threat or promise, will have to be taken into account. A perfectly innocent expression, coupled with acts or conduct on the part of the person in authority together with the surrounding circumstances may amount to inducement, threat or promise. It does not turn upon as to what may have been the precise words used but in each case whatever the words used may be it is for the judge to consider whether the words used were such as to convey to the mind of the person addressed an intimation that it will be better for him to confess that he committed the crime or worse for him if he does not. The expression, "whatever you say will be used as evidence against you" will not exclude a confession. On the other hand "you better pay the money than go to jail", "if you tell me where my goods are I will be favourable to you", "I will get you released if you tell me the truth", have been held to be sufficient to give the accused grounds for supposing that by making the confession he would gain an advantage or avoid an evil.

It must be borne in the mind that the advantage gained or the evil avoided must be of temporal nature therefore any inducement having reference to a future state of reward or punishment does not affect the admissibility of confession. A confession will not be excluded which has been obtained by the accused by moral or religious exhortation. The expression "you had better as good boys tell the truth", "kneel down and tell me truth in the presence of the Almighty", do not give out any temporal gain and so the confession derived on these confessions are not excluded by Section 24. Confession obtained on the allegation by the panches that if the accused does not

confess he shall be excommunicated will not exclude the confession. It should be borne in the mind that the gain or evil must be in reference to the proceeding against him.

Evidentiary Value of confession

Value of judicial confession- a case where there is no proof of corpus delicti must be distinguished from another where that is proved. In the absence of the corpus delicti a confession alone may not suffice to justify conviction. A confessional statement made by the accused before a magistrate is good evidence and accused be convicted on the basis of it. A confession can obviously be used against the maker of it and is in itself sufficient to support his conviction. Rajasthan High Court has also held that the confession of an accused person is substantive evidence and a conviction can be based solely on a confession.

If it is found that the confession was made and was free, voluntary and genuine there would remain nothing to be done by the prosecution to secure conviction. If the court finds that it is true that the accused committed the crime it means that the accused is guilty and the court has to do nothing but to record conviction and sentence him. No question of corroboration arises in this case. Normally speaking it would not be quite safe as a matter of prudence if not of law to base a conviction for murder on the confession of the alleged murder by itself and without more. It would be extremely unsafe to do so when the confession is open to a good deal of criticism and has been taken in the jail without adequate reason and when the story of murder as given in the confession is somewhat hard to believe. This observation was made by the Supreme Court and therefore it cannot be said to be a good law in the case of judicial confession.

Confession to Police

Section 25. Confession to police officer not to be proved
No confession made to a police officer shall be proved as against a person accused of any offence.
Reasons for exclusion of confession to police- another variety of confessions that are under the evidence act regarded as involuntary are those made to a personnel. Section 25 expressly declares that such confessions shall not be proved.

If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have a committed. A confession so obtained would naturally be unreliable. It would not would be voluntary. Such a confession will be irrelevant whatever may be its form, direct, express, implied or inferred from conduct. The reasons for which this policy was adopted when the act was passed in 1872 are probably still valid.

Case
In **Dagdu v. State of Maharashtra, A.I.R. 1977 S.C. 1579**, Supreme Court noted:
The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the police investigation. The police should remember that confession may not always be a short-cut to solution. Instead of trying to "start" from a confession they should strive to "arrive"

at it. Else, when they are busy on their short-route to success, good evidence may disappear due to inattention to real clues. Once a confession is obtained, there is often flagging of zeal for a full and through investigation with a view to establish the case de hors the confession, later, being inadmissible for one reason or other, the case fundles in the court.

In R v. Murugan Ramasay, (1964) 64 C.N.L.R. 265 (P.C.) at 268
Police authority itself, however, carefully controlled, carries a menace to those brought suddenly under its shadow and the law recognises and provides against the danger of such persons making incriminating confessions with the intention of placating authority and without regard to the truth of what they are saying.

Effect of Police Presence

The mere presence of the policeman should not have this effect. Where the confession is being given to someone else and the policeman is only casually present and overhears it that will not destroy the voluntary nature of the confession. But where that person is a secret agent of the police deputed for the very purpose of receiving a confession, it will suffer from blemish of being a confession to police.
In a rather unusual case, the accused left a letter recording his confession near the dead body of his victim with the avowed object that it should be discovered by the police, the supreme court held the confession to be relevant. There was not even the shadow of a policeman when the letter was being written, and planted.

Exclusion of Confessional Statements Only

This principle of exclusion applies only to statement which amount to a confession. If a statement falls short of a confession, that is, it doesn't admit the guilt in terms or sustainability all the facts which constitute the offence, it will be admissible even if made to a policeman, for example, the statement of an accused to the police that he witnessed the murderer in question. The statement being not a confession was received in evidence against him, as showing his presence on the spot.

Statements during Investigation and Before Accusation
A confessional statement made by a person to the police even before he is accused of any offence is equally irrelevant. The section clearly says that such a statement cannot be proved against any person accused of any offence. This means that even if the accusation is subsequent to the statement, the statement cannot be proved.

