UNIT-I: INTRODUCTION

Introduction

"**No act is a Crime without Law**". This maxim underscores the need and importance of a law. There are several laws in a country; however the most important among them is a statutory law. The statutory law should necessary be a criminal law, for India this remains India Penal Code, to enforce this law we need a procedural law that deals with criminal justice functionaries hence we had code of criminal procedure. Another important law of any criminal justice system is evidentiary law for India it is Indian Evidence Act. This lesson is intended to address and enrich the readers with reasonable major laws of India.

Definitions – Vices, Sin, Tort and Crime

Vice (victimless crime)- Legal Definition

Activities that are made illegal because they offend the moral standards of the community, hence they are banned. For instance Gambling, pornography, and prostitution are the big three of vice crimes in most states and communities. A vice squad is a police division whose focus is stopping public-order crimes like gambling, narcotics, prostitution, and illegal sales of alcohol. Vice squad may also refer to: Vice Squad, an English punk band.

Sin

Sin is a moral definition used by the religions to describe a wide range of actions some of which are not illegal under most nations' legal systems. The word crime describes actions that are illegal under a nation's legal system. Since the two could be mutually exclusive, attempting to link the two terms in a conversation or in logical thought may not be a rational exercise.

Torts

A tort, in common law jurisdictions, is a civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act. The person who commits the act is called a tortfeasor.

Tort Law: Three Types of Torts

Torts are wrongdoings that are done by one party against another. As a result of the wrongdoing, the injured person may take civil action against the other party. To simplify this, let's say while walking down the aisle of a grocery store, you slip on a banana that had fallen from a shelf. You become the plaintiff, or injured party, and the grocery store is considered the tortfeasor or defendant, the negligent party.

Simply said, you would probably take civil action against the grocery store to recoup compensation for pain, suffering, medical bills and expenses incurred as a result of the fall.

Negligence is just one tort category. There are three general categories of torts. Regardless of the tort action, three elements must be present:

- Tortfeasor, or defendant, had a duty to act or behave in a certain way.
- Plaintiff must prove that the behavior demonstrated by the tortfeasor did not conform to the
- Duty owed to the plaintiff.
- The plaintiff suffered an injury or loss as a result.

Because torts are a civil action involving private parties, punishment does not include a fine or incarceration. The punishment for tortious acts usually involves restoring the injured party monetarily. Sometimes a court order may force the tortfeasor to either do or not do something. Think trespassing, defamation or slander. Let's explore the three types of torts:

- Intentional torts
- Negligence torts
- Strict liability torts.

Crime

Crimes can be broken down into elements, with exceptions; *every* crime has at least three elements: a criminal act, also called actus reus; a criminal intent, also called mens rea; and definition of law. Criminal elements are set forth in criminal statutes, or cases in jurisdictions that allow for common-law crimes, which the prosecution must prove beyond a reasonable doubt. The term conduct is often used to reflect the criminal act and intent elements. Following are the common included elements of crime, absence of one would not constitute an act of Crime.

Elements of Crime

- Mens Rea
- Actus Reus
- Law
- Offender/ Victim.

Crime-Definitions

There are very many diverse conceptions of crime, each of crime, each of which reflects a different scientific and ideological viewpoint. It is important to note that the variation in definition as real consequences upon how different types of behavior are dealt with at a practical level. According to the author Rob White, crime is not inherent in an activity. It is defined under particular material circumstances and in relation to specific social processes e.g. the prohibition in drinking alcohol; killing al-cap one who sold alcohol illegally. A crime was created and many people were engaged in selling illegal alcohol and many people were killed. Then the prohibition was uplifted.

Kenny defines crime as a wrong whose solicitation is punitive and which is no way remissible by any private person but is remissible by the crown.

Keeton-crime is an undesirable act which the state finds most convenient to correct by the institution of proceedings for the infliction of a penalty rather than leaving the remedy to the discretion of the injured person.

Sutherland- Criminal behavior is behavior which is a violation of criminal law. No matter what the degree of immorality, reprehensively or indecency of an act, it is not a crime unless it is prohibited by law.

For much of its history, criminology and legal jurisprudence has accepted the legalistic definition of crime as given by **Paul Tappan**

"Crime is an intentional act or omission committed by a person or group in violation of Criminal Law (Statutory Law, Judicial Preceedents, Special or Local Law(s) in force) and sanctioned by state as Felony or Misdemeanor"

History of Criminal Law

In the uncivilized society no person was said to be safe from attacks to his person or property by any other person. The person attacked either succumbed or overpowered his opponent. A tooth for a tooth, an eye for an eye, a life for a life was the rule of law. With the advancement of time, the injured person agreed to accept compensation, instead of killing his adversary. For a long time the function of settling the terms remained with the parties themselves, but gradually this function came to be performed by the State.

In India the criminal jurisprudence came into existence from the time of Manu. Manu has recognized assault, theft, robbery, false evidence, slander, criminal breach of trust, cheating, adultery and rape. The king protected his subjects and the subjects in return owed him allegiance and paid him revenue. The king administered justice himself, if unable due to certain circumstances; the matter was entrusted to a judge. If a criminal was fined, the fine went to the king's treasury and was not given as compensation to the injured party.

Different laws came into existence in the reins of different rulers. When the Britishers came into India they adopted a different set of law which was based on British pattern, but it was not uniform throughout India. Different regulations were passed prescribing practice and procedure to be followed. In 1834 the first Indian Law Commission was constituted to investigate into the jurisdiction, powers and rules of the existing courts as well as police establishments and into the laws in operation in British India. The draft of the **Indian Penal Code** was prepared by the **First Law Commission**, chaired by Thomas Babington Macaulay in 1835 and was submitted to Governor-General of **India** Council in 1837. Its basis is the **law** of England freed from superfluities, technicalities and local peculiarities. The Indian Penal Code in its basic structure is a document that consists of the list of all the punishments and cases that a person who commits any kind of a crime is to be held liable and charged with. It covers any Indian citizen or a person

of Indian origin. The exception to this document is that any kind of military or armed forces crimes cannot be charged on the basis of Indian Penal Code. They have a different dedicated list of laws and the Indian Penal Code cannot supersede any part of it.

The Indian Penal Code IPC is the main criminal code of India. It extends to the whole of India except to the state of Jammu and Kashmir. The introductory draft of Indian Penal Code was formulated in the year 1860 and this was done under the supervision of the First Law Commission which was chaired by Lord Macaulay. The first Penal Code came into existence in the year 1862 and since then number of amendments have been made in the code. It is a comprehensive code that intends to cover all the substantive aspects of criminal law. In the Jammu and Kashmir the Indian Penal Code is known as Ranbir Penal Code (RPC). The total number of sections enumerated in the Indian Penal Code is five hundred eleven. Every section defines different category of crimes committed by persons of Indian origin.

Objective of the Indian Penal Code

The objective of this Act is to provide a general Penal Code for India. Though this Code consolidates the whole of the law on the subject and is exhaustive on the matters in respect of which it declares the law, many more penal statutes governing various offences have been created in addition to this code. The Indian security system has been one that has gone through a lot of tests and examinations throughout the time. This is due to the political as well as the social situation of the country. India is a land of diverse cultures and traditions and it is a place where people from various religions as well as ethnic backgrounds live together.

Indian Penal Code Format

The Indian Penal code has a basic format, it's a document that lists all the cases and punishments that a person committing any crimes is liable to be charged. It covers any person of Indian origin. The exceptions are the military and other armed forces, they cannot be charged based on the Indian Penal Code. They have a different set of laws under the Indian Penal Code as well.

The Indian Penal Code has its roots in the times of the British rule in India, formulating in year 1860.Amendments have been made to it in order to incorporate a lot of changes and jurisdiction clauses. One such amendment is the inclusions of section 498-A.The total number of sections contained in the Indian Penal Code are five hundred eleven. All these sections pertain to a particular category of crimes committed by civilians of Indian origin. There are sections related to Dowry Laws and jurisdictions in India, as well as there are several sections that concern various types of criminal laws. The Indian Penal Code is thus the most fundamental document of all the law enforcer as well as the entire judiciary in India.

