

Overview of CrPC

Whole story begins with rights it is a right which a human being has been given. Some rights are born with human being human being and these rights are recognized by law. In the beginning there were only Civil rights, there were no rights given by Criminal Law. Criminal Law is the much later addition near to 9th century.

In Civil rights, there were always a cause of action which occurred because of the infringement of civil rights. So, I needed relief by putting up a claim which will be instituted by suit (Sec-26, Order 4).

In every process where I want relief, it has to be followed the principle of natural justice. Eg; Hearing of both parties to come conclusion.

We have two types of Justice System:

1. Civil Justice System
2. Criminal Justice System

1. Civil Justice System – It starts with infringement of my rights – lead to a suit through a plaint in which put up a claim and get the decree.

Rights are those Rights which are given by law are the substantive rights if someone infringe my substantive right the I will ask for relief from the defendant.

2. Criminal Justice System – The basic difference between the Civil Justice System and the Criminal Justice System is that in the Civil Justice System, the infringement affects only the individual (plaintiff), hence it is *Plaintiff v. Defendant*.

However, in the Criminal Justice System, any infringement of a right defined under criminal law constitutes an “**offence**” as defined in **Section 2(n) of the Code of Criminal Procedure, 1973**.

That “**offence**” has two parts as followed:

- (i) Act or illegal omission which is **prohibited by law (substantive law)**
- (ii) That Act or illegal omission is **punishable by law (substantive law)**

In Criminal Law ask for SUFFERING as relief so the end product is suffering.

Offences are defined in –

- (i) IPC
- (ii) Special Laws, deals with special subjects, Eg; NDPS, Arms, POCSO etc
- (iii) Local laws, Eg; Guj excise Act, MCOCA, Bihar excise Act, etc

Special and Local Laws covers particular topic but we can't have separate procedure-like hearing of parties in court, parties will give the evidences. Other will rebut it (cross-examination). This whole process will be as TRIAL by trial we come to conclusion i.e. Judgement.

Criminal Justice System has two parts:

1. **Substantive** – IPC, local laws, special laws
2. **Procedural**

Ques. Does IPC, local laws, special laws have the common procedural law?

Ans. Procedure is from may be true to must be true. So, whole trial process i.e. Courts power, investigation, way of arrest, proclamation, warrants etc will be under a single roof i.e. CODE. So, code is like mall and Act is like shop. So, CrPC is the CODE which deals with multifarious things.

Ques. Is Criminal Justice is very new thing or very modern?

Ans. Though, the Criminal Law came much later, earlier the entire world had only one law which were Civil Law. But if we go to Hindu Law, we had both substantive and procedural law as early as in our Hindu Law.

Manu Smriti – There are 12 heads of substantive laws and as far as procedural law is concerned, it is a Hindu Law which is pre-cursor of natural justice and all the procedure.

Yajnavalkya Smriti – It is more of procedural law.

Narad Smriti – It is purely procedural matter are covered.

As early as *Smriti* times we had both substantive and procedural law.

In **Muslim Law**, when the Muslim came to India whether it was Muslim Dynasty or Slave Dynasty, they were hold by *Shariyat*, the Holy Quraan which lays down the principle of natural justice and also the same ideals which we see today the modern-day law. So, we can't say that criminal law was the creation of British.

Modern

Britishers were very consolidated. If we go preamble of any acts, it is an act to amend and codified normally these words are used in preambles because the Britishers knew that they are not creating the new law except IPC.

Ques. What is the need for procedure?

Ans. Merely because one claim that an offence has been committed against him does not mean that we are going to hang the other is the accused one basic principle which every human being wants is the right of being heard – What we call the principle of natural justice. There must not be any lacuna. In Civil Law we do not go with the presumption that defendant accused is innocent. But in criminal law, we presume it that accused is innocent which starts from the day 1.

In **Woolmington v. Public Prosecutor 1935 English Law** held accused is guilty not upon the accused it is upon the prosecution and this never shifts.

In **Sec-101 of IEA** which says that he who wants Judgement in his favour the burden of proof is upon that person.

As far as CrPC is concerned, when the Britishers came to India the

procedure of Criminal Law very well laid down by Muslim i.e. Mughal Dynasty when the Britishers took over India which was divided into Presidencies in which Europeans used to live where the rights were very different and second part was provinces. There also different rights and duties. So, basically there were two laws were going on. Now, the Presidencies were governed by **Criminal Procedure Supreme Courts Act, 1852**.

By the **Regulating Act, 1773 Sadar-e-Nizamat** has been established i.e. Supreme Court first at Calcutta then Bombay after then Madras. So, there were two system of Justice first by subordinate court i.e. Trial Court and appeal lie to the Supreme Court which is the Second Justice System.

In 1861, the High Courts act was passed which abolished the Supreme Court at Calcutta, Bombay and Madras and established H.C. by letter Patent In 1862 through Queen Victoria. So, criminal procedure **Supreme Court Act, 1852** had been also abolished and made criminal procedure H.C., 1865.

Now as far as Provinces are concerned there were Criminal Procedure Act, 1861 which were abolished by **Criminal Procedure Act, 1872**. These were two separate procedures for Provinces and Presidencies there were no Common Code.

For the first Uniform Procedure were laid down i.e. CrPC 1882 it has a lot of lacunas and discrepancies. So, after amendment a new code again came i.e. CrPC 1898 and this was the comprehensive, combined, Uniform Code which had been amended some time it was continued even after the Independence till 1973.

After Independence we had a lot of rejection regarding CrPC, 1898 which are following;

- (i) India was now socialist country giving rights to move poor so this code is not socialist in nature.
- (ii) Natural justice was not properly followed as Britisher were tyrant.
- (iii) No difference between executive and judiciary entities as presently Art 50 clearly says separation between the two.

Now, the **Law Commission of 41st of 1969** which form the basis of CrPC:

- (i) Reflected the ideals of social justice through provisions like legal aid and maintenance, upholding the principle of equality before law.
- (ii) Recommended a far less cumbersome code to avoid delays in investigation and trial; accordingly, **Section 309** envisages day-to-day proceedings to ensure speedy justice.
- (iii) The procedure very complicated in 1898 code. This code is very organized instead complicated.
- (iv) It separated the judiciary from executive though executive court are the criminal courts. But the power of executive court is purely preventive in nature U/S – 6.
Before the offence was committed – **Executive Magistrate**
After the offence was committed – **Judiciary Magistrate**

Once the offences are committed the criminal justice system starts either by FIR or by Complaint to mag.

Object of this New CrPC.

Purushotam Mondkar v. St. 1956 (SC)

The primary object of Criminal Procedure is to ensure the fair trial to accused and to the prosecution.

Ques. Is CrPC purely procedural law?

Ans. Procedural law also called the adjective laws CrPC has many substantive parts also as the

- (i) **Sec – 360 (Admonition)** given the punishment.
- (ii) **Sec – 345, 350, 349**
- (iii) Maintenance proceeding also there which is a civil matter, public nuisance these are substantive parts. So, it is not purely procedural law it has substantive parts also.

As per the law commission of 41st given the new CrPC 1973 which came into effect on 1st April 1974. It has 37 chapters, 484 sections, 2 schedules –

- (i) Schedule contains punishment i.e. classification of offences.

(ii) Schedule about forms.

Ques. Can state make any amendment in CrPC?

Ans. In our Indian Constitution 7th Schedule has 3 list. i.e. Union list, state list, and concurrent list. In concurrent list entry no. 11 in which state and centre can make the amendment/ laws.

Ques. Can there be a change in CrPC by a simple notification? Can a state pass mere a notification?

Ans. Simple notification is mere executive in nature. There cannot be a change by simple executive notification. It can be change by legislature.

Ques. Can ordinance change (amend) it (CrPC)?

Ans. Yes, ordinance is like law.

Ques. Can state make the law which is repugnant against the centre?

Ans. Article 254 (2) which says when any state makes any amendment which is repugnant to the centre then the law can be reserved by the Governor for the consideration of the President. If the President does not give his assent that amendment can't be passed.

Eg; There was not anticipatory bail in Uttar Pradesh for some decades.

Ques. What are the basic features of CrPC?

Ans. In CrPC whenever an offence is committed which includes 3 kinds of laws offences i.e. IPC, special law, local laws, so their procedure of this offence is laid down in CrPC but if any special and local law has his procedure then that procedure will be followed special/local laws prevail over general law. U/S – 4(2) of CPC and CrPC.

Ques. What does CrPC contains?

Ans. CrPC is a code which deals with Criminal Justice System. After the offence has been committed the need of evidence arises. So, collect the evidence and bring before the court. Court adduces the evidences i.e. Trial – then

Judgement – Execution of Judgement. So, after the commission of offence – either FIR registered U/S – 154 or Complaint case U/S – 200.

So, the bulk of CrPC what will happen after commission of the offence – Role of Judicial Magistrate.

Before offence – Role of Executive Magistrate – Preventive Role.

Power of Executive Magistrate –

- (i) Binding down the person **U/S – 107, 108, 109, 110** and if the person does not bring the surety, Magistrate can order for jail. It is not a trial because offence not committed – Quasi-Judicial Power.
- (ii) **Sec – 129-132** – *deals with Danda marne wali power*
- (iii) **Sec – 133-134-143** – Quasi Judicial power.
- (iv) **Sec – 144** – EM power (emergency)
- (v) **Sec – 145-153** – Quasi Judicial power.

Bulk CrPC – After offence

Maintenance – Sec – 125-128 – It is Quasi Civil/ Criminal matter. Why maintenance finds his place in CrPC because in CrPC has speedy trial which involve wife, children, parents they should not be suffered.

Victimology – The Criminal Jurisprudence written from the Accused POV because we go with the presume that Accused is innocent so the entire law favour the Accused. Sec – 357 ABC makes a lot provision in favour of victim Sec-358, 359, 372 so, the victim is also recognized very important part of Criminal Law.

Classification of offences

- (i) IPC offence
- (ii) Special/ local

(i) IPC offence –

Every 511-section dealt with separately ang Sec –

- (i) Which section
- (ii) Name offence
- (iii) Which/ how much punishment
- (iv) Cog/ non-cog
- (v) Bailable/ non-bailable
- (vi) By what court it is tried –

Session Court

- Session Judge
- Add. Ses. Judge
- Asst. Sess. Judge

JMIC

- Chief Jud. Mag.
- AdCJM
- Sub-div CJM
- JMIC

Any Magistrate

- Jud. Mag. II
- Metropolitan – CMM, MM

- (vii) Compoundable/ non-compoundable (Not written in Schedule of CrPC.)

Sec – 320 CrPC –

- (a) With permission of court
- (b) Without permission of court

Offences are divided into 3 basis –

If offence is punishable with –

- (i) Death, life or more than 7 years – are session triable, non-bailable or cognizable
- (ii) More than 3 years up to 7 years – are non-bailable, cognizable or triable by first class magistrate
- (iii) Less than 3 years or fine – are non-cognizable, bailable or triable by any magistrate.

Ques. Does 'any magistrate' includes executive magistrate?

Ans. Executive magistrate is a magistrate and executive magistrate is criminal court as per Sec-6. But U/S – 3 wherever there is a reference of magistrate in CrPC it will be construed to be Judicial Magistrate and hence all the power which are given of a trial are given only to Judicial Magistrate because the word is magistrate. No where is the word used 'executive magistrate'. Power of executive magistrate is purely preventive and executive in nature.

We have only 2-3 instances where the role of executive magistrate is come after an offence has been committed.

- (i) Inquest proceeding (sec – 174 CrPC)
- (ii) Sec – 167 produces before the nearest mag/ If the judicial mag. Is not available then avail before the executive mag.

Ques. What is the Criminal Justice System?

Ans. It basically means when an offence has been committed then offence is not only limited to victim it is against the society. The end product in Criminal Law after the offence commission is suffering. The end product in Civil Justice is not suffering but compensation or restitution *in integrum*. Both the Justice System, the end product is diametric opposite.

Ques. What comprises the Criminal Justice System?

Ans. OFFENCE has been committed.

These are 3 types of offences –

- (i) IPC offences
- (ii) Special law offences
- (iii) Local law offences

After the commission of an offence, the first step will be

- (i) Collection of Evidence – If it is cognizable offence, we go to the police, register the FIR. Investigation will be done by collection of evidence then they come to a conclusion and matter goes to the court for the first time.
- (ii) Court –
 - a. Pre Trial – framing of charges.
 - b. Trial – Entire CrPC revolves around trial. Collection of evidence, investigation, FIR etc is for Trial Point of View.
- (iii) Prison/ punishment/ reformation

Criminal Justice System

Investigation

Pretrial/ Trial

Reformation/ Prison

Our Criminal Justice System always reeked because the Britishers given the colour. They were very oppressive people. They could force themselves was through very dominant Criminal Justice System which were absolutely in favour of the Britishers. Even today the vestiges of the British Rule are felt in the various agencies. However, new CrPC 1973 tried it best to remove the vestiges of British Rule and give us a brand new CrPC which is more or less in consonance with the constitution. There was a very important commission which was setup to reform the Criminal Justice System.

Justice malimath committee in 2000 – Their recommendations were very important.

Ques. Who are the agencies involved in Criminal Justice System?

Ans. 1. Police – Police is not creation of CrPC. Criminal courts are the origin of CrPC. CrPC only recognize only few CrPC agencies i.e.

- (i) A police officer (include constable)
- (ii) Officer incharge of police officer/ station (S.H.O.)
- (iii) Superintendent of Police U/S – 154

Not mentioned – IG, DIG, DG, Head Constable, Constable, ASI, SI, DSP.

Ques. Does the powers given to only a police officer, officer in charge of PO/ Station, Suprt. Of P.O?

Ans. U/S – 36 – of CrPC – says that whatever the powers an officer in charge of P.S. enjoys the same power will be enjoyed by the Higher/ Superior Rank officers in the areas which they hold.

Eg; A DG represent the state.

Ques. What is the nomenclature of police?

Ans.

- (i) **Constable** – No star; only state badge (e.g., DP, KP, PP).
- (ii) **Senior Constable** – No star.
- (iii) **Head Constable** – No star.

- (iv) **Assistant Sub-Inspector (ASI)** – 1 star with red and blue striped ribbon.
- (v) **Sub-Inspector (SI)** – 2 stars with red and blue striped ribbon and badge.
- (vi) **Inspector** – 3 stars with red and blue striped ribbon and badge.

All of the above are non-gazetted personnel.

Below are Gazetted Officers –

- (i) **Deputy Superintendent of Police (Assistant Commissioner of Police)** – 3 stars
- (ii) **Additional Superintendent of Police (Addl. SP) / Deputy Commissioner of Police (DCP)** – IPS officer – Ashoka emblem.
- (iii) **Superintendent of Police (SP) / Deputy Commissioner (DC)** – 1 star and Ashoka emblem.
- (iv) **Senior Superintendent of Police (SSP)** – (after completion of 12 years of service, selection grade) – 2 stars and Ashoka emblem.
- (v) **DIG (Deputy Inspector General of Police)** – 3 stars and Ashoka emblem.
- (vi) **Inspector General of Police (IG)** – Crossed sword and baton with one star; car plate: 2 stars and flag.
- (vii) **Additional Director General of Police (Addl. DGP)** – Crossed sword and baton with Ashoka emblem; rectangular flag and 3 stars on car plate. DG – Square Rectangular – Same A DGP
- (viii) **Director General of Police (DGP)** – Crossed sword and baton with Ashoka emblem; same rectangular flag as Addl. DGP

Police star has always white colour.

Police is the creation of Police Act; 1861 Preamble defines all the duties of Police.

Rojnamcha (General Diary) – **Persian word** – Everything is written in the general diary whatever is going on in Police Station. It is in numbered, this is a public document and very important can't cancel if once written.

Eg:

S.No.	Date Time	Particulars	Signature
1			
2			
3			

Case Diary – It is diary of case, Eg- an offence was committed, FIR was registered, I am the IO first thing will I write that at 4:00PM this case was given to me for investigation by officer in charge of P.O., I went to the spot and arrested these people etc. Now, accused is produced before the Magistrate. Magistrate read the case diary. If there is inconsistency between case diary and general diary it means it is faulty investigation either case diary is not public document, it is private means it is only meant for the IO or Judge. But general diary is a public diary.

➤ **CBI is created by Delhi Special Police Establishment Act, 1946. CBI has two works –**

- (a) As anti-corruption people, suo moto, raid anywhere in India
- (b) To investigate specific cases, they don't have own power. Only State or SC can give. No lower Judge can transfer to CBI.

Ques. Is CBI a police station?

Ans. Yes, CBI has its own P.S. If CBI investigate a case will be resemble application of CrPC.

Ques. Section – 34 of Police Act, 1861

Ans. This section will apply where the state given the application of this section. It mentions the power of police man on the road to arrest you there and then, in matter of

- (i) Person who slaughters any cattle and cleans any carcass. Person rides or drives any cattle recklessly or furiously, train the breaks of any

cattle.

- (ii) Any person who wantonly or cruelty beats, abuses, tortures any animal
- (iii) Any person
- (iv) Exposing good for sale.
- (v) Throwing dirt into street.
- (vi) Being found drunk or riotous
- (vii) Indecent exposure of person.
- (viii) Neglect to protect dangerous.

Punishable with imprisonment not exceeding 8 days with or without hard.

3. **Defence Lawyer v. Prosecution Lawyer (Agency)** – My right as a defence lawyer comes under Article – 22 i.e. accused has a fundamental right to be represented by pleader of my choice. In case accused has not money then in CrPC have a provision of legal aid so as far as accused is concerned the natural justice must be followed. If there is not a fair trial then there is negation of my Right to life U/A – 21

Ques. Who are the officers of the court?

Ans. There are 3 officers of the Court –

- (i) Presiding Officer – Judge
- (ii) Defence Officer
- (iii) Prosecuting Officer (P.P.)

- In **Indian Advocates Act 1961** – say they cannot carry a personal business. Because they are officers of the Court.
- **Public Prosecutor** – They are the counsel for the Accused. The offence is against the state and that is why the state is being represented by P.P. that is why P.P. is not allowed to appear on behalf of the Accused.

Ques. What is the duty of Public Prosecutor?

Ans. The duty of P.P. is not to ensure the conviction. He is officer of state and

court and all officer of the court has to secure justice.

Moham boram v. Jayavelu 1970 Andra Pradesh H.C.

The ideal P.P. is not concerned with securing conviction and satisfying the department of State Govt. with which he has to be contact. He is an agent of Justice and his only job to secure justice.

3. Court (Agency)

4. Prison/ Reformation (Agency)

In CrPC there is no role of prison. But we have got Prison Act. But in CrPC has bit reflection U/S – 360 where probation of offender Act mentioned. Whereas Central Law of Prison is Prison Act, 1958 etc which are other acts which deals with Reformation. Every state has own prison manuals which are more or less in consonance with Prison Act, 1894.

Overview of CrPC

In Criminal Justice System offences are of two types:

1. Cognizable (more serious)
2. Non-cognizable

Sometime non-cognizable offence has the serious punishment with comparison with cognizable.

Eg. Bigamy; 7 years but non-cognizable

So, where the more impact on the society then more chances are there that is a cognizable offence, non-cognizable offence these are basically wrong which have been elevated to the level of offence and that is why non-cognizable offence are not investigated by police. Police can investigate in cognizable cases can arrest without warrant in a cognizable case.

Ques. Where does the non-cognizable case go?

Ans. When a person goes to police to lodge a FIR (U/S – 154). He goes as an

informant in cognizable case whereas in NC, person cannot go the P.S. but to magistrate, now magistrate will first look at the complaint or application and see that whether an offence U/S - 190 committed or not and if finds yes offence has been committed then magistrate make a call to complainant to come with your evidence U/S – 200.

Ques. Only non-cognizable cases to magistrate or can cognizable case also go?

Ans. Suppose S.S.P. break the bone of somebody. So, can that person go to P.S.? No. now that person will go to Court. So, that offence can be a cognizable offence (that is private istgasa).

Complaint can be –

1. Cognizable
2. Non-cognizable

Ques. Can I go to both i.e. P.S. or to the Court?

Ans. Yes, there is no bar. I can do so. Is not the duplication of process? In CrPC has the provision where a complaint is put up along with FIR. The magistrate will hold on the complaint and wait for the FIR's result to come and allow the investigation to be completed. Then the final report will come. If the magistrate happy with that then he merges the complaint with final report. If not happy then magistrate will conduct his run enquiry.

Police investigate.

Magistrate always inquires.

Cognizable cases –

- (i) P.S.
- (ii) Magistrate

Non-cognizable cases –

- (i) Magistrate

Ques. If the non-cognizable combined with the cognizable then FIR can be

lodge, Eg – Bigamy (non-cognizable) + Cruelty (cognizable). Police can investigate it.

Ques. What happens if the FIR has been registered?

Ans. Once police register the FIR then naturally police will **now start the investigation** --> It is collection of evidence. Police want to come to a conclusion that whether the offence has been committed or if committed which offence is committed, who is the accused. So, after finding the police came to conclusion i.e. final report U/S – 173 CrPC. Now the police job finishes. P.S. represent the state.

FIR will be written in **Roznamcha** i.e. general diary. An IO will investigate on the FIR. The more serious the offence, the more higher rank office will be IO. Even the lowest P.O (constable) is the competent IO.

Ques. How IO will start for investigation?

Ans. U/S – 157 mentions by go to the spot and starts writing case diary.

Ques. Can IO deny for investigation?

Ans. Yes there are 2 proviso U/S – 157 Eg. In trivial matter.

Ques. If necessary, in the process of investigation arrest the accused.

Ans. Arrest is the violation of Under Article – 21 of Indian Constitution.

In CrPC there are two types of arrest.

- (i) Preventive arrest – Police can do U/S – 151 CrPC.
- (ii) Arrest after an offence committed – by accused – Chapter – 5 – Sec – 41 – 50A deal with arrest.

In 2008, we have spade of Amendment in arrest laws. **Eg.** Sec – 41

Ques. What P.O. do after arrest of accused?

Ans.

(i) Police can't arrest accused for more than 24 hours and produce before the nearest magistrate. If the 24 hours is insufficient to investigate then P.O.

produce the accused U/S – 57 CrPC before Magistrate and ask for police custody U/S – 167 CrPC – Max 15 days.

Ques. Suppose accused confesses before P.O. Si, does it have any value in law?

Ans. No, because it is hit by Sec – 25 IEA. But it helps use from the right place or from the right person.

Police custody (advantage of arrest) Discovery of fact from accused U/S – 27 IEA is relevant.

Ques. What is the different between discovery and recovery?

Ans. A knife **recovered from the tree**, only accused know the place nobody can know the place. Now that knife sent to forensic science laboratory by the police FSL said that the finger prints of the accused were found, the blood of the dead person is found on the knife and used for the murder.

A) How did the accused know that the knife was hidden in the jungle?

B) How did the blood of victim come on the knife?

So, that means accused is connected with knife? So, it is the **discovery of the fact**.

Search

Ques. Are their search provision in CrPC?

Ans. Yes

- Sec – 91 - searches by notice.
- Sec – 93 - search by warrant, given by magistrate
- Sec – 165 - search by without warrant
- Sec – 166 - search by without warrant outside his jurisdiction

Search is invasion in my right to privacy. The procedure of search is given U/S – 100 CrPC. Whether it is with or without warrant.

Evidence

- Witnesses
- Oral
- Documentary
- Real (material)

All witness will be examined by the IO U/S – 161 CrPC (written in first person – myself-I) which is oral evidence. Sec – 161 statements of a witness which is oral evidence being taken by IO is not signed why? Because framers knew about the police if they allow signature witness will be under a pressure.

Sec - 162 says any statement taken by police during investigation, what are those statements –

- (i) Making site map
- (ii) Search memo
- (iii) Taking evidence U/S – 161

All statement taken by police during investigation cannot be used for **corroboration**. It can be used for contradiction. It means Eg; I am a witness in my 161 statement and said ABC murdered D **which is not signed** and now go to the court and said ABC murdered D which is **under oath** and also signed if you lie before the court then will be liable **U/S – 193 of IPC** – liable 7 years punishment. Now the statement is same – both the statement – he is telling truth. **Both statements cannot be used for corroboration**. It can be used for contradiction.

Eg; I said in 161 that I saw ABC murdered D in P.S. and now in court I said I saw A was murdering D under oath. Now Defense Counsel will come and say in 161 you said ABC murdered D and before court A murdered B either you were telling lie. This is contradiction – **Under Section – 162 (2) proviso**.

Ques. Is the FIR statement of police?

Ans. No

FIR is the statement by the informant so can I used the FIR for corroboration?
FIR can be used for corroboration and contradiction.

Eg; There was a murder of 'A' and 'D' was an eye witness; he was a servant.
Murder B contact D given money to D that give some other statement to police. (before the starting of trial means during investigation)

By the time, trial start, D is not going to tell the truth so police bring D before the magistrate U/S – 164 statements of witness U/S – 164 is by magistrate not by police. It can be used also for corroboration it is under oath.

Similarly, dying declaration can be used for both corroboration and contradiction. Value of Section – 164, statement U/S – 164 before magistrate given by witness under oath at investigation and when witness give the same statement in trial before court if different then witness can be liable for perjury U/S – 193 IPC.

Jessica Lal case

5. Final Reports

Final Reports is the conclusion U/S – 173

- (i) Which offence committed
- (ii) Who committed the offence

Ques. Can the court interfere when the police is investigation?

Ans. Earlier law was that the investigation is the forte of police. The court should not interfere in investigation of police. The role of court starts only after final report given by the police U/S – 173. As a result, the court used to sit as a mute spectator till the final reports given to the court.

Sakiri Vasu v. St. of U.P. 2007 SC

SC held that the basic aim of criminal justice system is to give justice, if the investigation is wrong then the **judgement is bound to be wrong**. Why should magistrate remain a mute spectator. The magistrate can interfere if there is a

complaint that investigation is not going on properly, U/S – 156 (3) CrPC magistrate can monitor the investigation.

Nomenclature of the criminal court

Sec-6

H.C. is the first criminal court. SC is not a criminal court. Criminal court means where a trial can take place.

H.C. followed by the session court, **there are 3 types of Judges –**

- Session Judge
- Add. Session Judge
- Asst. Session Judge

Then we have –

- Judicial Magistrate I class, where Chief Judicial Magistrate, Add. CJM, Sub-divisional Judicial Magistrate, JMIC.

1. H.C. –

Session Court –

- Session Judge
- Add. S.J.
- Ass.t S.J.

2. JMIC –

- CJM
- Add. CJM
- JMIC

3. JM II class

4. Executive Magistrate

Executive magistrate court has been delineated/ separated from the other criminal court and made a different court. This delineation of executive court from judiciary is one of the biggest achievements of 1973 CrPC.

Power of the Courts –

1. H.C. has the power
2. Session court (session judge/ Ad. SJ) has all the power to give any punishment **except death penalty**. If gives then it must be confirmed by H.C.
3. Asst. Session Judge, has the power to punish **up to 10 years** and power of **fine is unlimited**.
4. Magistrate – CJM/ Ad. CJM – 7 years + unlimited fine
Sub-div. JM/ JMJC – 3 years + 10,000 fines
JMJC – 1 year + 5000 fine
5. Executive Magistrate – It has no power to holding a trial after an offence has been committed. They have preventive in nature power.

Sometimes, imprisonment in lieu of fine has to be given means one is not able to pay the fine then what is to be done? Sec-64 to 69 of IPC along with Sec-30 of CrPC.

Punishment can be given **consecutively** (Punishment – 5 years + 2 years = 7 years) and **concurrently** (Punishment 5years + 2 years = 5 years Running simultaneously)

Jurisdiction – Sec – 177 – 189

Beginning of the Court work –

- (i) Pre-trial
- (ii) Trial

- It is the basic foundation thing of trial.
- Court for the first time uses its judicial mind to pertain that –

- Whether the offence committed?
 - Which offence has been committed?
 - Who committed?
- S-173 (final reports) or complaint report given to court

Application of my judicial mind is the next step after police puts up its final report. This application of my Judicial Mind is called taking cognizance. If magistrate not satisfied with the police report, Judge may order for further investigation.

Ques. On what ground magistrate can apply his judicial mind?

Ans. On complaint case – Magistrate U/S – 190 uses his Judicial mind that whether offence committed or is it a civil matter? If court finds to go further then courts take cognizance U/S – 190.

Go further U/S - 200 of CrPC.

There is no complaint come into me or not any FIR case come. But reading it in the newspaper. Now the court can take the **Suo moto cognizance**.

Sec-190 taking of cognizance

- (a) By police report (FIR)
- (b) Complaint case → Sec-200 if offence committed
- (c) Suo moto case

- 1) 154 (FIR) – (173) (police report) → U/S – 190 – taking cognizance – Beginning of application of judicial mind (Pre-trial) → Trial of court

Illustration. A murder is committed and an **FIR** (First Information Report) has been lodged.

Police complete the investigation and file the **police report under Section 173 of the Code of Criminal Procedure (CrPC)**.

Now, the question arises:

Section 302 of the Indian Penal Code (IPC) (murder) is **not triable by a Magistrate**. It is exclusively **triable by a Court of Session**.

Ques. Do we have to place the police report under Section 173 directly before the Sessions Court?

Ans. No. The Magistrate will take **cognizance** under **Section 190 of the CrPC**.

All Sessions - Triable Cases First Come to the Magistrate

Every case - whether it is:

- **Sessions triable**, or
- **Triable by any Magistrate** -

Must first come before the Magistrate under **Section 190**.

If the case is **Sessions triable**, then the Magistrate will **commit** (send) the case to the Court of Session under **Section 209 of the CrPC**.

[The matter comes to magistrate; the accused is already under custody and police put up the final report of murder and magistrate go through it. Now they will give a copy of entire file except case diary to the accused so that when tomorrow accused goes to the court of session, he is prepared for his framing of charge.] (for session trial case magistrate will not frame the charge)

So, all matter came before magistrate he will decide which matters are session triable and which magistrate triable case.

Committal can be at two stages –

- (a) When U/S – 190 of CrPC magistrate takes cognizance and commit to session court U/S – 209 (before trial)
- (b) During the trial – When magistrate holding the trial of the case of grivious hurt and that person now dies which become section – 302 of IPC. Now magistrate commit the case during the trial to the session court U/S – 323 of CrPC.

If the police have not arrayed any accused as an accused and magistrate feel that he should be arrayed as an accused then magistrate can array take him as an accused – U/S – 190 of CrPC.

Discharge is a pre-trial process. If magistrate finds that some of the accused are innocent then magistrate can discharge then U/S – 190.

After trial there is acquittal and before trial there is discharge. Tomorrow if magistrate find any evidence against discharged accused, then magistrate can call them back. There is no double jeopardy but if magistrate acquitted the accused, then there will apply double jeopardy [(Art-20(2))] magistrate can't call them again.

- 154 (FIR) investigation final report U/S – 173 of CrPC.
- 190 magistrate takes cognizance (discharge and arrayed)
- Framing of charges

After reading the FR the magistrate reached at the conclusion that ABCDE has committed the offence of XYZ. Now magistrate straight way ask that in my view you have committed XYZ offences. Do you agree?

If they say yes → That means they are pleading guilty, now there is no need for trial. Magistrate immediately give the Judgement and convicted.

If say, no → Now the trial starts right after the framing of charges.

Trial goes as per how much serious the offence.

Trial

- If the offence is punishable 10 years or upwards it goes to session trial.
- If it JMIC triable then it goes to magistrate.
- **Matter comes by –**
 - Trial by FIR (PR)
 - Complaint trial
 - Suo moto trial
- **Two types of case in CrPC –**
 - (i) Summon case – punishable up to 2 years

- (ii) Warrant case – above 2 years of punishment

Trial

- 1) By session judge or Add. S.J – 10 years or above
 - 2) By magistrate – chapter 19 –
 - a. Warrant case - trial by Police Report
 - b. Warrant case – Trial by Complaint Eg; Bigamy (other than Police Report) and Suo moto case
 - 3) Summon case trial – chapter – 20
 - 4) Summary trial – chapter – 21
-
1. Sec – 300 to 327 – General Provision chapter – 24
 2. Sec – 195 R/W – 340, 341 etc – chapter – 26 (perjury)
 3. There is not concept of decree in criminal law once the judgement came, naturally it has right to appeal which comes under chapter – 29 of CrPC.
 4. Revision, reference chapter – 30
 5. Transfer of cases – chapter – 31
 6. Execution – chapter – 32
 7. Bail – chapter – 33
 8. Disposal of property – 34
 9. Limitation period – chapter – 36
 10. Misc – chapter – 37

Preamble – Consolidate – we are consolidating (exhaustive or complete) all the procedure relating to criminal law and amending it as per the need of our constitution DPSP.

(Pre + inter) – Ques. When CrPC came into force?

Ans. Sec – 1 (3) say it came into force 1st day of April, 1974. 25th Jan, 1974 was the assent date.

- President's assent does not make a bill into an Act. Rather passing the

notification into gazette make an Act.

Section – 1 – It intends to whole of India. The word – Except the St. of J&K' omitted by the J&K Reorganization Act 2019 w.e.f. 31st Oct, 2019.

Ques. What do you mean by India?

Ans. 'India' word defined in CrPC also U/S – 2 (f) and Art – 1. Territory of India given in Schedule – 1, Sec – 2 (F) of CrPC says

India means the territories to which this code extends

Ques. If the CrPC does not extend will it not be India?

Ans. We are looking for CrPC point of view, the applicability of CrPC as well as India per se as concerned we will have to go under Art – 1 of Indian Constitution which define India as a territory of India as given in Schedule – 1, where Nagaland, J&K and tribal areas all are the part of India.

107 R/W 151 CrPC – Sat I QUINJA

CrPC will not apply – state of Nagaland and tribal areas but chapter VIII, X, XI (deal with police) will apply to state of Nagaland and tribal areas, these chapter are deal with executive power.

107 R/W 151 CrPC

Eg – A is going to commit offence. Police arrest him before committing the offence U/S – 151 it is preventing arrest. Now police take him before executive magistrate and ask him to bind the accused U/S – 107 CrPC for good behaviour and ask him to pay 1 Lac as surety.

Chapter VIII – Section – 106 to 124 – Security for keeping peace and for good behaviour

Chapter X – Section – 129 to 148 – Maintenance of public order and tranquillity and public nuisance

Chapter – XI – Preventive action of police

State of Nagaland –

- Nagaland was given a special status by Article – 371A

They have own procedure

Tribal areas –

These are those areas which are mentioned in Schedule – 6 of Indian Constitution. Clause – 20 of 6th Schedule where, 9 District of 4 states are mentioned i.e.,

ASSAM

MEGHALAYA

MIZORAM

TRIPURA

These 9 District are the tribal areas. Schedule – 6 is also known as Mini constitution. Constitution given them the right to make their own laws. Because these are basically tribal areas, they have been following their own culture from the time immemorial. We had not been able to merge them in our Society and we do not want to disturb their society.

But if concerned state wants to apply the certain provision of CrPC they can do so by simple notification in official gazette.

(M.IMP) Capital of Meghalaya is Shilong where CrPC is applicable.

DEFINITIONS:

Sec – 2(a) Bailable offence –

Bailable offence is not very dangerous for the society.

Bail is the matter of right provided accused must produce the surety.

We have ampity number of Judgement where S.C said court must not put onerous of task of bail which leads to denial of bail.

Bail – Default Bail U/S – 167 of CrPC

Police did not complete the investigation within 60 days or 90 days and accused in Judicial Custody get after expiring 60 or 90 days he will get the bail by right.

(1) **Bailable:** It is a legal right given by CrPC – U/S – 436.

(2) **Non-Bailable:** It is not a right. It is given U/S – 437 of CrPC. It is based upon discretion of the magistrate.

Sec – 2(b) – Charge includes any head of charge when the charge contains more heads than one.

CrPC does not define the word charge. Only it says that charge includes any head of charge when the charge contains more heads than one. It is only used by the Court not by Police. When the police make the final report by saying chargesheet it is common parlance which is wrong in CrPC. Charge is basically a specific accusation made against a person by the court.