Confessional FIR
Only that part of a confessional First Information Report is admissible which does not amount to a confession or which comes under the scope of section 27. The non confessional part of the FIR can be used as evidence against the accused as showing his conduct under section 8.

Statement not amounting to Confession

A statement which does not amount to confession is not hit by the bar of section. A statement in the course of investigation was that the design was carried out according to the plan. The statement did not refer to the persons who were involved in the murder, nor did the maker of the statement refer to himself. This was held to be not a confessional statement. Hence, not hit by section 25. The statement of inspector (crimes) that the accused accepted before him that he got the counterfeit currency notes from a stranger but the accused denying to have so stated, was not admissible in evidence.

Use of Confessional Statement by Accused

Though the statements to police made by the confessing accused cannot be used in evidence against him, he can himself rely on those statements in his defence. The statement of the accused in FIR that he killed his wife giving her a fatal blow when some tangible proof of her indiscretion was available was not usable against him to establish his guilt. But once his guilt was established through other evidence, he was permitted to rely upon his statement so as to show that he was acting under grave and sudden provocation. There is nothing in Evidence Act which precludes an accused person from relying upon his own confessional statements for his own purposes.

Section 28- Confession Made After Removal Of Impression Caused By Inducement, Threat Or Promise, Relevant:

If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, it is relevant.

Confession After Removal Of Threat Or Promise- under section 24 we have seen that if the opinion of a court a confession seems to have been caused by any inducement, threat or promise having reference to the charge and proceeding from a person in authority, it is irrelevant and cannot be proved even against a person making the confession,
Section 28 provides that if there is inducement, threat or promise given to the accused in order to obtain confession of guilt from him but the confession is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court been fully removed, the confession will be relevant becomes pre and voluntary.

Confession on Promise of Secrecy, etc- section 29 lays down that if a confession is relevant, that is, if it is not excluded from being proved by any other provision on Indian Evidence Act, it cannot be relevant if it was taken from the accused by:

1. Giving him promise of secrecy, or
2. By deceiving him, or
3. When he was drunk, or

4. Because it was made clear in answer to question which he need not have answered, or because no warning was given that he was not bound to say anything and that whatever he will state will be used against him.

Section 80. Presumption as to documents produced as records of evidence

Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume-that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

1. Where, however, a criminal court finds that a confession or other statements of an accused person has not been recorded in the manner prescribed, evidence may be taken that the recorded statement was duly made see the Code of Criminal Procedure, 1973 (2 of 1974), section 463.

Section 32. Dying Declaration
Case in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.

Admissibility of dying declaration

It would be very unsafe and hazardous to sustain the conviction of the accused charged for offences under section 302 read with section 34 IPC on the basis of dying declaration recorded by special executive magistrate and police officer separately; **Dada Machindra Chaudhary v. State of Maharashtra , 1999 Cr LJ 4009 (Bom).**
Where there were infirmities in declaration regarding state of deceased to make oral dying declaration and unnatural conduct of witness to whom dying declaration was allegedly given by the deceased which was disclosed to the police after two days of death of deceased, accused was entitled to the benefit of doubt; **Ram Sai v. State of Madhya Pradesh, 1994 Cr LJ 138 (SC).**
Where father of deceased son lodged F.I.R. after admitting him in hospital and mentioned about oral dying declaration with necessary details, such dying declaration given to interested persons is reliable; **Vishram v. State of Madhya Pradesh, AIR 1993 SC 258.**

Where deceased victim knew assailants and gave their names to his family members at first opportunity, his dying declaration could be relied upon; **Prakash v. State of Madhya Pradesh , AIR 1993 SC 65.**
Admissions are not conclusive
There is no doubt that admissions are a good piece of evidence and they can be used against its maker. Admissions are, however, not conclusive and unless they constitute estoppel, the maker is at liberty to prove that they are mistaken or are untrue; **Jagdish Prasad v. Sarwan Kumar , AIR 2003 P&H 3.**

Dying declaration
That the FIR as well as the statement given by the injured to the investigating officer is not admissible as dying declaration under section 32; Sukhar v. State of Uttar Pradesh, 2000 Cr LJ 29 (SC).

Dying declaration must be made by deceased only
The declaration made by the deceased cannot be called dying declaration because it was not voluntary and answers were not given by her, it was her husband who was answering; **Suchand Pal v. Phani Pal, AIR 2004 SC 973.**
If the court is satisfied that the dying declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and consistent, there is no legal impediment in founding the conviction on such a dying declaration even if there is no corroboration; **Kusa v. State of Orissa, AIR 1980 SC 559.**

When dying declaration does not require further corroboration
Once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration; **Khushal Rao v. State of Bombay, AIR 1958 SC 22.**

When more than one dying declarations
In case of two conflicting dying declarations one recorded by doctor in the presence of two more doctors and second by a person attested by Sarpanch, in second one being not proved by competent witness cannot be relied upon; Harbans Lal v. State of Haryana, AIR 1993 SC 819.
Where there are more than one dying declarations and they are inconsistent there it is not possible to pick out one such declaration wherein accused is implicated and base the conviction on the sole basis of that dying declaration; **Kamla v. State of Punjab, AIR 1993 SC 374.**
Among three dying declarations recorded by doctor, police and Magistrate with no infirmity in any, the fact that third declaration was not in question and answer form is not material; Ganpat **Mahadeo Mane v. State of Maharashtra, AIR 1992 SC 1180.**