The Indian judicial system is one that has evolved into a stable and fair system of detention and penalizing, after being tested well for several years. The judiciary of the country is a body of people who are given the task of execution of the laws made by the government, that is, the judiciaries of a country are its law enforcers. However, the judicial representatives cannot assess the cases of crimes or misconduct on their own perceptions or rules.

There has to be a single system or a document that acts as a standard to all the decision making process and the penalizing norms. Such a document exists in all countries and in case of India; it is referred to as The Indian Penal Code. The Indian Penal Code is applicable to all the citizens of India who commit crimes or actions suggesting misconduct in the Indian Territory. The document is applicable to ships as well as aircrafts within the Indian seas or the airspace as well. Indian penal code is the skeleton of the Indian criminal justice system. IPC covers any Indian citizen or a person of Indian origin with the exceptions to any kind of military or the armed forces crimes, which are handled by a dedicated list of armed force acts.

The most important feature of the Indian Penal Code is the impartial nature of judgments promoted by the document. The Indian Penal Code does not include any special favors for any special person at some position. Thus, the Indian Penal Code stands alike for government employees, as for a common man, and even for a judicial officer.

This builds up the faith of the common citizens in the law making and enforcing bodies in the country and prevents any sort of corruption or misuse of power on the part of the people in power. All in all, the Indian Penal Code of the present day has done away with almost all its flaws and has evolved into a modern law enforcing document that takes into consideration the humane side of the personalities of culprits as well. This has escalated and improved the Indian system of Law to greater heights and has led to a firm respect for it in every citizen of the country.

Importance of the Indian Penal Code

Indian Penal Code is a very important set of regulation which is very important for the system to be operated in a proper way. It is the main criminal code of India. They are various offences that are made under this law. The Indian Penal Code includes all the relevant criminal offences dealing with offences against the state, offenses for public, offences for armed forces, kidnapping, murder, and rape. It deals with offense related to religion, offences against property and it has an important section for offences for marriage, cruelty from husband or relatives, defamation and so on so forth. This was an general over view of the structure of Indian Penal Code. It is not only important for India but every country should have an Penal Code in order for its system to be operated in a systematic way. This document majorly covers all the basic offences which are highlighted in the society.

The Act 45 of 1860

The Indian Penal Code Bill was passed by the Legislative Council and it received the assent of the Governor-General on 6th October, 1860. It came on the Statute Book as THE INDIAN PENAL CODE (45 of 1860) - Herein after referred as IPC.

The first Codified Criminal Laws: Indian Penal Code (IPC)

- The Code embodies the general penal law of the country
- It is the substantive criminal law
- It is the sole authority in respect of

- General conditions of liability
- Definition of offences
- General Exceptions and
- Includes Private Defense-Exempting from criminal liability

- It prescribes the various punishments for all offences- with only maximum punishments

THE INDIAN PENAL CODE (45 OF 1860)- **IPC** *6th October, 1860*

Preamble
Whereas it is expedient to provide a general Penal Code for India;

Chapter I – Introduction

1. Title and extent of operation of the Code
This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

2. Punishment of offences committed within India
Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which, he shall be guilty within India.

3. Punishment of offences committed beyond but which by law may be tried within India
Any person liable, by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

4. Extension of Code to extra-territorial offences
The provisions of this Code apply also to any offence committed by—

(1) Any citizen of India in any place without and beyond India;
(2) Any person on any ship or aircraft registered in India wherever it may be.

Explanation — In this section the word "**offence**" includes every act committed outside India, which, if committed in India, would be punishable under this Code.

Illustration
A, who is a citizen of India, commits a murder in Mongolia. He can be tried and convicted of murder in any place in India in which he may be found.

5. Certain laws not to be affected by this Act
Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

Important Terms in India Penal Code

Chapter II - General Explanations

6. Definitions in the Code to be understood subject to exceptions
Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "**General Exceptions**", though these exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations
(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) *A*, a police-officer, without warrant, apprehends *Z*, who has committed murder. Here *A* is not guilty of the offence of wrongful confinement for he was bound by law to apprehend *Z* and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

7. Sense of expression once explained
Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

8. Gender
The pronoun "he" and its derivatives are used of any person, whether male or female.

9. Number
Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

10. "Man", "Woman"
The word "**man**" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

11. "Person"
The word "**person**" includes any Company or Association or body of persons, whether incorporated or not.

12. "Public"
The word "**public**" includes any class of the public or any community.

13. "Queen"
Repealed by the A.O. 1950.

14. "Servant of Government"
The words "**servant of Government**" denotes any officer or servant continued, appointed or employed in India or under the authority of Government.

15. "British India"
Repealed by the A.O. 1937.

16. "Government of India"
Repealed by the A.O. 1937.

17. "Government"
The word "**Government**" denotes the Central Government or the Government of a State.

18. "India"
"**India**" means the territory of India excluding the State of Jammu and Kashmir.

19. "Judge"
The word "**Judge**" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which is confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations
(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.
(c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.
(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another court, is not a Judge.

20. "Court of Justice"
The words "**Court of Justice**" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration
A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. "Public Servant"
The words "**public servant**" denotes a person falling under any of the descriptions hereinafter following; namely:

Second — Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third — Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth — Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth — Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth — Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh — Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth — Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth — Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth — Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh — Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth — Every person

(a) In the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) In the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation 1 — Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2 — Wherever the words "**public servant**" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3 — The word "**election**" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

22. "Movable property"
The words "**movable property**" is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

23. "Wrongful gain"
"Wrongful gain" is gain by unlawful means of property, which the person gaining is not legally entitled.
"Wrongful loss"
"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully
A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property.

24. "Dishonestly"
Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "**dishonestly**".

25. "Fraudulently"
A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

26. "Reason to believe"
A person is said to have "**reason to believe**" a thing, if he has sufficient cause to believe that thing but not otherwise.

27. Property in possession of wife, clerk or servant
When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation — A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. "Counterfeit"
A person is said to "**counterfeit**" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.

Explanation 1 — It is not essential to counterfeiting that the imitation should be exact.
Explanation 2 — When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.

29. "Document"
The word "**document**" denotes 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, as evidence of that matter.

Explanation 1 — It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations
A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.
A banker's cheque upon a banker is a document.
A power-of-attorney is a document.
A map or plan which is intended to be used or which may be used as evidence is a document.

Explanation 2 — Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration
A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

30. "Valuable security"
The words "**valuable security**" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration
A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

31. "A will"
The word "**a will**" denotes any testamentary document.

32. Words referring to acts include illegal omissions
In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. "Act", "Omission"
The word "**act**" denotes as well a series of acts as a single act: the word "**omission**" denotes as well as series of omissions as a single omission.

Constitution of India

The Indian constitution gives the law making procedure in Indian Parliament. The primary function of the Indian Parliament is to make, fresh laws and to revise or abrogate existing laws. Bills passed by the Parliament falls into two categories:
(a) Money bills and
(b) Non-money or, ordinary or, public bills.

The procedures prescribed by the constitution for passing the two categories of bills are different. Procedure of passing ordinary or public bills-An ordinary bill has to pass through different stages before becoming an Act. An ordinary bill may be introduced in either House of the Parliament.

The first stage is the introduction or the firstly reading of the bill. Most such bills are introduced by ministers. They are drafted by technical experts and approved by the Council of Ministers. Ordinary members of the Parliament may also introduce bills. One month's notice has to be given to the speaker or, the chairman of the Rajya Sabha before the introduction of the bill. Then on a date fixed by the speaker or the chairman, the mover rises on his seat to move the bill. This is the introduction or the first reading of the bill which is a formal affair. No debate usually takes place at this stage. But on an unusual bill, for example the bill on Preventive Detention in 1954 may be opposed by the opposition at its very introduction. After introduction, the bill is published in the Gazette of India. The speaker or, the chairman may allow some bills to be gazette even before the first reading. Such hills do not require formal introduction in the Parliament.