Eshu Singh v. State of Andhra Pradesh 2004 (SC)

Charge is a precise formation of the specific accusation made by a court against a person who is entitled to know its nature at the earliest stage.

Read with Section – 211.

**Police → Accusation → Final Report
Court → Charge**

FIR → Investigation → Accusation by police as final report → Court → U/S – 190
court take cognizance → Uses judicial mind → Accusation of an offence by
magistrate (i.e. charge)

Bare – ‘more heads than one’ – Eg – More than one offence against one person.

- The court which tries always frames.

Charge has two aspects –

- (i) Application of mind
- (ii) Coming to a conclusion regarding an offence.

Section – 2(c) ‘cognizable offence’

Section – 2(l) non-cognizable offence

Section – 2(c) ‘cognizable offence’ given in Schedule I

Ques. What is impact of cognizability?

Ans.

- (i) FIR can be register, if it is non-cognizant than No FIR can be register.
- (ii) Police can arrest without warrant.
- (iii) Police can investigate.

If it is non-cognizable then no FIR, arrest, or investigation can be so.

We have only two types of cognizable cases. Normally cogniz-ability depends upon what impact on the society. Cognizable case means it is more serious case.

- (a) Those which are not very serious.
- (b) They may have a lot of imprisonment but they do not affect the society.

In other words, those which were civil wrongs and which were elevated to the position of offences are lot of non-cognizable case.

Eg – Bigamy – 7 years (non-cog)

Section – 2(d) Complaint

Complaint has a very wide meaning. It is one of the ways to start the criminal justice system.

Two ways to start the criminal justice system –

1. If it is cognizable offence, register the FIR
2. If it is a non-cognizable offence then there is no FIR, investigation by

police. I can move the court straight way.

Charge word is connected with Judiciary only. Not with police.

An allegation (accusation) made orally or in writing to a magistrate.

Complaint can be oral, just as a FIR can be oral. Similarly, magistrate can reduce the complain of oral with writing.

Ques. Can complaint be made to H.C, session court?

Ans. No, because the word is written here is magistrate.

With a view to his taking action under this code.

Person who is giving complaint must have motive. Complaint made always with specific purpose if that specific purpose is not there it is not a complaint.

Whenever the word 'magistrate' used alone means a Judicial magistrate U/S – 3.

Ques. Can complaint be made against unknown person?

Ans. Yes, complaint can be made against known, or unknown person.

Bare

Committed 'an offence' → It means 'any offence' which includes non-cognizable and cognizable, IPC, local laws or specific law's offence.

Ques. What are the requisites of a complain?

Ans.

- (i) It has to be oral or written application.
- (ii) Some person known or unknown committed an offence.
- (iii) Complaint must be made only to a magistrate and by virtue of Sec-3 of CrPC magistrate means only judicial magistrate.
- (iv) Complaint must be made with an object and magistrate should take an action. In other words, a complaint should not be a mere information

if the object is not to take action, then it cannot be called complaint. Since the police officer is not a magistrate hence any petition/ application given to a P.O can never be a complaint.

Ques. What all will contain in complaint?

Ans. It is not necessary for the complaint that all the evidences have to be put up. Just as a FIR has not supposed be encyclopaedia of events. Similarly, it is not necessary for the complainant to set out all the evidence in his possession.

Ques. Does in CrPC have the strict rules as like given under Order – 6 of CPC for pleading?

Ans. No, there is no application for CPC to CrPC.

Ques. Can magistrate dispel, reject the complaint on the basis of wrong section, legal infirmity and not proper formatting of the complaint?

Ans. No, merely because the complaint is defective form, wrong section written, or it has legal infirmities magistrate cannot reject a complain.

Bhimmappa v. Laxman 1970 SC

Orally, or writing

Magistrate cannot deny to write a complaint; he is legally bound to reduce the complaint into writing.

Ques. Some people brings affidavit as a complaint before the court so affidavit can be a complaint?

Ans. Yes it can be considered.

Ques. Complainant can be a company, juristic person?

Ans. Yes, word 'person' word includes biological as well as juristic person.

Ques. P.O. investigated in non-cognizable case. Will this investigation be thrown out?

Ans. After investigation done by P.O. and makes the report of this case will be consider as complaint.

Narain Singh v. State 1986 Delhi H.C.

A report of a P.O. in consequence of an unauthorized investigation into of non-cognizable offence shall be deemed to be a complaint.

Ques. A case was registered U/S – 323 (non-cognizable), 341 (cognizable) of IPC. FIR has been registered. While investigated 341 of IPC not proved. But proved 323 of IPC, will it still be considered as FIR?

Ans. No, now it will be considered as complaint it started up as a FIR and ends up as a complaint. R/W explanation of 2(d) of CrPC.

Keshav Lal Thakur v. St. of Bihar 1997 SC

The P.O. had registered a cognizable offence, and after investigation it was found that it was a non-cognizable offence, now SC referred the explanation of Section – 2(d). A report made by a P.O. in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the P.O. by whom such report is made shall be deemed to the complainant.

Eg – A woman registered a case under Section – 494 R/W 498A of IPC, FIR has been registered, police have been investigated. Section – 494 is non-cognizable offence and Section 498A is cognizable. After investigation police found that that this case is only related to Section – 494 of IPC. Now, in such cases the Final Report will be treated as complaint → Deemed complaint

IO will be → Deemed complainant.

Ques. Petition have been put up before executive magistrate that my neighbour is gunda, he should bound down far good behaviour under Section – 107 and habitual offender, bound down U/S – 110, or U/S – 108, 109.

Is this a complaint?

Ans. No, complaints are on offences, here no offences have been committed.
Complaint can be made only after an offence has been committed.
These are preventive section.

Ques. Is FIR a complaint?

Ans. No, FIR is not complaint. FIR lodged before police and complaint file before magistrate.

Ques. Is Section – 125 CrPC petition a complaint?

Ans. No, because no offence has been committed.

Ques. Whether complaint can be sent by post?

Ans. There is no bar for sending complaint by post.

Ques. Is there anything return of a complaint?

Ans. No, provision of return of complaint in CrPC.

Ques. Difference between complaint and FIR?

Ans.

1. FIR is always made to a police officer or in a police station and complaint made to magistrate.
2. Complaint may relate to cognizable or non-cognizable offences. FIR only relates to cognizable offences.
3. Magistrate takes cognizance of an offence only on complaint. He cannot take cognizance on FIR. (he takes cognizance on final report)
4. In a complaint the complainant examined under oath. In FIR there is no need for oath.

Complaint also known as Private Istigasa

Ques. After receiving the complaint what does the magistrate do?

Ans. Magistrate now directs to complainant to appear before which is evidence U/S – 200 CrPC or if necessary for detailed enquiry U/S 202

CrPC.

Complainant goes to magistrate → **Section – 190** (magistrate takes cognizance)

↓

Sec – 200 (direct to complainant for evidence),
Sec – 203 (If no substance found, dismiss),

Sec – 204 (If found substance then called the accused → then frame the charges, and START the WARRANT/ SUMMON TRIAL - other than police report)

↓

Sec – 202 (detailed enquiry if needed – help of police can be taken or an ordinary person's help)

**** If accused speak lie under oath then he will be liable U/S – 193 of IPC (7 years imprisonment). Or 182 and 211 of IPC.**

Bare –

Section – 2(e) – High Courts

Section – 2(f) – done in Sec – 1

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

Ques. Is trial an inquiry?

Ans. Here court and magistrate include → judges, magistrates and executive magistrate.

Section – 2(g) – does not define inquiry it merely says that inquiry something than a trial which is conducted by magistrate or a court even then word trial has not been defined.

Ques. What is trial?

Ans. Trial basically means that once the charges has been framed then the proving or disproving of those charges by evidence in the court.

During the trial evidences are adduced to prove or disprove a charge which have been put up by a court.

Ques. What is inquiry?

Ans. Inquiry basically means application of judicial mind by the magistrate or any court.

In other words, issues which arise and then use its judicial mind over it broadly speaking it is an inquiry.

In CrPC, inquiry is basically called a **pre-trial process**.

Arun Dubey v. St. of M.P. 1991 H.C.

The term inquiry has been used in a wide sense, and we include such proceedings which do not require an adjudication upon the guilt of the accused. (That means whether he has committed offence or not, not adjudicate this).

It would also include the proceeding which perceived the stage of a trial.

Ques. When sending a person in police detention or remanding into Judicial Custody. Is that process an inquiry?

Ans. Yes, it is an inquiry because magistrate or court applying his mind that whether that person to set in free or not to set in free.

Swaroop Singh v. State of Rajasthan 1970 Raj. H.C. (divisional bench)

The proceeding of bail U/S – 167 of CrPC where the judge either sends for police detention or sends for remands. Raja H.C. clearly said it is a judicial act where judge is acting in judicial capacity and was judicial discretion by application of his mind.

Remand word is not used in U/S – 167 of CrPC. Sending of accused after 15 days of judicial custody into the judicial custody, will be called remand U/S – 309 of CrPC or whenever sending to police custody means sending for detention not for remand.

V.IMP – Ques. When magistrate conduct the committal proceedings U/S – 209 CrPC. Will it be taken as an inquiry?

Ans. State of U.P. v. Lakshmi Brahman 1983 SC

Whenever the magistrate commits, he uses his mind, and give the paper U/S – 207 to accused and uses his mind that whether this case is session triable or not which automatically clear that it is inquiry.

Confusion arises by Section – 19 of IPC where illustration (e) says that when a magistrate commits the case, he is not a judge. So here magistrate is not a judge but he uses his minds hence committal proceeding also inquiry.

Enquiry – Dictionary meaning, not use in CrPC.

Inquiry – Used in CrPC

D.S.P. conduct enquiry not inquiry.

Investigation – by police

Inquiry – by magistrate/ court

Trial – it is basically adducing of evidence.

Ques. When does the Trial began?

Ans. All the proceeding before a magistrate prior to the framing of charge which does not result in a conviction, can be called an inquiry. Trial means when he presiding officer is in the chair and the accused in the dock and prosecuting officer and defence officer present before the court will be called Trial.

Ques. Is framing of charges an inquiry or trial?

Ans. Inquiry because it is beginning of the trial or culmination of the trial. Framing of charge is the very foundation or beginning of trial whereas the earlier process is the crystallization of the framing was taking place in under Sec – 190 CrPC that was an inquiry.

Alim v. State of U.P. 1982 All H.C.

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

- **Sec – 190** (cognizance uses judicial mind) → Comes to conclusion (**ends up the inquiry**) → Framing of charge on the bases of conclusion → **Trial - judgement**
- **Sec – 190** cognizance → found no substance of offence (discharge of accused) → **But** later on found some add. Evidence by using the mind (recall the accused)**here is only uses of mind.**
- Framing of charge → Trial takes place → Judgement comes → Acquitted the accused → **Judge cannot recall the accused because of Art-20(2) of Indian Constitution or Sec – 300.**

Framing of charge is conclusion of inquiry and initiation of trial.

Section – 2(h) **investigation** word is appended with the police.

A magistrate never investigates. If magistrate authorized to any person to investigate will come U/S – 202 of CrPC.

Once the FIR has been registered, the Police start investigation U/S – 157 CrPC. First step of investigation is proceeding on the spot. Next is arrest. As far as arrest is concerned, arrest is an exception because nowhere in CrPC or in any law it is written 'shall' arrest. It is always 'may' arrest if necessary.

Everything which goes to the collection of evidences which means proceedings to the spot. Arrest of the accused. Search of a place. Seizure of any evidence. All these forms the part of investigation.

Investigation includes making of all the memos (fard), raid, search, seizure, medical examination of accused or victim are the part of investigation.

Investigation done by custom officers or by foreign exchange Regulating Act officers will not be considered as investigation.

Investigation is opened with P.O. or by person authorized by magistrate. When a P.O. is asked to submit a report by the Human Right Commission or **Departmental enquiry is not an investigation.**

Ques. Can I.O. stop investigation?

Ans. There are **two provisos in the Section – 157 of CrPC** where P.O. can refuse to investigate.

(a) If nature of offence not serious then subordinate to I.O.

(b) If no sufficient ground, then no investigation.

- In NDPS a P.O. who is not actually a P.O. but he is deemed to be officer in charge of the police station in N.D.P.S. they will be deemed Police Officer. So, any investigation conducted by non-P.O. who has been specifically called and given the power under N.D.P.S. will be taken as Investigation.

Ques. If there is illegality in Investigation. Is it the ground of acquittal of accused? Does it vitiate the trial?

Ans. Illegality in any investigation per se does not vitiate the trial. Because court has wider power. Court can order any evidence which it want. So, there is no curtailment of court. Court can ask for both, it can array anybody as an accused under section – 190 of CrPC while taking cognizance and under Section – 319 (sub-section-4) when the trial started – held in Sailendra Nath Bose v. St. of Bihar 1968 SC.

Ques. Who all are empowered to investigate in police?

Ans.

- (i) Officer of police station
- (ii) All senior officers (D.S.P, S.S, S.S.P., D.I.G, D.G.P. I.G) by virtue of section – 36.
- (iii) Crime branches have own police station.
 - a. State C.B. - Eg: Anybody is unhappy with the entire district the D.G or concerned I.G. crime can transfer to state crime branch.
 - b. Superintendent of Police C.B. – Eg: Anybody has doubt against an investigation by P.O. He goes to the S.P. and say that he has no faith in S.H.O.'s work and he don't want to investigate into the case by P.O. Now S.P. can always call for investigation and transfer it to the crime branch of his own office and he keep complete check.
- (iv) **National Agency –**
 - a. C.B.I. – (Created by Delhi Police Established Act 1946)

b. N.I.A. – (It is present creation)

Both has his own P.S. All of them maintain the same document which any police station in country maintaining.

Section – 2(i)

Judicial Proceeding –

Sec-1 of IEA, IEA applies to all Judicial Proceeding which is not been defined in IEA. But we have the definition in CrPC.

Any investigation conducted by the police is not a Judicial Proceeding.

‘Judicial Proceeding’ means any proceeding in the course of which evidences is or may be legally taken on oath.

The test of Judicial Proceeding is whether evidences can be taken under oath? So, if the evidences are not taken under oath, then it cannot be said Judicial Proceeding.

Some Quasi-Judicial authorities or tribunal also takes evidences under oath that does not make them court.

Judicial Proceeding in or before courts means it does not include tribunal.

Section – 2 (J) ‘Local Jurisdiction’

Seat → Eg: Jodhpur

Benches → Eg: Jaipur

Circuit Benches → Eg: Andaman and Nicobar (Calcutta H.C.)

Section – 2 (K) – Metropolitan area

This is a new word. It is the prerogative of the state to declare as Metropolitan area where the minimum population is 10 Lac (1 million)
R/W Sec-8 of CrPC.

Section – 2(m) ‘Notification’ means a notification published in the official Gazette.

Ques. What is an official Gazette?

Ans. O.G. is a Journal, it is an authorized legal document of G.O.I. or a state.

The O.G. of G.O.I. is published by department of publication, ministry of urban development. For purpose of giving public notice. It is the one of the most authentic and manifestations of Govt. Policies and Decision. All O.G. are printed by G.O.I. press.

In modern period there is a concept of E-Gazette. E-Gazette were introduced in 2008 in India.

Ques. Is it necessary that if E-Gazette has been issued then further hardcopy is also compulsory?

Ans. The **Supreme Court** held that **once the E-Gazette has been issued, it is sufficient.** No separate hard-copy publication is required.

The **mere signature of the President** on a Bill or draft **does not make the law operative immediately.**

The *last and mandatory step* is **publication, i.e., Notification.**

Notification is the official mode by which the Government informs the public about a new law.

Once the notification is issued, it is **presumed that the entire world knows the law**, and after that **no plea of ignorance of law is allowed.**

Commencement Date

Two possibilities exist:

(1) Commencement date is mentioned in the Gazette

If the Gazette says the law will come into force on a specific date, that date becomes the operational (commencement) date.

(2) Commencement date is *not* mentioned

If no commencement date is written, then the law is deemed to have commenced on the date on which the President of India gave assent. This is provided under Section 5 of the General Clauses Act, 1897.

Principles of Commencement

- (i) It is always the prerogative of the Legislature to declare the date of commencement in the Official Gazette.
- (ii) The Legislature may clearly state that the commencement will take place on a later date.
- (iii) If nothing is stated by anyone, then by virtue of Section 5 of the General Clauses Act, 1897, the law is deemed to commence from the date of Presidential assent.

If the Government wants to **delay or postpone** the coming into force of a law, then the **new commencement date must be notified** in the **Official Gazette of India**.

The **60th Law Commission Report** discusses in detail all aspects of a law's commencement and operation, including:

* Why the Government may delay commencement

- what changes Parliament can make
- practical implications and constitutional considerations

It is the most authoritative analysis on commencement-related issues.

M.H. George v. St. of Bombay 1965 S.C.

S.C. held that moment the notification declared it is deemed that it has come to the knowledge of each and every person in the world.

Section – 2 (n) offence

Act or omission which are punishable → offence so the end product will be punishable. Offence word has not been defined in I.P.C. CrPC gives the definition of offence and Section – 3(38) of General Clause Act 1987.

Ques. What is an OFFENCE?

Ans.

- (i) An act or omission prohibited by law.
- (ii) Made punishable by law.
- (iii) Made punishable by law.
- (iv) That law must be enforceable today.

Offences divided into 3 parts –

- IPC
- Special Law offences
- Local Law offences

Sec - 2 (o) Officer-in-charge of police stations

The word S.H.O (station house officer) has not been used anywhere in CrPC. The word used in CrPC throughout is officer-in-charge of police station.

Ques. Can a constable be officer in charge of P.S.?

Ans. No

Ques. Can a Head Constable be an officer in charge of P.S.?

Ans.

State of T.N. v. Thullaigam 1955 S.C.

A head constable in the police out post comes within the definition of officer-in-charge of P.S.

Section – 2 (p) 'place' includes a house, building, tent, vehicle and vessel.

The definition of 'place' is amended. In 1898 code 'vehicle' and 'vessel' words were not there. Vessel has been defined in IPC as a boat in a water which conveys people or goods. Before the Present Code of CrPC there were only house, building and tent word given so, anywhere is the search of place will include the vehicle or vessel search.

Definition of place or CrPC is wider than IPC's definition of place. Because vessel and vehicle not come in IPC (trespass)

Section – 2 (Y) words and expression used herein and not defined but defined in the IPC (45 of 1860) have the meanings respectively assigned to them in that code. This section very clearly says that those section which are defined in IPC but are not defined in CrPC then the IPC's definition will be applied in CrPC but not vice versa.

Eg: The word place in IPC does not include vehicle or vessel. So, if search of place used it means in CrPC that it is search of car or ship or boat also. Whereas in IPC, the trespass, there the word place does not include vehicle or vessel.

Section – 2(z) 'Pleader'

Pleader, basically means who pleads in the court. As far as the definition is concerned 'the person authorized by or under any law' means authorized by Advocate Act 1961 to practice such court.

So, all advocates are pleader.

Ques. Can a non-advocate be pleader?

Ans. Yes, it includes any other person appointed with the permission of the court to act in such proceeding.

Landmark – Hari Shankar Rastogi v. G.L. Sharma 1978 SC.

Held any non-advocate can also be allowed to act as pleader only with the permission of the court. However, if the court finds, once the proceeding start that the person is incapable then the permission can be withdrawn half way through the proceeding also.

Landmark-Jimmy Jahangir v. Bolly Hindley 2005 SC

Section – 2 (q) and Section – 32 of Advocate Act 1961 both the laws empower to court to permit any person who is not enrolled as an advocate to appear before any case. But permission must be sought by the party (by application).

Landmark – TC Mathai v. District and Session Judge Thiruvananthapuram 1999 SC

Held that parties can always request to court to appoint the non-advocate to plead its criminal case with the permission of the court, the request must be made by the party itself.

Article – 22 - It is our basic fundamental right that in all criminal laws, I have fundamental right to represented by pleader of my choice. Whereas in CrPC the accused has a right to appoint pleader of his own choice given U/S – 303 CrPC so this right is fundamental right as well as statutory also.

Section – 2 (r) ‘Police Report’ means a report forwarded by a police officer to a magistrate U/Sub-sec – 2 of Section – 173 of CrPC. Also known as final report.

P.R. is basically culmination of the investigation. It is conclusion by reaching of evidence.

Police Report –

Police find the accused, if the offence committed
Police finds if no offence committed then accused is not an accused.

Section – 2(s) – ‘Police station’

Police station means any post (chauki), outposts, beat box (patrolling) → It is area where police can rest there, it is not P.S.

Chauki are always subordinate to thana.

Section – 2 (t) Prescribed means prescribed by rules made under this code.

Section – 2 (u) ‘Public Prosecution’

‘P.P.’ and Ast. P.P. both are the creation of criminal law. In civil law we don’t have P.P. and Ast. P.P.

A.D.A. (Asst. District Attorney)

A.D.A looks after both criminal and civil matter that is why always advertise the post of A.D.A.

Section – 24 deals with P.P. district attorney and additional D.A. of H.C. and session court

Section – 25 – In magistrate court has asst P.P. and asst. District Attorney.

Section – 25A – Department of prosecution

Section – 2(v) – Sub- Division means a sub-division of a district.

India is divided in Administrative into District and District are divided into sub-division it means sub-division of a State.

Jurisdiction of a P.S. will be the Jurisdiction of the JMJC or court. (Kotwali → in ancient → Centre P.S.) Urban part P.S.

(Sadar → Look after rural part)

(v.v. IMP) Section – 2 (w) – ‘Summon case’

- (i) We have only two types of case in CrPC.
- (ii) Warrant case → **Section – 2 (x)** Offence punishable with death,
 - Life imprisonment
 - Imp. Exceeding 2 years.

- All offences which are punishable with 2 years are summon case.
- In summon case there is no bar to issue warrant if the accused is not attending into the court.

Summon case – Greater than or equal to 2 years → triable by any magistrate, it may be JMJC or IInd

Warrant case –

- (i) Death/ LI/ 10 years – Session trial matter
- (ii) Less than 10 years – Magistrate triable

- Only to procure the appearance of accused in court.

Section – 2(Wa) – Victim

It is very wide definition in CrPC, it was introduced in 2009 Amendment Act, victim is not the person can start the criminal justice system an offence unlike the civil law is an offence against the society hence, anybody can start, that's why we need to differentiate the word between victim informant and complainant. Both can be anybody, start the C.J.S.

As per the new law of victimology which has taken the last 2 decades. In earlier we used to say 'let hundred accused go free rather than 1 innocent suffering'. The new law is that if we go hundred accused free then what will happen to the 100 victims so, the law must be balance lots of inf. Law in modern day laws is to compensate the victim so naturally if the victim is died whom will be the compensate? So, that is why there was need for expanding the definition of victim.

The definition of 'victim' is not the 'victim' per se.

It includes all it's his or her guardian and legal heirs.

Section – 3 construction of references –

Section – 3(1)

(c) – A reference → magistrate –

- (i) Judicial magistrate for outside metropolitan area.
- (ii) Metropolitan magistrate for metropolitan area.

(d) Magistrate of II Class – JM of IInd Class.

(e) Magistrate of Ist class →

- (i) Metropolitan area MM exercising jurisdiction in that area.
- (ii) Other than metropolitan are JM of I class exercising jurisdiction in that area i.e. JMIC

(f) Ref. to C.J.M → Metropolitan area → C.M.M.

Sec-3 and Sec-6 of CrPC read together talks about segregation of power of judicial and executive. R/W Article – 50 of Indian Constitution.

Ques. Whether CrPC applies other local and special law offences?

Ans. Section – 4 – Trial of offences U/IPC and other laws.

This section can be divided into two parts.

First Sub-section deals with IPC and IInd subsection – deals with other laws.

Section – 4 (1) – ‘Otherwise dealt with’ → All incidental and consequential supplemental matter would be determined by CrPC. Eg: Disposal of property, limitation period. So, all section of 511 of IPC and related matter (suppl. Consq. Inc) will be determined by CrPC.

Section – 4 (2) –

Ques. Prevention of Corruption Act, NDPS, any other all these come under CrPC or not? Does CrPC applies over them?

Ans. All offences in India more or less be **covered by** CrPC, and all other suppl. Consq., incidental matter Eg: Bail etc. (It means investigated, inquired into, tried will be as per CrPC)

However, if any special or local laws lays down own procedure. Eg: NDPS has its own procedure then it will be covered by that procedure but no CrPC.

Section – 5 – Saving –

- (i) Where there no special or local laws applies then CrPC applies
- (ii) Where special and local laws apply that will override CrPC.

Ques. What happens if there is partial procedure given?

Ans. Special and local laws are not compendium of procedure so if the special and local laws quiet about something then CrPC will apply.

CHAPTER II

Constitution of Criminal Courts and Offices

Section – 6

Ques. Is S.C. a criminal court?

Ques. Is H.C. a criminal court?

- (i) Besides the H.C.--> It means the first criminal court is the H.C. But why S.C. is not the criminal court?

A criminal court is that court which can try a case for the first time i.e. why S.C. is not a trial court.

A criminal Court has to be distinguished from an appellant court. A criminal court is that court which can try a matter for the first time, as well as the Supreme Court is concerned, the power of the S.C. can be seen under **Article – 132, 134, 136**. In all these articles of the constitution, we find that all these are appellate powers. So, Constitution of India gives to S.C. appellate and revisional power. As far as CrPC concerned, In CrPC what is the reference to S.C. in CrPC? **U/S – 374, 379 of CrPC** these are the provision of appeal to S.C.

Article – 132, 134, 136 of const. have to be read with the statutory enactment under CrPC **U/S – 374, 379** other aspects of power of S.C. under CrPC is transfer of cases **U/S – 406 of CrPC**.

Trial – means taking evidence and giving decision.

Ques. How did H.C. become the criminal court? Or trial court?

Ans. Schedule 1 of CrPC not mentioned Triable by H.C. but U/S 407 of CrPC where the H.C. have special power given by CrPC in which H.C. can call recall any cases from the subordinate court for trial. Under Section – 407 H.C. takes the power in own hand by itself. It is the prorogation of H.C. in the interest of Justice.

Article – 227 gives the power to H.C., power of superintendent over its courts.

Article – 228 – transfer of cases. Similarly, in CrPC.

Article – 235 – H.C. has complete control over the subordinate courts

(v.IMP) Bare (ii) ‘The courts constituted under any law, other than this code.’

There are many other laws which are creating the courts Eg: J.J., Gram Nyalaya, POCSO, family courts.

Gram Nyayalaya Act, 2008 –

It is the concept of Vedic culture. The entire Vedas show that there is complete decentralisation of power, we found that in ancient Vedic society, there was grass root level democracy because India dwells in villages. At one point of time 93% of villages used to live in villages but nevertheless India still lives in villages. The basic aspect of justice that it must be available at your doorstep. The 124th Law Commission suggested that just like we used to have Gram Nyayalaya in the Vedic time, we must have Gram Nyayalaya in India now, so on this report the concept of Gram Nyayalaya was introduced in India. As a result of this report the Gram Nyayalaya Act, 2008 was passed. The G.N. will be established in villages for speedy and needy access to justice system in rural area of India. The Act came into force on 2nd Oct, 2009 (Gandhi’s Birthday). It is indeed sad that despite the fact 12-13 years have been passed but only 256 G.N. are operating in India while the target was 5000 Courts, As on today, on 17th Dec, 2021 - 256 operating, 20% G.N. alone in Madhya Pradesh. Naturally the need for G.N. can’t be under emphasised if we can have a disposal at a village level. Then there will be no need for person to go to courts (dist. Court). There is a lot of pendency in our country can be finish at the grass root level. There was a PIL which was put up before the S.C. on 3rd Feb, 2020 by N.G.O. National Federation of Society for fast justice, saying that, it is a indeed sad that the fact that Act has been passed, very

tardy progress has been made. Then the S.C. order to directed to the states to set up G.N. as quickly as possible more or less G.N. are functioning Rajasthan, M.P., Maharashtra, Kerala and all other state are lagging behind.

- (i) The main object of G.N. is to provide inexpensive justice at very doorstep of a village. The G.N. shall be headed by the judicial magistrate of the first class who will be the presiding officer called Naya-Adhikari. They shall be appointed by the State Govt. in consultation with the H.C. The presiding officer will be strictly the Judicial officer and they will be getting the same salary and have the same power as JMIC.
- (ii) G.N. shall be mobile courts and they will be exercising both power under Civil and Criminal Law. The seat of the G.N. will be located at the headquarters of the Panchayat. (head)

Ques. What pecuniary jurisdiction they have?

Ans. I and II schedule have been made by the court in which it will be mention that what offence will be tried, and what pecuniary matter of civil case come. These both schedules can be amended by both the state and centre govt. as per there need, legislative competence.

- (iii) As far as criminal trial are concerned the G.N. will follow a summary procedure.
- (iv) As far as civil matters are concerned, simplified procedure of civil matter given in Act as given in CPC.
- (v) Most of the G.N. will follow the procedure of alternative dispute resolution. For which they can appoint the conciliator also.

Ques. Judgement or order of G.N. will be consider as decree?

Ans. Yes, though it is a much-shortened procedure but it will be deemed to be a decree and for execution we need not go through very detailed procedure though the same principle of CPC being followed but even a summary execution is allowed under G.N. Act.

- (vi) G.N. are not bound by Indian Evidence Act. Because IEA has very strict rule of procedure. Question arises, then what will the guiding

principle? The guiding principle will be the natural justice or any rule made by their any specific H.C.

Ques. Are Judgement, decree etc appealable?

Ans. Yes, appeal is the basic principle of natural justice. Appeal in criminal case will lie to court of session and the tenure of appeal will be 6 months from the date of filing the appeal, the session court shall decide the appeal. As well as civil cases are concerned appeal lie to the district court.

(vii) Civil suit will proceed on a day-to-day basis and almost negligible adjournments are allowed. Order 17 will not apply if adjournment are giving only on the basis of minimal matters.

(viii) Plea bargaining will be allowed

Bare (iii) In every state, the following classes of criminal courts.

Judicial Hierarchy – State Level

State Judiciary

Courts of Session

- Sessions Judge
- Additional Sessions Judge

Judicial Magistrates

- Judicial Magistrate First Class (JMFC / JMFC)
- Judicial Magistrate Second Class (JMII / JMIIIC)

Executive Magistrate

High Court (H.C.)

↓

Sessions Judge

↓

Additional Sessions Judge

↓

(i) Assistant Sessions Judge

(ii) Chief Judicial Magistrate (CJM)

- a. Additional Chief Judicial Magistrate (Addl. CJM)
- b. Judicial Magistrate First Class (JMFC / JMFC)
- c. Judicial Magistrate Second Class (JMII / JMIIIC)

Sub-Divisional Level

Sub-Divisional Judicial Magistrate (SDJM)

(having jurisdiction over a wider sub-division)

- i. Judicial Magistrate First Class (JMFC / JMFC)
- ii. Judicial Magistrate Second Class (JMII / JMIIIC)

Clarification

CJM, Additional CJM, Judicial Magistrate First Class (JMFC), Judicial Magistrate Second Class (JMIIIC), Sub-Divisional Judicial Magistrate, JMI, and JMII **all fall under the category of Judicial Magistrates**, with differences only in **rank and jurisdiction**, not in their basic judicial nature.

There are two types of superior courts –

- (i) Administrative Superiority → Who will distribute the work, giving leave etc, CJM will decide
- (ii) Judicial superiority – My judgement and be appeal can be review/ will be done by judicial superior

Ques. Can I say that CJM is judicially superior to JMFC?

Ans. No, both are judicial first-class magistrates

Ques. What is the parameter of Judicial superior power?

Ans. The parameter is whether my appeal against my decision lies to that court. If that court hold revisional power or has appellate power over any of my decision then we can say it is judicially superior court.

Executive Magistrate – Sec – 6 – It clearly demonstrates the distinction between executive magistrate and judicial magistrate → Sec-6

Ques. The 1973 CrPC reflect Article-50, Sec – 3, 6 dictate of directive principles given in our constitution critically examine.

Ques. The biggest achievements of 1993 CrPC is the complete segregation of powers between executive magistrate and judicial magistrate critically examine? Sec – 3, Sec – 6

Section – 7 (i)

Eg: Sikkim was made part of India in 1975 by the 22nd Amendment Act in which has 4 districts i.e., South, North, East, West. But there is only 2 session division.

1 Session Division is handling two districts. So, Session division can be 1 district or may be 2 districts session has the division.

Session – 8 – Metropolitan area –

(i) Metropolitan area come into existence on the specified date in the notification. It will be only cities and town not village, whose population exceeds 1 million.

(ii) **4 metropolitan areas –**

- a. Bombay
- b. Calcutta
- c. Madras

These are 3 presidencies

- d. City of Ahmedabad

Delhi is mentioned yet it is metropolitan.

(iii) It is an executive Act, extend, reduce, alter the limits of a metropolitan area but reduction and alternation.

The test of metropolitan area is only population.

(iv) Merely because a metropolitan ceases to be a metropolitan because of decline in population does not mean that the matter pending before the metropolitan courts will no longer be taken as metropolitan courts.

Section – 9 – Court of Session

All establishment of court is the administrative decision.

Section – 9 (2) – In CrPC the word ‘Judge’ is different from the word ‘Magistrate’ – The distinction between Judge and Magistrate is about by Section – 6 of CrPC.

Judge means a H.C. Judge or Judges of Session Division i.e., (Session Judge, Add. S.J., Asst. S.J.) rest of are the Magistrate i.e., Judicial or Executive Magistrate.

Magistrate is the creation of CrPC only.

If we see Article – 233 of Indian Constitution which says that Session Judge will be appointed by the governor whereas Section – 9 (2) of CrPC says that the Session Judge shall be appointed by H.C. How can CrPC override the constitution?

St. of Assam v. Ranga Mohd. 1967 SC

Ans. Exp of Section – 9 of CrPC, the first appointment, posting or promotion of a person by the Govt of any services (governor). The later promotion, posting done by the H.C.

The first posting, promotion, appointment done by as per Constitution of India but the subsequent posting promotion, appointment will be done by the H.C.

Ques. Can a person be Session Judge in two Session Division?

Ans. No, there only be a 1 Session Judge. If a person to whom given an additional charge, then in that additional charge that person will not a Session Judge. He may be a Session Judge of place A if to whom given additional charge of place B then he will deem to be additional Session Judge of place B.

Section – 9 (5) The of Session Judge is vacant and one very important

application which concern fundamentals rights comes up for hearing and there is no Session Judge then naturally app. Of FRs cannot be pending for so long then otherwise the Session will look after i.e. by Add. S.J. or Asst. S.J. if both are no there then C.J.M. with Jurisdiction.

Section – 9 (6) – Normally Session Court holds its court in place which is specified as a Session Court. Section – 1 of IEA the word used is in or before a court.

In a court means – the building.

Before the court means – Wherever the Session Judge sits.

Kehar Singh v. Delhi Administration 1988 S.C.

This case was very sensitive and tempers were very high.

The court for safety of accused does not bring to the court and since it was dealing with the murder of the Prime Minister of India. The Session Judge decided to hold trial into the Jail and held that the H.C. has power to rectify the notification of jail as a court.

For the convenience of the parties and witnesses hold it sitting at any other place then court.

Session Court –

- (i) Session Judge (Only 1 S.J.)
- (ii) Add. S.J. (He may be many Add. S.J.)

Both of the above has the same power – Add. S.J. are administratively below to Session Judge but has the same judicial power.

- (iii) Asst. S.J. – He may be many Asst. S.J. → Section – 10 (Judicial subordination)

Section – 10 (3) 'Inability to act'

Paramjeet v. State 1997 Delhi (Divisional Bench)

'In ability to act' also include too much of work load.

Section – 11 Courts of Judicial Magistrate

Proviso – Special courts are those courts which made for special matters. As it deals with – for single case, for class of cases.

Sub-Section – (3) – If H.C. deem necessary confers the power of judicial magistrate of I or II class to any member of Judicial service of the state.