Illustrations
A wish to prove a dying declaration by B.A must prove B's death.
B wishes to prove, by secondary evidence, the contents of a lost document.
A must prove that the document has been lost.
The evidence is admissible.
(b) A is indicted for the murder of B.
C says the B, when dying, declared that A had given B the wound of which he died.
Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.
Presumption of fact and law- Section 79- 90A

Section 101. Burden of Proof
Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence to facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustration
(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.
A must prove that B has committed the crime.
(b) A desires Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies to be true.
A must prove the existence of those facts.

Joint family property

Merely because some of properties continue to stand in the name of plaintiff that by itself cannot lead to any conclusion that the property purchased by any one member of the family would necessarily be a part of joint family property and when evidence shows that the person who has purchased property had been engaged in an independent business for a sufficient long period; **Baban Girju v. Namdeo Girju Bangar, AIR 1999 Bom 46**.

Reasonable proof of ownership
In absence of any reasonable proof that defendant was the actual owner of the property, and plaintiff was only a name given does not prove that respondent was owner and plaint maker was only a name given to the property; **Rama Kanta Jain v. M.S. Jain, AIR 1999 Del 281.**

What to be proved by prosecution
It is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court on its own make out a new case for the prosecution and convict the accused on that basis; **Narain Singh v. State, (1997) 2 Crimes 464 (Del).**

UNIT-V: INQUIRY AND EXAMINATION

Inquiry of Criminal case in courts: Furtherance of 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 Section 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 move until 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.

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.

Key Points

- Investigation is the first stage. It is done 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.
- The final stage is Trial. It 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.

Submission of cognizable case in court
Section 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.

Section 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.

Section 118- 166. Witnesses
All persons are competent to testify, unless the Court considers that, by reason of tender age, extreme old age, disease, or infirmity, they are incapable of understanding the questions put to them and of giving rational answers. Even a lunatic is competent to testify, provided he is not prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Husbands and wives are, in all civil and criminal cases, competent witnesses against each other, subject to the qualification that communications between the spouses made during marriage are protected from disclosure.

In all civil proceedings, the parties to the suit are competent witnesses. Therefore, a party to a suit can call as his witness any of the defendants to the suit. And although an accused person is incompetent to testify in proceedings in which he is an accused, an accomplice is a competent witness against an accused person.

All persons are competent to testify, unless prevented from.
(a) Understanding the questions, or
(b) Giving rational answers
By reason of-

(i) Tender years,
(ii) Extreme old age,
(iii) Disease of body or mind, or
(iv) Any other similar cause. (Section 118)

A lunatic is competent to testify – unless he is prevented by lunacy from understanding the questions and giving rational answers to them. (S. 118)
A witness who is unable to speak may give evidence in any manner in which he can make it intelligible, e.g., by writing or by signs in open Court. Such evidence shall be deemed to be oral evidence. (S. 119).

A witness who has taken a religious vow of silence is deemed to be "unable to speak", and he may give his evidence in writing to questions put to him. (Lakshan Singh v. Emperor, (1941) 20 Pat. 898) When a deaf-mute witness is to be examined, the Court has to ascertain, before he is examined, that he has the necessary amount of intelligence and that he understands the nature of the oath and of the questions put to him.

Examination of witnesses

Section 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.

Section 137. Cross examination and Reexamination

Cross-examination: The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination: The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.
Comments:
Under section 137 the examination of witness takes place in three stages, namely, Examination-in-chief, Cross-examination and Re-examination. If opposite party so desires he may take the advantage of re-examination.

Examination-in-chief
After taking oath the witness has to give answers the questions asked by the party who has called him before the court. The testimony of the witness is recorded in question-answer form. In this

process all material facts within the knowledge of the witness are recorded to prove his case. This is called as examination-in-chief.
In conducting examination-in-chief like of a witness specially in serious cases, the public prosecutor should take abundant precaution in examination a witness, all necessary questions for proving the prosecution case should be put to the witness. In examination-in-chief the testimony is strictly confined to the facts relevant to the issues only, and not to the law. No leading question is permitted to be asked unless the court allows it.

Cross-examination
After the examination-in-chief the opposite party shall be called to examine the witness. This is known as cross-examination. Where in cross-examination of a witness, nothing appears suspicious, the evidence of the witness has to be believed. It is the right of the opposite party to cross-examine the witness to expose all relevant facts which are either left or not disclosed in the examination-in-chief. It is "one of the most useful and efficacious means of discovering the truth." The right of cross- examination can be exercised by the co-respondents when their interest is in direct conflict with each other.

Object of cross-examination
According to Powell "the objects of cross- examination are to impeach the accuracy, credibility and general value of the witness, to detect and expose discrepancies, or to elicit suppressed fact which will support the case of the cross-examining Party."
Further it can be said: "with this view, the witness may be asked not only as to facts in issue or directing thereto but all questions:

(a) Tending to test his means of knowledge;
(b) Tending to expose the errors, omissions, contradictions and improbabilities in his testimony; or
(c) Tending to impeach his credit.