The next stage in the life of a bill is the Second Reading which usually takes place after an interval of two days after the first reading. At this stage, any of the four courses are adopted.

The bill may be taken for consideration by the House at once.
It may be sent to a select committee of the House.
It may be sent to a joint select committee of the two Houses and

It may be circulated for eliciting public opinion. Very rarely bills are taken up for consideration straight way. When the 4th course is adopted, the secretariat of the House concerned request the State Governments to publish the bill in the State Gazettes inviting opinions from local bodies and recognized associations. Such opinions are circulated among the members of the House.

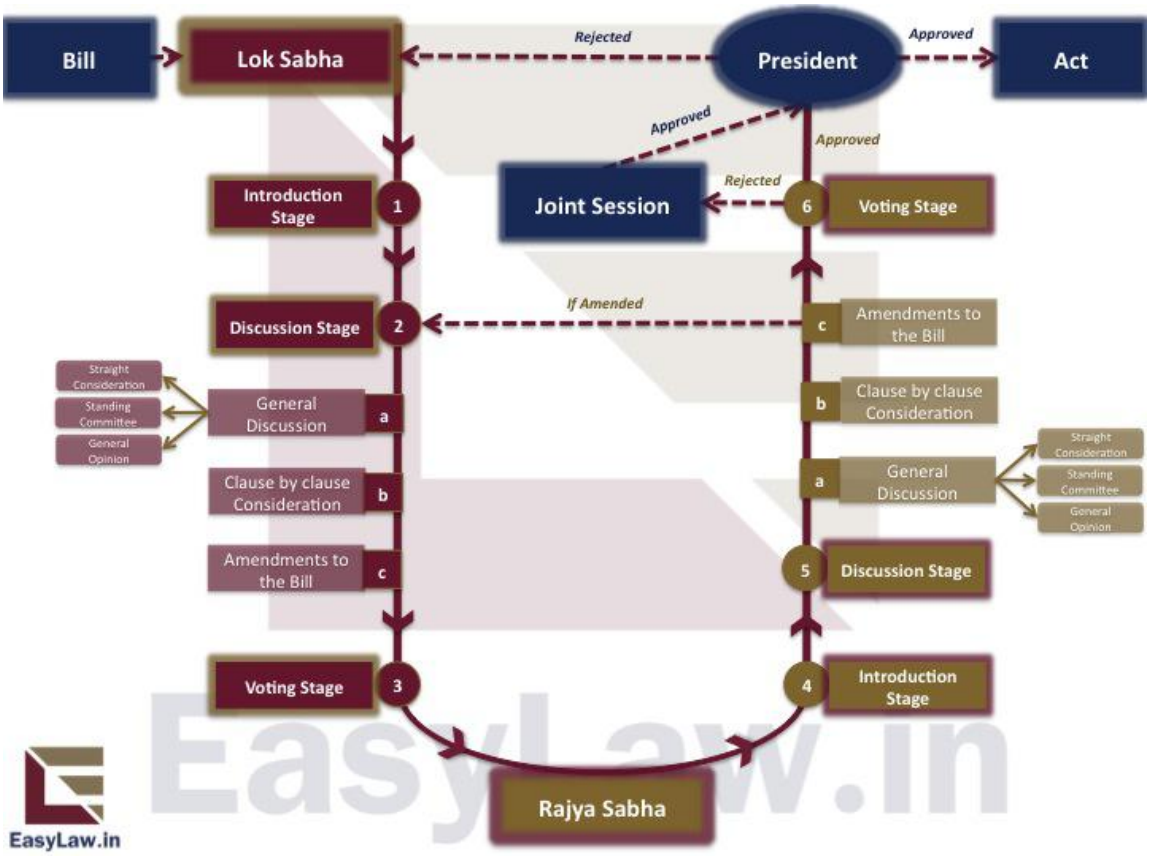
Committee stage

If the bill is referred to a select committee, the mover selects the members of the committee, the Speaker or the Chairman appoints one member of the committee, the chairman of the committee. The committee makes a careful study of the bill and reports back to the House.

Report Stage

The original bill along with the report of the Select committee is circulated among the members. It is at this stage that the bill is debated clause by clause. At two stages in the career of a bill debates take place. In the Second Reading when the bill is debated in principle and at the report stage, then it is debated clause by clause. The Second Reading is most crucial in the life of the bill while the Report stage is most important as giving final shape to the bill. After the bill is passed by a majority vote, it is submitted for the Third Reading.

Figure 1.1 Process of Law making in India



Source: www.easylaw.in

The Third Reading like the First Reading is only formal. No debate takes place and no bill is rejected at this stage.

After the bill is adopted at the Third Reading, it's transmitted to the other House where it goes through all the stages as in the originating House. The other House may accept the bill. In that case it is sent to the President for his assent. The other House also may reject the bill or, may introduce amendments not acceptable to the original House or, may not return the bill within six months. In any of such case, a constitutional deadlock develops between the two Houses.

The President may call a joint session of the two Houses to resolve the deadlock. The Speaker or in his absence the Deputy Speaker presides over such joint sessions. The deadlock is dissolved by majority vote. Finally the bill passed by both Houses goes to the President for his assent. If the President assents to the bill, it becomes a law. The President may return the bill for reconsideration. If the bill is sent back to the President with or, without amendments, the President cannot withhold his assent. This complicated and time consuming procedure is adopted to prevent hasty legislation.

Constitution of India: An Overview

- A political testament and a legal instrument - politics and law find their confluence here
- It is not a mere law, but a machinery by which laws are made
- Constitution is a living and organic thing which of all instruments has the greatest claim to be construed broadly and liberally
  [Goodyear India VS State of Haryana, AIR (1990)]

The constitution secures to all its citizens

- Justice-social, economic and political
- Liberty-of thought, expression, belief, faith and worship
- Equality-of status and opportunity
- Fraternity-assuring dignity of individual and unity & integrity of the nation

-The preamble

Fundamental Rights: The Concept

- An ordinary legal right is an interest which is protected by law and is enforceable in the courts of law
- An ordinary legal right is protected and enforced by the ordinary law of the land
- A fundamental right is one which is protected and guaranteed by the constitution
- It is called 'fundamental' because an ordinary right may be changed by the legislature through legislation. A fundamental right cannot be altered by any process other than amending the constitution.
- It cannot be suspended or abridged except in the manner laid by the constitution itself.

Table 1.1 Fundamental Rights enshrined in Constitution of India

Right to Equality	• Article 14 :- Equality before law and equal protection of law • Article 15:- Prohibition of discrimination on grounds only of religion, race, caste, sex or place of birth. • Article 16 :- Equality of opportunity in matters of public employment • Article 17 :- End of un-touchability • Article 18 :- Abolition of titles, Military and academic distinctions are, however, exempted
Right to Freedom	• Article 19 :- It guarantees the citizens of India the following six fundamentals freedoms:- 1. Freedom of Speech and Expression 2. Freedom of Assembly 3. Freedom of form Associations 4. Freedom of Movement 5. Freedom of Residence and Settlement 6. Freedom of Profession, Occupation, Trade and Business • Article 20 :- Protection in respect of conviction for offences • Article 21 :- Protection of life and personal liberty • Article 22 :- Protection against arrest and detention in certain cases
Right Against Exploitation	• Article 23 :- Traffic in human beings prohibited • Article 24 :- No child below the age of 14 can be employed
Right to freedom of Religion	• Article 25 :- Freedom of conscience and free profession, practice and propagation of religion • Article 26 :- Freedom to manage religious affairs • Article 27 :- Prohibits taxes on religious grounds • Article 28 :- Freedom as to attendance at religious ceremonies in certain educational institutions
Cultural and Educational Rights	• Article 29 :- Protection of interests of minorities • Article 30 :- Right of minorities to establish and administer educational institutions • Article 31 :- Omitted by the 44th Amendment Act
Right to Constitutional Remedies	• Article 32 :- The right to move the Supreme Court in case of their violation (called Soul and heart of the Constitution by BR Ambedkar) • Forms of Writ check • Habeas Corpus :- Equality before law and equal protection of law

Directive Principles of State Policy- DPSP

Figure 1.2 Directive Principles of State Policy

DPSP: An Overview

- Cherished Ambitions which are not justiciable in a court of Law
- Contained in part IV of the Constitution, articles 36 to 51
- It underlines the philosophy of democratic socialism with a touch of Gandhian idealism.