Section – 12 (1) JMIC – CJM

(2) JMIC → Add. CJM

Power of CJM and Add. CJM will be same.

Eg: 7 years and unlimited fine power of CJM. Same power will be of Add. C.J.M.

(3) (a) Eg: - Rajasthan has very broad area, in one part there is only far-flung area. In the headquarter there is two senior post-

- (i) CJM and Additional CJM
- (ii) In sub-divisional area (large area), the superior will be sub-divisional Judicial Magistrate.

Section – 13 and Section – 18 – Both Section – read together.

In the 1898 code, there was one class of magistrate called honorary magistrate. The appointment of such court was not on merit as a result there was a lot of criticism of such magistrate. So, that is why had no place in India but has the efficacy that is why that aspect has been retain in Section – 13 but now the checks and balance regards have been given. So, what were earlier honorary magistrate now become special judicial magistrate and in presidency special metropolitan magistrate.

Sec-13 Special Judicial Magistrate

1) Who holds or has held any post under the Government.

Ques. Can non-judicial person be a special judicial magistrate?

Ans.

K. Pahadia v. St. of Bihar 1997 SC

Post under the Government includes previous magistrate, judge etc comes under who hold or have held any post under the Government R/W Proviso.

2) Term will not be exceeding 1 year at a time (subject to the rules of made by H.C.)

Sec-18 Same

M.K. Gopalan v. St. of M.P. 1954 SC

The special magistrate though he called as the special magistrate does not mean he has any discriminatory power in procedure. The procedure remains the same as laid in CrPC.

Sec-14 Local Jurisdiction of Judicial Magistrate

Ques. What will be the local limits?

Ans. Either the H.C. will decide and in case where H.C. does not decide or make general direction then C.J.M. will define the territorial limits.

Sub-sec (3)

Section – 16 –

Judicial Magistrate

S.J.

↓

C.J.M. (Add. C.J.M)

↓

JMIC
↓
JMIIC

Metropolitan Magistrate

S.J.
↓
C.M.M. (Add. C.M.M.)
↓
M.M.

Civil Law matter → Judge
Criminal Law matter → Magistrate

Section – 20 – Executive Magistrate → He is a magistrate (criminal law) and also the revenue authority. Executive Magistrate may be a collector, sub-divisional collector, Tehsildar, Nayab Tehsildar.

When he is looking after revenue matter, he is a Judge and when he looks after law and order he become the Executive Magistrate.

Both are the separate role. Both roles cannot inter change. The Police Act, 1861 talks about that the collector shall be the in charge of law and order.

Collector has two types of work –

1. Executive nature → Lathi charge order, Sec-144
2. Quasi-Judicial → Binding down someone, taking surety etc is the preventive role.

Executive Magistrate → When they are dealt with CrPC, they are specifically playing the role of a Criminal court.

Role of Collector -

- **Collector** – Revenue collector
- **Law & Order** – Executive Magistrate
- **Running Criminal Court (Quasi-Judicial Power)** – Sec – 107, 108, 147, 109, 110, 134, 135, 136, 145, 146, 147 etc.

CrPC uses the word District Magistrate only CPC uses the word collector only.

Criminal Law Hierarchy –

- District Magistrate (He will be only 1 D.M.)
- Add. D.M. – he may be many of Add. D.M. (same power but adm. Subord.)
- Sub-divisional Magistrate (S.D.M.)
- Tehsildar
- Nayab Tehsildar

Important Land Administration Officers –

Patwari – Though working at the lowest rung of land revenue administration, Patwari is the one of the most important directly with the land matters. A Patwari is assigned a particular tehsil (a unit of administrative division) and he is responsible for the maintenance of land records of the area.

Revenue Inspector (RI) – Revenue Inspector is the next officer in hierarchy after a Patwari. He is in charge of a group of Tehsil/ Mandals. He primarily assists the Tehsildar and Nayab Tehsildar in carrying out the duties related to land matters.

Naib Tehsildar – Naib Tehsildar is the deputy of a Tehsildar. He is the link between the Revenue Officer, Patwari and Tehsildar. He is generally an in-charge of two or more revenue circles. He assists the Tehsildar in carrying out his duties and provides land records with the help of Patwari and Revenue Inspector.

Tehsildar – When it comes to revenue collection, Tehsildar is the highest authority in a Tehsil. He has elaborate powers and responsibilities regarding the maintenance of land records and collection of revenue from the respective circles.

Sub-divisional Magistrate (S.D.M.) – He is generally an officer of the state civil services. A Tehsildar reports to the S.D.M. and presents periodic reports about the situation of the Tehsil.

Add. D.M. – He is generally a senior state administrative service officer and the S.D.Ms of two to 3 sub-divisions report to him. His functions usually are supervisory and he acts as a bridge between the local administration and the Dist. Adm.

D.M. – He is generally an Indian Administrative Services (I.A.S.) Officer. He is the administrative head of the district.

Section – 20 (5) – A.N. Roy Commission of Police v. Suresh Sham Singh 2006 S.C.

Police Commissioner will be deemed as an additional D.M. his power given by the St. Govt. will be as of Add. D.M.

Section – 24 to 25A deal with prosecutor.

Public Prosecutors –

The duty of P.P. is to ensure Justice. He has a very wide range of powers and duties. In a criminal trial, there are three officers i.e. Presiding officer,

prosecuting officer and defence officer as S.C. has held in Sidhartha Vashisht v. State N.C.T. of Delhi 2010 S.C. that duty of P.P. is not to ensure conviction but to ensure justice.

Ques. What are the duties of P.P.?

Ans. Public Prosecutors used H.C./ S.C. Asst. P.P used for Magistrate Courts.

His duties mainly consist in conducting prosecutions on behalf of the state. The P.P. should not, however, appear on behalf of accused. His main job starts right after investigation is over. Since he is going to appear in the court, if the police investigation has defects, then before putting up final report in the court, it is first sent to the P.P. After then, he finds out all the lacunas of that investigating report which the defence council may find to make the case weak.

He writes all the weaknesses of the investigation and return the file to the I.O. after then, police fulfil all the requirements and after then all the discrepancies are fully covered. Then it is sent to the senior officer of that I.O. who goes through the P.P.'s comment and has rectification made by the I.O. police. After then he gives the final report to the P.P. to put up the chalan.

P.P.'s another role is in the trial at the time of framing of charges and at the trial.

Power given by CrPC –

The basic role of prosecution is to give justice. If a P.P. feels that there is no worth leading the case or it is in the interest of justice that we should not carry with this case. Then he has the power of withdrawal from the prosecution U/S – 321 CrPC and Sec – 224 CrPC. Under Sec – 321, the P.P. is empowered to withdraw from prosecution after consent of the court at any stage before the judgement is pronounced. It is not same as quashing of the matter. Quashing is always done by the H.C. by using its

inherent powers under the Section – 482.

We can say he acts as the narrator of the incident before the court. He is expected to present a truthful picture of the case before the court. He is not overwhelmingly concerned about the outcome of the trial; he is just there to function as a court officer and ensure that justice is being fairly done.

Section – 321 withdrawal from prosecution

U/S – 321 R/W Sec – 224 CrPC

Sec- 321 says P.P. or Asst. P.P. is charge of –

- (a) Case P.P. or asst. P.P. must be in charge of case
- (b) With consent of the court
- (c) At any time before judgement is pronounced.
- (d) Either generally or in respect of one or more of offence i.e. may withdraw all charges or some charges against all the accused or against some of the accused depending on needs of justice.

Ques. What is the effect of such withdrawal?

Ans.

- (a) Made before charge has been framed, the accused shall be discharged.
- (b) Made after charge the he shall be acquitted.

Proviso – If it pertains to C.B.I. or matter in list I concerning Central Govt. then P.P. shall be appointed by Central Govt.

In case P.P. other than appointed by Central Govt. wants to withdraw, then he requires permission from Central Govt.

Ques. The Public Prosecutor is the officer of the court and his main job is to ensure justice. Critically examine.

Ans. Sec – 321 will not apply to executive magistrate (preventing proceeding of) only those matters which will end in a discharge or acquittal only in those matters Sec – 321 applies.

In Sec – 321 no reasons for withdrawal have been given that on what grounds withdrawal can be made?

M.N.S. Nair v. P.V. Bala Krishnan 1972 S.C.

The most imp. Consideration for withdrawal is interest of justice. The P.P. must show that some ground exists where –

- (a) It is impossible to carry on.
- (b) And ultimately in the interest of justice that the matter should be withdraw.

Executive consideration like change of Govt.'s etc. are absolutely no ground.

The P.P. and A.P.P. can withdraw in other word even though withdrawal is an executive action not a judicial action but it should be in the interest of justice. It is the P.P.'s prerogative or duty to ensure that he is acting in interest of justice. Merely because his superior authority direct him to do so is not a sufficient ground for withdrawal.

Landmark

Abdul Karim v. State of Karnataka (2001 S.C.)

Verrapan had abducted a Sub-Inspector and later killed him and abducted famous star Raj Kumar and threaten that he will kill him unless all the cases against him were not withdrawn. The state govt. withdraws all the cases. The father of Sub-Inspector (deceased) moves to S.C. that this is against the interest of justice.

The S.C. laid down that it is the duty of P.P. and P.P. should exercise his mind in the good faith and he will not pay attention to any such order of the court if it is against justice. (That is reason why if the P.P. is not

satisfied with the direction of the govt, then he can specifically tell the govt. that I do not agree on this matter.)

Deputy Accountant general v. State of Kerala 1970 **– Kerala H.C. (Full bench)**

Kerala H.C. held that even though the withdrawal power is an executive power it must be exercised in the light of P.P.'s own Judgement not on the dictates of some other authority. Sec – 321 provides for the safeguard that in case P.P. came under pressure to withdrawal of the suit then he can move to the court for the consent of court to withdraw the suit. So, if the court is not agreed with the P.P.'s decision the court can refuse it.

T. Venkat Reddy v. D. Gopal Krishan **1993 (A.P. H.C.)**

The P.P. asked for withdrawal, but the Trial Judge has not agreed with the withdrawal. The matter went to the H.C. The H.C. upheld the trial court's order of refusal to withdrawal and said that Judge was right in his order, very clearly the matter shows that the P.P. has not applied his mind as he merely acted on the orders of the government.

No doubt that P.P. is working under govt. and he is bound to take instruction of the govt. but that does not mean that if the instruction are politically motivated or clearly against the interest of justice that does not mean that he has to blindly follow those. Because after all S-321 gives only the P.P. the power to withdraw. The terminology of Sec-321 is very clear as it is on honourous task for P.P. to ensure that withdraw is in the interest of justice.

Ques. Once an order for withdrawn, can it be changed or cancelled with the change of govt.?

Ans. No, because once an order for withdrawal has been made it can't be rescinded. **State v. Ganeshan (1995 Madras H.C.)** because it can lead to so much uncertainty or chaos and it would be against the interest of justice.

State v. Mohd. Ismail (1981 Kerala)

Accused is not available that is why the case is to be withdrawn but the Kerala H.C. held it is not the reason to be withdrawn and he can't be found in future.

As far as the magistrate is concerned the role of the magistrate is very important because he is final deciding authority and nothing can stop him from exercising his power. It is the power of magistrate to or purely the discretion of magistrate to grant or not to grant the permission withdrawal of the case.

Ques. U/190 magistrate took the cognizance and it is a session triable case but the P.P. goes to magistrate and says that he wants to withdraw. Now can a magistrate give its power to refuse the withdrawal to sessions court?

Ans. The power of withdrawal belongs to court which tries it that is the reason why magistrate can't grant consent to withdraw a case which is exclusively triable by session court.

Ques. What is the role of magistrate?

Ans. Once P.P. applies for withdrawal the magistrate must apply his mind and see whether actually the withdrawal will be in the interest of justice.

Ques. Is the magistrate supposed to give reason for the permission/ or allowing the withdrawal?

Ans. There was a dichotomy of views of H.C. The matter went to S.C. in

case of S.N. Paswan v. State of Bihar 1987 S.C. The S.C. settled the dust in the matter; they said the reasoned order need not to be given by the magistrate that while granting the permission to withdraw to the P.P.

Ques. Where the magistrate gives order or refused the withdrawal is it an interlocutory order (interim order)?

Ans. No, it is not can interlocutory order, because there is no revision of interlocutory order. So, this order can be subject to the revision of Revisional Court (H.C., Session Court) – Revision Order is only for Permanent Order.

Ques. Does a notice required to be given to other party?

Ans. No, it is not provided by any law **K.V. Krishna Roa v. State of Andhra Pradesh (2003)**. In this case, a question come that is a notice necessary? The A.P. H.C. held that this section does not contemplate any notice to the complainant for withdrawal prosecution.

So, what is the remedy available to the complainant?

Ans. – The complainant can go for revision against such order.

Ques. Another question came up before Kerala H.C. that suppose there are cross cases (suppose 2 people had a fight A went to B's house in that fight A caused grievous hurt to B and later B shot A with gun. Here both A and B are complainants in their own virtue. So, 2 FIRs have been registered by A and B and one case is withdrawn no whether both the case is necessary to be withdrawn?

Ans. No, because both the cases stand at different footing. There is no bar on withdrawal of one case and not withdrawing both cases on grounds of justice.

Ques. Another aspect is that **withdrawal can be viz-a-viz all the accused**

or withdrawal can be viz-a-viz one accused?

Ans. It is not necessary that withdrawal can be against all the accused but it is totally the prerogative of the P.P. to withdraw the suit.

- **P.P. may withdraw against 1 of the accused.**
- P.P. may withdraw some of the charges not all of the charges.
- To withdraw some of the accused not against all the accused.
- There is nothing like public policy and public policy is not a proper ground for the withdrawal. Interest of justice differs from case to case that is only ground/ way for the withdrawal.

Section – 24 Public Prosecutor -

- (i) H.C.
 - a. Central Govt.
 - b. State Govt.

- (ii) Session Court
 - a. Central Govt.
 - b. State Govt.

- 1. For every H.C. –
 - a. Central Govt – shall after consultation with H.C.
 - b. State Govt – shall after consultation with H.C.

Appoint –

- (a) A Public Prosecutor
- (b) May also appoint one or more addl. Public Prosecutors.

For conducting in such court –

- (a) Any prosecution

(b) Appeal

(c) Other proceedings

2. **Special class of cases** – the Central Govt. may appoint one or more public prosecutors for purpose of conducting any case or class of case in district or local areas. (includes the C.B.I. matters)

3. State Govt. may appoint a P.P. and may also appoint one or more addl. P.P. for the district proviso – Bare Act.

A P.P. may look after the district depending upon the quantum of work or he may be given addl. Charge of another district.

4. **D.M.** – in consultation with sessions judge prepare a panel of names – who are in his opinion fit to be appointed as good P.P. or Addl. P.P. for the district.

This clause became a cause for the clashes.

Harpal Singh Chauhan v. State of U.P. (1993 S.C.)

District Session Judges Moradabad – sent name of few people for P.P. to **D.M.** – neglected the list of Session Judge.

The matter went to H.C. – held that it is provided that **D.M.** shall consult and he consulted as he didn't like the panel and he prepared his own list of names.

Now the matter went to S.C. and S.C. held that it is the job of sessions judges to deal with counsels and he powers that what should be the qualities of counsel. Thus, the word consultation to be read as concurrence until and unless the Session Judge agrees to the list it shall not be considered.

Vinay Srivastava v. St. of U.P. (2006 Allahabad)

The court held that D.M. can't make panel without the recommendation of Session Judge. (The final authority to accept or not to accept the withdrawal by the P.P. lies to the court. The consent need not be based on any reason which have to be recorded.)

Ques. Is an advocate general a Public Prosecutor?

Ans. He is not a P.P. as advocate general is a post created by constitution. In case he has to be present in as P.P. a case then he has to be formally appointed as a P.P. U/S – 24 CrPC. (**State of Kerala v. K. Krishan 1982 Kerala H.C.**)

A Legal Remembrancer (L.R.) also can't be called as an ex-officio P.P. **Superintendent and remembrancer of legal affairs of West Bengal v. Praful Majhe (1977 Calcutta D.B.)**

If he has to appear in a case he has to be appointed as a P.P. formally U/S – 24 CrPC.

Ques. Can a private demands services of P.P.?

Ans.

Phool Singh v. State of Rajasthan (1993 Rajasthan H.C.)

It was held by H.C. that P.P.'s can't represent the accused. But, a victim the services of P.P. are available if court does not bar provided that it does not go against the impartiality, dignity of special P.P., then the private party will deposit the remuneration or fees of that P.P. in the court.

Ques. Can a court remove a Public Prosecutor?

Ans. The P.P.'s are appointed by the state; a court has no power to remove a P.P. as a court is not remunerated by court. The court can send the grounds to the Sessions Judge or to H.C.

5. Bare Act

6. Appointment of P.P.'s will be made from the Cadre by the State Govt. Proviso – Bare Act.

Explanation – 'Regular Cadre of Prosecuting Officer'

Qualification for Public Prosecutor –

7. Practice as an advocate for not less than 7 years.

8. For purposes of case or class of cases who has been in practice as an advocate for not less than 10 years as a special P.P.

Proviso – has been added by act of 2009 and is in consonance with the principles of victimology.

That the court may permit the victim to engage an advocate of his choice to assist the prosecution Under this Sub-Sec But that advocate will be subordinate to that special P.P.

Victim's advocate can only for the assistance of S.P.P. not above him.

9. **Bare Act** – If an advocate has been working as an P.P., Add. P.P., Asst. P.P. in whichever capacity, it is that will be deemed to be an advocate's tenure.

Sec – 25 Assistant Public Prosecutors – (we used these days – District Attorney or Asst. District Attorney – because it includes both Civil and Criminal cases.)

No qualification has been laid down for A.P.P. – qualification of A.P.P. are now made by U/S – 25A – Directorate of prosecution, as qualification are

not laid down by CrPC.

A Police Officers appointment as a P.P. is always not desirable because the attitude of Police Officer is always against the accused. (So, is it not against the interest of justice?)



K.S. Kundu v. State of Haryana (1989 P and H H.C.)

A senior police officer was made a Head of Prosecution by the Directorate & H.C. Criticized this. – Officer U/S – 193 of IPC – padding. P.O. used to make evidence by padding.

S.B. Shahanne v. St. of Maharashtra 1995 S.C.

The court held that the police apartment and prosecutors must be separate as the P.P.'s to be appointed from the cadre by state govt.

Continuation of Sec-25 by Sec-302 of CrPC.

Sec – 302 Permission to conduct prosecutions

Ques. Sub-Sec (2) of 302 if the pleader of victim prosecuting the case, then what is the role of P.P. and A.P.P.?

J&K International v. Govt. NCT of Delhi (2001 S.C.)

A person can be permitted to conduct prosecution in the magistrate court and for this purpose he can engage own private counsel. If he engages his own private counsel, it is for the magistrate to Sec – 1 whether that person is competent to fight a case.

2 – If the counsel (pvt) is appointed he is only working to assist P.P.

P.P. is always the captain of a ship.

Sec-301

Ques – If P.P., A.P.P. appears in the court does they need for the Sec – 301 Vakalatnama?

Ans. – 301, no they no need to submit.

(2) If any victim or any private person wants his own advocate fight for him then he will remain under the P.P. or A.P.P.

P.P. or A.P.P. is the in charge of the prosecution and they will remain the in charge of prosecution. However, senior that advocate may be whom the victim is bringing. (Always remember written argument always submitted by the P.P. but if the court specifically permits as the advocate good, then the court may allow the arguments to be given by the advocate who the victim has brought.

Sec-302 Bare Act

T. Narvana v. St. of A.P. 1960 full bench

Ques. If an Advocate general is called for the case now, do we can say that the advocate general is working under P.P.?

Ans. No, he has given power U/S – 24 and in case a P.P. is already there then advocate general will be taken as Amicus Curiae (friend of the court), advocate general will not be considered as he is assisting the P.P.

Sec – 25A – Directorate of Prosecution (inserted by amendment of 2005)

Director of Prosecution

- Public Prosecutors Addl. Public Prosecutors special public

prosecutors of H.C.'s are directly under **Director of Prosecution** (Head).

Deputy Director of Prosecution –

- Public prosecutors
- Addl. P.P.
- Special P.P.
- Asst. P.P. of District Courts.

1) State govt. establish a – Directorate of prosecution consisting. There can be one director of prosecution and as many Deputy Directors of Prosecutions.

2) Amendment or update in Bare Act as per 2020 – Director of prosecution of Deputy Director of prosecution – practice not less than 10 years + concurrence of chief justice of H.C.

3) Director of prosecution – shall function under administrative control of Head of home department in state.

4) State govt. may by notification specify the function of Deputy Director of Prosecution or Director of Prosecution.

5) The provision of this Section shall not apply to advocate general for state while performing the functions of a P.P.

Sec – 303 Right of person against whom proceedings are instituted to be defended –

Right to defense is given to a person by Article – 22, as a person have a fundamental right to be defended by the pleader/ legal practitioner of own choice. The statutory recognition of Article – 22 is given U/S – 303 CrPC.

Chapter – III

Powers of Courts (Sections – 26 to 35)

This chapter broadly deals with 3 topics –

- (i) Which offences are triable by which court
- (ii) What sentences these courts can pass
- (iii) What is the way of conferring/ withdraw if these powers.

Sec – 26 – courts by which offences are triable –

- Part I – deals with IPC offences
- Part II – deals with any other offences under any laws.

Subject to the other provisions of this code

(a) Any offence of IPC may be tried by –

- a. The H.C.
- b. The court of session
- c. Any other court by which such offences is shown in the 1st schedule to be triable.

Provided by that any offence U/S – 376, 367A, 376B, 376C, 376D, 376E IPC shall be tried as far as practicably by court presided over by a woman.

Ques. It if is written that the case is triable by magistrate, can a H.C. take-over that case?

Ans. Yes, under Sec – 407

Ques. A session court takes up a case which is actually triable by a magistrate. Is it doing wrong thing?

Ans. The Higher Court can try the suit of lower court but not vice versa.

Ques. Theft case, session court says send this case to session court and starts the trial. Is this a wrong practice? Has he contravened CrPC?

Ans. No, the word is 'any offence triable by' in Sec-26(a) – Bare Act.

(b) Any offence under any law may be tried by, if no court is mentioned then by –

- a. The H.C.
- b. Any other court by which offence is shown in 1st schedule to be triable.

It means when any court is mentioned in such other law then the offence other than IPC be triable by such court.

Case – U.P. Private Forest Act – provides that the offences are triable by JMHC under this Act – but H.C. directly taken over the court, it was held by Allahabad H.C. that no, H.C. can't take case directly. H.C. can take case directly if there is no court specified under Act or if there is any grievance against the court mentioned in Act i.e. JMHC.

Harish Chandra v. K. Narain 1937 Allahabad.

Sec – 27 Jurisdiction in case of Juvenile Justice Act comes under J.J. Act

Sec – 28 Sentences which H.C. and Session Judges may pass.

- 1) H.C. may pass any sentence authorized by law. A death sentence can be passed by H.C. there is no need of ratification by another court.
- 2) A Session Judge or Addl. Session Judge may pass any

sentence authorized by law and also death sentence pass but with confirmation of H.C. Question arise can a death sentence be executed on mere order of Session Judge? – No, execution after confirmation of H.C.

Ques. But any sentence of death passed by any such Judge shall be subject to confirmation by the H.C.

- 3) An Assistant Session Judge (up to 10 years he can pass) may pass any sentence authorized by law except –
 - a. A death sentence
 - b. Imprisonment for life
 - c. Imprisonment exceeding 10 years

Ques. What is the fine power of H.C., Session, Addl., or Asst. Session Court?

Ans. Unlimited

Sec – 29 sentence which magistrate may pass -

1. C.J.M. & Addl. C.J.M. powers – can pass any sentence authorized by law except –
 - i. A sentence of death
 - ii. Imprisonment for life or
 - iii. Imprisonment for a term exceeding 7 years

Fine – unlimited – up to 7 years punishment he can pass.

2. JMJC and Sub-Divisional J.M. – not exceeding 3 years or fine not exceeding Rs. 10,000 or both
3. JMJC – not exceeding 1 year, fine not exceeding Rs. 5,000 or both

Ques. What about the fine powers of magistrate in special laws?

Ans.

Eg: - In Food Adulteration Act – power of magistrate exceeds Rs. 10,000.

Ques. Now whether magistrate can exceed his power provided under CrPC?

Ans. Yes, as Sec-5 provides that special law can override the CrPC. Since special law will override CrPC. That is the reason why under special law more fine power to magistrate is given and thus magistrate can exercise that power provided under special law even though that exceeds CrPC powers.

In IPC the cases in which sentence is 3 years, 7 years or 10 years. The question which arises that the magistrate has the power of only 3 years whereas the punishment given in is 7 years or even when we go to Sec-409 IPC or Sec-467 IPC life imprisonment triable by 1st class magistrate.

Ques. In such matters what is the way out?

Ans. If a magistrate feels that he should be given more than 3 years, then he has two ways - (for the punishment of 7 years or more than Rs. 10,000 fine) –

- He can submit the case to C.J.M. U/S – 325.
- In case he is trying the case of 409 Sec IPC, he has the power U/S – 323 CrPC to commit the case to the Session Court – (when punishment is more than 7 years)

Sec – 30 – Sentence of imprisonment in default of fine –

If fine has been awarded as a punishment, the fine has 3 ways –

- 1) Imprisonment for a time and fine – compulsory fine
- 2) Imprisonment or fine – choice between these
- 3) Only fine.

Ques. If a person is not able to pay fine then what should be the punishment in lieu of fine?

Ans. This is not provided in CrPC but Sec – 64 of IPC provides for this.

Sec – 30 R/W Sec – 63 to 68.

Sec – 63 Amount of fine –

While determining fine if it is not expressed then it is the prerogative of court to give the fine at deems. Just, however while determining on unlimited fine if no specific fine has been given in any punishment and the matter has been left to the court then the court will not impose an excessive fine which is against the justice.

Sec – 64 Sentence of Imprisonment for non-payment of fine -

- Imprisonment and fine
- Imprisonment or fine
 - o Then it should competent to court to direct sentences to such offender in default of payment – Offender shall suffer imprisonment for a certain term which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under/A. Commutation of Sentence.

Imprisonment in lieu of fine always be in consecutive in nature –

Eg: If 5 years of imprisonment and 1 year in lieu of fine then it will run consecutive i.e. 6 years.

- First finish the imprisonment
- Then the imprisonment in lieu of fine.

Ques. What will be the term in lieu of fine?

Ans. Sec – 65 limits to imprisonment for non-payment of fine, when imprisonment and fine awardable – shall not exceed the 1/4th of term of imprisonment which is fixed for that very offence, if the offence be punishable with imprisonment as well as fine.

Eg: 10 years for offence 1/4th of 10 years – 2 1/5 years in lieu of fine/

- For life imprisonment + fine (5 years) – Sec – 57 IPC – reckoned as equivalent to 20 years while calculating fraction of terms of punishment.
- Death penalty + fine – Before death penalty fine will be taken from property of person. (U/S – 421 of CrPC)

Situation –

- Magistrate is trying a case of LI (20 years) U/S – 409 IPC and according to Sec – 65 the punishment if lies of fine can be 1/4 of the imprisonment provided for offence i.e. 5 years.

Ques. But the powers of magistrate to give punishments is 3 years?

- How to solve this problem that imprisonment in lieu of fine is 5 years. So how can JMFC pass the punishment? – U/S – 29 CrPC

Bare Sec – 30 CrPC – only deals with magistrate not with Session Judges because Session Judges has all the power and magistrate has the limited power because Sec – 65 of IPC given Blanket power to everybody, power given by CrPC much less so how to do mix and match? It can be mix and match by Sec – 30 of CrPC.

Bare Sec – 30 CrPC is restraining powers of magistrate viz-a-viz Sec – 65 IPC. As far as magistrates are concerned, they are governed by Sec – 30 CrPC and not by Sec – 65 IPC.

Imprisonment

- (i) Life imprisonment
- (ii) Term Imprisonment
- (iii) Imprisonment in lieu of fine.

Imprisonment in lieu of fine – It can never be concurrent, so always be a separate imprisonment from term imprisonment i.e. it can always be consecutive.

- Recap – Sec 64 – 65 of IPC – problem arose U/S – 29 of CrPC – Sec – 30
- Imprisonment in lieu of fine power of Session Judges, Add. S.J., Asst. S.J. given U/S – 65 of IPC but magistrate power U/S – 30 of CrPC.

Ques. Why can't it be concurrent to term imprisonment?

Ans. The Madras H.C. in case of **P. Balaraman State (1991)** held that imprisonment in lieu of fine is not a sentence and (suffering) as a sentence must be suffered completely. But an imprisonment in lieu of fine is a penalty, it can be finished by payment of money. So, both has distinct legal characters. **R/W Sec – 68.**

Sukumaran v. State (Kerala H.C.) – any sentence can't be concurrent with imprisonment in lieu of fine, these two are distinct entities.

Shelu Tama v. Hari Jha 1958 D.B. Patna H.C. – A substantive sentence which is a term imprisonment can't be compared with imprisonment of fine both are distinct and can never be made concurrent.

Ques. Is Sec – 30 CrPC applicable to local or special law? Can a magistrate give imprisonment in lieu fine in special or local laws, if it is not written in special or local law?

Ans. Sec – 40 IPC – makes Sec – 64, 65, 66, 67 IPC applicable R/W Sec – 2 (Y) of CrPC para (2) to local or special laws. Naturally the provision of CrPC i.e. Sec – 30 is also applicable automatically.

As the powers of Sec – 30 CrPC flows out of Sec – 64, 65, 66, 67 IPC these sections are made applicable to local or special laws by virtue of Sec – 40 para II-IPC. Hence the magistrate can give imprisonment in lieu of fine under special or local law R/W Sec – 64, 65, 66, 67 IPC.

Ques. There is a special law in which no provision written for imprisonment in lieu of fine. The magistrate imposed certain fine in that special law. The accused refuses to pay the fine. Now he contends that in this law there is no provision of imprisonment in lieu of fine then the magistrate cannot give? Will the contention of accused be accepted?

Ans. Sec – 40 of IPC will be applicable to special and local laws.

Chajjula v. State 1972 SC held that Sec – 30 CrPC implies that the powers given by Sec – 65 of IPC are curtailed as far as magistrate are concerned by Sec – 30.

Sec – 31 – It will be incomplete if we do not complete the Section – 66 to 70 of IPC vis-à-vis imprisonment in lieu of fine.

Sec – 66 Description of imprisonment for non-payment of fine (it applies on all of judges and magistrate)– may be of any description to which the offender might have been sentenced for offence.

Ques. Will imprisonment in lieu of fine be rigorous or simple?

Ans. Depends upon term of substantive imprisonment – if substantive imprisonment is rigorous or simple then imprisonment in lieu of

fine will be rigorous or simple.

(v.IMP) Sec – 67 Imprisonment for non-payment of fine, when offence punishable with fine only – simple imprisonment will be given.

Then imprisonment in lieu of fine shall be simple imprisonment -

1. Fine up to Rs. 50/- → term not exceed 2 months.
2. Fine up to Rs. 100 or above Rs. 50/- → Not exceeding 4 months.
3. Above Rs. 100/- → not exceeding up to 6 months.

Sec – 68 – It clearly shows that imprisonment in lieu of fine is mere in the form of penalty and it has to be contradistinguished from the substantive imprisonment. It completes by totally suffering. But imprisonment in lieu of fine. – it completes or terminates when person pays the fine or laws takes money from the property.

Imprisonment to terminate on payment of fine – imprisonment in lieu of fine will end if a person pays for the fine or law takes money from property of person.

Sec – 68 - implies the difference between the substantive and concurrent imprisonment. It terminates when accused pays or law takes money from the property.

Sec – 69 Termination of imprisonment on payment of proportional part of time –

Eg: A has been awarded 6 months of imprisonment in lieu of fine of Rs. 1000/- A says that he can't pay fine. He was awarded imprisonment and sent to jail. After 3 months – A started working

in jail earned Rs. 500/- If he pays these Rs. 500/- as a fine (part of fine) → then he will have no need to remain in jail for next 3 months.

In other words, whatever proportion of money he is submitting such proportion of imprisonment will decrease.

Illustration (bare)

Sec – 70 fine leviable within 6 years or during imprisonment, death not to discharge property from liability.

If the offender died, having imprisonment in lieu of fine, then how to recover that fine. He will not be discharged from liability after death –

Fine will be recovered from any property while would after his death, be legally liable for his debts.

Sec – 31 sentences in cases of conviction of several offences at one trial –

Eg: A has gone to murder X → A house breaking –

- Broke the tooth of servant of X grievous hurt
- Molested wife of X Sec – 354 IPC.
- Shoot X **Sec – 302**

These whole incidents are on transaction in a transaction as different offences may be committed in one transaction which is connected by – proximity of time, place, intention. (Found in that Eg. That same time, place and intention.)

In one transaction A has committed offences under Section – 452, 354, 325, 302 IPC as the punishments of all these offences are different. So, the golden rule is –

Golden Rules of Criminal Law –

Each offence must be treated, tried, punished separately so in that Eg.

It means there will be 4 trials for A's offences.

This will lead to cumbersome of different trials for this CrPC brought a solution for this that each offence will be treated, punished, separately but tried together in one trial to save time of court and all parties or witness of the court i.e. Joinder of charges.

Eg:

- **Sec – 452** – 4 years and fine Rs. 1000/- or separately imprisonment in lieu of fine
- **Sec – 354** – 3 years and Rs. 2000/- or separately imprisonment in lieu of fine
- **Sec – 325** – 5 years and Rs. 3000/- or separately imprisonment in lieu of fine
- **Sec – 307** – 7 years and Rs. 5000/- or separately imprisonment in lieu of fine

Judge can't club either imprisonment or fine or imprisonment in lieu of fine.

The court has one prerogative to keep a person punished if he is a (hard criminal) that he will be imprisoned consecutively i.e. 10 years.

If the offender seems to be 1st time offender, then the court can award concurrent punishment (as the sentences will start together). As maximum in case of A will be 7 years.

Ques. Is this a prerogative of a judge?

Ans. Yes, law says that to award punishment consecutively as every offence must be punished separately is a rule of law.

To award concurrent punishment it is the discretion prerogative of the court/judge.

Ques. Suppose the judge awarded above mentioned punishments and does not mention about concurrent or consecutive then what would be deemed?

Ans. Then it will be deemed as consecutive (means the rule of law)

Ques. If a person is already under imprisonment for 10 years and now again got convicted for 7 years as these two are different trials will these be consecutive or concurrent?

Ans. Sec – 427 CrPC (same as Sec-31) says this will be consecutive but if courts deem fit then it can be concurrent.

Sec – 71 R/W Sec – 31 limits of punishment of offence made up of several offences –

(1) Para illustration (a)

Eg: Suppose A slap a person fifty times. So, fifty times Sec – 323 of IPC has been committed, each 323 offence is punishable with 1 years so that punishment will be 50 years so do we send a person for 50 years? Ans. in Illustration (a)

Sec – 71 Part II and III –

Eg:

A cause robbery with causing hurt will come U/S – 394 property related offence. But will put Sec – 323 (body of offence) with that section both are distinct offence. Example is same as robbery + 302 + wrong

restraints. But whereas A causes hurt and GH because GH is the aggravated form of hurt.

Sec – 31 – such punishments when consisting of imprisonment to commence one after the expiration of other in such order as the court may direct unless the court directs, they such punishments shall run concurrently.

Why?

In such order means – If court has to give 10 years and life imprisonment it means if the L.I. is given first then 10 years will go concurrent as all term imprisonments will see concurrently to life imprisonment. So, 1st the court will give 10 years then L.I.

If court does not direct –	If court directed –
Preview Eg:	
Imprisonment 3 years	I – 3 years of term imprisonment
Imprisonment 3 years	II – 3 years of term imprisonment
Imprisonment 3 years	III – 3 years of term imprisonment
Life imprisonment (14 years)	IV – L.I.