Therefore, the basic objective of the cross-examination is to ascertain the truth from the testimony given by the witness. It was held that when it is intended to suggest that the witness is not speaking the truth on particular point, it is necessary to direct his attention to it by questions in cross-examination.

The appellant sued two police officers for damages of malicious prosecution. In cross-examination the appellant put questions in that regard to one of them who denied the allegation that he demanded a bribe. He did not put suggestion to the other police officer. It was held that the appellant had not properly substantiated his allegations.

If the witness refused to appear for cross-examination it was held that his evidence lost all credibility. On the other hand where an opportunity for cross-examination has not been used at all or used partly, that does not demolish the testimony of the witness. The absence of cross-examination does not mean the evidence is unchallenged. If the party did not suggest any question to be put to witness by Inquiry Officer, it is not open for him or her to say that opportunity for cross-examination was not given.

Range of cross-examination

Although the range of cross-examination is unlimited, under the section the court has discretionary power to exclude irrelevant questions. The person (complainant or any of his witness who gave evidence on affidavit after being summoned by the accused, can only be subjected to cross-examination as to fact's stated in affidavit. It is not open to the accused to insist that before cross-examination be must dispose in examination-in-chief. The right to cross-examination must relate to the relevant facts. It cannot be turned "into an engine of torture of the witness.

Section 138. Re-examination

The examination of witness subsequent to cross-examination by the party who called him, is called re-examination. If the party finds inconsistencies or discrepancies arising out of cross-examination he has the right to re-examine his own witnesses. But, in case of re-examination no new question or fact shall be permitted to be asked without the court's consent. Similarly, no leading question can be asked. It was held that the re-examination of witness is not confined to mere clarification of ambiguities arising in cross- examination. One cannot supplement examination-in-chief by way of a re-examination and for the first time, start introducing totally new facts, which have no concern with the cross-examination.

If any new matter is introduced in re-examination the adverse party must be given opportunity for cross-examination. It is generally called re-cross-examination.

Section 155. Impeaching the credit of witness

The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:

(1) By the evidence of persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

Explanation:

A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations: The evidence is admissible.

(a) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

(b) A is indicted for the murder of B.
C says the B, when dying, declared that A had given B the wound of which he died. Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence. The evidence is admissible.

Principle:

Section 155 deals with manners by which the credit of a witness may be impeached
Impeaching the credit of witness means exposing him before the court as what is real character, so that the court does not trust him. Impeaching the credit of witness may be done either by the opposite party or with the permission of court by the party who called him:

Sections dealing with impeaching credit of witness:

1. Section 155 provides for impeaching the credit of witness.
2. Impeaching the credit of a witness by cross-examination (Sections 138, 140, 145 and 154).
3. By putting questions injuring character of witness in cross-examination (Section 146).

Method of Impeaching Credit

Unworthy of Credit (Clause 1):
By producing independent witnesses from their means of knowledge and experience, they can testify that the witness if question is unworthy of credit. In order to disclose such witness as untruthful the court should be undoubtedly sure that independent witnesses are well acquainted with the general reputation of the witness. "In theory such is confined to general reputation for untruthfulness, and the witness is to state his personal opinion, but in practice the question is put in this way."

Corrupt inducement (Clause 2):
By producing independent witness the credit of witness can be impeached that he has taken bribe, or has accepted the offer of a bribe or has received any other corrupt inducement to give evidence. When any kind of corrupt inducement is proved the witness is completely discredited.

Previous inconsistent statements (Clause 3):
This clause provides that the credit of witness may be impeached by proving his previous statements. When the present statement is contradicted by citing previous statement it must be satisfactorily proved. The previous contradictory statements of a witness can be used to discredit only his testimony and not that of other witnesses.

Previous statements recorded on tape can be used to corroborate as well as to contradict the evidence. The previous inconsistent statement must relate to the matter in issue. This third sub-clause refers to a former statement which is inconsistent with the statement made by the witness in evidence in the case and it is permissible that the witness be contradicted about that statement.
Explanation:
In examination-in-chief a witness can not be asked the reasons for his belief that another witness is unworthy of credit. Such questions can be asked only in cross-examination.

Section 45. Expert Evidence

Evidentiary Value of Expert Evidence under Indian Evidence Act, 1872

The opinions or beliefs of third persons are, as a general rule, irrelevant, and therefore, inadmissible. Witnesses are to state the facts only, i.e., what they themselves saw or heard or perceived by any other sense. It is the function of the Judge and the Jury to form their own conclusion or opinion on the facts stated. Thus, the opinion or the impression of a witness that it appeared to him from the conduct of a mob that they had collected for an unlawful purpose is not admissible to prove the object of the assembly.

There are, however, cases in which the Court is not in a position to form a correct judgment, without the help of the persons who have acquired special skill or experience in a particular subject. In such cases, the help of experts is required. In these cases, the rule is relaxed, and expert evidence is admitted to enable the Court to come to a proper decision and under this head come matters of science, art, trade, handwriting, finger impressions and foreign law. The rule admitting expert evidence is founded on necessity.