Code of Criminal Procedure

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.

Object and Importance of Criminal Procedure

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.

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.

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).

Indian Evidence 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.

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.

Nature and Scope- Doctrine of Mens Rea and Actus Reus

Mens Rea

The term *mens rea* refers to the mental element in the definition of a crime. This is not some abstract mental process; it refers to specific words in the charge or indictment. The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element. The guilty mind refers to the intention, knowledge or recklessness of the accused. Essentially the law states that we must mean to cause a wrongful consequence.

Intention is commonly used in the *Criminal Code* to establish a type of guilty mind. A word "willfully" means to or "intentionally" is used to describe a state of mind. There are two basic types of intention-specific and general. Specific intent offences frequently use the phrase 'with intent' or 'for the purpose of' to demonstrate a specific purpose behind the crime. General intent crimes are those that do not require a further purpose or intention and are often crimes committed in moments of uncontrolled passion or aggression.

The knowledge form of a guilty mind means that the accused must have knowledge of the specific circumstances of the crime. The phrases "knowingly" or "knowing" are commonly used here to indicate a specific type of knowledge. For example, to knowingly lie to a judge or jury is called perjury and is a criminal offence but to give false evidence unknowingly is not a criminal offence.

The third kind of intent is recklessness. This is type of intent is found in crimes like dangerous driving causing death. It means that the accused has been unduly careless in their actions by not exercising good judgment and foresight. If one drives 100km/h through a school zone in the daytime, with no intention of killing or harming a child, and hits a child crossing the street and that child dies, the law would use recklessness to establish the guilty mind. Contrary to TV law, it is not necessary for the Crown to establish why an accused has committed an offence (the motive). Motive may be used to establish intention and can be used in sentencing to mitigate or aggravate the sentence depending on the reason for committing the crime.

Actus Reus

There is no punishment for thinking about a criminal act. A crime must have an *actus reus*, Latin literally for a bad act. A defendant has committed the *actus reus* of an offense if he has done some act that is an action prohibited by law. Most crimes consist of a defined set of actions that together are prohibited.

It is not a crime to carry an item around a store. It is not a crime to walk out of a store. It may be a crime to walk out of a store, with an item, and not pay for it. The act of walking out of the store without paying for an item is the *actus reus*. For it to be a crime, it must be done knowingly. The *actus reus* and the *mens rea* must take place together.

The physical act of committing an offence (actus reus) is more than an act, it can be an omission to act or a "state of being." For example if one is in possession of an illegal narcotic, one is not

acting or failing to act but merely in possession. This is a state of being. Omissions to act can also be crimes (a failure to act when required to do so by law). If a parent fails to provide the basic necessities for children's survival the failure to provide is an omission and a crime.

The majority of crimes are acts or kinds of misconduct. Proof of the physical element requires more than simply determining an act, omission or state of being exists. It is necessary to consider the four C's-conduct, consequences, circumstances and causation. The conduct must be as described earlier an act, omission to act or a state of being as outlined in a specific section of the criminal charge. Of particular importance to the concept of conduct is that it be voluntary. The law will not hold someone criminally responsible for an involuntary act. Consequences refer to the outcome of a specific act. For a homicide the consequence would be the death of a human being.

The circumstances aspect of the actus reus refers to the relevant circumstances under which an act must occur to be criminal. In the case of the crime of trespassing at night the relevant circumstances would be that the act occurred at night, on someone's property other than your own and that you entered the property without consent or lawful excuse.

UNIT-II LEGAL PROVISIONS IN INDIAN PENAL CODE

Crimes against Property

Crimes against property can cause enormous loss, suffering, and even personal injury or death. Upcoming sections analyze theft crimes that involve force or threat, receiving stolen property, and crimes that invade or damage property, such as burglary and arson.

Property Crimes: These are crimes that do not necessarily involve harm to another person. Instead, they involve an interference with another person's right to use or enjoy their property. Property crimes include:

- Larceny (theft)
- Robbery (theft by force) – Note: this is also considered a personal crime since it results in physical and mental harm.
- Burglary (penalties for burglary)
- Arson
- Embezzlement
- Forgery
- False pretenses
- Receipt of stolen goods.

Theft: Section 378

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1 — A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2 — A moving effected by the same act which affects the severance may be a theft.

Explanation 3 — A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4 — A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5 —The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for the purpose authority either express or implied.

Illustrations

(a) *A* cuts down a tree on *Z*'s ground, with the intention of dishonestly taking the tree out of *Z*'s possession without *Z*'s consent. Here, as soon as *A* has severed the tree in order to such taking, he has committed theft.

(b) *A* puts a bait for dogs in his pocket, and thus induces *Z*'s dog to follow it. Here, if *A*'s intention be dishonestly to take the dog out of *Z*'s possession without *Z*'s consent. *A* has committed theft as soon as *Z*'s dog has begun to follow *A*.

(c) *A* meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, *A* has committed theft of the treasure.

(d) *A*, being *Z*'s servant, and entrusted by *Z* with the care of *Z*'s plate, dishonestly runs away with the plate, without *Z*'s consent. *A* has committed theft.

(e) *Z*, going on a journey, entrusts his plate to *A*, the keeper of the warehouse, till *Z* shall return. *A* carries the plate to a goldsmith and sells it. Here the plate was not in *Z*'s possession. It could not therefore be taken out of *Z*'s possession, and *A* has not committed theft, though he may have committed criminal breach of trust.

(f) *A* finds a ring belonging to *Z* on a table in the house which *Z* occupies. Here the ring is in *Z*'s possession, and if *A* dishonestly removes it, *A* commits theft.

(g) *A* finds a ring lying on the highroad, not in the possession of any person. *A* by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) *A* sees a ring belonging to *Z* lying on a table in *Z*'s house. Not venturing to misappropriate the ring immediately for fear of search and detection, *A* hides the ring in a place where it is highly improbable that it will ever be found by *Z*, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here *A*, at the time of first moving the ring, commits theft.

(i) *A* delivers his watch to *Z*, a jeweller, to be regulated. *Z* carries it to his shop. *A*, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of *Z*'s hand, and carries it away. Here *A*, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.

(j) If *A* owes money to *Z* for repairing the watch, and if *Z* retains the watch lawfully as a security for the debt, and *A* takes the watch out of *Z*'s possession, with the intention of depriving *Z* of the property as a security for his debt, he commits theft, in as much as he takes it dishonestly.
(k) Again, if *A*, having pawned his watch to *Z*, takes it out of *Z*'s possession without *Z*'s consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly.

(l) *A* takes an article belonging to *Z* out of *Z*'s possession, without *Z*'s consent, with the intention of keeping it until he obtains money from *Z* as a reward for its restoration. Here *A* takes dishonestly; *A* has therefore committed theft.

(m) *A*, being on friendly terms with *Z*, goes into *Z*'s library in *Z*'s absence, and takes away a book without *Z*'s express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that *A* may have conceived that he had *Z*'s implied consent to use *Z*'s book. If this was *A*'s impression, *A* has not committed theft.

(n) *A* asks charity from *Z*'s wife. She gives *A* money, food and clothes, which *A* knows to belong to *Z* her husband. Here it is probable that *A* may conceive that *Z*'s wife is authorised to give away alms. If this was *A*'s impression, *A* has not committed theft.