Now = 3 + 3 + 3 + 14 = 23 years

If life imprisonment is given 1st then all above will automatically be included in this i.e. only 14 years means it will run concurrently that is why it is the prerogative of the court that which punishment will be given first.

Sub-sec – Merely just because the punishment is more than the power of court it need not be sent to higher court (consecutively counting)
Total punishment of separate offence is more than the court power then no need to higher court. Provided – Bare 2 proviso –

- (i) It shouldn't be more than 14 years
- (ii) It can't give more than double of his powers.

Proviso

- (a) Imprisonment the twice amount of punishment (not more than 14 years) of the court's power to punish
- (b) Not exceeds the twice amount of punishment of the court's power to punish.

Eg: JMIC = 3 years x 2 = 6 years is maximum punishment power in one trial.

CJIM – 7 years X 2 = 14 years

But suppose, if JMIC – does not want to send the case to Higher court then he can make punishment concurrent.

Eg: 3 years + 3 years + 3 years + 2 years + 3 years = 16 years then make it concurrent. Then the person will remain in prison for maximum 3 years in concurrent imprisonment.

- **Consecutively** – JMIC has power = 6 years
- **Concurrent** – JMIC has power = 3 years

Eg: A has broken the bones of 5 persons.

- 3 years
- 3 years
- 2 years
- 2 years
- 2 years

Now a JMIC can't give concurrent sentence as A will have to remain in only for 3 years or double is 6 years. In such a case the JMIC will submit the case to CJIM U/S – 325 CrPC. CJM can give him punishment up to 7 years

and in consecutive case $7 \times 2 = 14$ years.

In consecutive imprisonment A will remain in for 12 years.

- Imprisonment in lieu of fine can't be added here in consecutive sentence.

Ques. Does this proviso of Sec – 31 apply to Session Judge? Can a Session Judge give consecutive sentence of more than 14 years or is this proviso applicable to all courts?

Ans. Yes, Session Court have unlimited power except in case of death.

Eg:

A raped – X – 10 years

A raped – Y – 10 years

A raped – Z – 10 years

In one transaction.

Yes, it is allowed to Session Court to give consecutive.

In Bare case of consecutive sentence, it shall not be necessary for the court to send the offender for trial before higher court.

This proviso is applicable only to magistrates. Because the Session does not send the case higher court for higher punishment. But JMIC, CJM u/s – 323, 325 of CrPC send to higher court.

“Consecutive is Rule but concurrence is an exception”

- 3 years
- 2 years
- 2 years

- 3 years

I.e. 10 years – In appeal by the convicted person, the aggregate of consecutive sentences shall be deemed to be single sentence.

This matter is triable by magistrate so appeal will lie to Session Court but the matter is above 7 years so –

Advantage of Sub-Sec (3) of Sec – 31 –

Sec 374 – says that where the punishment is more than 7 years then the convicted person can appeal to H.C. also.

Ques. A - drunk and shot in crowd as a result X, Y, Z died now in one transaction there will be 3 cases of Sec – 302 and A was given life imprisonment in the cases. Sec – 31 provides for “after the expiration of other.” How to be construed in this case?

Ans. This matter came before S.C. in cases of **Kamal Natha v. State of T.N. (2005 S.C.)**, **Sanaullah Khan v. St. of Bihar (2013 S.C.)** held that the punishment will be consecutive but further judgement came –

- **Om Cherian v. St. of Kerala 2015 S.C.**
- **Duryodhan Rout v. State of Orissa 2015 S.C.**

It was held that it will be concurrent. These judgements were contradictory to each other. To solve/ settle this 5 judges decision bench judgement came in case of **Muthurama Lingam v. St. Represented by Inspector of Police (19 July 2016)**

Ques. What is the life imprisonment?

Ans. There is a lot of confusion of L.I. because of these Sec – 55 IPC, Sec – 432, 433 of CrPC.

57 IPC, confusion arose on L.I. Sec 55 of IPC and Sec – 433 of CrPC states

that if anybody is undergoing the L.I. and has completed the 14 years of imprisonment, then appropriate govt. can commute (to change the nature of sentence) the sentence.

Ques. Will these 14 years includes remissions? Like 7 years remit in 14 years so for murder's punishment will be 7 years. It is wrong so Sec – 433A of CrPC come then passed.

Ans. The legislature passed another law Sec – 433A CrPC, i.e., the person will have to undergo sentence of 14 years first actually then his sentence can be commuted by State Govt or Central Govt. means commutation after 14 years, presently the law is if the person is under L.I. then Section – 55 IPC R/W 433 and 433A of CrPC. Person can get the commutation after 14 years of Imprisonment but it is not a right and also L.I. does not means the punishment is 14 years.

- **Sec – 57** does not says that the L.I. will be 20 years, we can't measure the life of a person. Sec – 57 only says when to compute the fraction of the life imprisonment of any offences so i.e. why the L.I. will be deemed to 20 years. So, L.I. will not be reckoned as person has the life of 20 years it is just a parameter.
- **Sec – 57 of IPC** has nothing to do with commutation of L.I. while computing fraction L.I. is deemed to be 20 years. This is just a parameter to compute the fraction. Eg: punishment of attempt is half of L.I. – means half of 20 years.
- **Sec – 55 IPC R/W Sec – 433 and 433A CrPC** – This is not a right it is purely the prerogative of state to release a person after 14 years or not, it can't be challenged.

Gopal Vinayak Godse v. St. of Maharashtra 1961

It was clearly held that imprisonment basically means imprisonment and life has been defined under IPC and general clauses act, 1987 as the entire

life of a person so imprisonment for the entire life of person.

- Dabir Singh v. St. of Punjab 1979 S.C.
- St. of Punjab v. Joginder Singh 1992 S.C.
- Maru Ram v. GOI 1981 S.C.
- Ashok Kumar v. GOI 1991 S.C.
- Laxman Naskar v. GOI 2001 S.C.
- Subhash Chander v. Krishan Lal 2001 S.C.
- Shri Bhagwan v. St. of Raj 2001 S.C.
- Swami Shradhanand v. St. of Kart. 2008 S.V.
- GOI v. Shree Hari 2015 S.C.

Muthurama Lingum case 2016

1. Every time it is reviewed and it was very clearly said that "the legal position is that life imprisonment only means the entirety of life unless it is curtailed by remission, validly granted U/S 432 CrPC by the appropriate authority or Under Article – 72 or Article – 161 of COI by the executive head."

- President and the governor (these both are executive heads) have the power of commutation and remission of punishment.
- Thus, commutation is purely executive power.
- Judiciary can't commute or remit. It is only by the executive head.

Eg: A had murdered X, Y, Z. 3 L.I.s

Ques. A got commutation against X, will A be set free?

Ans. No, 2 more L.I.'s are pending.

2. (last page) New law of 2013 provides for "L.I. till the remainder of his

life" – U/S – 376 (i) IPC

Ques. Will this provision of law overrides Sec – 55 IPC, 432, and 433 of CrPC?

Ans. No, Govt. will not commute because it is legislature law has been providing for this and Govt.'s discretionary will not be above to statutory laws. It means wherever it is written that "the remainder of his life" all the commutations are not allowed.

The prerogative of executive is gone.

Ques. Will the Govt. commute the punishment still?

Ans. No

3. **Muthurama case** – Whether 2 or more life imprisonment be concurrent or consecutive?

Ans. Sec – 427 (2) CrPC itself gives answer that when a person is awarded 2 life imprisonment then they will run concurrently because how can give a L.I. after the person dead.

So, all life imprisonment will run concurrently.

- Suppose A committed rape → 10 years and murder of a person who saving a girl so got the imprisonment of L.I. it was held in **Muthurama Lingum** that this is the prerogative of the court to give 10 years punishment first or L.I. If court gives 10 years first or earlier then after completing 10 years, he will start his L.I. but if the court gives L.I. earlier than 10 years imprisonment will become concurrent with L.I.

Dictation given in back pages with date of 22 of march 2022.

Sec – 32, 33, 34, 35 deals with the mode of conferring powers or

withdrawing of powers from the judges.

Sec – 33 - If judges are transferred and send to some other places it is not that we have to conferred the power again and again, once judges have conferred the power Under CrPC as JMJC you will be retaining your power wherever judge go, posted. Eg: If JMJC of first division and transferred to another place and by promotion you become CJM so all the power which have been conferred will remain with. So, CJM will have the power of JMJC and of course the CJM power will increase but JMJC power will be included in CJM.

Sec – 32 to 35 Bare Act

Ques. Who is the successor in office?

Ans. Sec – 35 (i) We are presuming that in your predecessor is transferred or retired or dies etc., anything happens, the successor in office will conduct all the proceeding which he (predecessor) has conducted and continue from there he left.

Chapter – IV

(A) Power of superior officers of police

- There are two police officers mentioned in CrPC only –
 - (i) Officer in charge of police
 - (ii) A Police officer

The most important occurring name in CrPC is officer in charge in police station and also a police officer and in Sec – 154 of CrPC the word superintendent is being used.

The officer in charge of police station has all the power in CrPC. That is

the reason why do all the P.O., D.G.P., I.G., D.I.G, D.O.P have power for that matter? Do they have a power for S.H.O./ Officer in charge of P.S.?

Sec – 36 which confers all the powers of officer in charge of P.S. in their area.

Their area means for example D.G. of Police – has all the power in state.

These power given U/S 36 of CrPC –

- I.G. – has power in his zone
- D.I.G. – in his range
- S.S.P. – in district
- D.S.P. – in sub-division.

Sec – 36 Bare

(B): Aid to the magistrates and the police

Sec – 37 – public when to assist magistrates and police

As a general rule it is the duty of public to assist magistrate and police. Law enforcement agencies are not adequate and police. Sometimes, they need the help of public. These sections lay down a legal statutory duty for public to do certain works for public servants.

In other words, if public refuses to do so it will not be an omission but it will be illegal omission. In IPC omission are not punishable but illegal omissions are punishable in IPC. (Sec – 187 IPC). So, in case public – you are asked to assist and public do not or you have been given legal duty U/S – 39, 40 and you don't do. Now we can always proceed against you for committing an offence.

'Reasonably demanding his aid' is very important qualification – any aid which is unreasonable which any reasonable prudent man will say unreasonable would not be covered by illegal omission and also –

'Bound' – mean he refuses and does not do so then we can always proceed against him U/IPC he is committing an offence for disobeying the lawful P.O. – lawful command.

And also S.C. also held that Sec – 37 does not give the power to magistrate or to police to shirk towards its own duties and to put entire weight on public.

(a) In the arresting – taking or preventing the escape of any other person whom such magistrate or police officer is authorize to arrest.
OR

Eg: In non-cognizable case, police is not authorized to arrest, then if police officer asks for the help of public to arrest and that public person refuses, he will be not committing any offence because P.O. must be authorized to arrest.

(b) In the prevention or suppression of breach of peace. Eg – If magistrate or P.O/ find that there is going to be riot and they ask the help of 50-100 people to stop that riot but people refuses then it is an illegal omission.

(c) In the prevention of any injury attempted to be committed to any railway, canal, telegram or public property.

Sec – 37 – 'Every' – The word every means anybody. Who is competent.

Sec – 38 – When a warrant directed to the person other than police officer, if he desires any help from public then the person to whom he asked for help are also bound by law to help him.

Sec – 37 & 38 – are protected by Sec – 76 nothing is an offence done by a person bound by law and Sec – 79 nothing is an offence done by a

person justified by law to protect the public acting U/S – 37 and 38.

Sec – 39 – The applicability of **Sec – 39** is only to the **IPC** offences. It is a duty of every person to give immediate information to the nearest police officer or magistrate regarding the commission of these offences.

Sub-sec 1 of Sec-39 – deal with two things –

- (i) Offence has been committed
- (ii) Offence about the commit (of the intention of any person to commit) – bare.

Sec – 39 deal with IPC offences but only those offences which are mentioned i.e. –

- (1)
 - (i) Sec – 121 – 126 and Sec – 130
 - (ii) Sec – 143 – 145, 147, 148
 - (iii) Sec – 161, 165A
 - (iv) Sec – 272 – 278
 - (v) Sec – 302, 303, 304
 - (vi) 364A
 - (vii) Sec – 382
 - (viii) Sec – 392 – 399
 - (ix) Sec – 409
 - (x) Sec – 431 – 439
 - (xi) Sec – 449 – 450
 - (xii) Sec – 456 – 460
 - (xiii) Sec – 489A – 489E

(Jurisprudence it is not the fear of law but collective will of the people)

- If the offence is non-cognizable then inform to magistrate (cog. + non cog.) i.e. why P.O. (cognizable) & magistrate both words are mentioned.
- BOP is upon a person that is why he did not inform about such offence. (If the person is bound to inform for the commission of offence and that person was aware of commission. So, more or less that person is committing the abetment by aiding.)

(2) Bare Act –

State of Gujarat v. Anirudh Singh (1997 S.C.)

It is the statutory duty every witness who has a knowledge of commission of crime to assist the state also very criminal trial is a voyage in quest of truth for public. Justice to punish the guilty. Every citizen who has a knowledge of commission of crime cognizable offence has the duty to make information to police and cooperate with I.O. who is enjoined to collect the evidence and if necessary to summon the witness to give evidence.

- Criminal procedure code can be divided into parts –

CrPC

CrPC	
We will read this part first	Deal with judiciary
Before these offences has been committed	After the offence has been committed
Preventive actions are needed	Criminal Justice system comes into picture
It is the job of police	Criminal justice system starts either by FIR/ complaint to Magistrate.

- **Police Act 1861** – The preamble of police act says that the job of police is to prevent and detect crime but it is also written in this act that the District Magistrate shall be in charge of the law and order of a district and police is for the help of district magistrate.
- If we were stopping an offence before it occurred, if we could pre-empt or we could prevent it then it would be the best possible thing. That is why starting part of CrPC from Sec – 106 to 153 all deals with prevention and part started after the commission of an offence. Firstly, we will go to Part I.
- As District Magistrate and Executive Magistrate have basically the roles of maintaining law and order in the district. To maintain law and order one important power has been given.

District Magistrate and Executive Magistrate will play two roles

- Quasi-Judicial
- Purely Executive
- And that is the reason why both these matters are dealt with in CrPC.
- As far as keeping good behavior or preventive matter is concerned bearing Sec – 106 which deals with Judiciary and Sec – 107 to 148 all deals with Preventive matters or purely executive matters.

Sec – 106 is the only Sec which judiciary has been given to take security for maintaining good behavior.

- Preventive actions can be taken by Judiciary, E.M., and Police.

Preventive Actions

- Preventive action by Judiciary
- P.A. by Executive Magistrate
- Preventive actions by Police

This part of CrPC ensures that there is separation of powers between Executive Magistrate and Judicial Magistrate.

The powers which are given here are clearly preventive powers and the powers which will start after 154 are basically dealing with criminal justice system.

Preventive Actions by the judiciary sec – 106 –

Ques. What is the difference between Preventive power of judge and preventive power of executive magistrate?

Ans. Judicial Magistrate or Session Judge bind down the person during conviction for keeping peace and good behavior.

Ques. Who are allowed to bind down convicted person for keeping peace?

Ans. All the 3 judges of court of session that are Session Judge, Additional Session Judge, Assistant Session Judge, and Judicial Magistrate of first class only not Judicial Magistrate and class.

Sec – 106 does not apply on every conviction, but apply on conviction of any offence which are punishable under Chapter VIII except the offences which are punishable U/S – 153A, 153B, or 154 or assault or using criminal force or committing mischief, any offence of criminal intimidation any offence which caused or was intended or was known to be likely to cause breach of the peace and abettor of all these offences is also covered here and the convicts will be bound down by court maximum for 3 years and if the conviction is release-set aside on appeal then bound will also be set aside. Bond executed shall become void. If the end person does not give then judge has power to put him again in jail and take the article 21 of COI of him.

Binding the person for 3 years during conviction by executing the bond

that if he comes out from conviction, he will maintain the peace.

Power of binding down the convicts is also given to appellate court or revisional court. – Sec – 106 (4) under the code of 1898 this action could be taken by High Court, Session Court, D.H., S.D.M., and first-class Magistrate but now Executive Magistrate is separated from it.

Correlates with Sec – 356 of CrPC also deals with preventive power where any person is convicted by court for the offences mentioned U/S – 356 itself the court can bind down that person to notify his residence and absence of residence to the court after released from jail. Court binds down him for 5 years to inform about his residence, change of residence and absence from such residence.

Ques. Powers of an Executive Magistrate are purely preventive or executive in nature in CrPC. Do you agree with statement, critically examine.

Ques. The 1973 CrPC has been written in consonance with Article – 50 of the constitution. Critically examine.

Ques. Executive Magistrate acts as a criminal court in some matters. Enumerate these matters with case causes.

Ques. The Executive Magistrate has been given varied powers in Criminal Procedure Code 1973 Broadly discuss these powers as given under CrPC?

Powers of an Executive Magistrate are divided into 5 parts – 125 to 143

Quasi-Judicial Powers – 129 to 132 (purely executive power) 133-143
Quasi-Judicial Power and 144 – emergency executive power. 145 – 148
owe again Quasi-Judicial powers. All these are the power of executive magistrate.

Powers of Executive Magistrate				
Section - 125 to 143	Section - 148 to 151	Section - 152 to 162	Section - 163	Section - 164 to 167
Quasi-Judicial Power	Purely Executive Power	Quasi-Judicial Power	Emergency Executive Power	Quasi-Judicial Power
Binding power for good behavior	Dispersion of unlawful assembly	Public Nuisance	Emergency use of Executive power	Dispute as to immovable property
126 to 129 power 130 to 143 procedure → Section – 126 to 129 are dealing with binding down power and procedure of all these is given U/S – 130 to 143				

Binding down a person – Binding down a person means we are ensuring that he will not commit any offence, that he does not breach any public peace. Person can be bound down either by asking him to give his own surety by taking money from him in the form of bail and if he does not do so then we can forfeit his money/property or another method that he brings person as surety so in all these 4 sections i.e. 107, 108, 109, 110 offences has not been committed.

- Preventive law or what we called preventive detention – **Laws like MISA, USA, TADA, POCA**, all these are preventive laws to prevent commission of an offence and the law of preventive detention is governed by **Article – 22** these laws somewhere give substantive as well as procedure part.
- Here under CrPC we are not dealing with **Preventive detention**. These Preventive detentions are specific laws. Here we are talking about prevention U/S – 107 to 110.

These are 3 agencies to prevent commission of an

offences –

- (i) The magistrate
- (ii) The police
- (iii) The public

The preventive action is the best possible thing for any society. Because if there is preventive action taken then no offence will take place and criminal justice system will not come to action.

Preventive Action Powers		
To the magistrate (Session Court Judicial Magistrate first appellate court or revisional court)	To the police	To the public
Sec – 106 R/W Sec – 356	Sections from 149 to 153	Section – 37, 38, 39, 40 and Section – 43 powers to arrest any person committed N.B.O.

Preventive powers of Executive Magistrate –

It is because of this part of CrPC that there is complete division of powers between Executive Magistrate and Judicial Magistrate. The role of Judicial Magistrate starts after the offence has been committed and the role of an executive magistrate starts before the offence has been committed.

When we talk about preventive powers the best way to prevent is to bind down a person with a surety or security. Since binding down power is a Judicial process. If any person not cable to give security/ surety. He will send to jail and his right to like and liberty will be taken by court. That is why they cannot use it as their arbitrary power. Hearing of power is must.

So, Sec – 107 to 110 are one of the most important powers of executive magistrate to ensure prevention of an offence.

Ques. The powers of 108, 109 and 110 which are of executive whether these powers are also with judicial magistrate?

Ans. Sec – 478 of CrPC says that if legislative assembly by resolution so permits, then the state govt. may by after consultation with the high court direct that references under Sec – 108, 109, 110, 145; 147 of the CrPC to an Executive Magistrate shall be construed as reference to judicial magistrate of the first class.

Order of Sec – 478 is not an executive order. It is a legislative order after consultation with the high court. It is legislature + high court because order U/S – 478 is against Article – 50 of Indian Constitution which talks about separation of judiciary (because 478 → legislature + H.C) from executive Sec – 478 has applied for the first time when Chhattisgarh was formed.

Section – 107 – says basically the main job of any executive magistrate is to maintain law and order and is to maintain peace and public tranquility in his area. If he get an information that some person is going to breach the peace and disturb the public tranquility then he may require such person to execute a bond for not exceeding one year for keeping peace for such period.

Two terms are used here – **Breach of peach or disturb the public tranquility**
– Breach of peace is much more limited to its scope because breach of peace can be done by even two people. But disturbance of public tranquility is much more extended to its scope. Both are covered here U/S – 107.

U/S – 151 police arrest the person to prevent the commission of a cognizable offence and after arresting he present to the person before executive magistrate and executive magistrate bound down him for keeping peace and good behavior. (107/151) Satikuinja 0 used in Punjab.

Sec – 107 (2) – Basically there can be two situations. A is a punk (gunda) is going to breach the peace or disturb the public tranquility in the area of executive magistrate.

(ii) A is living in Jurisdiction of E.M. but likely disturbing peace and tranquility in any other area.

In both the situations E.M. can bound down that person A. The maximum period U/S – 107 E.M. which security is asked for is one year and this one year starts from the date when executive magistrate starts proceedings U/S – 111 of CrPC.

Ques. Whether an E.M. can drop the proceeding once he started inquiry and made an order of Sec – 111?

Ans. There is no bar on the magistrate to drop the proceeding at any point of time. Eg: (wrong information regarding person). We are using word drop here we can not use word discharge because discharge is pre-trial process.

- If FIR made against person and final report made by police against him then magistrate found that the person is falsely implicated then he will be discharged by magistrate.
- And if after trial person found no guilty then acquittal.

Inquiry by executive magistrate is necessary -

There is no doubt that the police can arrest the person on the basis of an apprehension U/S – 151 but the executive magistrate can not bind down that person without inquiry means for the purpose of binding down a person U/S – 107 the executive magistrate must have to follow the procedure U/S – 111 to 124. If he does not do so then that will be an illegal proceeding. It is bound to be set aside the principle or rules of natural justice must be followed. E.M. cannot bind down the person before him arbitrarily without making any preliminary inquiry or

following the process laid down U/S – 111 to 124.

Section 108 – Security for Good Behaviour from Persons Disseminating Seditious Matters

When we deal with matters involving sedition, or attempts to create enmity between religious or any other groups, or anything disrespectful to any religion, or any publication trying to criminally intimidate or defame a Judge [Section 108(2)], or any matter covered by Section 292 of the Indian Penal Code (IPC) relating to obscene material—if any person is doing any of these acts, then the Executive Magistrate of that jurisdiction can call that person and ask him to execute a bond (for a period not exceeding one year) for keeping good behavior and for not committing these acts.

Sub-Section (2)

This sub-section deals with the rights of the press.

We have a fundamental right under Article 19(1)(a) of the Constitution of India (freedom of speech and expression). Sub-section (2) protects this fundamental right by making it clear that the proceedings under Section 108 cannot be taken against the editor, proprietor, printer, or publisher if they are acting in conformity with the rules laid down in the Press and Registration of Books Act, 1867.

Because this is our fundamental right under Article 19(1)(a) of the Indian Constitution, the protection applies.

However, proceedings under this section can still be taken against all these persons by an order of the State Government or by an order of an officer empowered by the State Government.

Section 109 – Security for Good Behaviour from Suspected Persons

This is one of the most misused sections, because under Section 109,

anybody who tries to conceal his presence, and regarding whom the police have merely a *reason to believe* that he is going to commit an offence, can be arrested under **Section 151 of the Code of Criminal Procedure (CrPC)**.

Once arrested, the Executive Magistrate may order him to execute a bond, with or without sureties, for a period of one year for maintaining good behaviour.

SECTION 109 — Concealment of Presence

This is the “shadow section.” It covers **two distinct vectors** of concealment:

1. **Concealing *himself*** - physical evasion.

Example: Police appear; suspect ducks behind a wall and runs.

2. **Concealing appearance** - disguise.

Example: Changing clothes, covering face, impersonation to hide identity.

Both count as *concealing presence*.

Police need merely a **reason to believe** you *may* commit an offence. That “reason to believe” + concealment → arrest under **Sec 151** + proceed under **109**.

SECTION 110 - Habitual Offenders

These are the “repeat vectors of disruption.”

Habitual doesn’t mean “one-time bad day.”

It means repeated, patterned, persistent conduct.

People rarely testify against them - fear contaminates evidence.

So, the law gives the Executive Magistrate power to bind them down for up to 3 years, forcing good behavior.

This is preventive, not punitive: the goal is danger-neutralization, not revenge.

Ques. Executive magistrate receives information from whom?

Ans.

INFORMATION SOURCE TO EXECUTIVE MAGISTRATE

He can act on:

- Police reports, or
- Own independent inputs (*mukhbirs*, informants, social intelligence)

But even if the source is informal, the *procedure* can never be informal.

PRINCIPLE: NO PREVENTIVE ACTION WITHOUT NATURAL JUSTICE

Sections 107–110 **cannot operate** unless:

- the person is heard,
- the basis of action is disclosed,
- the magistrate shows he applied his judicial mind.

This is codified in **Section 124**, which embeds natural justice.

This prevents the state from turning preventive law into a pretext for harassment

SECTION 111 — Preliminary Order (Show Cause Notice)

This is where the law demands **mental discipline** from the magistrate.

The Magistrate must issue a **preliminary order** that:

1. Specifies the **substance of information** received (not vague gossip).
2. Specifies **the amount of bond/surety** demanded.
3. Provides the **grounds** for compelling the person to show good

behaviour.

After issuing this preliminary order, the Magistrate **cannot go beyond it**. If he goes outside its boundaries → **the entire proceeding becomes illegal**.

Not "irregular."

Not "minor flaw."

ILLEGAL. Void. Null.

OBJECTS OF SECTION 111 –

Two things must become visible:

1. **Application of Mind**

The Magistrate must show he's acting like a quasi-judicial authority, not a rubber stamp of police.

2. **Reasonable Opportunity**

The accused must understand:

- why he's being bound down,
- what bond is demanded,
- and must get a chance to explain or rebut the allegations.

Without this, the entire architecture collapses.

SURETY — A JUDICIAL, NOT ARBITRARY PROCESS

Preventive sections (107–110) are **not punishments**.

They're "civil restraints disguised as criminal procedure" — meant to *prevent harm, not punish offenders*.

So, surety must be:

- reasonable,
- proportionate to the person's financial capacity,
- justified in writing.

If the Magistrate demands an impossible amount, causing the person to go to jail because he can't pay →

This is **illegality**. Abuse of power.

The Supreme Court has warned repeatedly against this.

Surety determination requires judicial reasoning, not guesswork.

Section 112 – Procedure When a Person Appears or Is Brought Before the Magistrate

When a Magistrate has made an order under **Section 111**, or when the police have arrested a person under **Section 151 of the Code of Criminal Procedure (CrPC)** and produced him before the Magistrate, then the order shall be read over to him.

If the person so desires, the substance of the order shall be explained to him.

In other words, if the person against whom an order under **Section 111** is made is present in the Court, then the order must be read over to him. However, when the person is *not* present in Court, then **Section 113** comes into the picture.

Section 113 – Summons or Warrant When the Person Is Not Present

When the person against whom an order is made is **not present** in the Court, then the Magistrate shall issue a **summons** requiring that person to appear before the Court.

If that person is already in the custody of any officer, then the Executive Magistrate may issue a **warrant** to that officer directing him to bring that person before the Court.

Proviso to Section 113 – Power to Issue Warrant of Arrest

The proviso gives power to the Executive Magistrate to issue a **warrant of arrest** against the person when there is *reason to fear the commission of a breach of the peace*, and when such breach of the peace **cannot be prevented otherwise**.

In such situations, the arrest under **Section 113** may be made **before the hearing**.

Section 114 – Copy of Order to Accompany Summons or Warrant

The copy of the **show-cause notice** issued under **Section 111** shall accompany the **summons** or the **arrest warrant** issued under **Section 113**.

Section 115 – Exemption from Personal Appearance

The Executive Magistrate may grant exemption from personal appearance and allow the person to appear through a pleader (legal representative) if he is satisfied that there is sufficient cause for granting such exemption.

Section 116 – Inquiry into the Truth of the Information **Sub-section (1)**

Now that the inquiry has started, it must be understood that **this is not a trial**. A trial can be conducted only for an **offence**, but under **Section 116**, there is **no offence** involved.

Therefore, it is an **inquiry** conducted by the Executive Magistrate, during which he takes further evidence.

Sub-section (2)

Ques. Which process is followed for Sections 107, 108, 109, and 110?

Ans. The procedure of a summons trial shall be followed for the inquiry under **Sections 107, 108, 109, and 110** of the Code of Criminal Procedure

(CrPC).

Ques. Can the Executive Magistrate issue an arrest warrant during proceedings under Sections 107, 108, 109, and 110?

Ans. Yes.

When the Executive Magistrate has **reason to believe**, he may issue a warrant under the **proviso to Section 113**.

This is the **first instance where arrest can be made before the hearing**.

Section 115 – Presence of the Person and the Principle of Criminal Proceedings

One basic aspect of **criminal law** is that any proceeding which takes place against the accused must take place **in the presence of the accused**.

Here, however, the person is **not an accused**, but the same principle applies.

In contrast, under the **Code of Civil Procedure (CPC)**, a person does **not** need to ask for an exemption. A person may appear in Court if he wants, but there is **no requirement** unless the Court specifically orders his appearance.

In such situations, appearance can also be made through a **recognized agent**.

Section 116 – Continuation of Inquiry and Interim Bond Inquiry and Natural Justice

Once the person appears with his answer, and evidence is produced by both parties, the inquiry under **Section 116** proceeds. This inquiry may continue for **2–3 months**.

This provision fundamentally deals with the principle of **natural justice**, expressed as *audi alteram partem* ("no person shall be condemned without being heard").

Application of Summons Case Procedure

The summons case trial procedure is to be applied to the inquiry under Section 116.

Ques. Whether an Interim Bond Can Be Executed After the Inquiry Has Started but Not Completed?

Ans. Yes.

Section 116(3) deals with the concept of an interim bond.

If the Magistrate considers that **immediate measures** are necessary for:

- preventing a breach of the peace,
- preventing a disturbance of public tranquillity,
- preventing the commission of any offence, or
- ensuring public safety,

then the person **against whom an order under Section 111 has been made** may be directed to execute a bond, **with or without sureties**.

If the person **defaults** in executing such bond, he may be **detained in custody** until the bond is executed or until the inquiry is concluded.

Provisos –

(a) A bond can be executed under **Sections 108, 109, and 110**. Otherwise, a person **against whom proceedings are not being taken** under Sections 108 to 110 **cannot** be directed to execute a bond for maintaining good behaviour.

(b) The conditions of the interim bond cannot be more stringent than the order under Section 111.

The conditions cannot be onerous (i.e., excessively burdensome) compared to the show-cause notice issued under Section 111.

Example:

If the Magistrate issues a bond of **₹50,000** under Section 111, he cannot

direct an interim bond of ₹2,00,000.

The interim bond must always be **less than or equal to** the bond required under Section 111.

4. Habitual Offender and General Reputation - In the case of a habitual offender, general reputation can form the basis for binding down. This is one of the rare conditions in criminal jurisprudence where general reputation is considered as evidence.

We do not need to prove this by specific evidence of specific individuals; it can be proved through general reputation evidence.

Thus, an offender can be bound down on the basis of his general reputation.

Ques. What is general reputation as evidence?

Ans. Reputation as a fact – Section 116(4).

This sub-section recognizes general reputation as a relevant evidentiary basis.

5. Joint or Separate Inquiry

A **joint inquiry** may be conducted for two or more persons.

If the Magistrate thinks fit, he may also conduct **separate inquiries** against those persons.

6. Time Limit for Completion of Inquiry

The inquiry **shall be completed within six months**.

If it extends beyond six months, the proceedings **stand terminated automatically**.

However, for special reasons, the Magistrate may extend the inquiry **beyond six months**, provided:

- The Magistrate records **reasons in writing**.

- Only the inquiry can be extended - the reputation cannot be extended

Proviso (Bare Act)

If the person has been sent to jail / detention, then after the expiry of the six-month period, he shall be **automatically released** from detention.

7. Power of the Sessions Judge

This sub-section can be used positively, not negatively.

A Sessions Judge cannot extend the inquiry beyond six months.

He cannot direct its continuance;

he can only direct that the proceedings shall end.

Nature of Proceedings Under Chapter VIII

The proceedings under this section are **inquiry**, not **trial**, because the person under Chapter VIII is **not an accused**—he has not committed any offence.

This matter came before the Orissa High Court in:

Damodar Majhi v. State (1981) Orissa High Court.

Applicability of Chapter VIII to the Juvenile Justice Act

Ques. Does Chapter VIII apply to the Juvenile Justice Act?

Ans. No.

Section 17 of the Juvenile Justice Act clearly states that notwithstanding anything contained in the Code of Criminal Procedure (CrPC), no proceeding shall be instituted and no order shall be passed against a juvenile under Chapter VIII of the CrPC.

This was affirmed in:

Riyaz v. State of Maharashtra (2005, Bombay High Court).

Outcomes After Completion of Inquiry Under Section 116

Once the inquiry under Section 116 is completed, there are two possible outcomes:

- (i) Inquiry proceeds – Section 117
- (ii) Inquiry is dismissed – Section 118

Section 117 – Order to Give Security

If it is proved in the inquiry that the person against whom the inquiry is made should execute a bond, then the Magistrate may order him to furnish such bond.

Bond may be:

- (i) With sureties, or
- (ii) Without sureties

It may be a personal bond or a surety bond.

Provisos –

1. The bond which is asked to be furnished shall not exceed the amount mentioned in the order under Section 111.
2. The amount of the bond shall not be excessive; it must be reasonable.
3. In the case of a minor, the bond shall be executed only by his sureties.

However, read with Section 17 of the Juvenile Justice Act, 2005, this proviso is overridden - meaning the Juvenile Justice Act prevails, and proceedings under Chapter VIII cannot be initiated against a juvenile at all.

Ques. Whether the order under Section 117 is appealable? If yes, in which court can it be appealed?

Ans. Yes, the order is **appealable**.

Under **Section 373 of the Code of Criminal Procedure (CrPC)**, appeals lie from orders requiring security, or orders refusing to accept or rejecting sureties for keeping the peace or maintaining good behavior. These orders are expressly listed as **appealable orders**.

Section 354(6) read with Section 117

This means that an order passed under **Section 117** must be **written as a judgment**.

A judgment must contain:

1. **Points for determination**
2. **Decision**
3. **Reasons** for such decision

This gives the order the character of a judicial determination, even though the proceedings are *inquiry* and not *trial*.

Section 363(3)

On the application of the person concerned (accused in a general sense, though not legally an "accused"), a **certified copy of the judgment** shall be supplied **without delay and free of cost**.

When Inquiry Under Section 116 is Disproved

If the inquiry under Section 116 results in the information being **not proved**, then **Section 118** applies.

Section 118 – Discharge of Person Informed Against

If the information is disproved:

- The person shall be **discharged**.
- The Magistrate shall make an **entry on the record** that such person is **not a danger to security**.
- If such person is in **custody** only for the purpose of the inquiry, he shall be **released**.
- If he is **not in custody**, he shall simply be discharged.

Important Clarification

This term “**discharge**” must *not* be read as the term “discharge” used in **pre-trial criminal proceedings**.

Here, it only carries its **dictionary meaning**, because the person under Chapter VIII is **not an accused**, and these proceedings are **not trials**.

Ram Narain Singh v. State of Bihar 1972 SC

In this judgement it was held that if the court finds that a very long period has been passed and that person had behaved very well. The court can presume that there is no longer a breach of peace.

Sec – 119 Commencement of period for which security is required –

1. The person who is already undergoing a sentence and at such time the order U/S – 106 to 117, is made then the period for such security is required (if the person had not executed such bond) shall commence on the expiration of such sentence means the period will not be concurrent to the already undergoing sentence it will be consecutive.
2. If he is not undergoing any sentence then period will start from the date of order. The date fixed by a magistrate (or later date which were fixed).