Who is an expert?
The expression "expert" covers 'person especially skilled'. An expert may be defined as a person who, by practice and observation, has become experienced in any science or trade. He is one who has devoted time and study to a special branch of learning, and is thus especially skilled in that field wherein he is called to give his opinion.

The term implies both superior knowledge and practical experience in the art or profession, but generally, nothing more is required to entitle one to give testimony as an expert than that he had been educated in a particular art or profession.

Before such evidence can be considered, it must be proved that the person giving the evidence is an expert. If on considering the evidence, the Court comes to the conclusion that the person who has given evidence is not an expert; his opinion has to be discarded.

How an Expert's Testimony differs from that of an Ordinary Witness

(1) An expert's evidence is not confined to what actually took place, but covers his opinions on facts, e.g., although a doctor may not have attended the victim, he can still give his opinion as to the cause of the victim's death or the effect of a certain poison.
(2) An expert can refer to and rely upon experiments conducted by him in the absence of the other party. Thus, on a charge of arson, evidence of an experiment conducted by an expert subsequent to the fire is admissible to show how the fire may have originated.
(3) An expert may quote passages from well-known text books on the subject and may refer to them to refresh his memory.
(4) An expert may state facts relating to other cases in **pari materia** similar to the case under investigation.

The Value of Expert Evidence

Perhaps the testimony which least deserves credit with a jury is that of skilled witnesses. These witnesses are usually required to speak not facts, but to give opinions; and when this is the case, it is often quite surprising to see with what facility, and to what extent, their views can be made to correspond with the wishes or the interests of the parties who call them. They do not indeed willfully misrepresent what they think, but their judgment becomes so warped by regarding the subject from one point of view, that even when conscientiously disposed, they are incapable of forming an independent opinion. Testimony of experts is usually considered to be of slight value, since they are proverbially, though perhaps unwittingly, biased in favour of the side which calls them. As the Privy Council once observed: "There cannot be any more unsatisfactory evidence than that of an interested party called as an expert."

In **Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagat, (A.I.R. 1954 S.C. 316),** the Supreme Court observed that the conclusions based on mere comparison of handwriting must, at best, be indecisive, and therefore, should yield to the positive evidence in the case.

Similarly, in **Emperor, v. Ramrao Mangesh,** it was held that expert evidence, as a mode of proof, though permissible, is hazardous and inconclusive, and as a method of proving disputed handwriting, it is accepted by the Courts with great caution. It is indeed unsafe to base a conviction on the uncorroborated opinion of a handwriting expert.

As observed in an American case (**Peoples v. Patrick, 182 N.Y. 131**),— "Expert witnesses are affected by that pride of opinion and that kind of mental fascination with which men are affected when engaged in the pursuit of what they call scientific enquiries."

Medico-legal opinion

Section 45 to 51. Expert's Opinion and its admissibility & relevancy
Section provide relevancy of opinion of third persons, which is commonly called in our day to day practice as expert's opinion. These provisions are exceptional in nature to the general rule that evidence is to be given of the facts only which are within the knowledge of a witness. The exception is based on the principle that the court can't form opinion on the matters, which are technically complicated and professionally sophisticated, without assistance of the persons who have acquired special knowledge and skill on those matters. Conditions for admitting an expert opinion are following:

a) That the dispute can't be resolved without expert opinion and
b) That the witness expressing the opinion is really an expert.

Who is an expert?
The definition of an expert may be referred from the provision of Sec.45 of Indian Evidence Act that an 'Expert' means a person who has special knowledge, skill or experience in any of the following

1) foreign law,
2) science
3) art
4) handwriting or
5) finger impression and such knowledge has been gathered by him—
   a) by practice,
   b) observation or
   c) proper studies.

For example, medical officer, chemical analyst, explosive expert, ballistic expert, fingerprint expert etc.

According to Sec.45, the definition of an expert is confined only to the five subjects or fields as mentioned above. But practically there are some more subjects or fields on which court may seek opinion an expert. An expert witness is one who has devoted time and study to a special branch of learning and thus he is especially skilled on those points on which he is asked to state his opinion. His evidence on such points is admissible to enable the court to come to a satisfactory conclusion.

Duty of the expert:
a) An expert is not a witness of fact.
b) His evidence is of advisory character.
c) An expert deposes and does not decide.
d) An expert witness is to furnish the judge necessary scientific criteria for testing the accuracy of the conclusion so as to enable the judge to form his independent judgment by application of the criteria to the facts proved by the evidence.

Value of expert opinion:

The Expert evidence has two aspects
a) Data evidence [it can't be rejected if it is inconsistent to oral evidence]
b) Opinion evidence [it is only an inference drawn from the data and it would not get precedence over the direct eye-witness testimony unless the inconsistency between the two is so great as to falsify the oral evidence] - [**Arshad v. State of A.P. 1996 CrLJ 2893 (para34) (AP)**].