(o) *A* is the paramour of *Z*'s wife. She gives a valuable property, which *A* knows to belong to her husband *Z*, and to be such property as she has no authority from *Z* to give. If *A* takes the property dishonestly, he commits theft.

(p) *A*, in good faith, believing property belonging to *Z* to be *A*'s own property, takes that property out of *B*'s possession. Here, as *A* does not take dishonestly, he does not commit theft.

Punishment for theft: Section 379

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Non-bailable—Triable by any Magistrate—Compoundable by the owner of the property stolen with the permission of the court.

Theft in dwelling house, *etc.*: Section 380

Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable— Triable by any Magistrate—Non-compoundable.

STATE AMENDMENTS

State of Tamil Nadu:

Section 380 of the Indian Penal Code (Central Act XLV of 1860) (hereinafter in this Part referred to as the principal Act), shall be renumbered as sub-section (1) of that section and after sub-section.

(1) as so renumbered, the following sub-section shall be added, namely:

"(2) Whoever commits theft in respect of any idol or icon in any building used as a place of worship shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to three years and with fine which shall not be less than two thousand rupees: Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than two years." *Vide* Tamil Nadu Act 28 of 1993, sec. 2.

Theft by clerk or servant of property in possession of master: **Section 381**

Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable— Triable by any Magistrate—Compounded by the owner of the property stolen with the permission of the court.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft: **Section 382**

Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) *A* commits theft on property in *Z*'s possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting *Z* in case *Z* should resist. *A* has committed the offence defined in this section.

(b) *A* picks *Z*'s pocket, having posted several of his companions near him, in order that they may restrain *Z*, if *Z* should perceive what is passing and should resist, or should attempt to apprehend *A*. *A* has committed the offence defined in this section.

Robbery and Dacoity (Section 390-402)

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.
Para II: Punishment—Imprisonment for life—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

Robbery: Section 390

In all robbery there is either theft or extortion.

When theft is robbery —Theft is "**robbery**" if, in order to the committing of the theft, or in committing the theft, or in carving away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery —Extortion is "**robbery**" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation —The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) *A* holds *Z* down and fraudulently takes *Z's* money and jewels from *Z's* clothes without *Z's* consent. Here *A* has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to *Z*. *A* has therefore committed robbery.

(b) *A* meets *Z* on the high roads, shows a pistol, and demands *Z's* purse. *Z* in consequence, surrenders his purse. Here *A* has extorted the purse from *Z* by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) *A* meets *Z* and *Z's* child on the high road. *A* takes the child and threatens to fling it down a precipice, unless *Z* delivers his purse. *Z*, in consequence delivers his purse. Here *A* has extorted the purse from *Z,* by causing *Z* to be in fear of instant hurt to the child who is there present. *A* has therefore committed robbery on *Z*.

(d) A obtains property from *Z* by saying— "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless *Z* is put in fear of the instant death of his child.

Dacoity: Section 391

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "**Dacoity**".

Section 392. Punishment for Robbery

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Rigorous imprisonment for 10 years and fine—Cognizable— Non-bailable—Triable by Magistrate of the first class—Non-compoundable.
Para II: Punishment—Rigorous imprisonment for 14 years, and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 393. Attempt to Commit Robbery

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Voluntarily Causing Hurt in Committing Robbery: Section 394

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 395. Punishment for Dacoity

Whoever commits Dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Dacoity with Murder: Section 396

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Death, imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 397. Robbery, or Dacoity, with Attempt to Cause Death or Grievous Hurt

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for not less than 7 years—Cognizable— Non-bailable—Triable by Court of Session—Non-compoundable.

COMMENTS

(i) An act would only fall within the mischief of this section if at the time of committing robbery or dacoity the offender—

(a) uses any deadly weapon; or

(b) causes grievous hurt to any person; or

c) attempts to cause death or grievous hurt to any person; *Shravan Dashrath Datrange* v. *State of Maharashtra*, (1997) 2 Crimes 47 (Bom).

(ii) There can be no quarrel that knife is a deadly weapon within the meaning of section 397; *State of Maharashtra* v. *Vinayak Tukaram Utekar*, (1997) 2 Crimes 615 (Bom).

(iii) When identification of articles alleged to have been recovered from accused is not properly proved nor victim could identify accused in identification parade or in court accused cannot be convicted under section 397; *Bhurekhan* v. *State of Madhya Pradesh*, AIR 1982 SC 948 : (1982) Cr LJ 818: (1982) 1 SCC 174 : (1982) SCC (Cr) 128.

Attempt to Commit Robbery or Dacoity when Armed with Deadly Weapon: Section 398

If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for not less than 7 years—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Making Preparation to Commit Dacoity: Section 399

Whoever makes, any preparation for committing Dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for 10 years and fine—Cognizable— non-bailable—Triable by Court of Session—Non-compoundable.

Punishment for Belonging to Gang of Dacoits: Section 400

Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing Dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Punishment for Belonging to Gang of Thieves: Section 401

Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Assembling for Purpose of Committing Dacoity: Section 402

Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing Dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Crimes against Persons

Crimes against persons are a category of crime that consists of offenses that usually involve causing or attempting to cause bodily harm or a threat of bodily harm. These actions are taken without the consent of the individual the crime is committed against, or the victim.

These types of crimes do not have to result in actual harm - the fact that bodily harm could have resulted and that the victim is put in fear for his/her safety is sufficient. The following will cover important forms of crimes against persons such as culpable homicide, murder, rape, and hurt.

The offences under any law (mostly the Indian Penal Code) are classified as cognizable and non-cognizable, as bailable or non-bailable and by the lowest courts which can try them. These are given and defined in the First Schedule of the Code of Criminal Procedure, 1973.

Culpable Homicide: Section 299

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) *A* lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. *Z* believing the ground to be firm, treads on it, falls in and is killed. *A* has committed the offence of culpable homicide.

(b) *A* knows *Z* to be behind a bush. *B* does not know it *A*, intending to cause, or knowing it to be likely to cause *Z's* death, induces *B* to fire at the bush. *B* fires and kills *Z*. Here *B* may be guilty of no offence; but *A* has committed the offence of culpable homicide.

(c) *A*, by shooting at a fowl with intent to kill and steal it, kills *B* who is behind a bush; *A* not knowing that he was there. Here, although *A* was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill *B*, or to cause death by doing an act that he knew was likely to cause death.

Explanation I — A person who causes bodily injury to another who is laboring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2 — Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3 — The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

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Murder: Section 300

Firstly- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) *A* shoots *Z* with the intention of killing him. *Z* dies in consequence. *A* commits murder.

(b) *A*, knowing that *Z* is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. *Z* dies in consequence of the blow. *A* is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if *A*, not knowing that *Z* is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here *A*, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) *A* intentionally gives *Z* a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. *Z* dies in consequence. Here, *A* is guilty of murder, although he may not have intended to cause *Z*'s death.

(d) *A* without any excuse fires a loaded cannon into a crowd of persons and kills one of them. *A* is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1 —**When culpable homicide is not murder.—**Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First — That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly — That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly — That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation — Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) *A*, under the influence of passion excited by a provocation given by *Z*, intentionally kills. *Y, Z*'s child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) *Y* gives grave and sudden provocation to *A*. *A*, on this provocation, fires a pistol at *Y*, neither intending nor knowing himself to be likely to kill *Z,* who is near him, but out of sight. *A* kills *Z*. Here *A* has not committed murder, but merely culpable homicide.

(c) *A* is lawfully arrested by *Z*, a bailiff. *A* is excited to sudden and violent passion by the arrest, and kills *Z*. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) *A* appears as witness before *Z*, a Magistrate, *Z* says that he does not believe a word of *A*'s deposition, and that *A* has perjured himself. *A* is moved to sudden passion by these words, and kills *Z*. This is murder.