Sec – 120 contents a bond –

The bond to be executed by any such person shall bind him to keep peace or to be of good behavior.

Two aspects –

Can bind him to keep peace in the area/ or locality.

OR

Of good behavior, he will not commit any offence, or anywhere attempt or abatement of any offence punishable with imprisonment wherever it may be committed is a breach of a bond.

Sec – 121 Power to reject sureties –

Sureties have a very important role of play in CPC or in CrPC sureties' step into the shoes of person. No one can be forced to become a surety. Surety always is a matter of absolute own volition. If a person does not want to remain surety anymore then he can come to court and ask to leave as surety to the court.

1. Magistrate – May refuse to surety offered
 - May reject any surety previously accepted by him or his predecessor – on the ground that such surety is unfit for the purpose of bond under chapter – 8.
 - Provided that before refusing to accept or rejecting any such surety – magistrate.

He can't refuse or reject the surety arbitrarily.

Magistrate –

- Magistrate shall either himself hold an inquiry on oath into fitness of inquiry.
 - Or made an inquiry to be made by sub-ordinate magistrate to him.
2. Such magistrate before holding inquiry give reasonable notice to the surety, and the person by whom the surety was offered and shall record the substance of evidence adduced before him in making such inquiry.

Magistrate can't reject or accept of surety without giving him proper hearing. So, follow the principle of natural justice.

3. If the magistrate is satisfied that the surety is unfit person for the purpose of bond shall make an order refusing to accept or reject and as the case may be → shall give reasons for doing so.

Provides – Magistrate shall issue a summons or warrant to the person for whom the surety is bound to appear or brought before him → before making an order for rejecting any surety.

Sec – 122 –

In case, the surety is not given (default) or he does give security but later on, he contravenes the conditions given in the bond then the alternative given under sec – 122.

Sec – 122 – Imprisonment in default of security -

In a person to whom order has been given for giving security does not give security or contravenes the conditions given in bond then this is dealt by Sec – 122 → Imprisonment in default of security.

Imprisonment is negative of fundamental right of life and liberty.

1. a & b.
2. If a person is in Sec – 110 order to give security to more than 1 year or not exceeding 3 years but person does not give the security so it will be dangerous for the E.M. to throw him for 3 years then we do need the judiciary to step in.

In case he is been asked to be the surety more than 2 years and he fails to give surety then the matter will be sent to a session judge. → If session judge says that it is a fit case then only, he be detained for the period more than one year in the imprisonment but not more than 3 years.

3. Here session judge can't give punishment more than the stipulated time period (means not more than 3 years) (proviso)
4. Joint inquiry – to refer matter jointly for more than 2 persons to the session court.
Except, no case S.J. bind him more than power allowed by Section/law. Eg: Section – 108, 109 – not more than 1 year.
5. A session judge may in his discretion transfer any proceeding to an addl. Session Judge or Asst. Session Judge – of the proceedings U/Sub-sec 2 and 4 upon such transfer – Addl. Or Asst. Session Judge may exercise powers of Session Judge.
6. If the security is tendered to the officer in charge of jail, then he – refer the matter to court or magistrate who made order and wait for orders of such court or magistrate.
7. Imprisonment for failure to give security for keeping the peace shall be simple. (Sec – 106 & 107 = simple imprisonment)
8. Imprisonment for failure to give security for good behavior shall where the proceedings have been taken U/S – 108 – be simple and the proceedings taken **U/S – 109 and 110** – be rigorous or simple as the court or magistrate districts in each case.

Sec – 123 Power to release persons imprisoned for failing to give security.

The basic principle of fundamental right of right and liberty, if infringed – by giving wrong imprisonment, or by giving more imprisonment.

Asked to furnish security which is much more than it should actually be.

Ques. What should a person do?

Ans. He can go for Sec – 123 – is basically a revisional power.

Revision is engraved in the very concept of the integrated judiciary. The concept of integrated judiciary always pre-supposes that the superior court has a complete administrative and judicial control over a lower court and if the lower court is committing any mistake or is trampling upon the fundamental rights by giving a harsh order then it becomes duty of higher court to set right this injury .

As far as infringement of fundamental rights is concerned, articles – 132 says that S.C. is the guardian of all fundamental rights and people can always move to S.C.

But does a person have need to move to S.C. where he has not committed any offence? Why not to give the smaller court the powers and that is the reason why we have Section – 123.

Sec – 123 (7)

Eg:

Suppose a person is bound down for 3 years: and now he detained in jail for 1 year and released after 1 year with condition. Now to 2 years passed; after releasing from jail, he follows the condition for 1 year. But, after 2 years he breaches the condition, now he again arrested, so he has to give the surety rest 1 year because 1 year was remaining out of 3

years. (written in bracket -bare)

Chapter - X

Maintenance of public order and tranquility (Sec – 129 to 132)

There is nothing judicial or court in this. The E.M. is purely executive in nature.

Unlawful Assembly

The police act, 1861 very clearly says that maintenance of law and order is the duty of district magistrate and police will assist him in maintaining law and order.

It is always the responsibility of the state to maintain law and order because to give peaceful existence to its subject is one of the prime duties of the state and for this purpose, we must arm the magistrate and the police with power to control unlawful assemblies.

The word unlawful assemblies are created by Sec – 141 of IPC any assemblies which he unlawful or against law. It has very limited connotation. It has minimum 5 people and only covering those offences which has been given in **Sec – 141 IPC**.

Instead of this, we must: -

- (a) Cover any eventually where the problem of law and order can occur.
- (b) To give power to maintain law and order.

Sec – 129 Dispersal of assembly by use of civil force – **Sec – 129** allows the executive magistrate and the P.O. to use force, means it can be from tear gas to the firing.

This power is given by any riots taken place suddenly. So, E.M. and P.O. can exercise this power immediately.

Any Executive Magistrate – Naib Tehsildar to District Magistrate etc. all are covered.

Officer in charge of police station – **S.H.O.** – it is not a word of CrPC.

In absence of such officer in charge any police officer not below the rank of sub-inspector. So, it is not below the rank of sub-inspector who can order dispersal of crowd and any executive magistrate can order dispersal of crowd.

The word “unlawful assembly” has not been defined in CrPC but Sec – 2 (y) says that wherever CrPC does not define any word then the same definition as given in IPC can be taken in CrPC.

As a result, the definition and the treatment of unlawful assembly as given in **Sec – 141 IPC** would be taken as the unlawful assembly in CrPC. Or any Assembly of 5 or more people.

If it is not falling within the parameter of **Sec – 141 IPC** then any assembly which has 5 or more people and if he feels that it is an unlawful assembly and for the disturbance of public place. So, the powers of any sub-inspector or any executive magistrate is huge as these are not restricting themselves to only unlawful assembly U/S – 141 but any assembly which has 5 or more people which is going to disturb the public peace or any assembly which is not an unlawful assembly but to disperse. It shall thereupon, be the duty of the members of such assembly to disperse accordingly.

If they don't disperse, they are committing an illegal omission and they are committing an offence and now not following the words of the public officer and now that public officer can arrest such persons.

2. If upon being so commanded → Such assembly does not disperse then that officer can use the force. (bare act) Conduct is like not to

disperse then the last source available to E.M. and P.O. that to use force but before to use force must warn (not written in bare act).

Many proceed to disperse such assembly by force.

Ques. What is parameter of the word "force"?

Ans. Reasonable force, force can mean, tear gas, lathi-charge, and can even mean the firing.

All the 3 are covered by the word "by force".

The biggest defense of police officer is whether he is covered by **Sec – 100 IPC**? Whether his firing was justified by **Sec – 100 IPC**? The right to private defense against the body of others.

Sec – 130(1) - Use of armed forces to disperse assembly basically the army is called when there is a breakdown of civil machinery.

When the civil machinery is no longer there. Because any society works down because of fear if this fear goes away then more force has to be used. It is as long as the fear of unknown is their people will behave well.

Arm forces in law means – army, navy, air force. It does not include CrPC, CISF, BSF. Because these are paramilitary or central police forces.

132 (3) (a) – Army don't have the Danda. So, if they use the force then they use their guns. So, army is the last resort as lots of people may die.

(2) & (3) normally the army will move as per the direction of E.M. But, in doing so he shall use as little force i.e., minimal force and do as little injury to person and property but not shoot to kill.

Sec – 132 – It deals with that matter where Suo Moto action taken by gazette officer.

Eg: If the army was going and notable to contact with E.M. then the

commissioned officer and Gazette Officer of army may take action to disperse such assembly and if the contact to E.M. possible then they will act as per indirection of E.M.

Sec – 132 Protection against prosecution for acts done under proceeding sections –

'No prosecution' it means FIR can't be lodge if written. 'No cognizance' then it means FIR can be lodge, police can investigate, chalan can be put up but court can't take cognizance.

Quasi-Judicial Power (Sec – 133 to 143)

Public Nuisance – Public Nuisance has been defined in Sec – 268 IPC. Because public nuisance effects public and it is natural that there must be some agency to deal with these matters. The public nuisance matters are not matter of law and order of public tranquility because these matters are of different category and thus treated differently. Whenever public nuisance is conducted then it must be removed as soon as possible. That public nuisance which occurring everyday life have been envisage in Sec – 133.

Ques. Who will order the removal of that public nuisance? Is the E.M. or Judiciary? E.M. has lots of public dealing i.e., why this power given to E.M.

Ans. Executive Magistrate has been given to the power to order for removal of such public nuisances. Sec – 133 deals with public nuisance.

Sec – 133 – Conditional order for removal of nuisance –

Public nuisance as an offence is different – IPC deals with lot of public nuisances as the punishment for specific public nuisance has been provided Under Chapter – 14 of IPC and those which are not covered under the definition of public nuisance the punishment for that is provided

U/S – 290 but which is the very small fine of only Rs. 200.

Sec – 34 Cognizable police act deals with public nuisance, and provides for more punishment. But this part from Sec – 133 to 143 deals with relief.

1. Clause (a) to (f) covers the public nuisance which are dealt by Sec – 133 CrPC.

Sec – 133(a) This clause to be read with Sec – 137.

Sec – 137 Procedure where existence of public right is denied – (bare)

Whenever any order is made U/S – 133 (1)(a) and it is alleged that there is an obstruction in public way in such cases when the person appears before magistrate (E.M.) and now he says that this is not a public way this is his private land then the magistrate will stay the proceedings asking to give a preliminary proof (evidence), once he gives evidence and evidence is cogent enough as the evidence appears to be in favor of that person then the magistrate will stay the proceedings of Sec – 133 and ask him to get a proper decree of civil court.

So, until the matter has been decided by the civil court the E.M. will stay the proceeding.

In case he (E.M.) finds that evidence is not reliable evidence he will now proceed with U/S – 133 and make the order final U/S – 138.

137 (3) Once the person asked that it is a public right or not and if he has not denied to this or if he has denied and he has not been able to put up proper evidences then later on in the proceedings he can't deny that this is not a public way, then estoppel. Will apply on him. Later on he can't reargue this matter.

In executive magistrate's court has no jurisdiction on to weigh evidences and decide on the ownership or possessory rights, he must leave this decision to the civil court.

(c) This clause deals with trade or occupation. It is a fundamental right to trade and occupation but if that trade and occupation are injurious to the health and physical comfort of the people.

Eg: Where a rice mill working at night makes noise and does not let people sleep it is a nuisance causing injury.

Eg: Order made by executive magistrate to close the mandi for selling vegetable as it disturbs the peace of people. This matter went to S.C. that mandi was held on once a day in a week and this is the right to livelihood for people who are dependent on that mandi's sale. Now in both the evils which is severe that merely causing inconvenience to people because of noise or the right to livelihood. Sometimes a community has to bear certain evils so that the livelihood of people can be maintained as a result S.C. struck down the order of executive magistrate notwithstanding Sec – 133 as this order is not justifiable.

(c) Construction

(d) Whenever any building, structure becomes dangerous for human life then it should be abolished or removed.

(e) Bare Act

(f) Proceeding U/S – 133 are not intended to settle private disputes in the garb of public nuisance. The word community is the most important word, means the matter must concern the rights of a community.

Suhel Khan v. St. of Maharashtra 2009 S.C.

Public Smoking -

For maintenance of health and environment ban smoking is must smoking is violative of article – 21 i.e. Right to life. **Murli S Deora v. NOI 2002 S.C.**

Ques. In which CrPC provision the smoking in public was banned?

Ans. No, provision in CrPC but we have 'prohibition of smoking in public places rules' under cigarettes and other tobacco products (prohibition of advertisement and regulation of trade and commerce, production, supply and distribution) Act, 2003. -> Sec - 31 of this allow to make above rules and according to these rules and directions - S.C. banned smoking U/ Murli Deora Case in public places.

Sec - 134 - Service or notification of order -

Sec - 135 to 143 Bare Act.

Sec - 291 of IPC Bare Act.

Emergency Power - Sec - 144, 144A

Before taking any action, the opposite party must be given a chance of hearing but there may be such situation that the magistrate may not have any chance for hearing in such case he may straight way pass on order, as the individual right are sub-servient to the public right.

Sec - 144 - Power to issue order in urgent cases of nuisance or apprehended danger -

(1) It will be an order stating reason and object of the order.

Basic reasons to apply Sec - 144 orders -

(1) To prevent obstruction, annoyance or injury to any person.

(2) There is an immediate need for prevention or speedy remedy.

(3) If there is any danger to human life, safety.

(4) Disturbance of public tranquility, riot, affray.

(2) In an emergency ex parte order can be passed **U/S - 144** without hearing other party. This Sub-Section makes it a very dangerous

provision.

Ques. What is the remedy for an ex parte order?

Ans. All orders under CrPC are revisable U/S – 397/ It is not an interlocutory order because interlocutory order is not revisable.

Zila Parishad Etawah v. K.C. Saxena (1977 All H.C.)

It was held that an order U/S – 144 can be brought up for revision before sessions court or H.C. U/S – 397 CrPC. However, the H.C. or Session Court must interfere with order – 144 only under exceptional cases where there is glaring defect of procedure or a manifest error on the point of law and hence a huge miscarriage has been caused.

Ques. Where the order of 144 is against the fundamental rights?

Ans. The person can file a writ **Ghulam Abbas v. State of U.P. (1981 S.C.)** very clearly S.C. held in this case that an order under Sec – 144 is purely administrative in nature. It is neither judicial have even Quasi-Judicial in nature. Hence, if it violates any fundamental rights it is then enabled to writ jurisdiction.

Madhu Limaye v. UOI 1971 S.C.

3. Order of Sec – 144 can be directed against –

- A particular person.
- To persons residing in a particular place or area.
- To public generally, all the person visiting to such place are bound by this order.

These orders can't remain indefinitely; there is always a time limit for such orders to remain in force. Because it is not a British Raj at present.

Safeguards are given in Sub-Sec – 4.

4. The period generally – for 2 months not more than 2 months.
Provided that govt. may be notification direct that such order made by magistrate shall remain in force for such period not exceeding 6 months.

2(rescind by magistrate) + 6(rescind by state govt. -Sub-Sec - 6) = 8 months

- Sec – 144 only tells us abstain – tells what not to do instead what to do.
- U/Sec – 144 an executive magistrate can pass restrictive order he can't make a mandatory order to make a person to do something.

The question arises – Firstly this section is an exception to the rule that all orders must be addressed to one person. But then as the S.C. held in **Ghulam Abbas** case that where human life is at stake there law must step in, even though it may appear to be draconian, no doubt safeguards have already been given, **Eg** in a communal tension as a result because of Sec - 144 many time the magistrate has an control of law and order situation but that does not mean that Sec – 144 should be used at a drop of hat. Any order U/S – 144 must fulfil the basic aspects of justice i.e. public good.

This matter came for consideration many times. –

Ramlila maidan case v. Home Secretary UOI (2012 S.C.) – Baba Ramdev Case

- Delhi police ordered Sec – 144 order and arrested people. The matter went to S.C. that what is need for Sec – 144 applications?
- Now the S.C. held that before passing any order of Sec-144 which is basically a restriction of freedom, that order made applicable was held unconstitutional and invalid as people only gathered for yoga.
- Sec – 144A Bare Act powers to prohibit carrying arms in procession or mass drill or mass training with arms –

Though this section exists in CrPC but not commenced yet.

R/W – 153AA of IPC.

Sec – 144A was inserted by 2005 Amendment Act whenever a law is made the implementation come as by a Gazette notification, that implementation date is very clearly given and if no implementation date is specifically given then though the law has found its place, the legislature has passed it but for some reason holding it for abeyance, it is not commencement and that is what exactly happened with Sec – 144A as it was added by 2005 Amendment Act but the day when it will commence is still held in abeyance.

Many laws are passed by legislature but then then govt.'s change instead of repealing they just don't implement it as a result that law appears in the book but then it is not implemented.

Disputes as to immovable property –

India being an agricultural country and boundaries of the fields naturally no so well demarcated because demarcation is to be done by revenue department but even if the demarcation is done then there are so many reasons for going into disputes. All disputes lead to offences. Mostly in northern India murder are committing over land dispute. In Urdu – all offence is committed by *Zar-Zoru-Zamin* – immovable property.

The prerogative of the criminal court is much different than the prerogative of Civil Court. The criminal court is not supposed to go into merits of case to determine rights as the criminal courts does not have much time and always in the criminal case urgency is the key word and that is the reason why we find that a criminal court is never determinant of the merits of the case. Whenever any rights have to be ascertained the rights forum is the civil court, but till the rights are determined there are going to be murder etc.

The job of criminal court is not to be determine the permanent rights. The

job of the criminal court is to ensure that there is no ensuing offence to achieve this the easiest way is to maintain status quo till the actual rights are determined by the civil court.

Sec – 145 Procedure where dispute concerning land or water is likely to cause breach of peace -

Land or water – These words not to be taken in literal sense.

Land includes buildings, rents, fisheries or crops. Thus, the word land or water not to be taken in its dictionary meaning – Sec – 145 (2) deals with this 1, 2, 3, 4 bare reads with 6(a).

Proviso – Examples, A is the owner and B dispossesses him from land on 6-feb-2022 and police reports on 6-april to the magistrate.

Whenever the information reaches the magistrate if the dispossession took place 2 months before the information reaches the magistrate then it will deem that A is in possession even if B is now in actual possession.

5, 6, 7, 8, 9, 10 – If the goods are perishable nature, then E.M. will dispose it in right proper way and keep the proceed safe till the matter decided by court.

If the same subject matter is pending before civil court and already an order has been passed regarding civil possession this does not mean that proceeding U/S – 145 will run together in civil court.

Ques. Proceeding U/S – 145 or 107 can be run together when matter pending civil court?

Ans.

Jagdish Ram v. St. of Haryana 1990 P & H H.C.

Charan Singh v. S.D.M. Jalandhar 1992 P & H H.C

It was held that the procedure U/S – 145 is basically not interfering with the civil court infact it is complementary of the Civil Court. However,

where we find that a specific order has been given by civil court or any be a temporary injunction be given regarding the possession of property then the criminal court will follow that order but then maintaining law and order is the problem of criminal court i.e. Executive Magistrate can follow the procedure U/S – 107 and 145.

(So where civil court given any order regarding possession and there is chances there will be a breach of law and order then E.M. may proceed U/S – 107, 145 or both).

The object of Sec – 145 is basically to take out the subject of the dispute out of the hands of the disputant. **The question arises before Raj. H.C. that suppose there is a civil suit and property and there is a breach of peace. Is it affected by Sec – 10 of CPC? –**

Ans. No, these are two different matters.

That is why merely because the matter is pending with the civil court Sec – 10 does not apply on any proceeding which may be subsequently taken U/S – 145 because the subject matter and objectives are totally different. **Buddhi v. Gyana 1996 Raj. H.C.**

Ques. What happens if two persons are in joint possession of property?

Ans. This matter came up before various H.C.'s like Calcutta, Allahabad, etc.,

Ques. And if one party try to evict others party will Sec – 145 apply?

Ans. No, Sec – 145 will not apply as Sec – 145 applies only when one party has possession but other has not.

(107 Sec can be applied).

Bhinka v. Charan Singh (1959 S.C.)

The magistrate need not to go for the question of titles, he should concern themselves only for the question of possession. The question of

titles should be decided by only the civil court.

Sadhuram Bansal v. Pulin Behari 1984 S.C.

The question came before S.C. that suppose it U/S – 145 by maintaining status quo it was determined that A has possession.

Ques. Does the order U/S – 145 CrPC be said to be affecting the title?

Ans. Sec – 145 does not affect the title of the parties in dispute of the premises.

Thus, no party will acquire a title or right because an order has been passed for his favor U/S – 145 CrPC.

That A will say that criminal court has passed order in favor of A. So, title now belongs to me – A can't say this.

Because order has been passed U/S – 145 only to maintain the law and order.

If E.M. not getting that which party has the possession and fight is likely to occur then E.M. attach that property and appoint receiver until matter sorted by civil court.

Sec – 146 Power to attach subject of dispute and to appoint receiver –

1. If the person convicts the court that no there is no longer any likelihood of breach of peace then the same magistrate can rescind his order.
2. This is a makeshift receiver till the receiver is appointed under order – 40 by civil courts.

If the receiver appointed by civil court, then the receiver which appoint by E.M. will not be longer there. E.M. can't appoint receiver or if civil court already appointed a receiver, then E.M. can't appoint receiver.

Sec – 147 – Dispute concerning right of use of land or water.

Right -	
Exercisable for full year	Seasonal Right
Whether that person is exercising the right 3 months before filing the application.	When the person is using or exercising right only seasonally last of such occasion or season.
If the right of exercisable not fall in one of them then the right will not be got to any party.	Eg: Right of fishery, in rainy season.

Sec – 146 specifies that even after making the order if the magistrate finds the matter to be an emergency, or if he determines that neither of the parties was then in such possession, or if he cannot reassure himself as to which of them was then in such possession of the subject matter of conflict, he may attach the subject matter of dispute till the competent court has decided the party's rights with regards to party entitled to the possession.

The magistrate may remove the attachment if he is convinced that there is no breach of peace with respect to the subject matter of dispute. The magistrate attaches the subject matter of the dispute. But, if no receiver has been chosen by any civil court in relation to the subject matter of the dispute, he may make the arrangements as he deems necessary for the case of property, if he deems fit, assign a receiver thereof, who shall have all powers of a receiver appointed U/S – CPC, 1908.

When a receiver is duly chosen by civil court in relation to the subject matter of dispute, the magistrate shall direct the receiver appointed by him to hand over the subject matter of dispute to the receiver appointed by civil court, and shall discharge the receiver of his dispute who was duly appointed by him.

Sec – 461 R/W law of executive magistrate

Sec – 147 Dispute concerning right of use of land or water –

Sec – 147 specifies that if an executive magistrate is informed by a police

officer's report or other evidence that there is a dispute likely to result in a breach of peace concerning the perceived right of the user to use any land or water within his local authority, whether that right is asserted as an easement or otherwise, he shall make a written order specifying the reasons for his satisfaction. The magistrate shall then examine such claims, hear the parties, receive all such proof as may be brought by them, understand the impact of such evidence, take such further evidence if it is necessary.

When the magistrate seems to have certain rights, he may make an order preventing any intervention with the exercise of such right, including in the appropriate case, an order to eliminate any obstacle in the exercise of any such right. The order cannot be made where the right is exercisable at all times of the year, it can be made only if that right has been used within 3 months of receipt of a police officer's report or other details referring to investigative institution or when right is exercisable only at certain season or on specific occasion.

If the magistrate considers in any proceeding that the dispute relates to any alleged right of a land or water owner, he may, after having recorded his reasons, start the proceedings as if they had been instituted persuaded to **Sec – 147(1)** and if the magistrate finds in any proceedings initiated pursuant to **Sec – 147 (1)** that the dispute should be dealt with pursuant to **Sec – 145**, he may after having recorded his reasons continue the proceedings **U/S – 145**.

Chapter - XI

Prevention Action of the Police

Sec – 149 – Police to prevent cognizable offences – The preamble of Police Act, 1861 provides for the same as **Sec – 149 CrPC** i.e. to prevent offence or crime. If the offence has been committed then to detect the crime. The powers police are purely executive in nature. If they don't perform his duty then it will be illegal omission.

Sec – 150 Information of design to commit cognizable offence.

If a police officer receives an information regarding that the cognizable offence has to be committed then he has a duty –

- (1) To inform the superior officer.
- (2) Must inform the officer who is on spot. Basic aspect of police is always sharing of information.

Sec – 151 Arrest to prevent commission of cognizable offence – This is the most controversial matter. This power can be used when there was no any other way to preventive arrest (Offence not yet committed).

In many cases in S.C. the Sec – 151 has been challenged and under these judgements S.C. laid down certain guidelines that there will be no misuse of powers U/S – 151, many times Sec – 151 has been challenged as arbitrary and infringing rights U/A – 21.

- **Joginder Kumar v. State of U.P. 1984 S.C.**
- **D.L. Basu v. State of W.B. 1997 S.C.**
- **Ahmad Bhatil v. State of Gujarat 2005 S.C.**

In all these judgements the hon'ble S.C. consider that this is a very dangerous section this can be easily misused.

However, it is for judiciary to ensure that these are not misused. Already the vestiges of British are there in our country and that is the reason why it must be ensured that his law serve the purpose for which it has been written and no to become a bit for its shoes and become a draconian law.

One basic way is to prevent this is **Article – 22**. Any person arrested must be produced to the nearest magistrate within 24 hours of arrest and this is reflected in **Sec – 151 (2)**.

When a preventive arrest is made **U/S – 151** the judicial magistrate is the person who can uphold the fundamental rights as well as statutory rights

of an arrested person if justified the police the law will take its course. If a police officer is not justified then it is the duty of court/ judiciary to protect the constitutional right of an arrested person.

The moment a person is arrested U/S – 151, he has to be produced before a magistrate within 24 hours U/S – 57 CrPC – now the magistrate will get to know that this arrest was warranted or not.

If it is not warranted then he should be released immediately. Warrant means here that the arrest is necessary or not.

Arrest power under CrPC –

- Before the offence i.e. preventive offence – Sec – 151, Sec – 152, 153 Bare Act.
- After the offence i.e. arrest – U/S – 41 CrPC.
 - After the offence was committed.
 - What is offence – prohibited + punishable
 - Cognizable – Non – cognizable

Chapter XII **Information to the police and their powers to investigation**

CrPC –

- Before the offence happens here the role of executive magistrate is important.
- Maintenance Sec – 125 to 128
- After the offence has been committed.

Offence –

- Anything which is prohibited by law or made punishable by law.
 - Punishable is much more important.
- (i) **Cognizable** – move to police station
- (ii) **Non – cognizable** – Can't move to police station but to magistrate.

Cognizable –

- (i) Bailable or non-bailable
- (ii) Summon case or warrant case

When it is bailable then the police shall have to take your bail and if it is non - bailable then you will have to go to the court to get you bail though police can take bail in non-bailable case – U/S – 437 but normally, the procedure is non-bailable cases to go the court.

Police Station – People can move to police station in all cases of bailable non – bailable, summon, warrants.

When an offence committed against a person so right has been infringed that right was that person is not allowed to infringe that right. The right which is prohibited by law so for that person will be punished. Since punish always involve suffering hence, we have to undergo a trial.

In which victim says that accused committed crime and accused deny it.

It means now the criminal justice system starts –

- Offence has been committed.
- Collection of evidence, by two persons -

- (i) Police
- (ii) In complaint case the person himself has to collect evidences.

Ques. Who is police?

Ans. An offence is committed against society is deemed to be committed against state and police represents state in collecting the evidences and to write information and present final report in court as police is trained in all these.

I.e. why (why anybody can start criminal justice system- from society)

Means anybody can register an FIR or anybody put up a complaint.

FIR can be register on summon cases also.

Sec – 154 Anybody can be the informant – FIR – in a criminal justice system he will be called as complainant (Istgara) U/S – 200 If he goes to court.

It is not necessary trial informant only has to be victim

Ques. What is the role of police?

Ans.

- (1) To register FIR
- (2) To collect evidence – investigation
- (3) Final report
- (4) Represent you through prosecutor in trial.

The entire CrPC has been written on the axis of trial.

In C.J.S. it has 3 parts –

- (i) Lodging of FIR and investigation (written in angle of trial)
- (ii) Trial (written in angle of trial)

(iii) Reformation jail (not governed by CrPC but prison Act of State)

Immediately after the offence if it is cognizable has been committed – person should inform to police because delay in registration of FIR, will lead to concoction means lesser the time lesser the change of any embellishment or concoction.

The word FIR has not been used in Sec - 154 but used for 1st time in Sec – 207 (ii)

Sec – 207 supplies to accused of copy of police report and other documents.

Sec – 154 Information in cognizable offences -

Ques. What is the basic object of an FIR?

Ans. The basic object of an FIR is to set the criminal law in motion. The important wants justice, the criminal justice system is started by an FIR (This is from the point of view of informant).

From the police point of view this is basically to get information to start investigation against the alleged criminal. This starts the basic investigation. The FIR since it is beginning it must always be prompt as soon as possible. Whenever a prompt FIR is lodged it signifies that there are lesser changes of embellishment and falsely alleging or implicating any accused and also gives a true picture of the account.

Ques. Is the injured party is allowed to register any FIR or any body else can do so?

Ans. The offence is against the whole society so anybody is allowed to go to police station and lodge an FIR.

Moment an FIR is registered, immediately entries are made in many corresponding registers. FIR is a signed documents – informant can register an FIR orally which will be reduced to writing by the office in

charge of police station or by any on his behalf, FIR can be brought into writing. However, all FIR's must be signed, unlike a complaint FIR need not be under any oath. Infected FIRs are never under oath. Means no need of affidavit.

So, in trial, who lodge the FIR, proves that informant wrong then Sec – 193 of IPC will not be applicable against him.

- The FIR must be registered as soon as possible.
- The police station can't say no to registering FIR.

Person goes to P.S. – preliminary inquiry – proceed with FIR.

Landmark Judgement – **Lalita Kumari v. State of U.P. 2013 S.C.**

- In some judgements like **state of Haryana v. Bhajan Lal 1992**
- **Ramesh Kumari v. State of N.C.T. of Delhi (2006)**
- **Prakash Singh Badal v. State of Punjab (2007)**
- It was held that immediately after receiving information the police station must register an FIR.
- In some judgement it was held that police can do some preliminary inquiry like in

Shashikant v. C.B.I. (2007)

Rajender v. Administration of Chandigarh (2007)

- Thus, there are two views regarding registering FIR.
- Thus, the matter was referred to 5 judge benches i.e. constitutional bench in case of Lalita Kumari's case.
- Here in this case, they devilled upon the word 'shall' in Sec – 154 and said before the word 'shall' no word of like 'reliable', 'reasonable', 'credible' mentioned. So, police work is not to check that is it reliable information or not. So 'shall' not mean reliable or not.

In which it was held that whatever 'shall' word is used in any statute it means there is no discretions left to the party or to the court to take any other interpretation.

243rd can commission report -

This report of law commission did not make this clear that whether FIR to registered immediately or not or is it mandatory or not. Thus, somewhere S.C. lamented but then legislature made a Section – 166A of IPC which came after amendment 2013 of IPC.

Sec – 166A lay down that if a public servant fails to record any information given to him U/S – 154 (1) of CrPC in relation to cognizable offences punishable under rape, acid, outraging of modesty, provision of IPC. He shall be punished with imprisonment not less than 6 months and may extend to 2 years + fine.

It means registration is mandatory in all cases of cognizable matters but this **Section – 66A** also provides for the punishment for non-registration of FIR in these mentioned cases.

Hiralal v. State of U.P. 1973 S.C. – 1st rule of interpretation is literal rule of interpretation as liberal interpretation is an exception. Thus the 'shall' word to be interpreted as mandatory.

Information to – police – write in daily general diary (rajnamcha) and it says that they had reduced the information in writing U/S – 154.

So, police used to take this excuses that they will reduce in FIR when police seem fit, so, S.C. discussed –

General diary – write, whatever happening in police station and this mentioned **U/S – 44 of the Police Act 1861**.

So, S.C. discussed this that this is completely unfounded. As general diary (Rajnamcha) covers anything which comes to P.S. Law U/S – 154 talking about reduced into writing in form of first information report not talking about general diary.

Thus, it is clear that registration of Fir to be done in FIR register.

The cognizable information is 1st written in general diary then preliminary inquiry then registration of FIR is completely unfounded interpretation – Lalita Kumari case general diary is something else it is not the major document for registering FIR.

Madhu Bala v. Suresh Kumar 1997 S.C.

It was held by S.C. that FIR must be registered in an FIR register which is blank book register containing 200 pages same was held in case Bhajan Lal.

Ques. What happens if police do not register an FIR? When preliminary inquiry to be conducted?

Ans.

- (i) Matrimonial matter Eg: U/S – 498A.
- (ii) Matters relating to C.B.I. i.e. corruption by Judge, IAS etc
- (iii) Matter regarding medical negligence.

All of the above are mentioned in the Lalita Kumari case.

Territorial Jurisdiction does not matter in registration of an FIR.

Zero FIR – all FIRs are numbered, but the FIR which is not pertaining to the territorial FIR will not be given any number and after registration it will be sent to the concerned police station. After receiving the FIR, the concerned police station assigns the serial number to that FIR and get it converted to regular FIR.

Thus, the concept of zero FIR also flows out of the 'shall'. Technically, this word zero FIR is not used anywhere.

Cross FIR/ Counter FIR –

Eg: A goes to B's house with an intention to murdering him and fires at B out of misfire B hit A with Lathi. A goes to P.S. and lodges an FIR

against B. B also goes to P.S. and register another FIR against A.

The circumstances and the incidents are the same but these are two opposite parties so, the FIR registered by 2 separated parties on same incident is known as cross FIR.

Every FIR ends in a separate final report and two separate trials that are to be taken, but the trial to be held together because the witness, are same (trial not merged, but held together)

Confessional FIR –

- If an accused himself goes to police station and register an FIR that he has committed an offence. This is a confession FIR. A confession FIR can't be used against accused because it is hit by Sec – 25 IEA. A confessional FIR has no value. It can be taken as conduct U/S – 8 IEA. It can't be used for corroboration.

Ques. Can an FIR be used as dying declaration?

Ans. Yes, in certain cases where a person who is dying, the police or anybody records a dying declaration and after that the person dies. This dying declaration can become an FIR but only in such cases.

Eg: A was dying and B police officer was near to the spot and recorded the declaration. What is said by A and as B said to A to again whatever speak to B, to the doctor that whatever written by B is true and also signed by A. So, it can be corroborated of the statement before the doctor.

(Evidentiary value of an FIR)

Dharampal v. State of U.P. 2008 S.C. – The injured person before his death himself dictated the FIR to police it was read over to him and he put thumb impression same such a report to the police is dying declaration U/S – 32 IEA.

v.v. IMP FIR is not hit by Sec – 162 CrPC because FIR is not during investigation even investigation starts from FIR. So, Sec – 162 CrPC says that any statement taken by police during investigation can't be used for any other purpose except contradicting not for corroboration.

Contradicting and corroborating – Statement given to police by a person and if that goes to court and give same statement to the court under oath it is corroboration – but if that person had given some other statement to police or other statement court – it means wither he was lying earlier or later now these are contradicting statements.

(These are corroborating statement)

Police statement can't be corroborating but only for contradicting.

1. FIR is not hit by **Sec – 162** – it means now the FIR is not only for contradicting but for corroborating purpose also.

Eg: An informant signed an FIR, when he goes to court and says same thing whatever he has written in FIR, now the court while writing the judgement can say that his informant was steadfast. Whatever he wrote in FIR the same thing he had here under deposition even when cross examination took place, he was steadfast as he had not changed his statement. So, it can be said that he must be telling the truth.

So, the maker of an FIR can be contradicted **U/S – 145 IEA** or corroboration **U/S – 157 IEA**.