Expert evidence is opinion evidence and it can't take the place of substantive evidence. It is a rule of procedure that expert evidence must be corroborated either by clear direct evidence or by circumstantial evidence. It is not safe to rely upon this type of evidence without seeking independent and reliable corroboration - [**S.Gopal Reddy v. State of A.P. AIR 1996 SC2184 (Para27)**]

Difference between evidence of an expert and evidence of an ordinary witness:

Evidence of an expert Evidence of an ordinary witness

1. Expert gives his opinion regarding handwriting, finger impression, nature of injury etc.
2. It is advisory in character.
3. Court can't pass an order of conviction on the basis of expert opinion, as because it is not conclusive.
4. Expert gives his opinion on the basis of his experience, special knowledge or skill in the field.

- An ordinary witness states the fact relating to the incident.
- Witness states the facts. Opinion of a witness is not admissible.
- Court may pass an order of conviction on the basis of evidence of ocular witness (eye witness).
- A witness gives actual facts connected with the incident what he had seen or heard or perceived.

The expert opinion is only corroborative evidence. It must not be the sole basis for conclusive proof. The expert witness must be subjected to cross-examination in the court. Mere submission of opinion by an expert through any certificate or any other document is not sufficient.

1. Question arises whether A, at the time of committing the offence, was incapable to know the nature of his act or that he was doing what was wrong or contrary to law because of unsoundness of mind. The opinion of the experts upon the points is relevant-

a) Whether the symptom exhibited by A commonly show unsoundness of mind and
b) Whether such unsoundness of mind usually renders the person incapable to know the nature of his act or to know what he does is wrong or contrary to law.

2. Medical opinion:-

The value of Medical evidence is only corroborative. A doctor acquires special knowledge of medicine and surgery and as such he is an expert. Opinions of a medical officer, physician or surgeon may be admitted in evidence to show--

a) Physical condition of the a person,
b) Age of a person
c) Cause of death of a person
d) Nature and effect of the disease or injuries on body or mind
e) Manner or instrument by which such injuries was caused
f) Time at which the injury or wounds have been caused.
g) Whether the injury or wounds are fatal in nature
h) Cause, symptoms and peculiarities of the disease and whether it is likely to cause death
i) Probable future consequences of an injury etc.

When there is a conflict between the medical evidence and ocular evidence, oral evidence of an eye witness has to get primacy as medical evidence is basically opinionative. Where the direct

evidence is not supported by the expert evidence, the evidence is wanting in the most material part of the prosecution case and therefore, it would be difficult to convict the accused on the basis of such evidence.

If the evidence of the prosecution witnesses is totally inconsistent with medical evidence, it is the most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained, it is sufficient to discredit the evidence as well as the entire case. [**Mani Ram v. State of U.P. 1994 Supp (2) SCC 289,292; 1994 SCC (Cri) 1242**]
Where the opinion of one medical witness is contradicted by another and both experts are equally competent to form an opinion, the court will accept the opinion of that expert which supports the direct evidence in the case. [**Piara Singh v. State of Punjab AIR 1977 SC 2274**]

3) Handwriting:

Like other expert opinion, the opinion of handwriting expert is advisory in nature. The expert can compare disputed handwriting with the admitted handwriting and give his opinion whether one person is the author of both the handwriting.
The court shall exercise great care and caution at the time of determining the genuineness of handwriting. A handwriting expert can certify only probability and 100% certainty. On the question of the handwriting of a person, the opinion of a handwriting expert is relevant, but it is not conclusive and handwriting of a person can be proved by other means also.

The following are the different modes of proving handwriting:
i) A person who wrote the document can prove it. (Sec.47)
ii) A person who saw someone writing or signing a document can prove it (Sec.47)
iii) A person who is acquainted with the handwriting by receiving the documents purported to have been written by the party in reply to his communication or in ordinary course of business, can prove the documents (Sec.47)
iv) The court can form opinion by comparing disputed handwriting with the admitted handwriting. (Sec.73)
v) The person against whom the document is tendered can admit the handwriting. (Sec.21)
vi) The expert can compare disputed handwriting with admitted handwriting and thereby prove or disprove whether the documents were written by the same or different persons. (Sec.45).

4) Fingerprint expert:
Expert opinion on fingerprints has the same value as the opinion of any other expert. The court will not take opinion of fingerprint expert as conclusive proof but must examine his evidence in the light of surrounding circumstances in order to satisfy itself about the guilt of the accused in a criminal case.

5) Ballistic expert:
A ballistic expert may trace a bullet or cartridge to a particular weapon from which it was discharged. Forensic ballistics may also furnish opinion about the distance from which a shot was fired and the time when the weapon was last used.

6) Evidence of tracking dogs:
Trained dogs are used for detection of crime. The trainer of tracking dogs can give evidence about the behavior of the dog. The evidence of the tracker dog is also relevant U/s-45.

Case
In **Abdul Razak V. State of Maharashtra (AIR 1970 SC 283)** question arises before the Supreme Court whether the evidence of dog tracking is admissible in evidence and if so, whether this evidence will be treated at par with the evidence of scientific experts. In this case, Pune Express was derailed near Miraj Railway Station on 10th Oct., 1966. Sabotage was suspected. The removal of fishplates was found to be the cause of derailment and accident. The police dog was brought into service, taken to the scene of crime. After smelling the articles near the affected joint, the dog ran towards embankment where one fishplate was lying, and then the dog smelt it and went to a nearby shanty and pounced upon the accused who was a gang man at Miraj Railway station.