(e) *A* attempts to pull *Z*'s nose, *Z*, in the exercise of the right of private defence, lays hold of *A* to prevent him from doing so. *A* is moved to sudden and violent passion in consequence, and kills *Z*. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) *Z* strikes *B*. *B* is by this provocation excited to violent rage. *A*, a bystander, intending to take advantage of *B's* rage, and to cause him to kill *Z*, puts a knife into *B's* hand for that purpose. *B* kills *Z* with the knife. Here *B* may have committed only culpable homicide, but *A* is guilty of murder.

Exception 2 — Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip *A*, not in such a manner as to cause grievous hurt to *A*. *A* draws out a pistol. *Z* persists in the assault. *A* believing in good faith that he can by no other means prevent himself from being horse whipped, shoots *Z* dead. *A* has not committed murder, but only culpable homicide.

Exception 3 — Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 — Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation — It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 — Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Culpable homicide by causing death of person other than person whose death was intended: Section 301

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for Murder: Section 302

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Punishment for murder by life-convict: Section 303

Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

CLASSIFICATION OF OFFENCE

Punishment—Death—Cognizable—Non-bailable—Triable by Court of Session— Non-compoundable.

Punishment for culpable homicide not amounting to murder: Section 304

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Dowry death: Section 304B

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation

(1) For the purpose of this sub-section, "**dowry**" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Rape and other unnatural sexual offences (Section 375-377)

Rape: Section 375

A man is said to commit "**rape**" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First — Against her will.
Secondly — Without her consent.
Thirdly — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any

stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly — With or without her consent, when she is under sixteen years of age.

Explanation — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

STATE AMENDMENT

Union Territory of Manipur:

(a) In clause sixthly, for the word "sixteen" substitute the word "fourteen"; and
(b) In the Exception, for the word "fifteen" substitute the word "thirteen". *Vide* Act 30 of 1950.

Punishment for rape: Section 376

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,

(a) Being a police officer commits rape
(i) Within the limits of the police station to which he is appointed; or
(ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or
(iii) On a woman in his custody or in the custody of a police officer subordinate to him; or

(b) Being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) Being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) Commits rape on a woman knowing her to be pregnant; or

(f) Commits rape on a woman when she is under twelve years of age; or

(g) Commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 — Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2 — "**Women's or children's institution**" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3 — "**Hospital**" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Hurt and Grievous Hurt (Sec.319-320)

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

Hurt: Section 319

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Grievous hurt: Section 320

The following kinds of hurt only are designated as "**grievous**":

First — Emasculation.
Secondly — Permanent privation of the sight of either eye.
Thirdly — Permanent privation of the hearing of either ear,
Fourthly — Privation of any member or joint.
Fifthly — Destruction or permanent impairing of the powers of any member or joint.
Sixthly — Permanent disfiguration of the head or face.
Seventhly — Fracture or dislocation of a bone or tooth.
Eighthly — Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Force, Criminal Force and Assault (Sec.349-351)

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years and fine—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Section 349. Force — A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First — By his own bodily power.
Secondly — By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.
Thirdly — By inducing any animal to move, to change its motion, or to cease to move.

Section 350. Criminal force

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Section 351. Assault

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
Explanation — Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations
(a) *A* shakes his fist at *Z*, intending or knowing it to be likely that he may thereby cause *Z* to believe that *A* is about to strike *Z*, *A* has committed an assault.

(b) *A* begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause *Z* to believe that he is about to cause the dog to attack *Z*. *A* has committed an assault upon *Z*.

(c) *A* takes up a stick, saying to *Z*, "I will give you a beating". Here, though the words used by *A* could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

CHAPTER VIII - OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

Crimes against public tranquility

Section 141. Unlawful assembly

An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First — To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or
Second — To resist the execution of any law, or of any legal process; or
Third — To commit any mischief or criminal trespass, or other offence; or
Fourth — By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
Fifth — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation — An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Section 142. Being member of unlawful assembly

Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Section 143. Punishment

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine, or both—cognizable—Bailable— Triable by any Magistrate—Non-compoundable.

Section 144. Joining unlawful assembly armed with deadly weapon

Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable— Triable by any Magistrate—Non-compoundable.

Section 145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse

Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable— Triable by any Magistrate—Non-compoundable.

Section 146. Rioting

Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Section 147. Punishment for rioting

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable— Triable by any Magistrate—Non-compoundable.

Comments

The Sub-Inspector was pursuing investigation which is his duty and therefore it could not be said that while he was pursuing the investigation, it was in pursuance of an unlawful object and therefore no conviction could be passed under section 147; *Maiku* v. *State of Uttar Pradesh,* (1989) Cr LJ 860 : AIR 1989 SC 67.

Section 148. Rioting, armed with deadly weapon

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Bailable— Triable by Magistrate of the first class—Non-compoundable.

Comments

There must be nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly

will become liable for the same; *Allauddin Mian Sharif Mian* v. *State of Bihar*, (1989) Cr LJ 1466 : AIR 1989 SC 1456.

Section 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

CLASSIFICATION OF OFFENCE

Punishment—The same as for the offence—According as offence is cognizable or non-cognizable—According as offence is bailable or non-bailable—Triable by court by which the offence is triable—Non-compoundable.

Section 150. Hiring, or conniving at hiring, of persons to join unlawful assembly

Whoever hires or engages or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

CLASSIFICATION OF OFFENCE

Punishment—The same as for a member of such assembly, and for any offence committed by any members of such assembly—Cognizable—According as offence is bailable or non-bailable—Triable by court by which the offence is triable—Non-compoundable.

Section 151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse

Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation — If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine, or both—Cognizable— Bailable—Triable by any Magistrate—Non-compoundable.

Section 152. Assaulting or obstructing public servant when suppressing riot, *etc*.

Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Bailable— Triable by Magistrate of the first class—Non-compoundable.

Section 153. Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed

Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 1 year, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para II: Punishment—Imprisonment for 6 months, or fine, or both—Cognizable—
Bailable—Triable by Magistrate of the first class—Non-compoundable.

UNIT III: CRPC (CRIMINAL PROCEDURE CODE)

Organizational setup of courts in India

Chapter II - CONSTITUTION OF CRIMINAL COURTS AND OFFICES

Section 6. Classes of Criminal Courts—Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:

(i) Courts of Session;
(ii) Judicial Magistrate of the first class and, in any Metropolitan area,
Metropolitan Magistrate;
(iii) Judicial Magistrate of the second class; and
(iv) Executive Magistrate

Section 7. Territorial divisions

(1) Every State shall be a session's division or shall consist of sessions 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 sessions division and district

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

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

(4) The 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 areas

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

(2) As from the commencement of this Code, each of the Presidency-towns of Bombay, 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.

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 Sessions shall ordinarily hold its sitting at such place or places 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 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:

Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrate 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 Courts.

(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 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 subdivision 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 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

(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

Section 14. Local Jurisdiction of Judicial Magistrates

(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code: Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.

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

(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.

Section 15. Subordination of Judicial Magistrates

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate
(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

Section 16. Courts of Metropolitan Magistrates

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

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

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

Section 17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate

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

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

Section 18. Special Metropolitan Magistrates

(1) The High Court may, if requested by any Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases *** in any metropolitan area within its local jurisdiction: Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

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

(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class.

Section 19. Subordination of Metropolitan Magistrates

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

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

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

Section 20. Executive Magistrates

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

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

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

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

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

Section 21. Special Executive Magistrates

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

Comments

Special Executive Magistrate is entitled to exercise any of powers of the Executive Magistrate conferred by the Code, *State of Maharashtra* v *Mohammad Salim Khan,* (1991)1 Crimes 120 (SC)

Section 22. Local Jurisdiction of Executive Magistrates

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

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

Section 23. Subordination of Executive Magistrates

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

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

The Complaint

This part of lesson will assist the police officer to collect all the relevant information that he should acquire when he receives a complaint of abuse from either a child or another source. This information will assist the police officer to determine the priorities for the next steps that should be taken to ensure the immediate protection of the victim and to reduce the risk of the suspect escaping either alone or with the child. Following these first steps the investigating police officer can use the information collected to effectively plan the strategies for the investigation. (Planning the investigation is dealt with in Chapter 4)

When a complaint of child abuse or exploitation is received

The police officer that receives a complaint of alleged child abuse or exploitation should complete a detailed criminal offence report and immediately notify his/her supervisor about the complaint.