- **Damodar Prasad v. State 1972 S.C.**
- **K. Joseph v. State 1973 S.C.**

2. However, it cannot be used to contradict other witness or to corroborate other witness. **Kumar Prasad v. State of M.P. 1992 M.P. H.C.**

Ques. Can FIR be used to discredit the testimony of other witnesses/ people?

Ans. FIR can't be used to discredit other people. George v. State of Kerala 1998 S.C.

In other words, an FIR is the document only of the maker/ of the informant. It can't be used for any purpose viz-a-viz other witnesses.

Ques. Is FIR a substantive piece of evidence? Can a FIR be sole basis of conviction?

Ans.

Harkirat Singh v. State of Punjab 1997 S.C.

The FIR could be used for contraction or corroboration but can't be used as substantive piece of evidence.

Utpal Das v. State of W.B. 2010 S.C.

Magesh v. State of Karnataka 2010 S.C.

- An FIR is not a substantive piece of evidence. It can be used only for contradicting or corroborating the maker of FIR. But if the FIR is a D.D. (32 of IEA) then can be taken as subject matter.

Ques. What are the content of an FIR?

Ans. State of U.P. v. Krishna Master 2010 S.C.

Raja v. Uttarakhand 2003 S.C.

In an FIR, we must have material fact.

Ques. What is material fact?

Ans. That who were witness and that a what role they played. These are basic things which must be in a FIR.

An FIR is not supposed to be an encyclopedia of events that is why minute details are not necessary but major facts must be given.

Omission of material facts amounts to material discrepancies and thus amounts to contradictions as per explanations of Sec – 162 CrPC. Thus, it can't be reliable.

All FIRs are first information which means they carry a presumption of truth, therefore if any person went to advocate before filing an FIR, it indicates that such FIR is not law and are containing embellishments and concoctions.

Omit of material fact –

- Witness
- Parties
- Facts of case

So, if I omit to give this information will amount material discrepancies which are contradiction yourself. So, court can't rely on you.

- Mere because the informant contradicts his own FIR that perse is not enough to throw the entire trial out of court. FIR is a very important aspect.

Ques. Where FIR is not proved the informant contradicts himself whether this would lead to acquittal?

Ans. This matter came up before S.C., merely because an FIR is contradictory or not proved that is not enough for acquittal. The case depends upon many evidences which are produced by prosecution even if the informant does not come, even non-examination of informant cannot lead to an acquittal.

Krishna Mochi v. State of Bihar 2002 S.C.

An FIR is the 1st version of incident which is received by police for the 1st time. The statement given by FIR carries more weight than any other statement though it is not a substantive piece of evidence that is why we can't take presumption of truth we can't take any legal presumption.

Ques. What is the effect of delay in an FIR?

Ans. Whenever the FIR is lodged as quickly after the incident there are lesser chances of concoction, adding things i.e. embellishments. The chances of embellishments reduces whenever there is a quick FIR.

Whenever, there is a timely report is loose out to a large extent changes of embellishments, false, implications of people, it can't be presumed but it can be said that there is a less chance to concoct.

The story given in FIR must be authentic and truthful.

Ques. If there is a delay does it means to say that delay in FIR must be false?

Ans. Delay can be of few hours, one day, few days, even months. The basic law of delay is that in the delay is sufficiently explained then delay will have no effect on sanctity of an FIR.

This matter was clarified by S.C. in case – Ram Kumar v. State of Haryana 1995 S.C.

Harpal Singh v. Davinder Singh 1997 S.C.

In this case the persons went to hospital to save the life of victims who was very seriously injured this resulted in delay in FIR. It was held that this was reasonable delay.

Subbah Rao v. P.P. High Court of Andhra Pradesh 1997 S.C.

In this case, witness, saw a very ghostly murder they wanted to save their lives and hide themselves in darkness. The next day when they become safe and then went to police station and lodged an FIR. It was held that it

was a reasonable delay.

Sanjeev Kumar v. State of Punjab

Where the victim's father was busy in arranging blood as there were immediate operation and father was sitting outside operation theatre and after the operation got over and his son died in operation, he then went to police station and lodged an FIR. It was held by Hon'ble S.C. that delay was sufficiently explained.

Satguru Singh v. State of Punjab 1997 S.C.

There was delay of 10 days and there was no tangible explanation, no benefit of doubt could be given this delay was very bad for the case.

Sahib Singh v. State of Haryana 1997 S.C.

There was delay of 6 hours but it was seen that the delay was deliberate to the point that what should be given in FIR and who should be saved or not or whose name should be added. This delay was seen to be fatal to the case.

Dalvir Singh v. State

The injured person refused to speak anyone till his father came and the father came much later and after the father came then only the FIR was registered. It was held that many times the children only want to speak their parents, it is considered sufficiently explained.

Daya Yadav v. State of Bihar 2003 S.C.

Where the P.S. was about 5 K.M. from the place of incident and it took them 4 hours to reach the P.S., it was held that it is sufficiently explained. Thus, delay if satisfactorily explained is not fatal to the case.

Ques. What about delay in cases of rape?

Ans. As far as case of rape are concerned, India stands of a different footing then the other country as there is a lot of honor involved of the family and many times there are lot of delays, delay in lodging an FIR in sexual cases can always be acceptable.

Om Prakash v. State of Haryana 2011 S.C.

Gang rape, the girl (young and poor) was under going into a trauma and she was not even prepared to speak to her family members. It was only after few days that she was able to talk to her parents even though many days were passed the S.C. held that it was a reasonable delay.

Vidya Dharam v. State of Kerala (2004 S.C.)

There was case of outraging the modesty of a woman and the FIR was lodged after 2 to 3 days the S.C. held Kerala is a very tradition bound society there is hesitation in women to report such crimes as of evident embarrassment the delay is properly explained and it is not fatal.

State of U.P. and Major Pandey (2009 S.C.)

The moment normal rule is that the prosecution has to explain delay and no prejudice because of such delay has been caused, does not apply per se to rape case. The S.C. laid down a rule in this case.

Satyapal v. State of Haryana 2009 S.C.

It was held that delay is the natural phenomena in rape cases and it is not of major significance ordinarily the family of victim would try to avoid stigma for the unfortunate victim.

In this case, the girl kept quiet and family kept quiet until it was realized that the girl became pregnant because of rape then they register an FIR. It was held that delay is explained properly and reasonable.

There is no time limit for lodging an FIR because there is delay in lodging FIR. There is no legal reason to throw out the case. - **Om Prakash v. State of U.P. 2009 S.C.**

Harbans Kaur v. State of Haryana 2005

Even if there are long delay and witness (not victim) now lodges an FIR, if the witness had no motive to implicate the accused and gives plausible reason for delay, even then delay is sufficient explained.

Cryptic FIR -

Anonymous Telephone case – eg: received a call and say there is dead body then phone cut.

A cryptic or anonymous telephone call or a message which does not specify the details can't be treated as an FIR or even if he specifies his details then this is not an FIR.

- **Soma Bhai v. State of Gujarat 1975 S.C.**
- **M. Mahto v. State of Bihar 2002 S.C.**
- **B.K. Singh v. State of Bihar 1997 S.C.**

The object of these crypto messages is not to register an FIR, basically the object of such call, message is to make the police to go to crime scene.

When the police go to spot and find there is a dead body then it sends a message to police station i.e. 'Rukka' becomes FIR.

- If P.O. send a 'rukka', he became the complainant, so, he cannot investigate the matter.

So, now police become the informant – even dead person is not identified – it will not any bad effect on FIR.

- **Thaman Kumar v. U.T of Chandigarh 2003 S.C.**
- **T.T. Anthony v. State of Kerala (2001 S.C.)**

Vague phone call or telegram is giving only vague information can't treated as an FIR.

- FIR does not follow the investigation. But the investigation follows as the FIR.

Ques. What happens when police go to spot and starts investigation.
Can that investigation be the FIR?

Ans. No,

Patai v. State of U.P. (2010 S.C.)

A cryptic message recording an occurrence cannot be termed as FIR. In order to be message or communication, information to be recorded as an FIR or qualified for an FIR there must be something in the nature of complaint or accusation or at least some information of crime given with the object of setting the police or criminal law in motion. It is not necessary that FIR should contain minute details or the name of the offenders but at least some information about the crime and the object must be very clear to set the criminal law in motion.

Ques. Whether FIR is a public document?

Ans.

Jayant Bhai v. State of Gujarat 1992 Guj H.C.

FIR is a public document as the accused is entitled to have certified copy the denial of copy to accused even after payment would be against the principle of natural justice and would be violation of Article – 21.

Even the accused can ask the certified copy U/S – 76 of IEA, because this is a public document.

Sec – 154 Information in cognizable cases.

- For FIR, use the word informant
 - FOR complaint, use the word complainant.
1. The informant comes to P.S. to register an FIR.
 2. If the officer in charge of the P.S. somehow does not register the case, then that person can always send by post in writing to the superintendent of police. If the superintendent of police is satisfied that such information discloses a commission of cognizable offence then either he will investigate the case himself or direct an investigation be made by any police officer sub-ordinate to him.

Sec – 155 Information as to non-cognizable cases and investigation of such cases –

- 1) In case of non-cognizable offence; the police may enter the information in the general diary and direct the person to go to magistrate who is competent to try it.
- 2) In case the magistrate asks him to investigate any non-cognizable matter, then the police man is having all the powers which he has in the cognizable case except to arrest without warrant.
- 3) In case, the FIR registered on some cognizable and other non-cognizable offences then he can register an FIR and he can investigate as if the non-cognizable offence as a cognizable. But, without warrant he can't arrest.
- 4) In case, where he investigates and finds that the cognizable offence has not been committed. It is only the non-cognizable offence which has been committed then final report of police officer will be converted into a complaint (U/S – 200 CrpC) and he will be deemed to be the complainant.

He will now go on to Sec – 156 – as Sec – 156 marks the beginning of the investigation.

Sec – 156 – police officer's powers to investigate cognizable case -

The right to fair investigation is contained in right to fair trial and right to fair trial is right to life. This thing was clarified by S.C. on **Zahira Sheikh v. State of Gujarat (2006 H.C.)**

No, permission is needed from any court to start any investigation.

There is no right to the victim to choose any investigation agency. Thus, there is no right to insist the choosing of any investigation agency.

C.B.I. v. Rajesh Gandhi 1997 S.C.

It was clearly held that no one can clearly insist that an offence should be investigated by a particular person or a particular agency.

Ques. Can C.B.I. be ordered to investigate?

Ans. The power to get an investigation conducted by C.B.I. is outside the powers of magistrate, no magistrate can order, investigate by the C.B.I. However, the S.C. or the H.C. can use its powers under **Article – 136 COI** or **Article – 226 of COI** and in the interest of justice they can order investigation by C.B.I. However, the S.C. has been very firm on this point that in case the H.C. orders investigation by C.B.I. it has to be in rare or in exception cases otherwise the C.B.I. would be flooded with a large number of cases and will not be able to investigate all of them.

Secretary minor irrigation and rural engineering services **U.P. v. Sahngoo Ram Arya 2002 S.C.**

S.C. held that although the H.C. the power under **Article – 226** to order C.B.I. inquiry, this should be not only in rare and exceptional cases, the material must prima facie be disclosed that justice can't be done until the matter handed over to the C.B.I. and very clearly the S.C. laid down this aspect that C.B.I. inquiry can't be ordered as a routine merely because the parties is making any allegation.

Any police officer who is sending a 'rukka' or who is the raiding the party should not investigate. This matter came up before Bombay H.C. in **Meena Gopal v. State of Maharashtra 1993 Bom H.C.**

State of Raj. v. Raj Kumar Aggarwal 2013 S.C.

This is very wrong practice it is always risky to encourage the witnesses to give the statements through affidavit. The police can always induence the witness.

Navin Chandra v. State of Meghalaya 2000 S.C.

We have seen that police parties take financial assistance from the parties to meet the expenses of investigation. The S.C. held that this amounts to outside interference and all police investigation must be completely free from any extremist circumstances or assistances. Investigation should be free and fair.

The order of investigation should be given by the highest courts as it is a serious matter.

P & H Bar association, Chd. v. State of Punjab 1994 S.C.

Reopening of a matter is a very serious matter and there is prima facie that there is clear evidence that investigation was wrong, otherwise there should be no reopening of an investigation.

Jayant Vitamins Ltd. Chaitanya Kumar 1992 S.C.

Once fix has been registered and suppose the FIR does not disclose any offence or it is proved that the FIR has been registered malafidely then the police does not have any power to quash an FIR, session court magistrate, etc. also. Quashing is not a matter dealt under CrPC and that is why only resource is to use the inherent power of the H.C. U/S – 482 CrPC.

Megha Singh v. State of Haryana 1995 S.C.

In this the S.C. held that the complainant should not investigate. In other words where the police officer is the complainant he should not be investigating because whenever a complainant investigates there is always the fear about unfairness and impartiality on the investigation and hence any police officer who becomes informant then he should not be investigating himself.

156 (2), 156 (3) Bare

Ques. What is the meaning of 'such an investigation'?

Ans. Suppose an informant went to the P.S. U/S – 154, P.O. refused to register FIR, now he went to the S.P. – H.C. refused, now if he goes to the magistrate U/S – 156 (3) then the magistrate can order for lodge of FIR, now magistrate need not to write but order and write please take necessary legal action and send to police – It is sufficient, why? – Magistrate is not taking cognizance; he just orders to lodge the FIR to P.S. as he sees the matter prima facie.

Sec – 156 (3) 'such an investigation'

Sakiri Vasu v. State of U.P. (2007)

Ques. 'Such an investigation' can include the interference of magistrate in investigation?

Ans. 'Such an investigation' means if the police is not registering an FIR, then the magistrate can order such an investigation.

Here the role of such magistrate is NIL during such an investigation. The magistrate had to wait until the final report U/S – 173 was put before him, then he can apply his mind.

UOI v. Prakash Hinduja 2003 S.C.

It was observed that a magistrate can't interfere with the investigation by the police.

Ques. Is magistrate a mute spectator?

Ans.

Sakiri Vasu v. State of U.P. 2007 (D.B.)

The S.C. held that if magistrate is not allowed to interfere then in that case it is against justice. The magistrate should be allowed to monitor the investigation. If the investigation is in the right way then the magistrate can't interfere but if it is not going in right way then the magistrate can interfere. How magistrate monitor the police?

Whenever an investigation goes wrong the magistrate can always question to the I.O. – that is why he has not done so or why he has done so?

Suppose the magistrate is monitoring and now he finds that investigation is not proper.

Ques. Can he order further investigation U/S – 156 (3)?

Ans. Because further investigation is U/S – 173 (8).

Now whether word 'such an investigation' includes further investigation during investigation before final report? Now the S.C. says yes as to so used the **Doctrine of Implied power**.

Sometimes, all details can't be inserted by legislation by intimation if we were not allowed to imply things legislations would be an indeterminable procedure and legislative intend would be defeated by omission. (It is not necessary that legislature will clean everything word by word so we have to use imply power)

- **UOI v. Paras laminate 1991**
- **RBI v. Peerless General Finance and Investment Co. Ltd. and others 1986**

Were referred cases in which it was said that doctrine of implied power is used.

Chief executive officer Gujarat maritime board v. Haji Dard (1996 S.C.)
J.K. synthetics v. Collection of central excises 1996

Thus, the doctrine of implied power is impended with these simple looking words i.e. may order investigation and now it is given a huge expanse, may order such an investigation means –

1. In case no FIR was registered by police and a magistrate may order registration of FIR.
2. In case the police is not conducting the investigation at all, the magistrate can interfere and may even order for further investigation even before the final report U/S – 173 CrPC has been put up before him. But however, that magistrate can't order that so, and so investigating officer must investigate, he can't change the investigating agency.

Ques. Does a judicial magistrate has a powers U/S – 156 (3) to direct

further investigate Suo Moto?

Ans.

- (i) Yes, the magistrate has powers U/S – 156 (3) to direct further investigate Suo Moto.
- (ii) Where a magistrate has taken cognizance U/S – 190 CrPC the investigation was complete and the final report U/S – 173 was put up, magistrate went to next step and taken cognizance and has called accused for trial – trial is about to begin. After taking cognizance, it comes to notice that further investigation is needed there is no provision of further investigation after Sec – 173.

Lot of S.C. Judgements says no – further investigation can't be ordered as there is no such provision.

Vinu Bhai Hari Bhai v. State of Gujarat 2019 S.C.

This judgement overruled all the previous judgement U/S – 156 (3) – nowhere does it write that only before 173th court.

Can order such an investigation so such an investigation is such a wide term, it is not to be only limited during investigation – 156 (3) can be applied even after taking cognizance U/S – 190 of CrPC.

Investigation – Sec – 2 (h) Definition R/W – 173 (8)

R/W – Sec – 156 (3)

P.O. can investigate which offences – 157.

- (i) Cognizable case
- (ii) Offences which should not be barred by any law. Eg: particular offences must be investigated by the D.S.P. but not sub-ordinate to him.

A magistrate can order further investigation any point of time till the trial starts – after trial he can't order for further investigation. – **2(h) R/W – 173 (8) R/W – 156 (3) of CrPC.**

- Sec – 156 (3) is a revisable order.

Now, 4 ways to lodge FIR –

1. 154 (1)
2. To S.P. – 154 (3)
3. 156 (3)
4. 157 (1)

Sec – 157 Procedure for investigation -

Otherwise – means police itself is the informant here the word forthwith, came to Supreme Court for consideration in case of **Alla China Apparao v. State of Andhra Pradesh (2002 S.C.)**. The word forthwith basically means without any reasonable loss of time without any unreasonable delay which means a copy of FIR will be sent to the magistrate immediately as soon as possible even at the house of magistrate and if the magistrate leaves then duty magistrate leave then duty magistrate will receive the FIR + case diary also.

A delay in sending an FIR does not ipso facto vitiate a trial but if other things are also wrong then a delay also will now go a long way in giving a suspicion on the correctness of trial.

The officer in charge of police station is under a legal duty to register any FIR in case he receives cognizable offence's information but sometimes, (he has to register a cognizable offences), the offence is trivial, there is no sufficient ground to continue such investigation.

Ques. What to do in these cases?

Ans. Proviso of Sec – 157 the officer in charge of P.S. can stop/ refuse investigation.

Ques. Under what condition police refuse to investigate the case?

Ans. Proviso (a) of Sec – 157 (b)

Ques. What should be the checks and balance of finding the trivial matter?

Ans. Sec – 157 (2)

The checks and balance were given U/S – 158 & Sec – 159. Reports of reason for not conducting investigation will be send to senior P.O. or also to the magistrate may be through the senior P.O. by directly himself. Now magistrate will decide that this matter is trial or not.

Sec – 158 Report now submitted –

Sec – 159 such magistrate receiving such report (regarding proviso)

May direct an investigation 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.

Sec – 159 – Power to hold investigation or preliminary inquiry –

The magistrate can conduct the inquiry himself and now come to the conclusion or may depute a lower magistrate, so all options are available to such a magistrate, he can redirect the police officer – regarding no closure and continue the investigation.

Sec – 157, step 2

- Moment the FIR has been registered, a copy of that FIR should be sent to the magistrate as soon as possible + case diary.

Step – 2 –

Police will go to spot – (trained police officer) to investigate the fact that place of occurrence should not be disturbed at all.

Even CrPC recognize this as a duty of police officer to proceed to the spot.

Investigate – collection of evidences.

No, where or under no law is the word 'shall arrest'.. always 'may arrest'

Chapter – V

Arrest of Persons

The topic of arrest is Anglo Norman is origin. The word arrest has been originated from the French word i.e. Arret.

Halsbury laws – Arrest consist of actual seizure or touching of a person's body with a view to his detention.

Ill report of national police commissioner which quoted in case of Joginder v. State of U.P. by S.C.

Sanchin Saini v. State of U.P. (2021)

In this case, the Hon'ble Allahabad H.C. held that arrests in India are the Prime source of corruption and court held 60% of the arrests are unjustified because of those unnecessary arrests 43.2% unnecessary expenditure is incurred by jails.

Ques. Why arrest is the considerable topic to S.C., H.C. arrest in CPC – arrest of defendant/ judgement debtor CrPC – Preventive arrest i.e. **Sec – 151**

- Arrest after the offences has been committed i.e. arrest in chapter V.

Basically, arrest is to prevent a person –

- (a) To commit an offence that is why arrest powers are given to the public sec – 43.
- (b) By magistrate may also arrest U/S – 44.
- (c) By police Sec – 151, Sec – 41

Arrest of a woman has been treated differently U/S – 46.

Article – 21 – is a fundamental right against the arrest right to life and liability. → for the protection of liberty is provided but Article – 22 was made to liberty is not talked much provide the grounds of arrest.

- Person arrested to be produced before magistrate within 24 hours.
- To appoint a legal practitioner for defence.

Hon'ble Justice Karishna Iyer – coined a term Bail and not Jail. In other words, arrest is the last resort.

Jagjeet Singh v. Asish Mishra 3 Judge Bench 18 April 2022.

1. Victim has a right to heard – this is in consonance with the concept of victimology. That is bail should not be granted to accused.
2. There is no need to go to the merits of the case only to focus on prima facie facts/ things. The right to bail is basically a balance between individual's fundamental right v. public right.

Where public right wins – No bail is to be granted.

- If fundamental right overrides the public right, then the bail is to be granted.

The arrest law in India has been draconian that is the reason why it was imperative that all the agencies gather to save a common man from the wrongful arrest. It is always imperative that all agencies must join hands to ensure that the most fundamental rights in Article – 21 and 22 are insured of not infringed.

Agencies got together -

1. Hon'ble Supreme Court and Hon'ble H.C. courts.
2. Because of the relentless efforts by the Hon'ble Courts.

The legislature passed many amendments in Ch-V.

The most important amendment is the **CrPC Amendment Act, 2008**, i.0065. Sec – 41, 41A, B, C, 49, 50, 50A (2005), 51, 54, 55A, 58, and 60.

In wrongful arrest - no arrest is shown is the real problem and even 3rd degree tortures were used, that's why.

D.K. Basu and Rini Johar v. St. of M.P. (2016) S.C. held that a police officer should be held accountable but police must be made to pay for the wrongful arrests.

Paramvir Singh Saini v. Baljit Singh (2020 December)

In this Hon'ble S.C. gave directions to install video cameras at the places of interrogation and this data has to be preserved for 18 months minimum.

Shafi Mohd. v. State of Himachal Pradesh (2018 S.C.)

Court said that it is recommended that crime scene to be video graphed also.

So, there have been constant efforts and slowly we can say some changes are coming what was earlier a black law now is under the sharp scrutiny of senior courts of country and no police officer can imagine itself to get away free if he is blankly violating and fundamental rights by not arresting and using 3rd degree torture.

Sec – 41 When police may arrest without warrant: -

Chapter – V comes into existence when the person already has committed offence.

Sec – 41(1) – Arrest is without warrant or without any order from a magistrate that means Suo Moto arrest by police after Suo Moto arrest without warrant can be divided into two parts:

- Preventive in nature

- After an offence has been committed (U/S - 41)

(a) Who commits, in the presence of police officer, a cognizable offence
– (affected by 2008 Amendment Act)

Now offence which are punishable up to 7 years.

(b) Only the police officer will not be in a hurry to arrest such person,
unless the grounds are which are given here are met with: -

That person can't be arrested, arbitrarily.

(i) The police officer has reason to believe on the basis of such
complaint, information, or suspicion that such person has
committed the said offences.

After arrest that person shall be produced before magistrate within 24
hours under the Sec – 57 CrPC.

v. IMP Arnesh Kumar v. State of Bihar 2014 S.C.

Duties of the police and magistrate –

Authorizing detention without recording reasons as aforesaid by the
Judicial Magistrate concerned shall be liable for departmental action by
the appropriate High Court.

Guidelines:

All state govt. is will instruct their police officers not to automatically
arrest when a case of **Sec – 498A** is registered but to satisfy themselves
about the necessity of arrest. Now, the question arises that **Did Arnesh
Kumar only dealt with 498A?**

This very S.C. judgement makes it very clear in the last line that those
directions shall not apply only to the 498A but also in such cases where
the offence is punishable with imprisonment up to 7 years.

1. All police officer be provided with the checklist containing sub-clauses under Sec – 41 (1) (b) (ii)
2. The police officer shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest.
3. The magistrate which authorizing the detention of accused shall pursue the report furnished by police officer in terms aforesaid and only after recording its satisfaction, the magistrate will authorize detention.
4. The decision not to arrest an accused, be forwarded to the magistrate within 2 weeks from date of institution of case with a copy to magistrate which may be extended by superintendent of police of District for reasons to be recorded in writing.
5. Notice of appearance in terms of Sec – 41A of CrPC of served an accused within 2 weeks from the institution of case, which may be extended by S.P. of District for the reasons to be recorded in writing.
6. Failure to comply with the directions aforesaid shall apart from rendering police concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before H.C. having territorial jurisdiction.
7. Authorizing detention without recording reasons as aforesaid by judicial magistrate concerned shall be liable for department action by appropriate H.C.

Sec – 41A R/W Sec – 41 (1) – If person is no need to arrest then notice of appearance

Notice of appearance before police officer -

(ba) The restrains are only available in the offences which are punishable up to 7 years not available on offences which are punishable with more than 7 years of imprisonment.

3. Who is a proclaimed offender.
4. Who has stolen property in his possession.

5. , (f)

Ques. Can a police officer arrest any person outside India?

Ans. Yes, (g) provided that he can be extradited for that offence.

(h) (i)

Ques. Is this section exhaustive?

Ans. Arrest powers are not only given in Sec – 41 many local and special laws give powers to arrest. Thus, Sec – 41 is not an exhaustive law/Section.

Sec – 41B, Sec – 41C, Bare

Sec – 41A→Safe guards Section – Inserted by 2008 AA.

Sec – 41D Right to arrested person to meet an advocate of his choice during interrogation.

Sec – 41D basically recognizes the right of a person to be represented by a pleader.

Ques. At what stage the arrested person to be represented by pleader?

Ans. As arrest is the violation of basic fundamental right of life and liberty. Article – 22 deals with the right to be represented by pleader of his own choice starts right from the moment when the arrest takes place. But, not throughout the investigation the arrested could meet.

Sec – 42 – Arrest on refusal to give name and residence.

The police can arrest the person only if he has committed a non-cognizable offence in presence of police officer and then refuses to give his name and residence to such police officer or gave fictitious name or address.

So, this arrest is not for the commission of offence but for refusal to give

name and residence on the demand of such P.O.

Ques. When can a P.O. arrest without warrant in a non-cognizable offence?

Ans. But, if the person discloses his identity wrong to P.O., then P.O. can arrest.

Ques. Under what circumstances can a private person arrest without warrant?

Ans. If the accused is committing any offence (non-bailable and bailable) in his presence.

If that person is any proclaimed offender, use the principle of natural justice –

Sec – 79 IPC and act done by a person justified, or by mistake of fact believing himself justified by law.

Suppose private person arrested a person in bailable offence then private person holds to prove that it was mistake of fact or not. So, court have to take lenient attitude. So, if any served the society and court punish them for that trial matter then nobody going to arrest so, that why court goes ver lenient in this matter. Because public interest is above to individual interest.

Ques. When a police officer can be re-arrest a person?

Ans. Sec – 43 (2) (2 times arrest) –

1. By P.O.
2. By private person

Sec – 44 (2) – If magistrate's gun man said about the person whose arrest is necessary then magistrate order to arrest and now that person can be produced before that magistrate who ordered to arrest (i)

magistrate is not complainant.

Sec – 46 Arrest how made –

While arresting a person normally the police touch the person and says that you are under arrest.

In case of female, a male police officer can't touch her as then it should be done by a woman officer.

Arrest: Custody: Detention

Arrest: To put a person into confinement arrest can be in many ways –

1st differentiate between formal arrest and custody (formal).

So, arrest leads to custody which can be both formal and informal.

Detention: It is not sure that whether that person has committed the offence or not.

So, there is an investigation after arrest or taking that person into custody. If the police have been convinced that the person has not committed the offence then the police will release that person. That's why they are detaining but if it is convincing that the person had committed the offence then that person to be sent in the judicial custody.

In police custody i.e. the word used is detention, arrest leads the custody.

Formal arrest or formal custody is different from informal arrest or informal custody.

3. Here death or life imprisonment not to be read separately. In CrPC, 'arrest' word is basically used for formal arrest which leads to custody. So, always the word used is police detention.

Ques. Can a police officer shoot to kill?

Ans. Whenever police take the life of anybody, it has to be either bound by law (Sec – 76 IPC), justified by law (Sec – 79, IPC), Sec – 100 of general exception Sec – 103, or 106 Sec – it must fall within any of

these exceptions. Sec – 46 is justifying but it has to be in good faith. The burden of proving is upon police officer to prove that he had taken reasonable care and caution.

Ques. Was killing necessary?

Ans. Force can be used while arresting that person but killing is not necessary if the offence is punishable with death or L.I. only then that P.O. can cause death, but that death is only in case justified by good faith. (**Dakhi Singh's case**).

Sec – 47 – Search of place entered by person sought to be arrested: 1, 2, 3, bare act

Ques. Can Sec-47 be used to enter into any religious place?

Ans. There is no bar that police cannot enter into any religious place.

Ques. Do any need to take permission of court is required to enter into religious place?

Ans. No, there is no need to take permission of court as there is no bar in entering the religious place.

But police must utterly respect the religious place, take off shoes if need, belt, respect the idol. Because we are not British police.

Sec – 48, pursuit of offenders into other jurisdiction Sec – 49, no unnecessary restraint.

The offenders not to be treated as animals and that is the reason why right to life must be respected even though the person is accused.

However, when he is arrested, he should not ordinary be handcuffed, nor should be unnecessary subjected to unnecessary iron or even tying with long ropes.

Ques. Whether a person to be handcuffed or not?

Ans. As a general rule the answer is no. It is only in special circumstances where they find that the offender is of dangerous nature and it is imperative that he is to be putted under handcuff. In such cases, it is always advisable for the police to write the reasons before taking that person into handcuffs in 'Roznamcha'.

It is the duty of advocate that when their client or accused is produced in handcuffs, he should object there at that time because Sec – 49, gives lot of power to advocate to object their handcuffing.

There was the Punjab police rule which basically was a rule that all person to be taken to court must be handcuffed. This rule was struck down by S.C. as violative of Article – 21. So, there is no necessity under taking any person in handcuff.

Sec – 50, Bare

Sec – 50A, Bare → **This Sec** – deals with the right of an arrested person. It is the reflection of Arnesh Kumar there is no law in India which allow 3rd degree method (custodial torture) for the purpose of investigation. After the person is arrested there is no provision of force. So, even if the police give 1 slap, he will be liable for custodial torture. (causing hurt in custody)

Sec – 51, search of arrested person –

1. If a person is arrested U/a non-bailable warrant or u/a warrant which provides for taking a bail but the person arrested cannot furnish bail and whenever a person is arrested without warrant whether it is a non-bailable offence or even if it is bailable offence or even if it is bailable offence but where the accused is unable to give his surety/ security then the 1st step of the officer making arrest 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. -> accused can ask as matter of right when he released.
- Other than necessary wearing apparel.

For the articles seized to receipt shall be given to such person showing the articles taken in possession.

2. The search of female the search shall be made by another female with strict regard to **decency** in closed walls → (no male officer can conduct search on female)

Advantages of Sec – 51 -

1. There is no way of implanting any object on that arrested person.
2. If there any incriminating object on that person that can be immediately retrieved.
3. If there is something by which that person can harm himself/ herself during custody that should be retrieved.

Weapons need not be unlicensed weapon it could be licensed also or it may be simple 'kirpan' all these taken to be record, this have to ceased or in the arrest memo they have to be noted and produced before the magistrate.

Sec – 52 Power to seize offensive weapon –

Sec – 53 – Examination of accused by medical practitioner at the request of police officer -

This Sec – directly comes into conflict with the fundamental right i.e. right to privacy, right to privacy has been taken as a part of right to life as per the latest S.C. judgements.

The question arises that whenever the offence is such –

Suppose there is scuffle (as far as rape cases are concerned – is covered – U/S - 54) and examination (medical) leads to evidences as to the examination of accused's body (at the time of fight, skin come into the nails) will lead important evidences then such a medical examination can be ordered.

Ques. Is this order of medical examination, violative of the fundamental right of privacy?

Ques. Whether forcibly medical examination is violative of **Article – 20(3)** i.e. right to not to incriminate himself?

Ans.

State of Bombay v. Kathi Kalu 1961 S.C.

In this case, it was held that whenever anybody fluid is taken or fingerprints are taken or footprints are taken or even handwriting is taken, it is not violative of Article – 20(3).

Because all these things help in proving that person is innocent also. By taking body fluids like blood, urine, nails, semen etc. handwriting, would helps in proving the person innocent, thus, these can't be said to be self-incriminating only. That is the reason why this is not violative of article – 20(3). However, tests like lie detector test, polygraph test or the brain mapping test – all these are not allowed. These are not evidences, in these accused confess his allegation but this confession is not voluntary of accused.

They are inducing, drugging, electrical impulses involving in this test we can't say that these tests are on free will hence these are hit by Article – 20(3) held in **Selu v. State of Karnataka 2010 S.C.**

Sec – 53A – examination of person accused of rape by medical practitioner: -

This section was inserted by 2005 Amendment Act. The medical examination of accused can be conducted forcefully.

But the medical examination of victim can't be conducted forcefully but only willingly by his consent. If victim refuses to medical examination, then the benefit will go to accused.

90% of rape cases has struggle sign, except some consensual case.

When victim consent for her medical examination then lot of things are available as evidences: -

As far as accused is concerned, medical examination is mandatory in rape case.

- (a) Skin of men in nails of women.
- (b) The struggle marks
- (c) Semen
- (d) Vaginal swab

Even after 15 days dead sperms have been found in the vagina of woman. I.e. without delay, or within 48 hours make examination because it becomes easy.

As these offences are not conducted in public. So, it is a very private affair – Thus, the opinion evidences are of much importance or the Narco Analysis test, all these are not allowed. These are not evidences because this is violative of **Article – 20(3)** This matter can in **Selvi v. State of Karnataka 2010 S.C.**

Ques. That why do we say that Narco analysis tests, etc were conducted?

Ans. Because when these tests are conducted with consent of accused then these are not violative of Article – 20 (3). Now, it will be evidences used as defence by accused.

The Narco analysis tests conducted by police are not evidences – but this test will help the police in a proper investigation. Thus, these tests can be used as tool of investigation.

2. Female – To be examined by or under the supervision of a female registered medical practitioner.

Explanation – This explanation applies to Sec – 53, 53A, and 54.

(a) & (b)

(Viscera) –

Normally taken from dead person.

The presence of the sperm of male inside the body of woman can be taken as a very important opinion.

Then the question comes whether there was consent?

Ans. In a study, it was found that even after 15 days of the offence has been committed, dead sperms can be recovered from the body of victim. That's why it became necessary that without any delay medical examination should be conducted.

2, 3, 4, 5

Kishan Kumar Malik v. State of Haryana (2011 S.C.)

In this case, S.C. held that in all sexual offences it is always advisable that DNA test must be conducted because DNA test is one of the most reliable test/evidence.

Sec – 54 – Examination of arrested person by medical officer –

This Sec is substituted by Amendment Act of 2009.

Earlier law was that when the accused was arrested and it is dependent upon the magistrate whether to allow the medical examination or not and now by amendment it is made mandatory. So, earlier it was discretion of the magistrate whether to allow medical examination of accused or not to allow.

Sec – 54 Bare

Sec – 54 is a very important safeguard for the protection of any person.

Sec – 54A Identification of person arrested –

Earlier, a person could refuse for text identification parade and then the court can take presumption against him.

Sec – 9 IEA

This section made it mandatory that if magistrate orders the TIP then the person can't refuse it and that is the reason why this has become very important section.