The Supreme Court held that evidence of the trainer of tracking dog is relevant and admissible in evidence, but the evidence can't be treated at par with the evidence of scientific experts analyzing blood or chemicals. The reactions of blood and chemicals can't be equated with the behavior of dog which is an intelligent animal with many thought processes similar to the thought processes of human beings. Whenever thought process is involved there is risk of error and deception. The law is made clear by the Supreme Court by enunciating the principle that the evidence of dog tracking is admissible, but not ordinarily of much weight and not at par with the evidence of scientific experts.

Apart from the above fields, there are chemical analyst, explosive experts, mechanical experts, interpreter, patent expert, hair expert etc. whose opinion is admissible in evidence.

Admissibility of expert opinion:

Expert opinion becomes admissible only when the expert is examined as a witness in the court. The report of an expert is not admissible unless the expert gives reasons for forming the opinion and his evidence is tested by cross-examination by the adverse party. But in order to curtail the delay and expenses involved in securing assistance of experts, the law has dispensed with examination of some scientific experts.

For example, Sec.293 Cr.P.C. provides a list of some Govt. Scientific Experts as following:

a) Any Chemical Examiner / Asstt. Chemical examiner to the Govt.
b) The Chief Controller of explosives
c) The Director of Fingerprint Bureau
d) The Director of Haffkein Institute, Bombay
e) The Director, Dy. Director or Asstt. Director of Central and State Forensic Science Laboratory.
f) The Serologist to the Govt.
g) Any other Govt. Scientific Experts specified by notification of the Central Govt.

The report of any of the above Govt. Scientific Experts is admissible in evidence in any inquiry, trial or other proceeding and the court may, if it thinks fit, summon and examine any of these experts. But his personal appearance in the court for examination as witnesses may be exempted unless the court expressly directs him to appear personally. He may depute any responsible officer to attend the court who is working with him and conversant with the facts of the case and can depose in the court satisfactorily on his behalf.

Can an Expert suo moto examine and furnish his opinion?
No, an expert can't initiate examination or analysis and furnish his opinion unless the Investigating Officer has sought his opinion in compliance with the formal procedure. An expert can't do anything suo moto in regard to analysis or examination and formation of his opinion.

Investigating officer and expert opinion:
The investigation officer should seek opinion from experts or specially skilled person to form his own opinion whether the materials collected during the course of investigation is actually establishes the link between the crime, the victim and the criminals. The investigating officer shall seek the assistance of an expert whenever he feels necessary for establishing any fact related to the fact in issue.

Forensic Science expert opinion
Sec. 45 to Sec.51 under Chapter-II of the Indian Evidence Act provide relevancy of opinion of third persons, which is commonly called in our day to day practice as expert's opinion. These provisions are exceptional in nature to the general rule that evidence is to be given of the facts only which are within the knowledge of a witness. The exception is based on the principle that the court can't form opinion on the matters, which are technically complicated and professionally sophisticated, without assistance of the persons who have acquired special knowledge and skill on those matters. Conditions for admitting an expert opinion are following:

a) That the dispute can't be resolved without expert opinion and
b) That the witness expressing the opinion is really an expert.

Section 47A. Relevancy of Opinion as to electronic signature
When the court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying authority which has issued the Electronic Signature Certificate, is relevant. The question arises whether an electronic signature is of A. The certifying authority which has issued the electronic signature opines that A is not the person who has applied or approached for getting an electronic signature. Thus A is not the owner of the electronic signature in question. It belongs to someone else.
The opinion of Certifying authority may be accepted by the court.

Section48. Relevancy of opinion as to existence of right or custom
When the court has to form an opinion as to the existence of any general custom or right, the opinion of the persons who are in a position to know about its existence, are relevant.
Explanation:-
The expression 'general custom or right' includes customs or rights common to any considerable class of persons. Private rights are excluded from the operation of this Section. Here the word

"general" is equivalent to the term 'public'. A tribal or family custom excluding a son or brother from inheritance may be proved by general evidence of the members of the tribe or family who would naturally be cognizant of its existence and its exercise without controversy.

Sec.49:- Relevancy of opinion as to usages, tenets etc.

1) When the court has to form an opinion as to ----
   a) Usages of any body of men of family
   [usages includes any practice, tradition or custom of trade, business, agriculture, family etc.]
   b) Tenets of any body of men or family
   [Opinion, principle or doctrine held or maintained by a body of men, it applies to religion, politics science etc.]
   c) Constitution and government of religious or charitable foundation
   d) Meaning of words or terms used in a particular district or by particular classes of people

2) Opinion of persons who have special means of knowledge as to the above matters, are relevant. A, the sister of B, claims to inherit the self-acquired property of B under a special custom. General evidence as to existence of such custom by the members of the family who would naturally be cognizant of its existence and exercise without controversy is admissible.