The supervisor should ensure that any allegations of child abuse are, where possible, investigated by an experienced police investigator.

The initial information obtained from a child or any other person who complains is critical in the investigation and later prosecution processes. The following details should be recorded in writing when taking a complaint of suspected child abuse:

- Time, date and place the complaint or information is received.
- Name, address, telephone and any other information to later locate the person who provides the complaint or information.
- The names, addresses, ages and any other information that may assist to identify the child and their parents.
- Any information about the relationship between the child and the alleged offender.
- Details about the alleged child abuse and if another person reports the complaint, how they learnt about the abuse of the child.
- Details about the current location of the child and the parents.

The identity of the any person that a victim of a sexual offence may have first told about the sexual abuse and accurately record the words that the victim used to complain to that other person of the sexual abuse. Evidence from this other person can assist to give credibility to the victim's complaint.

Any other relevant information including details about any other children that may be at risk at the same the same offender/s at the same location or another.

The police officer receiving the complaint of suspected child abuse should instruct the person making the complaint not to discuss the allegations with the child or any other person.

All information obtained should be treated with complete confidentiality.

A detailed and signed statement should be obtained from the person making the complaint as soon as practicable.

After you have received a complaint, your initial inquiries should include the following when appropriate:

Determine the urgency of the complaint. The following matters should be fully considered to assist in determining the urgency and priorities for planning the investigation:

The current welfare and protection required by the child.

- The age and development level of the child.
- Any potential loss of evidence.
- The likelihood of the abuse continuing without intervention.
- The relationship of the child to the suspect abuser.
- The likelihood that the child may be moved from the known current location either to new premises or over an international border.
- The seriousness of the alleged abuse.

- Check police records for any similar criminal activity and especially violent crimes previously committed by the identified suspect.
- Check the police "Missing Person" records if the full identity of the child and his/her parents are unknown.
- Contact any specialized unit assigned to policing prostitution and gather information about the brothel including its ownership, management, security, exact location.
- Contact border and/ or immigration police and notify them in relation to any possible movement over a border by the suspect or child. Supply these police with a detailed description of the suspect and child.
- Contact the head of your nearest government agency responsible for child welfare to gather any information that the agency has in relation to the child, its family or the alleged suspect.
- Contact the child's parents and notify them about the complaint received, but do not give any details about your investigation plan or the alleged suspect's identity or the current whereabouts of the child, unless the child is in a safe location.
- Remember that the parents themselves may be the abuser or a knowing party to the alleged abuse or exploitation. A parent may be responsible for selling their child into prostitution or other types of labor that is harmful to the child's physical and mental health.

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.

Table 3.1 Information and Complaint

Information	Complaint
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.	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.
No legal definition. It is used in its regular English meaning.	It is always about commission of an offence.

Inquiry

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:

- 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.
- 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.

Section 116. Inquiry as to truth of information

(1) 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

(2) 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

(3) 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—

(a) 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;
(b) 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

(4) For the purposes of this section the fact that a person is a 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

(5) 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

(6) 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

(7) 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

If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided that
(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;
(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;
(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Section 148. Local inquiry

(1) Whenever a local inquiry is necessary for the purposes of section 145, section 146 or section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid
(2) The report of the person so deputed may be read as evidence in the case
(3) When any costs have been incurred by any party to a proceeding under section 145, section 146 or section 147, the Magistrate passing a decision may direct by who such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable.

Section 176. Inquiry by Magistrate into cause of death

(1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence

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

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

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

Explanation—in this section, the expression "relative" means parents, children brothers, sisters and spouse

Case Law

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 **Section 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.

Section 2. **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 **section 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.

Investigation

Section 2(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;

“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 - In Adri Dharan Das v. State of W.B., it has been opined that: "arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and connection of other persons, if any, in the crime."
In Niranjan Singh v. State of U.P. , it has been laid down that investigation is not an inquiry or trial before the Court and that is why the Legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial.

In S.N.Sharma v. Bipen Kumar Tiwari , it has been observed that the power of police to investigate is independent of any control by the Magistrate.
In State of Bihar v. J.A.C. Saldanha , it has been observed that there is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment and further investigation of an offence is the field exclusively reserved for the executive in the Police Department. Manubhai Ratilal Patel v. State of Gujarat and Others,(2013) 1 SCC 314.

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

(a). First Information Report (section 154 Cr.P.C.),
(b). Crime details form, - (I F.2)
(c). Arrest / court surrender memo
(d). Property seizure memo (e). Final Report Form (section 173 Cr.P.C.) Police Officer's Power to Investigate Cognizable Cases Any officer-in-charge of a Police Station may, without the order of a magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of the Criminal Procedure Code. 1973.

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

Refusal of Investigation

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

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

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

Further Investigation

The mere undertaking of a further investigation either by the investigating officer on his own or upon the directions of the superior police officer or pursuant to a direction by the Magistrate concerned to whom the report is forwarded does not mean that the report submitted under Section 173 (2) is abandoned or rejected. It is only that either the investigating agency or the court concerned is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of the offence indicated in the report. Vipul Shital Prasad Agarwal v. State of Gujarat and another, (2013) 1 SCC 197.

Section 139. Power of Magistrate to direct local investigation and examination of an expert

The Magistrate may, for the purposes of an inquiry under section 137 or section 138
(a) Direct a local investigation to be made by such person as he thinks fit; or
(b) Summon and examine an expert

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, notwithstanding that the other offences are non-cognizable.

Section 156. Police officer's power to investigate cognizable cases

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII
(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate

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

Comments
(i) The Magistrate has no power to take cognizance of an offence on basis of private complaint that resulted in submission of the report under section 173 consequent upon reference under section 156 (3) when once he has accepted negative police report and closed the proceedings; *S D Soni* v *State of Gujarat*, (1991) Cr LJ 330 (SC)
(ii) Rejection of prosecution case on ground of illegality or irregularity not proper; *Leela Ram* v *State of Haryana*, 1999 (8) JT 274: 1999 (8) Supreme 631
(iii) Conclusion of Court cant not be allowed to base solely on the probity of investigation; *State of Karnataka* v *K Yarappa Reddy*, 1994 (8) SCC 715: 1999 (6) Scale 330: 1999 (8) JT 10.

Section 157. Procedure for investigation

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

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case

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

Comments
Section 157 casts a duty upon the investigating officer to forthwith send the report of the cognizable offence to the concerned Magistrate The purpose for forthwith sending the report to the concerned Magistrate is to keep the concerned Magistrate informed of the investigation of a cognizable offence so that he may be able to control the investigation and if required, to issue appropriate directions Mere delay in the despatch of the FIR itself is no ground to throw away the prosecution case in its entirety Sending the report to the concerned Magistrate is a circumstance which provides a basis to raise suspicion that the FIR is the result of consultation and deliberations and it was recorded much later than the date and time mentioned in it, and discloses that the investigation is not fair and forth right; *Swati Ram* v *State of Rajasthan,* (1997) 2 Crimes 148 (Raj)

Section 158. Report how submitted
(1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf
(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate

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

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 magistrat – 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.

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.

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.

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.

How Arrest is made?

Sec. 46 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.

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".

DK 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, a 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

- 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
- 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.

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 with several sections related to Bail in the following ways.

Provisions as regards bail can be broadly classed into two categories

(1) Bailable cases **(Section 496)**, and
(2) Non- bailable cases **(Section 497)**.