- **Sec – 55A – Health and safety of arrested person –**
- **Sec – 56 Person arrested to be taken before magistrate or officer in charge of police station –**
- **Sec – 57 Person arrested not to be detained more than 24 hours.**

Article – 22 very clearly says that it is a fundamental right that an arrested person should be produced before a magistrate within 24 hours. It is not necessary that accused has to spend 24 hours in custody minimum required time can be kept in custody.

This 24 hour is also given in CrPC also so, that the police can conduct its investigation regarding the accused.

Sec – 57 is the statutory recognition of **Article – 22**.

By chance the investigation does not complete within 24 hours then the accused person to be produced before magistrate Under Section – 57 then –

- (a) The accused must be produced before magistrate within the reasonable time.

(b) If the police are not able to complete investigation within 24 hours then the magistrate has 3 options –

- i. Can release the person on a bond.
- ii. Can give police the custody of accused Under Section – 167
- iii. Can order judicial custody – 15 days at a time.

Judicial custody is 15 days at a time – even it can run 10 years

Police custody is 15 days only (detention)

It means Judicial Custody can be renewed after 15 days U/S – 309 – is known as remand.

Send for trial then call it as remand.

Why renewal?

Accused has right of bail, so, he may ask after 15 days, so, just to know about what is happening with him removal is necessary.

Investigation in judicial custody if after 15 days of police detention investigation is not completed.

Remand means – sending back

Arrest and bail have 3 stages: -

- (i) For investigation – detention
 - (ii) For trial – remand
 - (iii) For sentence – to proceed for appeal
- Sec – 58 police to report apprehension –
 - Sec – 59 Discharge of person apprehended –
 - Sec – 60 Power, on escape, to pursue and retake
 - Sec – 60A Arrest to be made strictly according to the code –

- Arrest-investigation,
- Search-collection of evidence, if necessary,
- Seizure- collection of evidence, if necessary, if found any incriminating thing we have to seized.

Search – Search is basically is negation of right to privacy as per modern laws, right to privacy is a part of right to life. Any search or seizure of property of accused is a negation of right to privacy that is why any search of a person or place must be strictly as per law. Law has to give that person all the safe guards and adequate measures to ensure that while conducting search the police officer does not trample upon the fundamental rights of the accused or anybody else wherever he is conducting search.

Search –

1. Search of a person or for a person Sec – 47, 51 etc
2. Search of a place – Sec – 100
 - a. With warrant Sec – 92, 93, 94, 95, 97, 98
 - b. Without warrant Sec – 165, 166, 153

Chapter – VII

Process to compel the production of things

Whenever a police officer wants to search – if it is an accused – if he sends him a notice – the accused is not going to produce anything as the accused can't be asked to produce any incriminating thing as under Article – 20 (3) i.e. not to forcibly incriminate himself.

If police want to search another ordinary person –

Then the right to privacy cannot be ignored i.e. right to life, then the police will give notice to him, to produce certain document. If fails then search will conduct.

Sec – 91 – Summons to produce document or other thing –

Notice can be given by –

- Court
- Officer

1, 2 Sec – 139, IEA, 1872 not to examine the person who had come to deliver the documents.

Sec – 92 Procedure as to letters and telegrams –
Sec – 93 – when search warrant may be issued –

It may be a –

- General search or inspection
- Specific search or inspection

Suppose, I have given a notice and person does not produce a document U/S – 91 or police goes to a magistrate that there is thing of drug or arm, stolen thing etc, so, now the warrant come.

Ques. Is this not violative of Article – 20 (3)?

Ans.

Sham Sachdev v. Delhi 1991 Delhi H.C.

It was clearly held that this is not violative of Article – 20 (3).

Sec – 165, 166 – without warrant, normally police do and not follow 93.

Sec – 94 – Search of place suspect to contain stolen property, forged, documents etc.

Sec – 93 – was the general section but Sec – 94 is a specific Section for search warrants for objectionable article or stolen property.

Sec – 95 – Power to declare certain publications forfeited and to issue search warrants for the same –

Not less than H.C. will decide that the publication is seditious or communal or not – Sec – 96.

Sec – 96, 97, 98 – Who can move in the H.C.? Any person having interest in newspaper, book? Even reader can go to H.C.

Sec – 99 – Direction, etc of search warrants –

Sec – 100 – Person in charge of closed place to allow Search – 1, 2, 3, 4 independent witness means he has no acts to crime. Where the witnesses were taken but they are not from locality. This matter came up before S.C. in case of Ronny v. State of Maharashtra 1998 S.C. It was clearly held that merely because the witnesses were not from the same locality in no reason to reject the seizure of any article.

State of U.P. and Zakullah (1998 S.C.)

S.C. held that merely because the witnesses are acquaintances with the police does not mean that he is not an independent witness.

Every citizen is presumed to be independent unless the contrary is proved and we presume that every person tells the truth in any case there is always the cross-examination which is available.

Seizure memo – Search list – All the things seized and from where they were seized be contained in this seizure memo and that memo to be signed by both the independent witnesses.

Radakishan v. State 1963 S.C. -

The question arises that if police came without warrant and did not follow the procedure under Sec – 100 people resisted them i.e. police officers.

Ques. Can this Act be justified?

Ans. Yes

In this case, S.C. held that why not the people resist because that resistance is allowed by law.

Ques. Whether Sec – 100 can be applied while searching a car?

Ans. Yes, because the definition of place U/S – 2(P) includes the house, building, vehicle and vessel.

CrPC's definition of place is wider than the IPC.

Sec – 101 Disposal of things found in search beyond jurisdiction.

Local magistrate will send to that magistrate where has the jurisdiction.

Sec – 102 – Police do the *nakabandi* on road where in one of person's car found a lot of currency and person can't explain from where he has taken this much amount. So, the police make this case under income tax act, police seize it or any accusation of forgery, cheating, and amount in bank. Now the police seized that amount of bank all this will come U/S – 102. This gives enormous power to police.

Supurdgi Nama

Sec – 102 Powers of police after to seize certain property

Sec – 102 gives enormous powers to the police to seize any property which –

(a) To be a suspected property

(b) The circumstances in which it is found creates suspicion that it is connected with commission of any offence.

So, all the *Nakabandi*'s by police, any seized is seized if suspicion is covered under Sec – 102 CrPC.

So, mere suspicion is enough for a police officer to seize the property.

State of Maharashtra v. Tapan Das Neogy 1999 S.C.

The question came up before court that –

Ques. Can the bank account of person be ceased under Section – 102?

Ans. It was held that bank accounts constitute property and if these bank accounts are connected with any offence, then only the account can be ceased.

Eg: A has a fixed deposit (F.D.) which is 10 years older, presently case was filed against A of cheating. So, this F.D. cannot be called suspicious or cannot create suspicion. It can't be ceased.

Ques. Can police seize passport under Sec – 102?

Ans. Seizure of passport or impounding of passport are two different things –

Impounding – Passport Act, 1967

Seizure – Related to an offence (Sec - 102)

Police can impound the passport – means U/S – 102 police cannot impound the passport.

Surendra Nanda v. C.B.I. (2008 S.C.)

Sec – 103, 104, 105 – The question arises if **Court wants to send a life in a place where CrPC does not extend or summons to any person requiring him to attend and produce document or other thing or a search warrant. Then what is the procedure?**

Ans. Sec – 105 – the court can send summons, warrants, search warrant in a foreign country also similarly they can send their own summons, warrants etc here in India. The courts because of the principle of comity will help each other. The root is always through the central govt. i.e. ministry of external affairs.

Sec – 165 searches by police officer -

Ques. If the search witness turns hostile, whether the seizure came deteriorated?

Ans. No, S.C. has clarified in many Judgements that it is not uncommon that search or seizure witness becomes hostile. Merely because the search witness has become hostile is no reason to discredit the seizure.

State of M.P. v. Pattan 2005 S.C.

Where there were no time to take warrant in own jurisdiction – suppose the area is some other police station's jurisdiction (in Sec - 166) and there the police officer wants to conduct search and seizure in some place (means out of his own jurisdiction).

Then what is the procedure to be followed in such case?

Ans. Sec – 165-own area, 166-other area.

Arrest search seizure – with or without warrant by police

Sometimes police call the witnesses, so, how will be compel the appearance, by

1. 41A – Notice
2. For rest of person –
 - a. Summon
 - b. Warrant
 - i. Bailable
 - ii. Non-bailable
 - c. Bond
 - d. Proclamation
 - e. Attachment of property

Chapter - VI

Processes to compel appearance (A) summon.

➤ There are 5 ways to compelling for appearance –

- (a) Summon
- (b) Warrant
- (c) Issuing proclamation
- (d) Attachment property
- (e) Bond

Sec – 61 – Duplicate

Signature of presiding officer or
By H.C. with rule

Schedule II form no. 1, 30

Sec – 62, Served by-

- (1) Police officer
- (2) An officer of court
- (3) Any other public servant

Ques. Can the summon be served by post?

Ans. **Nav. Maharashtra Chakan Oil Mill v. Shiv Shakti Poultry farm 2001**
(Karnt H.C.)

There is no procedure by issuing process of summon to the accused by post (registered post).

A.D. – acknowledgement due

Ques. Where summon by registered post is allowed?

Ans. Sec – 63

In the person refuse to accept the summon and postman written on summon i.e. refused will deem to be accepted.

Sec – 64 and 65 – deal with substituted service –
Adult male member of his family – Only in CrPC
Any adult member of his family – CPC

Sec 65 – Mere chaspa does not mean that court will presume that summon has be accepted or received. No presumption can't be taken.

Chaspa Service is actually a deemed service. It is always propelled by principle of necessity since the person whom the summon is to be service is not available, hence the court has no other option but to stick the summon on conspicuous place of his house. Question arises –

Ques. Whether the chaspa service will deemed to be sufficient services?

Ans. No, presumption can be taken that chaspa means summon has been received it depends on the fact of each case. In case the facts are such the court is convinced that the chaspa is sufficient and person whom the service of summon has read it. Then no further summon need be sent, but the chances that there sometimes there is genuine reasons and to send the arrest warrant or non-bailable arrest warrant on a summon which not even genuinely read by the person to whom the summon was directed, would negation of justice, hence in such cases a fresh summon may be send.

Sec – 66, 67, 68 – 68 is continuation of Sec – 67

Sec – 69 –

1. Summon by Police

2. Summon by regt. Post

Why because witness is very important otherwise work of court will stop or delay.

Ques. If the witness does not come after serving of summon then is there any punishment for it?

Ans. Sec – 350 CrPC

Warrant

Sec – 70, 71

Every warrant is non-bailable, but it became bailable when court (discretion) allow it.

In practically, first issue the bailable warrant if person fails then issue non-bailable warrant.

Sec – 72 –

Ques. Can a warrant of arrest be directed to a public person?

Ans. Yes, but provide, not in ordinary cases, only where its immediate execution is necessary and no police officer is available. Now public person gets all the powers under general exception of IPC.

Sec – 73 – Order to hotel's person, or head man of village for warrant to be directed.

Ques. Under what conditions a private person be given a warrant arrest?

Ans. If person refuses – liable U/S – 187 of IPC.

CBI v. Dand Ibrahim SC 1997

Ques. Does the power of Sec – 373, have to the magistrate during investigation?

Ans. This power of the magistrate to issue warrant U/S – 73 is during investigation also.

Production will be before the magistrate.

Sec – 74 – The judges or magistrate don't know who is the in-charge of police station. So, judges/ magistrate sends the order to district superintendent of police for warrant to execute. So dist. SP send to SHO and SHO may send to Sub-Inspector or even to Head Constable. So, all these things are allowed by Sec – 74.

Sec – 75 – is the statutory reflection of Article – 22 of the constitution.

Sec – 76 – Moment the P.O. executes a warrant of arrest then immediately without unnecessary delay he will bring the arrested person to the court, here is no question of investigation means warrant of arrest to bring him into the court but not to produce him 24 hours before the court. So, when do I take 24 hours? When I have arrested you in an offence without warrant.

Proviso – If any delay then doesn't extend to 24 hours.

Sec – 77 – Warrant of arrest may be executing anywhere in India.

Sec – 78 –

Punjab Police went from Chandigarh to Delhi without a warrant to arrest.

So, here no offence has been committed so Sec – 151 of CrPC cannot be invoked but police took the benefit that they have sent a notice U/S – 41A that he fails to comply with it so that is why we have to gone to arrest. So, here police should take the arrest warrant from the Judge or Magistrate

of Chandigarh.

Sec – 79 – Bagga Case –

When any warrant is directed to any P.O. in police station area 'A' and he has to execute the warrant against a person in area 'B'. He must go to the Police Station in charge of 'B' and get his name endorsed or he should go to the Executive Magistrate where the accused lives and he should endorse the name of accused and so P.O. has come from place 'A' and I am endorsing his name to arrest him.

Now, after endorsing on the warrant, now he can arrest him and if need be, local police will be sent to help to arrest such person.

Suppose, there is reason to believe that by the time or fulfilling all the above condition the accused ran away then in such cases P.O will directly go and arrest him from place of 'B' – Sec – 79 (3).

Sec – 80 – If A court issue a warrant of arrest of a person who is outside jurisdiction and that place is less than 30 Kilometers from the court then that accused can directly brought before the court. But if that place is very far away then the right procedure is after arrest must brought before the court of that jurisdiction when the accused person comes under the jurisdiction where he lives i.e. before the magistrate or District Superintendent or Commissioner. Now, then the procedure of Sec – 81 has to be followed. If we don't follow the above-mentioned procedure then we are going denying the right to bail which is given U/S – 81 of CrPC. – Bagga Case.

Sec – 81 – This Section is the continuation of the Sec – 80.

After arrest -

1. The police will check his identity the accused person whether he is wrong person or not. If we are confirmed about the identity now, the E.M., or the commissioner as the case may be direct his removal into such court.

Now, the accused person has to transit bail right. Proviso (1) if the offence

is Bailable (so, how can we arrest more than 24 hours?) He has the right. So, if he is ready to give bail then E.M., Superintendent of Police or Commissioner will take the bail of him and send that bail bond to that court who given the direction of arrest warrant.

But the accused not desires to give bail or the case is non-bailable – Proviso (2). Now, judicial magistrate will come into the picture, now, the bail will not be taken by E.M., police or commission but produce before the Chief Judicial Magistrate session of 'B' place and they may take bail.

- Transit Bail – Sometimes, it is also known as transit anticipatory bail. This transit bail nowhere defined in CrPC. This bail is granted by that court which is not having jurisdiction over the place where the offence was committed. So, if the person is apprehending arrest he asks for transit bail.
- Eg: A is living in Delhi and he knows that NBW against him, so he can ask to Delhi Court for the bail that he will produce himself to Mohali Court. Once he get that bail then he can't be arrested.

Widely Publication – Proclamation and Attachment

When summon or warrant issued by the magistrate but person fails to follow then magistrate issues proclamation. When court finds that person has been abscond.

- Proclamation (in ordinary offences) is different from proclaimed offender (Sec – 82, Sub - 4).

Sec – 83, Attachment of property

Ques. How much property will attach?

Ans. Depends upon the discretion of judge. The reason for attachment here is not punishment. This chapter is not a punishing chapter neither the warrant of arrest not the attachment of property or nor the proclamation. It is to compel appearance. These are not punitive

section. If the persons come then the magistrate will return the property with red ribbon.

Ques. Can a proclamation and attachment of property be order simultaneously? If so under what condition?

Ans. Yes, proviso of Sec – 83.

Sec – 83 (4) If the immovable property is land paying revenue, then through collector but if it is not then by taking possession.

Sec – 84 – There may be other claimant to the same property which the magistrate attaching whenever there are any objections to such attachment or any claimants who make come will come U/S – 84.

Section – 84 (2) – The objection had to be put up in the same court which attach but if the attachment of property situated outside the jurisdiction of the court. Then the objection will be put up before the CJM of that jurisdiction where the property is situated.

Section – 84 (4) – Merely because of the objection has been put before the criminal court it does not act as sub-judice of Sec-10 CPC against a suit matter in criminal court or civil court is different.

If the matter has been disallowed then the objector has the limitation period of 1 year from that disallow order for instituting a suit under Section – 26 CPC.

In other words, this order will be conclusive but if objector put up a suit and that suit gives a different decision that will override criminal court decision, U/S – 84 of CrPC.

Ques. Sec – 85 – What do we with property has been attached?

Ans. Sell, auction, etc.

Ques. Can a warrant of arrest be issued in a summon case? Under what

circumstance a magistrate can issue warrant of arrest in summon case?

Ans. Sec – 87

Ques. The accused goes directly to the court to mark his presence so now will magistrate send him to the jail?

Ans. Sec – 88, no need to send him to the jail because summon and warrant is issued to compel the accused to appear before the court but he is already appear then accused give the bond with or without surety.

Now, if person signed a bond but do not appear then now presiding officer of court may issue warrant of arrest. – Section – 89

Section – 90 – General Section – Applicable to every summon and every warrant of arrest in this code.

Ch – 6 – Read/ with Chapter XXII

Attendance of those persons who are incarcerated.

Sec – 267 – Power to require attendance of prisoners.

Suppose, he is the accused, he is already in the under the prison or under trial or he is undergoing in prison in another case.

In jail, there is no police but warden.

(2) Order of attendance will be given by the JMJC or above to him but JMJC not allow unless it is countersigned by C.J.M.

Ques. What is production warrant?

Ans. Eg: If court need 'X' person who is under prison of Punjab but appearance need in Delhi then Delhi Court has sent production

order to Punjab Court to produce X in Delhi Court. Will know as production warrant.

Sec – 268 – Certain person is excluded. Eg: Godman, Terrorist etc., but state govt have to consider the following condition (bare)

Sec – 269 – On what ground does the officer in charge of the prison refuse to obey the court's order or under condition?

Ans. Sec – 269

Sec – 270, 271, bare – started journey from – 154, 156, 157, then arrest, search seizure, summon warrant, proclamation, attachment, attendance of confined prison)

Sec – 158 – Report means

FIR, case diary and in case P.O. refuse to investigate then that report.

Majority of evidence belongs to the oral evidence naturally because oral evidence forms backbone of all investigation.

Sec – 160 – If the witness refuses to come then he can be prosecuted U/S – 174 IPC.

Sec – 161 – Examination of witnesses by police

The statement U/S – 161 is always under the 'first person'.

I _____ R/o _____ etc/.

It is not a signed statement then question arises

Ques. What is the uses of that statement?

Ans. The statement U/S – 161 can be used only for contradict him (witness). It means when this person goes to the court for

examination in chief which under oath and says the same thing which given U/S – 161 and also says in cross-examination the same thing (not change his statement in cross)

Ques. The court can write that this witness is true in judgement as he did not change his statement in Sec – 161 or in chief or in cross.

Ans. No, this cannot be written in judgement because it will be considered illegal. Because this can't be used for corroboration but use for contradiction.

So, the statement U/S – 161 of witness will benefit to accused because when the accused break the statement of witness so naturally it will be in favour of accused.

- (1) 'Any police officer' – Even a constable can take statement U/S – 161, 'may examine orally' – it is not necessary to take the testimony of every witness who are at the spot.
- (2) 'Shall be bound' – The statement U/S – 161 is not under oath so if a person speaks lie, then he will not be liable U/S – 193 of IPC. But he is legally bound U/S – 161 (2) for which if he lies then he will be liable U/S – 202, 203 of IPC.

But if police ask self-incriminating question, then witness can be kept quiet because Article – 20 (3) says that he has fundamental right, not to be forced to incriminate myself.

Sec – 161 (3) 'The P.O. may' it is the discretion of the P.O. to reduce into writing the statement of witness. Statement of separate witness will in separate record.

Proviso – Inserted by 2002 audio – video record like rape, murder etc. (use only for contradiction)

There should be no delay in taking statements of material witnesses specially eye witnesses.

Budh Raj v. J&K 2002 S.C.

Ranbir Singh v. State of Punjab 1973 S.C.

Hon'ble S.C. has held that delay in examination of a particular witness in the prosecution ipso facto does not make the prosecution version suspicious. If the delay is satisfactorily explained and it is very much plausible then delay can be condemned.

- Dying declaration is the exception of Sec – 161 that it can be use for corroboration and contradiction.
- Refresh Additional S – 161 be taken? Yes, there is no bar.
- Sec – 162 (1) Statement made to police officer during the course of investigation shall not signed by the person making it.

If statement made before magistrate, then Sec – 162 will not apply.

Now, it is a statement made. Now police takes specimen signature of witness like on arrest memo, blood sample, seizure memo etc., a lot of signature takes all these by various judgement by S.C., are not statement made.

So, what comes under the 'statement made' it includes statement U/S – 161 or statement during the investigation.

1. Any statement made to P.O. during investigation not to be signed.
2. Purpose –
 - a. It can be use only by accused to contradict the witness who made this statement which is allowed U/S – 145 of IEA.
 - b. If the witness becomes hostile in court under deposition, then prosecution will contradict him.
 - c. Contradiction in re-examination

Exception of 162: –

- (i) DD – U/S – 32 of IEA

(ii) Sec – 27 of IEA (discovery)

Both can be used for contradiction and corroboration.

Explanation: -

Omission Amounts to contradiction Eg: 'A' U/S 161 given statement that he saw the B C D were murdering 'G'. Now when 'A' comes in court and gives his state in court and say he say B C D E were murdering G. Now E was omitted in U/S – 161 or vice versa then omission amounts to contradiction i.e. he is not reliable. So, material omission are amounts to contradiction (non-material is not).

- Before material omission can be taken as an contradiction then that matter must be put up before a person (witness) that why he omitted to speak? If he can't give the satisfactory answer then only the material contradiction amounts to contradiction.

Tahsildar Singh v. St. of U.P. 1959 S.C.

Ques. What is the thing which is not hit by Sec – 162?

Ans.

1. FIR – It can be used for both contradiction as well as corroboration.
2. DD – Sec – 32 of IEA
3. 27 IEA
4. Test identification parade (done by magistrate)

Sec – 163 R/W – 24 – It is reflection of Sec – 24 of IEA, if any confession is to be admissible in court, then it must be 'voluntarily' there should be no force, inducement, threat or any promise.

So, the ethos of the Sec – 24 IEA written in Sec – 163 of CrPC.

Sec – 164 follow Sec – 163(2) for confession

Sec – 24 of IEA has to R/W 163 CrPC and Sec – 163 (2) R/W – Sec – 27 of

IEA. The confession before IEA is not valid or not admissible as per Sec – 25 of IEA. Hence, the need for Sec – 164 CrPC.

Sec – 164 – It has two parts –

- (i) Confession of accused
- (ii) Statement of ordinary witness

Ques. What is the need for Sec – 164?

Ans. The need for Sec – 164 is arises out of Sec – 162 that statement made during the course of investigation can't be use for corroboration but for contradiction. Suppose 'A' is the prime witness and sole witness who only the witness, saw the scene or occurrence of murder, who is very poor witness and if he hostile in court then whole cost of murder will be ruined and statement U/S – 161 can only be use for contradiction only. So, how to correct it or save the case from ruin. It can be correct U/S – 164 that if magistrate take the statement of witness which will be under oath and it will not be hit by Section – 162 because it is not taken by police but by magistrate and if U/S – 164 witness turns to be hostile then he would be liable U/S – 193 of IPC.

Benefit of Sec – 164 –

- (1) It is under oath.
- (2) It can be used for both corroboration or contradiction.

So, it can now be written in Judgement that the witness who made statement U/S – 164, made the same in cross-examination so he is reliable.

Confession of accused

If accused is ready to confession before police but it will hit by Section – 25 of IEA. So, now police will bring him to the magistrate where accused

confess before magistrate U/S – 164 the procedure for it laid down in Section – 281 of CrPC if procedure is not followed properly then the confession lose his relevancy?

No, it can be correct U/S – 463.

Ques. Confession before executive magistrate is relevant?

Ans. No, *State of Haryana v. Parmanand* 1995 P&H HC
Phundi v. State of M.P. 1993 H.C. (M.P.)

It was held any statement recorded by executive magistrate or any confession made before executive magistrate cannot be taken as valid confession U/S – 164.

Sec – 164 (1) Confession –

- (i) During investigation – Police have to produce the accused before the magistrate.
- (ii) During pretrial
- (iii) During trial

If accused wants to confess before framing of charge – U/S – 164

Sec – 164 (4) is not on oath but it is signed by accused.

- Police can bring the person before any magistrate include JMIIIC.
- If the JMIIIC recorded the confession of person.

Ques. So, it is in the interest of justice that JMIIIC itself tried it?

Ans. No, before whom JM the confession is made that magistrate will not try the case. It is not written anywhere. But it is common practice.

- When the person's wants to confess before JM then JM ask to him that he is not bound to confess and if he does so then it can use it against it. So, JM gives the time to think before confess, for which

JM send him to Judicial custody for 48 hours. After 48 hours again bring him before the court (neither police will not bring judicial custody or now police taken out from judicial custody. → **Not written**

- If police bring the person before court, then JM provide him comfort zone, ask not to scare.

Sec – 281 records of examination of accused -

(1) Where the confession is recorded by metropolitan magistrate then he will only write the gist of the confession. This was set aside by Supreme Court in **Kausalya Das v. State 1966 S.C.** held that confession will be recorded in Toto, word by word. Gist is not allowed.

Ques. If magistrate forgot to signed by accused over the confession or magistrate forgot to give certification?

Ans. Then it will not be amount to illegality but it will amount to irregularity which can be correct U/S – 463 of CrPC. However, procedure given U/S – 164 R/W – 281 must be religiously followed.

Jogendra Naik v. State of Orissa 1999 S.C.

Ques. Can accused directly go to magistrate to confess before him if he is not sponsored by investigation?

Ans. U/S – 164 it is the police who produces this accused for confession before magistrate. This matter again came in **Ajay Kumar v. Raja 2013 S.C.** it was held that the decision taken Joginder Naik case is an absolutely correct decision and held that only that person which was produce by police only their confession can be noted U/S – 164. So, any person appears before the magistrate of his own volition independently cannot be recorded by a magistrate. If the magistrate records it, it has no value.

Ques. Is the confession U/S – 164 substantive pieces of evidence?

Ans. No, as early as privy council it was held that any confession noted by U/S – 164 not doubt can be corroborated but it cannot be put at the level of substantive piece of evidence. In other word conviction cannot be based only on confession.

Ram Krishan v. Harmit Kaur 1972 S.C.

Ques. Can confession be recorded by magistrate who don't have the jurisdiction?

Ans. Yes, even a magistrate who has no jurisdiction in the case can record it.

Ques. Can accused bring the written confession?

Ans. **Nazir Ahmad 1936 Bombay-** held no pre recorded confession are allowed U/S – 164.

The most important aspect of any confession including U/S – 164 is it should be made voluntarily. In other words, repentance (regret) is the base of 164.

A Bora v. Assam Guwahati (H.C.) 1988

If confession made on oath, then it vitiates the confession.

Babubhai Parmar v. State of Gujrat 2007 S.C.

An oath administered to an accused while records his confession, vitiates the confession → why? Because pressure will be built on the accused afterwards that he cannot retract – U/S – 193 IPC.

If the formalities have not been fulfilled then the revisional court or the appellant court must see whether any prejudice caused to the accused.

Statement of accused U/S – 164 – are taken to be exceptional

circumstances, normally the police always try to get statement of material witnesses recorded by the magistrate U/S – 154. Firstly, these statements are not U/S – 161 statements. Statement under Sec – 164 is under oath. 164 has two parts –

- (i) Confessions are not under oath.
- (ii) Statement of witnesses is under oath. So, naturally there is pressure on the witness. If he hostile then liable under the law.

Sec – 164A medical examination of the rape victim -

Ques. Can forcefully medical examination of rape victim be so?

Ans. No, U/S – 164A.

Sec – 166A & B – Known as letters rogatory.

Sometimes, the witness is available outside India, and he is not ready to come to India or any document or anything available with him and not ready to come to India and document which is under his possession is very important for the case so should we do?

Sec – 166A and B both added by the CrPC Amendment 1990.

Ques. What are letters rogatory? Under what circumstances they can be issued?

Ans. Letters rogatory or letters of request are formal request from a court to foreign court for some type of judicial assistance. The most common remedies sought by letter rogatory are service of process and taking of evidence.

Indian Court Request → Sec – 166A.

The court in India which require evidence or document or thing of witness outside India, in that case a letter of request is issued by the Indian Criminal Court to the foreign country's court. (not directly sent, all

communications between courts are through ministry of external affairs) that country's criminal court takes the statement document or thing in that country and after authenticating them, it forward all the evidence taken to India. Similarly, if letter of request is received by Indian Court through ministry of external affairs that we need some evidence of person who is in India, then the central govt will forward the matter to CJM or CMM as the case may be and now CJM or CMM record the statement, procure the document or thing and transmitted to concerned foreign court. These letter of request are called letters rogatory.

Narinder v. State of Punjab 2004 S.C.

Appellant was a suspect of murder in Canada. Canada's court send a letter of request to Indian Ministry of External Affairs that to take appellant's DNA samples etc. Appellant refused to gave DNA sample etc. Now the question arises

Ques. Which procedure is to be followed whether Canadian or Indian?

Ans. Here SC held that in Indian Procedure, Canadian procedure can't be applied as the appellant had already refused to give DNA, so, the CBI can't take DNA sample forcibly merely because Canadian law provides for such.

Thus, the Indian law will prevail for any procedure in India.

Sec – 167 is basically the continuation of Sec – 57, once a person is arrested. Article – 22 provides that the person to be presented before magistrate within 24 hours of his arrest. Why 24 hours? Because presumably the police will finish the investigation regarding the case within 24 hours. If police have not finished investigation, then the police will produce that person U/S – 57 before a nearest magistrate court. Then the police can make 3 demands from court:

-

1. That they need further investigation as the investigation was not completed within 24 hours then police send him to police custody/ detention.

2. If the court finds that there is no need of further investigation or court does not want to send the person in police custody or any other reason then court may send him to judicial custody.
3. Bond.
 - Sec – 57 (within 24 hours production before court)→ 167 (detention for investigation – not clear whether committed the offence)→ If committed – Sec – 173 (final report) → Sec – 190 – Court applies mind and from charges and now TRIAL begins
 - Now if he is a murderer, he can't take bail, so now court will **send him back** (remand – U/S - 309) to jail till the trial is continuing.

Sec – 167 whether police custody or Judicial Custody in the form detention, there is no word of remand. Remand comes when for the first time trial has begun U/S – 309 – now court is giving judicial custody it can't be endless J.C. No, custody can be more than 15 days.

In police, the police custody for 15 days once and for all, there can't be 16th day of police custody. But judicial custody is 15 days at a time that means after 15 days it renewed for remand which may continue to 10 years.

Sec – 167 (2) – For a term not exceeding 15 days in the whole -

Eg:

- 01 March – Arrest
- 02 March – Produce before the court, from this date maximum detention will be 15 days for **police custody – This 15 days** can be given in break 3 days – police custody then 2 days – judicial custody, after then 4 days – police days.
- So, 3 days of 3 days – police custody and 4 days of police custody = 7 days passed. Now, the 8 days of police custody is rest off so more than 8 days for police custody can't be given.

Now, in first 15 days the custody of PC and JC can be given intermediately.

- First 24 hours is not taken as reckoning.
- Suppose if the matter went to CBI or Crime Branch after passing of the 15 days of police custody, now Crime Branch want to continue the case from the fresh. So, no further police custody will be given.

Sec – 167 (2) proviso – default bail

If the investigation not completed within 90 days or 60 days then bail will be given as a right – ‘Shall’

Ques. How will get to know that whether the investigation has been completed or not?

Ans. As soon as the investigation completed the IO put the final report U/S – 173 so if the IO did not put the final report within time then magistrate has to give the right.

Ques. From what day 90 days or 60 days will be calculated?

Ans.

1. When under Sec – 57 productions of accused were done mean excluding the 24 hours.
2. It does not matter whether on the 90th day or 60th day was Sunday or any holiday, the right will be prevailed.
3. **Eg:** on 90th day, IO given at 10:00AM final report but defence counsel presented for bail at 10:15AM then the bail will not give but vice versa bail will be given – So, please mention the time on bail if the magistrate postpones the hearing of the bail still the right will be prevailed as the first right – S.C. held
4. If the bail is given but accused fail to give the surety (hasn't gave surety from last 4-5 days) but in the meanwhile the IO put up the final report then the bail will not be given. Magistrate must give the reasonable condition for fulfilling the surety like not condition of IPS must be the surety, so if it is unreasonable then it tantamount to denial of bail.

5. Default bail is not given in anywhere but it is used in common parlance. (default on the behalf of police)
6. Suppose, bail has been given of default bail under Sec – 167 and now accused is apprehending the victim after releasing from the bail.

Ques. So, is there any provision of cancellation of bail?

Ans. There is no provision of cancellation of bail U/S – 167 but Supreme Court given the decision that U/S – 437 in matter of non-bailable the magistrate can cancel the bail so 439 will be R/W – 167 of bail.

Ques. What is the provision of right of bail in the non-bailable matter? And under what condition?

Ans. Sec – 167

Ques. Can an executive magistrate come into picture in Sec – 167?

Ans. Yes, because Article – 22 is the fundamental right, he has to be produced before the magistrate within 24 hours, i.e. why we are invoking the principle of necessity U/S – 2A of 167.

Sec – 436 – Bailable

- The which is rejected in 437 then in such cases it does not act as refusal U/S – 167 because it is a right given by law. This matter came up – **B. Haldar v. St. of W.B. Cal H.C. 1993**

CBI Delhi v. Anupam Kulkarni 1992 S.C.

There can be change of custody within the first 15 days from police to judicial custody or vice versa however, after the expiry of first 15 days then further custody can only be judicial custody.

SK dey v. State 1974 S.C.

The period of 90 or 60 days has to be computed from the date of

detention after Sec – 57 that means under the order of magistrate and not from the date of arrest by the police.

P. Vithal giri v. State of Maharashtra 2002 Bombay H.C.

Ques. Sec – 304B has punishment 7 years to life imprisonment so whether it will come under 90 days or 60 days?

Ans. The imprisonment will be computed from the highest punishment i.e. Sec – 304B highest punishment will be life imprisonment so, it will come in 90 days.

Manu Bhai Patel v. State of Gujarat 2013 S.C.

Ques. Should a custody we give normally or should detention we given always?

Ans. S.C. held that giving detention is a judicial order which very important judicial function. Such order should not be pass mechanically. There must be proper usage of mind before passing any order under of detention.

Rafiq Mohd. v. State of Punjab, 1994 P&H H.C.

Ques. Does Sec – 167 apply to NDPS?

Ans. No, SC held that the proviso of 167 does not apply to NDPS Act because NDPS proceeding has maximum time than Sec – 167 or even the bail has to be granted as per the provision of NDPS and not as per the provision of CrPC.

Ques. Suppose police report (charge sheet) is filed on the 90th day then does the accused loose the right forever?

Ans. No, he can still get bail U/S – 437 or 439 CrPC.

Uday Acharya v. State of Maharashtra 2001 S.C.

Where the chargesheet is not filed within 90 days or 60 days then accused

has indifisable right on bail. So, where the bail is not given by magistrate despite the fact that the did not filed the final report, it was an illegal order. However, it the chargesheet is put up on time the right to default bail. → There is no default, so, right to statutory bail U/S – 167 is lost.

Ques. But the question arises if suppose on the 91st day, the bail application is put up earlier and the final report put up later same day of 91st day – this matter came up of 3 judge benches of Supreme Court – **Syed Mohd v. NCT of Delhi 2013 SC** the right of bail will not end when the bail application is put up earlier and chargesheet put up later on the same day.

Vipul Prasad v. State of Gujarat 2013 S.C. (3 Judge Bench)

If CBI start the matter from the beginning after passing of 90 days or 60 days by the police then CBI will not get these tenure of 90/60 days again merely, because the investigating agency has been changed.

Khatri v. State of Bihar 1981 S.C.

Ques. When the legal aid should be provided?