Section 50. Relevancy of opinion as to relationship

1) When the court has to form an opinion as to relationship between two persons,
2) The opinion of a person on such relationship is relevant on the following conditions:-
   a) He may be a member of the family of such persons whose relationship is in dispute or he may be an outsider.
   b) He must have special means of knowledge as to such relationship.
   c) His opinion must be expressed by conduct.

The opinion or belief of a person especially competent in this respect as expressed by his conduct in outward behavior is relevant. Here the word 'conduct' is not necessarily limited to the conduct of the relation of the persons in dispute, but it includes the conduct of the witness who gave his opinion about the existence of such relationship.

Provision:-The proviso to Sec.50 provides that the opinion on relationship can't be sufficient to prove a marriage

   1) In the proceedings under Indian Divorce Act or
   2) In the prosecutions for -----
      a) bigamy (Sec.494 IPC),
      b) bigamy with concealment of former marriage from the person with whom subsequent marriage is contracted (Sec.495 IPC),
      c) adultery (Sec.497 IPC) and
      d) enticing or taking away or detaining a married woman with criminal intent (Sec.498 IPC).

In these cases the fact of marriage must be strictly proved in regular way.

i) The question is whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

ii) The question is whether A was the legitimate son of B. The fact that A was always treated as the legitimate son of B by the member of the family, is relevant.

Section.51. Relevancy of grounds of opinion

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based, are also relevant.

Opinion is no evidence without assigning reasons for such opinion. The correctness of the opinion can be better estimated if the reasons upon which it is based are known. If the reasons are frivolous or inconclusive the opinion is worth nothing. i) An expert may give an account of experiments performed by him for the purpose of forming his opinion.

ii) An Excise Inspector is an expert on the question whether a certain liquid is illicit liquor or not. Before he gives his opinion as an expert he has to examine it and has also to furnish the data on which his opinion is based. His bald statement that the contents of the bottles are illicit liquor is not sufficient to prove that fact.[Gobardhan v. State AIR 1959 All 53].

From the above analysis it may be submitted that evidence of an expert is not a substantive piece of evidence. The courts do not consider it conclusive. Without independent and reliable corroboration it may have no value in the eye.

Important Terms

In this Code, unless the context otherwise requires, - **Section 2. Definitions**

(a) "**bailable offence**" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "**non-bailable offence**" means any other offence.

(b) "**charge**" includes any head of charge when the charge contains more heads than one.

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

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

Explanation- A report made by a police officer in a case which discloses, 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 complainant.

(e) "**High Court**" means,-
(i) in relation to any State, the High Court for that State;
(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;
(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India.

(f) "**India**" means the territories to which this Code extends.

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

(h) "**investigation**" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

(i) "**judicial proceeding**" includes any proceeding in the course of which evidence is or may be legally taken on oath.

(j) "**local jurisdiction**", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify.

(k) "**metropolitan area**" means the area declared, or deemed to be declared, under section 8, to be a metropolitan area.

(l) "**non-cognizable offence**" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.

(m) "**notification**" means a notification published in the Official Gazette.

(n) "**offence**" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle trespass Act, 1871 (1 of 1871).

(o) "**officer in charge of a police station**" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present.

(p) "**place**" includes a house, building, tent, vehicle and vessel.

(q) "**pleader**", when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practice in such Court, and includes any other appointed with the permission of the Court to act in such proceeding.

(r) "**police report**" means a report forwarded by a police officer to a Magistrate under subsection (2) of section 173.

(s) "**police station**" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf.

(t) "**prescribed**" means prescribed by rules made under this Code.

(u) "**Public Prosecutor**" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor.

(v) "**sub-division**" means a sub-division of a district.

(w) "**summons-case**" means a case relating to an offence, and not being a warrant-case.

(x) "**warrant-case**" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

(y) **words** and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

RECOMMENDED READINGS

Basu D. D. (2014). Criminal Procedure Code, 1973 (Set of 2 Vols.)

C K Thakker 'Takwani' and M C Thakker (2014). Criminal Procedure

Chandrasekhar Pillai K.N. (2016). R,V. Kelkar's Criminal Procedure (sixth edition 2016) Paperback.

Henry Stewart Cunningham (2015). The Indian Evidence ACT, No. 1 of 1872: As Amended by ACT XVIII of 1872.

Kelkar, R.V., (2003) *Lectures on Criminal Procedure* Eastern book Co., Lucknow.

Nageshwar Rao (2015 Ed II). Indian Evidence Act.

Nageswara Rao V (2012). The Indian Evidence Act Hardcover

Ratanlal and Dhirajlal (1995). Code of Criminal Procedure

Ratanlal and Dhirajlal **(**2013**).** The Code of Criminal Procedure –As Amended By the Criminal Law (Amendment) Act**.**

Sarathy Veppa P. (1994). Elements of Law of Evidence, Eastern book Co., Lucknow.

Singh, A., (1995) *Law of Evidence*, Allahabad Law agency.

Sohoni (2014). Code of Criminal Procedure Vol. 1 (Sections 1 to 128) Revised by Justice M L Singhal