In the former class, the grant of bail is a matter of course. It may be given either by the police-officer in charge of a police-station having the accused in his custody or by the Court. The release may be ordered on the accused executing a bond and even without sureties. In non-bailable case, the accused may be released on bail: but no bail can be granted where the accused appears on reasonable grounds to be guilty of an offence punishable either with death or with imprisonment for life. But the rule does not apply to

(i) a person under sixteen years of age,
(ii) a woman, or
(iii) a sick or infirm person. As soon as reasonable grounds for the guilt cease to appear, the accused is entitled to be released on bail or on his own recognizance; he can be also released, for similar reasons, between the close of the case and delivery of the judgment. When a person is released on bail, the order with reasons therefore should be in writing.

A person released on bail may be taken into custody by order if the Court. In the same way the High Court or the Court of Session may admit a person to bail or reduce the amount of the bail. As soon as the bail bond is executed, the accused is entitled to be released from custody. When the amount of bail taken td found to be insufficient, the Court may demand additional bail. A surety who is once accepted is at liberty to apply to the Court for his discharge; and the accused is then called upon to find fresh sureties. In case of non-bail able offence bail may be given by the following name and circumstances:

i. Anticipatory Bail (before arrest)
ii. Interim or Ad-interim Bail
iii. Bail after conviction

i. Anticipatory Bail (before arrest)

When a person is granted bail in apprehension of arrest, this is called anticipatory bail. This is an extra-ordinary measure and an exception to the general rule of bail. When any person has reason to believe that he may be arrested on an accusation of having committed a non-bail able offence, he may apply to the High Court Division or the Court of Session for a direction and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail. There is no section or provision which specifically authorizes the court to grant an anticipatory bail. However, application is made under sec. 498 of the CrPC for an anticipatory bail. This is because of the wording in the section, "in any case". Thus the power given in this section is very wide and can be exercised by both the High Court Division and the Court of Session in any case without any limitation.

ii. Interim or Ad-interim Bail

There is no express legal provision of ad-interim or interim bail. However, this kind of bail may be granted at any stage of a case by way of court's inherent power. If the case is pending in the Magistrate Court, application for such a bail will have to be filed in the Sessions Court under section 497 of CrPC and if the case is in the Sessions Court, application will go to the High Court Division against the order of the Sessions Court.

iii. Bail after conviction

The Section 496 and 497 have no application where a person has been tried and convicted even though the conviction is for bail able offence. Section 496 and 497 are in terms confined to accused person and a person after conviction cases to be an accused. Sections 426 and 435 of CrPC would be relevant for bail after conviction. Bail after conviction may be of two types:

a. Bail pending appeal under section 426 and 498 ; and
b. Bail pending revision under section 435.
c. The discretionary power of the Court to admit to bail is not arbitrary, but is judicial, and is governed by established principles. The High Court of Bangladesh directed that when a particular person surrenders and makes an application for bail, it should be considered the same day. However, if it has to be adjourned, the applicant should be directed to appear on the date fixed with a further direction to the police not to arrest him

till disposal of his bail application. But it does not mean that the bail application should be allowed invariably. It may also be dismissed. Short term release or keeping good conduct during that period shall not be the sole ground for enlarging a person on bail finally.

It should be decided on merits alone. The object of the detention of the accused being to secure his appearance to abide the sentence of law, the principal inquiry, Courts have considered the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offence and, in some instances, the character, means and standing of the accused.

Search and Seizure

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 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 contravelling

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 leveled 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.

UNIT IV: COURT PROCEDURES

Summons

A court order issued to a person (accused, victim, witness, police- IO, expert- forensic scientist or police) in order to make available their presence in the court on particular date and time.

Section 113 – Summons or warrant in case of person not so present

If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court;

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to far the Commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

114. Copy of order to accompany summons or warrant

Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

115. Power to dispense with personal attendance

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by a pleader.

204. Issue of process

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or
(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

Comments

(i) A summoning order passed by Magistrate under section 204 of the Code cannot necessarily be treated to be an interlocutory order thereby completely barring a revision against the same in view of the bar under section 397 (2) of the Code The test to examine whether such an order is an interlocutory order or not is that if the decision against such an order finally terminates the criminal proceedings, it would not be treated as an interlocutory order On the other hand if decision given either way would still allow the proceedings to go on then the order would not be a final order but an interlocutory order and then a revision against such an order would be barred under section 397(2) of the Code; *Umakant Panday* v *A JM*, (1997) 2 Crimes 27 (All)

(ii) Even after issue of process in summons case the accused can plead of absence of any triable case against him and the Magistrate, on being satisfied on reconsideration of the complaint, has discretionary power to order, dropping of the proceedings against the accused; *Awadhesh Prasad Singh* alias *Awadhesh Prasad Sharma v State of Bihar,* (1997) 3 Crimes 70 (Pat)

(iii) Accused are responsible for the conduct of business the necessary requirement issue process against the company is fulfilled Rejection of recalling of process issued against petitioner is proper; *Orient Syntex Ltd* v *Besant Capital Tech Ltd*, 2000 Cr LJ 210 (Bom)

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.

205. Magistrate may dispense with personal attendance of accused

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader
(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided

206. Special summons in cases of petty offence

(1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260, the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorize, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader: Provided that the amount of the fine specified in such summons shall not exceed one hundred rupees.

(2) For the purposes of this section, "petty offence" means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 19391, or under any other law which provides for convicting the accused person in his absence on a plea of guilty.

(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice

Warrant

Section 2(x). Warrant Case

"warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

Section 2 (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.

COMMENTS

(i) There is no particular format for a complaint. Nomenclature is also inconsequential. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with, is a complaint; Mohd. Yousuf v. Afaq Jahan ; (2006) 1 SCC 627.

(ii) The expression "Judicial proceeding" defined in clause (i) of section 2 includes any proceeding in the course of which evidence is or may be legally taken on oath. The law does not prescribe any particular method of presentation of challan, namely, that it should be presented by any police official. When the challan was presented before the Court, who was acting as a Judicial Magistrate at that time, the first step in the judicial proceeding was sitting in judicial proceeding; Shrichand v. State of Madhya Pradesh , (1993) Cr LJ 495.

Cognizable and non-cognizable offence

Section 2(c)- Cognizable offence

"**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;

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;

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.

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".

Table 4.1 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.	

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.

Trials: Summary, Summon, and warrant trials
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 except the following changes –

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.

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. Cr P C 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 4.2 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. 255, the acquittal will only amount to discharge.	When a summons case is tried as a warrant case and if the accused is discharged under S 245, the 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.

UNIT V: INDIAN EVIDENCE ACT

Indian Evidence 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.

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.

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.

Evidence – Meaning, principles

"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.

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.

Concept of relevancy and admissibility

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
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Admissibility

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.

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.

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, [1]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) 2 Crimes 297 (Pat). 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.

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.

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 be made in the immediate presence of a Magistrate[1], shall be proved as against such person.

[2][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]].

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.
[1]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.

Comments

Accuser'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 admit 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 5.1 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 5.2 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 CrPC or before the court during committal proceeding or during trial.	1. Extra-judicial confession is 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 a 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 conjecture 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 inferencing 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.

Dying Declaration

Section 32. 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 estoppels, the maker is at liberty to prove that they are mistaken or are untrue; Jagdish Prasad v. Sarwan Kumar , AIR 2003 P&H 3.

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 wishes 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

Presumption of Fact

"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.

"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.

Section 4. "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.

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 a 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.

Comments
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).

RECOMMENDED READINGS:

1. Guar K.D., (1995) *Criminal Law*, Oxford University Press
2. Kelkar, R.V., (1996) *Outlines of Criminal Procedure*
3. Pillai, A.P. S., (1996) *Criminal Law*, N.M. Tripathi.
4. Ratanlal and Dhirajlal (1995) *Code of Criminal Procedure*
5. Sarathy Veppa P. (1994) *Elements of Law of Evidence*, Eastern book Co., Lucknow.
6. Singh, A., (1995) *Law of Evidence*, Allahabad Law agency.