Ans. If the person is poor then legal aid should be provided when –

- (a) When the accused person is arrested
 - (b) During the course of investigation when accused needed the advocate i.e. U/S – 57.
 - (c) Throughout the case.
-
- Once the accused is released on bail then he cannot be put again into the custody again except only 2 grounds he will remain in custody –
 - (i) Refusal of bail
 - (ii) Cancellation of bail U/S – 437
 - **M. Ramaiah v. State of Andhra Pradesh 1992 H.C.**
 - **Sairahbibi v. State of Gujarat 1987 Gujarat H.C.**

- **Riaz Ahmd v. J&K 1990 J&K H.C.**

When the final report submitted on 91st day after the Court's hours or may be given at home of judge then the court can't day that filed within the working hour and cancel the bail granted.

Ques. If the chargesheet is not completed means of the some of the documents or report is not attached and filed on 90th day. So, accused object – matter came up in **Vedi Puran v. State of Andhra Pradesh 1994 H.C. (A.P.)**

It was held that the non-completion of final report because of certain expert reports within the first 60 or 90 days will not take away the right of the police to submit the final report.

Ques. Can the bail of Sec – 167 be cancel?

Ans. Rajnikant v. Intelligence Officer Narcotic Control Bureau 1990 S.C.

It was clarified it the accused breach the condition of U/S – 437 then instead of cancellation of bail not mentioned in Sec – 167, will not affect i.e., the provision of Sec – 437 can be invoked in Sec – 167 regarding cancellation of bail.

Aslam Baba v. State of Maharashtra 1993 SC

It was held that if the accused has been released on bail and the chargesheet was filed with some change of section. Then the SC held that this is not enough to cancel the bail.

Ques. What happens if the 90th day is Holiday?

Ans. This will not affect the right of bail of the accused held in **Shivanna v. Rural police 1992 Karnataka H.C.**

State of Tamil Nadu v. Eveera mani Madras.

Once the court has granted a default bail U/S – 167 but the accused did not fulfill the condition of like surety etc., meanwhile before accused the fulfill the provisions, the police filed the chargesheet then the right to bail can be cancel – so it is a settled law.

R. Kalukha v. State of Maharashtra 2000 Bombay HC

Accused has filed an application after completion of 90 days for bail. Magistrate said that he will deal with surety on tomorrow. In between these police filed its final report and thus magistrate cancelled the bail. Matter went to full bench of HC held that if he ready with his sureties then the court has no right under no circumstances to keep the matter pending and allow the police to put up chargesheet.

- There is no time period provided to file chargesheet – the limitation period of 90 or 60 days is provided for bail.
- There is no law which provides time period for investigation.

Sec – 167 (5) **Nirmal Kanti Roy v. State of W.B. 1998 S.C.**

D. Benupani v. Arun Kumar 1998 S.C.

In both these cases it was held that the time period for which has been given U/S – 167 (5) is not to be taken with rigidity sometimes in the interest of justice the court must take a lenient view.

So, there is no harm if the court take this leniently in the interest of justice.

Sec – 168, 169 Bare

A magistrate cannot release/ discharge an accused before the submission of police report it would be an illegal order.

Sec – 170 (2) Bind down the witness

Sec - 71

Ques. How does law ensure the presence of witness during a trial?

Ans. If the question is particular related to CrPC then mention the Sec – 71 of CrPC but if the question is related to law, then mention Sec – 32

and 0.16 of CPC also.

That the very success of a trial depending on the adducing of the evidences, majority of the evidences are the oral evidences depending on the deposition of the witnesses, hence if the witness fails to appear, firstly the whole criminal or civil justice system put go to the dogs and secondly the judgement will not be reflective all the cogent evidences, hence it is imperative that the witness must appear in the court at a due time for this purpose we have provision in Sec – 170 and 171 CrPC whereby bond will be taken by the IO from the witness to appear at the specified time U/S – 170. In case the witness refuses to sign on such a bond then the principle of necessity invoked and the PO has no option but to take him in custody and produced before the concerned court. Where the magistrate would try to make him sign the bond but in case magistrate also fails he has no option but to send him into custody until he executes the bond or till his evidences is over. Neatless to say a witness is not an accused and that is why Sec – 171 clearly says that he must not put to unnecessary inconvenience and unnecessary restraint and for that purpose and also for the purpose he may not tuitor on way to the court. 171 also disallows the PO to accompany of witness or complainant to the court while going to give his deposition on the specified date. Since both the civil and criminal justice system depend on the availability of the witness to give evidences. It is not only CrPC makes provisions but CPC also adequate provisions U/S – 32 R/W – Under 16.

Ques. What is case diary? How does it different from daily diary? And what is the efficiency and evidentiary value of case dairy? Critically examine.

Ans. A case dairy a name shows is the diary of the case right from the inception from the FIR to the submission of the final U/S – 173. The police officer right from the institution of the FIR starts its investigation. It is not that he has any magic lamp in which drives the lamp and press daugh, all facts come before him. He has to do a lot of stead work some of which unfruitful.

The entire records of his endeavors to collect the evidences which may be

fruitful or fruitless are reflected in a case diary. It is basically special diary in which what the IO on daily basis i.e. with whom he is meeting, what evidences he has collected and how, in other word the daily progress of a case is reflected in a case diary. It is different from daily diary in police station also call the general diary which is creation of Police Act, 1861. 'Rojnamcha' in North India, general diary which is recording all the incidents which are happening in Police Station in the chronological manner as per the time. A case diary is basically to keep a check on IO because the copy of the CD is sent to the senior PO who monitor the investigation on the daily basis and all copy of the CD sent to the court which keeps a check of the investigating officer through this CD, however a CD is basically the raw material for the collection of evidence even the minutest things are written. Since it is the diary of IO it can't given the status of evidence it is merely the daily working of IO on that case i.e. why CD can't be taken as evidence of anything which cannot be contradicted. The basic job of a CD is to ensure that the IO is conducting the fair investigation and also for the court to ensure that the investigation is going on the proper way. Especially in **Sakiri Basu v. State of U.P.** U/S – 56 (3) since the court have given the task of monitoring and in investigation where the charges of bad or corrupt investigation. The role of CD becomes very important for a magistrate. However, having said this a criminal court can use a case diary only for the purpose of clearing it mind a criminal court can't refer it to as evidences or even the judgement that even the IO written in the same thing in a dairy so CD can't be used for corroboration or contradiction or even for reference basically it can't be even use to fill the lacuna of some witnesses so CD can't be taken as any document which may help in appreciation of evidence officially at base it can't said to be a monitoring aspect which the court can monitor and ensure that the investigation is going on properly and to clear its mind.

It can be at various stages:

- (1) Clarification of mind is need when the police produces accused for the first time before the magistrate then the police ask for police custody/ detention whether to give bail or police detention then the court refers the case diary.
- (2) It to clear its mind can be at the time of taking cognizance or

(3) To clear its mind during the time of trial. Where the court wants clear its mind.

So, basically CD is a reference diary which can be refer to for the cases, for the purposes of monitoring and clarification of mind. Now, having said this CD has no evidentiary value but then it is something which is through hidden, plays a very hidden role. Following are –

- (i) It allows the magistrate to monitor investigation.
- (ii) It helps to frame a charge
- (iii) It helps the magistrate to deny or give bail.
- (iv) While the trial is going on at many places the judge may refer so as to clear own mind.

Ques. Can the accused ask for the case diary?

Ans. No, the CD is not the document to be given to the accused i.e. why there is no business of accused to be possession of the case diary and he can't legally ask for them. The only exception being that under Section – 161 when the IO or anybody else can refer the CD to refresh his memory then only the accused has right to refer to it and then cross-examine on that point.

General diary is a public document anybody can ask but case diary is not a public document nobody can ask but have some exception.

Sec – 172 (1A) – Inserted by 2008 Amendment Act, earlier what used to happen U/S – 161 the statement of witness is not a signed document of witness so if the IO who has been corrupted they spoils that document of witness and change the statement of witness so when the senior PO or the court ask to the IO or witness they both argu that they have change his statement so to resolve this problem the Sec – 172 (1A) has been inserted by 2008 amendment act which says the statement of witness U/S – 161 will be inserted in case diary then the IO can't change it then the senior PO can check.

Bhagwan Singh v. Commissioner of Police 1983 SC

The main object of CD is to clear the of the court. That is why the entries in the CD should be prompt and insufficient details haphazard maintenance of police case diary defeat the very purpose of maintaining the CD.

Halib Mohd. v. State 1954 SC

Bahadur Singh v. State of M.P. 2002

The SC has held that the CD can be made use by criminal court only for aiding it in inquiry or trial. Court can't use it in judgement and can't fill the lacuna in investigation.

Bhailal v. State of U.P. 1998 SC

The CD can't be used as evidence. They can't be used to explain any contradiction in evidence of prosecution. They can't be used for any other purpose except for the clearing the mind of the court.

Mohd. Ankoos v. Public Prosecutor of High Court of Andhra Pradesh 2010 SC

The defence counsel made the contradiction and the court by make the reference of CD done the contradiction. SC held that this act was wrong on the part of the court that the CD can't use as reference just to negate the defence counsel which is against the justice.

Sec – 173 – Overview

FIR lodges → investigation (collection of evidence) → come to conclusion → i.e. (i) Whether the offence committed?

(ii) Which offence committed?

(iii) Who committed?

And this is final report.

It may be of two types –

(i) Offence committed

(ii) No offence committed

(a) Offence committed – final report i.e. called chargesheet in the terminology of police but not in the terminology of CrPC. Chargesheet in CrPC only connected to magistrate.

So, always use the word FR.

When (chargesheet) Final Report (IO) sent to PP who comments in FR and again sends to IO then IO correct the investigation according to comments then again IO send the FR to PP. Now, PP okay it. Now, the FR send to DSP who read the FR and wrote PP put CHALLAN.

From Sec – 154 the police's work starts to Sec – 173 after Sec – 173 the court's work starts.

The word police final report is defined U/S – 2(r) CrPC. This police report is first step for trial.

Police Report –

- FIR true
 - o Offence committed
 - o FR U/S – 17

- FIR not true
 - o Offence not committed
 - o Known as Khatma Report
 - o Closure report

Closure report can be on many bases –

- (1) Accused has been absconded; we are not able to catch him.
- (2) We were not able to ascertain who is the accused.
- (3) Offence is not occurred. FIR is not true.

Ques. If the investigation is not complete and FR is given so, can additional final report be given?

Ans. Yes chargesheet it can be given even when the trial has started. Since the justice demand that once the FR submitted to magistrate and IO is going to further investigation, then he must keep the magistrate in the loop.

Ques. What is the role of the magistrate?

Ans. Till Section – 173 there is no mention of magistrate. In Sec – 156 (3) because of Sakiri Vasu case that the magistrate can interfere in investigation if there were charges against the IO like the investigation is not going properly.

Ques. Till Sakiri Vasu case came, what are the power is given to magistrate?

Ans.

(1) First power came U/S – 173/8 that he can order for 'further investigation'. Further investigation does not tantamount to reinvestigation, this can be done U/S – 482 of CrPC.

Earlier law was that further investigation order can be given only before taking the cognizance U/S – 190 but question arise that if magistrate after taking cognizance U/S – 190 of CrPC magistrate found any error then can he order for further investigation after cognizance?

Ans. Some of the SC's judgement says no, after cognizance, the further investigation order can't be given. But a landmark judgement **Vinubhai Haribhai v. State of Gujarat 2019 SC** held that further investigation order can be given after taking cognizance U/S – 190 in CrPC but question again arise U/S which section he can order? U/S – 156 (3).

Ques. When the trial starts then police can conduct further investigation and put up additional chargesheet but magistrate can't order for further investigation means the power to order further investigation ends when the trial starts.

Is not against the justice?

Eg: In the murder case, there pw1, pw2, pw3 police said that A murdered but pw1, pw2, pw3 are the eye witness and they says A & B done the murdered. Now the court has power U/S – 319 of CrPC that 'B' can be arrayed by the court as accused during trial on the basis of evidence which taken in trial.

Sec – 173 (1) Bare – Investigation completed as soon as possible

The reason is the right to life U/S – 21 of Indian Constitution includes speedy trial and speedy trial is possible when the speedy investigation is done.

2. (ii) If the after-investigation police found that the FIR is false, no offence has been committed then the IO must take action against the informer U/S – 182 and 211 of IPC has police put up a complaint along with the final report against the informant? – It is the duty of the magistrate. If police did not do so then order him to do so.

(4) During the investigation when the accused is released on bond. If when the trial start now that accused again give a new bond to make the appearance time to time during trial.

(5) Police shall forward to magistrate:

(a) Sec – 161 of CrPC

(b) Sec – 27 of IEA if any

(c) All memos

(d) Site map

(e) Case diaries

(f) Other things

But when copy of final report given to accused then the case diary will be excluded from it.

Rama Chaudhary v. State of Bihar 2009 SC

In further investigation the supplemental chargesheet which is the continuation of earlier final report. We can't call it reinvestigation.

Rupan Deal Bajaj v. KPS Gill SC 1996

The DG had padded the posterior of madam Rupan Deal and registered the case of Sec – 354. The police gave a final report of triviality and the magistrate also immediately accept it. Now SC held that no magistrate will accept the closure report without giving reasons.

Ques. Can police file the final report without the FSL forensic science laboratory report?

Ans.

CBI v. RK Jain 1998 SC

Yes, FSL is only corroborative piece of evidence we can put up a final report even without the receiving of FSL.

Ram Kumar v. State of M.P. 2002 M.P. H.C

Ques. Is the trial court bound to accept the Khatma Report?

Ans. No, the report of closure is not binding upon the magistrate.

UPSC v. S. Papaiah 1997 S.C.

It was held when then magistrate accepted the Khatma Report and drop the proceeding without the notice to the informant will be illegal that if anything to say then please come and give your protest will be called as protest petition.

Ram Lal Narang v. Delhi Admission 1979 SC

Do the police have to take prior permission before carrying out further investigation? No, nowhere is written but having said that SC it is desirable that the police should inform the magistrate and keep the magistrate

inform of all development happening specially after submission of the FR U/S – 173.

Ranjit Singh v. State of U.P. 2000 S.C.

Ques. Does it necessary to give the notice to accused when the police making further investigation?

Ans. SC said why should give the notice. There is no provision to give the notice to accused for further investigation.

R Sarada v. T.S. Vellu 2000 S.C.

Ques. Is there any provision of law that the police can't put up a FR report without taking the opinion of public prosecution?

Ans. S.C. held no provision in law that FR must be put up after taking the opinion of PP. The police merely take the opinion of PP to ensure that prosecution case succeeds. But in case the police put up the FR without taking the opinion of PP then there is no legal infirmity.

Dharampal v. State of Haryana 2016 S.C.

Ques. Can the magistrate restrict the power of investigation?

Ans. No, magistrate can monitor because of Sakiri Basu case, but can't restrict investigation is the forte of the police, they are trained in this.

- The magistrate can't acquit the accused on the basis that he has been absconding from very long time.

Sec – 174 – It deals with the inquest proceedings: -

T. Poonawala v. UOI 2018 SC

When the information is received of dead person, whether he died or not, police don't know i.e. whether this matter of murder, suicide etc., So, firstly

police ascertain the cause of death apparently. If the case is related to murder the police man become the informant but if the cause is natural cause or accident then non-FIR is going to be lodged. So, initially find out the cause by PANCHNAMA ask police to 5 people and make the Panchnama if the death caused by murder, then FIR will be lodged and make the report U/S – 173 but if the death is caused by natural causes, then the report will submit to executive magistrate who make the inquiry and make the conclusion that is it a natural death or murder case or etc.

Inquest report basically to see the initial body. It is not a substantive piece of evidence.

Sec – 174

Ques. Can an inquest report be a substantive piece of evidence?

Ans.

Raziq Ram v. J.S. Chauhan 1975 S.C.
State of U.P. v. Shobhanath 2009 S.C.

Statement U/S – 174 can't be used as a substantive piece of evidence and it is hit by Sec – 162 because it is part of investigation.

Whenever there is dichotomy between the inquest report and the post mortem report.

Ques. Does the benefit go in the favour of accused?

Ans.

Munshi Prasad v. State of Bihar 2001 S.C.

Inquest report cannot say to be a medical report of doctor. That is why when there is discrepancy between the post mortem report and inquest report (174) this can't be fatal or rather not even a suspicious circumstance.

That is why in inquest report the name of accused and which section is alleged will not be mention. Basically, the purpose of Panchama U/S – is

to show to police during investigation how the body was found and in which condition it was found held in **State of U.P. v. Krishna Master 2010 SC**

Sec – 176 (1A) – Under what circumstances judicial magistrate is allow to inquire in dead?

Ques. FIR is be all and end of trial. Do you agree with this state?

Ques. An early lodging of an FIR raises the presumption that it is true. Critically examine.

Ques. FIR is a substantive piece of evidence and can for the basis of a judgement. Do you agree with this statement? Give reason for your answer?

Ques. To register an FIR on a cognizable offence is a right available to every informant. Elaborate with reference to the provision in CrPC.

Ques. To start a criminal justice system is the prerogative of any person residing in India. Do you agree with this statement – give reference to exception if any?

Ques.....X.....X.....

Chapter – XIII

Jurisdiction of the criminal courts in inquiries and trials

Jurisdiction is taken from English law. Offence must be tried in the locality wherever committed. This rule reflects U/S – 177.

Sec – 177 Bare -

- Sec – 407 of CrPC is the exception of this rule where H.C. orders.

Sec – 178 P.N. Singh v. K.P. Ghaira 1957 S.C.

Cruelty to wife regarding dowry, most of the acts were committed at a place A but a part of them were committed at place B also it was held by SC that the case could be tried only at A or B place as the wife had left the husband and was living with her parents. It was held that no, merely because she is living with her parents, the place where she is living with her parents cannot be a right forum, it could be only the place A or B where the offence has been committed.

Harbans Lal v. State of Haryana 1998 S.C.

Wherever the lorry was going with the smuggled goods the courts of all the places would be the smuggled goods were carried jurisdiction to try the case.

Sec – 179 – There are two forums –

- (1) Where the Act was committed
- (2) Where the result ensued (effect in both area the case can be lodged.)

Nandu Lal v. Putul Dey 1995 Cal. H.C.

Where the wife was tortured in husband's place in Hoogly and she fell in as a consequence of that mental torture at some other place which is her father's place, it was held that where the father's house, that court can even try this matter or either both of the place.

Shiv Dayal v. Emperor 1894

Where one person instigates another to commit an offence and by a letter and this letter was send by post, now moment the contents of these letters, he opens the letter then the abetment is complete. So, as a result this offence is triable where the letter was received.

Eg: A lives in Delhi who send a letter to B. B lives in Mumbai the moment the letter reaches to B and read it abetment is completed.

But if the letter got destroyed and never reaches to B then attempt to abetment is done then the Delhi Court will try this matter.

Sec – 180 Eg: - Law of conspiracy to bomb blast, so bomb blast is an itself an offence. So, where the bomb blast occurred and where the conspiracy of bomb blast done. Either of both the places can be taken for trial.

Sec – 181 (5) Eg: A goes to Delhi to buy a car from B which amount is 60 lakhs but B sold to A only 3 lakh A knowing that and having reason to believe it is stolen. A came to Chandigarh after purchasing. So, at Delhi or Chandigarh either of the place trial can be.

Sec – 182 Eg: A is a baba and runs a TV show and says he will make a judge B is living Delhi and deposit the amount of 1000INR and A is living Chennai. Before exam he did Pooja for exam to crack it. So, either A or B places the cheating case as can be tried.

Suresh v. State of Maharashtra 1986 Bombay H.C.

Permanent residence – If the girl went to her father's house, whether it can be deemed that father's house, whether it can be deemed that father's house is her permanent residence and Bombay H.C. held that paternal home is always a permanent residence to a girl.

Sec – 183 – This Section invokes the principle of extended jurisdiction. Voyage means a long journey.

Normally in English language the connotation of voyage is high seas. However, Ganga, river Brahmaputra also be taken as voyage.

Jimmy v. State of Haryana 2002 P & H (H.C.)

The word 'voyage' does not include the voyage on high seas or foreign countries but are confined to within the territory of India.

Harish Tiwari v. Vimal Kumar Singh 1995 (P&H HC)

There was a fight in a running train going from Shahjahanpur to Jalandhar/ The accused brought down at Moradabad, the victim came to Jalandhar

and victim lodge the complaint at Jalandhar against accused.

Ques. Whether Jalandhar court has jurisdiction to try the case?

Ans. Yes, wherever the journey takes place from the beginning to the end and during the course all become the jurisdiction to try that case. It not only to human beings but also goods. From A to Place Z and crossed placed B, C, D, E, F, G etc everywhere the trial can take place.

Sec – 184 – This section deals with joinder of charges. In a transaction committing different offences eg: Commit A offence at Place Y, C offence at place Z B offence at place X,

OR

A committed offence Y place

B committed offence Z place

So, whether it is me or my co-accused or it my transaction consist of different offences through there is joinder of charges where any of those offences was committed, any court of can try.

Sec – 185 – Eg: -

- **Special cases – at Chandigarh** – CBI may have arrested a person at any place but CBI court is at another place, in that cases the court i.e. Special court of that area would try notwithstanding that offence was committed at Amritsar. Only Chandigarh court will try.

Whenever we have special courts, they have jurisdiction all over the state, irrespective of the fact that wherever the offence may be committed the trial will be at jurisdiction place only.

Proviso – SC or HC can direct that, try the matter of belongs to particular area to another area. U/S – 407 (HC), 406 (SC), or 408 (session court power) CrPC.

Sec – 186 – Bare Act

Sec – 187 – There is a person residing in your jurisdiction i.e. in India but who has committed an offence outside the jurisdiction. Or anywhere in India or even abroad what will you do?

Sec – 188 – ‘dealt with’ – FIR, Investigation, Trial, Inquiry

V.D Savarkar v. Emperor 1910 – Accused was brought in India from England. Court held that the word ‘found’ and you were found in Mumbai, So, the trial will be proceeded in Mumbai.

Sec – 189 Bare Act

Chapter XIV

Conditions requisite for initiation of proceedings -

After FR U/S – 173 except 156 (3) Sakiri Case and 173(8) further investigations

Sec – 190 – Now, the work of magistrate/ court starts -

Taking cognizance is the judicial action taken by court because the court has to initiate prosecution.

So, before starting a trial the court have to conduct an inquiry.

This is known as pre-trial inquiry for determining –

- (a) Which offence has been committed
- (b) Who has committed the offence.

Now, the court is applying its mind for the 1st time U/S – 190 as in form of raw material the report U/S – 173 is available to the court with which the court may agree or may not, with the police report.

The magistrate can take cognizance.

- 1) Upon receiving the police report U/S – 173
- 2) On receiving complaint case.
- 3) Upon receiving information, Suo Moto taking cognizance.

Ques. Who is empowered to take cognizance?

Ans. Always magistrate is empowered to take cognizance U/S – 190, despite the fact that the matter is triable by session court or another magistrate.

- 1) If the matter is session triable then the magistrate commits to session court.
 - 2) If the matter is CJM triable then the magistrate submit to CJM court and when the triable is done by magistrate (JMIC) but magistrate thinks he has not power of punishment more then 3 years or etc but accused must be punished more than 3 years then magistrate submit to C.J.M.
 - a. CJM – can take cognizance
 - b. Additional CJM – can take cognizance
 - c. JMIC - can take cognizance
 - d. JMIIIC – is empowered to take cognizance if CJM empowered him.
- If JMIIIC has taken cognizance then that is not void as per Sec – 460 (e) that is an irregularity not an illegality.
 - But if JMIIIC has taken suo moto cognizance without the permission of the CJM then that is an illegality as it is void according to Sec – 461 (K).

Ques. Whether JMIIIC can order for further investigation after taking cognizance?

Ans.

Venu Bhai v. State of Gujarat 2019 S.C.

S.C. clarified that further investigation can be ordered at any point of time before the trial which is empowered U/S – 156 (3).

- Though taking cognizance is an extremely important matter but it does not involve any formal action, basically the moment the magistrate applies his mind it is said that he has taken cognizance. Taking cognizance is purely a judicial function, at this point of time a magistrate as this time matter is to be looked upon prima facie.
- Like (a) merely see the document.
- (b) is enough to proceed further not for conviction.

Bhushan Kumar v. NCT of Delhi (2012 SC)

At this stage the magistrate has to ensure that whether there is sufficient ground for proceedings and not whether there is sufficient ground for conviction.

- Where a magistrate has taken cognizance on the police report, he can always call those persons who have not been arrayed as an accused and can accuse them. Similarly, if the police have arrayed a person as an accused but the magistrate thinks that he is not accused, he can discharge/ release that person also. (it is in pre-trial)
- In discharge, magistrate can call again that person who had been discharged.
- Discharge is not acquittal that why Article – 20 (2) is not violated. It is not irregularity or illegality.
- When the complaint received to magistrate then he has 3 options –
 - He may take cognizance and call U/S – 200 of CrPC.
 - He may not take cognizance.

- If a magistrate has applied his judicial mind, then he can't order for an FIR.
- If it is proved that FIR is false then victim can file a protest (objection) petition and in such cases the protest petition will be heard U/S – 190 CrPC by a magistrate and magistrate may convert that into complaint case by taking cognizance.

154 FIR → 173 → magistrate U/190

- Prima facie check
 - Which offence done (but not see the merit)
 - Who done (but not see the merit)
- If offence is done – whether triable by whom eg: if session triable

Now magistrate, give the copy to accused if needed put in judicial custody and commit to session judge – now session judge applies his mind (framing of charged)

- If the magistrate takes the bail of accused it means magistrate is applying his mind which magistrate can't do because trial is not been started.

Ques. What is cognizance?

Ans. Where a magistrate has taken cognizance, the superior court should not be in a hurry to cancel it. Because trial is yet to be start. But not started, so, if any higher, revisional or appellate court overrules the cognizance taken by magistrate then it will be wrong.

Taking cognizance by magistrate means magistrate only thinks or seems that offences has been committed and the trial should be begun. Because if the superior court cancel the cognizance, it means they are going into the merits of the case and considering the final report or investigation as final.

Nupur Talwar v. CBI 2012 SC

An order taking cognizance should not be ordinarily interfered with by the

superior courts, it is only if the order is perverse or based on absolutely no material, then only the higher court should interfere.

1. Complaint cases start from Sec – 190 after taking cognizance, now magistrate will convert this into Sec – 200 into a complaint case. In case of any need magistrate will do a detailed inquiry U/S – 202, if it is proven in inquiry that the complaint is not true then U/S – 203 – magistrate will dismiss complaint and if it is true then he will issue the process U/S – 204.
2. In case final report, if it is found that FIR is false magistrate has given notice to **informant** (filed a protest) U/S – 190 filed - Petition is a reply to the notice.

OR

Immediately along with report U/S – 173 the informant filed protest petition and then magistrate gave him notice and informant succeeds to prove his point then the magistrate will reject the final report wholly and take this matter U/S – 200 as a complaint case. (Now consider it as complaint case.)

Sec – 191 - Where a magistrate has taken suo moto cognizance, he may be biased because he has taken suo moto cognizance, if the same magistrate is going to try, it definitely offends. The principle of natural justice that is why whenever there is suo moto cognizance matter the accused in that suo moto matter in consonance with the principles of natural justice can be given the choice of getting the inquiry or trial conducted by another magistrate, so, it is left on the accused whether to continue with the same magistrate for trial or apply for change of court as this is in the interest of justice or natural justice.

It is with the basic aim the Sec – 191 has been made.

Ques. If the magistrate took the cognizance suo moto, does the accused has any right to transfer the case?

Ans. Yes, U/S – 191.

Sec – 192 – is a very procedural matter whenever a CJM takes cognizance of an offence because a magistrate includes a CJM.

Suppose, a person goes directly to CJM, additional CJM, SDJM because all are JMJC.

Ques. Now what he can do?

Ans. In such cases, any CJM may after taking cognizance in such matter U/S – 190, now the question arises, is he supposed to try himself?

Sec – 192 (1) – He can always delegate that matter to a subordinate officer to him.

Sec – 192 R/W - Sec – 410 (1)

Sec – 192 (2) –

Anil Saram v. State of Bihar 1996 S.C.

In this judgement, the Hon'ble held that 192 gives special power to CJM and senior magistrate that after taking cognizance firstly, it clarifies that a CJM can also take cognizance.

Sec – 192 – Any judicial magistrate can take cognizance of suo moto, PR, or complaint case and he can transfer to lower magistrate court. Similarly, any senior first-class magistrate can do the same provided he must be empowered by the CJM to transfer to lower magistrate R/W – 410 – CJM can recall it and withdrawal at any time, similarly senior magistrate of Sec – 192 (2) can do the same.

Secondly: that CJM had many administrative functions to do and that is why the efficacy of 192 cannot be underemphasized because if the CJM is so busy he can now after taking cognizance can always send it to anybody else.

If JMIC has 1st taken cognizance of the case then the CJM cannot take back that case from JMIC because withdrawal of case caste slur on magistrate. It should not be done in routine.

As Sec – 192 provides that CJM after taking cognizance Sec – 410.

CJM must give plausible reasons for taking action U/S – 410.

Sec – 193 Even a matter is session triable – magistrate will take cognizance of that matter no session court will take direct cognizance of any case except 199 (2) – 500 of IPC has 2 paragraphs.

In this section, the word 'committed' has been used for 1st time.

Sec – 199 (2) R/W – 209 of CrPC (procedural) – Cases where direct cognizance is to be taken by sessions court –

Eg: Sec – 199 (2), case U/SC/ST's Act.

Ravi Shankar v. State of U.P. 1991 All H.C.

S.C. directly ordered sessions court to take cognizance of the particular matter. It was objected that U/S – 193 it is provided that magistrate will take cognizance 1st, the matter came up before Allahabad H.C. and held that if the S.C. is giving any case to session court, then the provisions of 193 can be waived off.

(SC's order cannot be called a legislative law)

Sec – 194 – Sec – 195-199 are exception to the general rule of CrPC that anybody can start a criminal justice system.

But the exception is – the person empowered U/S – 195 to 199 can start the criminal justice system.

Sec – 195 – R/W – Sec – 340, 341, 342.

Sec – 195 – can be divided into two parts –

- (i) Offences against public servants – it does not deal with all the offences against the public servants. It only deals with the offences against public servant U/S – 172 – 188 IPC.
- (ii) Offences against court –
 - a. Perjury – giving false evidence under oath
 - b. Forgery – making false documents.

The basic object this is to stop private persons to disturb the public servants if it is open to everybody the public servant starts many cases asking many other people to do that. Then an unnecessary litigation would arise and lot of unnecessary cases would be created because naturally a public servant has many persons who have many vested interests in him.

The magistrate will not take cognizance unless – complaint in written made by public servant (victim) or some other of public servant (boss) of Sec – 172 to 188 IPC.

Sub-section (2) – (boss) public servant may order to withdrawal of complaint.

- When the senior public servant withdraws the case, the public servant has two option –
 - He can go U/S – 482 of CrPC
 - He can go U/A – 136 of Indian Constitution.
- Sec – 195 – does not apply to all tribunals, but only those tribunals are included which have been declared by some special act that they are having powers of court.
- So, Sec – 195 – does not apply to all tribunals.

The question arose before S.C. in case of **State of Punjab v. Raj Singh 1998**

S.C. that if a person in lodging an FIR and also filing a complaint case (as Sec – 188 IPC) whether FIR is circumvented by Sec – 195?

Suppose, someone did forgery of court documents U/S – 466, 467 and an FIR was lodged as well as complaint was filed in court and court also took cognizance U/S – 195. In this case the Hon'ble S.C. held that the powers of an FIR and investigation are not circumvented by Sec – 195.

Whenever we talk about perjury or forgery it must be a forgery committed in the court or for court purpose. Only that perjury which is committed during trial or that forgery which is used for court purpose is covered by Sec – 195.

Eg: A takes the degrees of law by making forgery – It is not done for the purpose of court. This will not come U/S – 195 CrPC.

Iqbal Singh v. Meenakshi Marwaha (2005 S.C.)

That means it is not necessary that offences which are enumerated in Sec – 195 must be committed for any reason except fooling the court.

There is no embargo on the power of the police to investigate the case of perjury or forgery. If an FIR is accompanied by any cognizable offences can be registered and police has full power to investigate it.

Ranbir Singh v. State of Haryana 2000 S.C.

A forged affidavit was filed before S.C.; a question arose that

Ques. Whether, S.C. is a court covered U/S – 195?

Ans. Here S.C. gave imprisonment for 3 months and later on set aside its order and said, we have no original jurisdiction to try such an offence as S.C. is not a criminal court U/S – 6 but S.C. can use his constitutional power to order sub-ordinate court.

A witness was examined under examination-in-chief under oath and later on in cross examination it was found that he was lying and he himself admitted this, whether the Sec – 195 can be applied?

Ans.

Chajju Ram v. Radhey Sham 1971 S.C.

Sanction should be granted in those cases where perjury appears to be deliberate and consciously done. The court should not start the perjury proceeding too readily and too frequently without due care and caution otherwise it will defeat its very end.

Ques. Can Sec – 195 – be applied to arbitration?

Ans.

Manohar Lal v. Vinesh Anand (2001 S.C.)

It was held that an arbitration cannot be termed as court within the meaning of Sec – 195. Hence, no applicability of 195 to arbitrators.

Great care and caution are required before the criminal law is set in motion in Sec – 195, there must be reasonable foundation for the charge in respect of which the prosecution is directed.

Ques. If the offence U/S – 19 committed before the H.C?

Ans. Action can be taken by any judge of the H.C., not necessary that the judge have to take action before whom the forgery or forgery have been committed.

Bai Kasturba bai v. Vam mali das (1925 Bombay)

An offence cannot be said to be committed in a relation to a judicial proceeding unless it is entered as a component in those proceedings. That is why the matter must be in relations to the proceedings; it must have been made with the specific purpose of poisoning the court. There the court should take rather lenient view.

Sec – 195 is basically a rule laying Section and its procedure can be followed by any court.

Ajaib Singh v. Joginder Singh 1969 S.C.

Suppose the magistrate is transferred or that magistrate did not take action. Can a successor in office of magistrate file complaint U/S – 195 CrPC?

Ans. Sec – 195 is not related with the person but with the court. Whenever anyone furnishes false affidavits one can always use S.C. 195 provided it is now subjected to 2nd aspect – it is in the interest of justice to make an inquiry against such a person.

Omkar Jadhav v. 2nd Additional Sessions Judge 1997 S.C.

Notice given by sessions judge U/S – 195 for fabricating record evidence and putting up false case. The matter went to sessions court as he gave false statement U/S – 161 and now under oath he is saying something else. Matter went to S.C. and held that statements U/S – 161 are not evidence as those were not even signed.

Sec – 195 R/W – Sec – 340 – now the court became complainant as its puts up complainant, now a complainant since he cannot conduct his own trial or own inquiry that is why now the procedure U/S – 340 must be followed.

Sec – 195 (b) R/W – 340, 341, 342, 343. Sec – 340 is the continuation of 195, all process of criminal justice system must fulfill the natural justice system. One very important aspect of criminal jurisprudence is that the complainant is not allowed to try his own case where the complainant is allowed to try his own case will be against the principle of natural justice.

Sec – 340 – 1. Court will do: -

- Preliminary inquiry
- Record a finding to that effect
- Make a complainant there of in writing
- Send it to a magistrate of 1st class having jurisdiction
- Take sufficient security and grant bail and send the accused in custody to such magistrate.

- Bind over any person to appear and give evidence before such magistrate.

3. Where the junior court does not use its powers as where it should have lodged the complainant but it does not then the senior court can button and have the power to order a case to be registered in this matter.

Sec – 341 – Appeal – (1)

2. This matter came up before S.C. in Lalit Mohan v. D.N. Chatterjee 1982 S.C. and S.C. held that S.C. has no power to change the legislation, if it is written that it is final then it is final and shall not be subject to revision and nowhere it is written that H.C. can't use its power U/S – 482.

Time period or limitation period for the complaint starts from when it is signed not when it is received.

Chajeo v. Radhey Shyam 1996 S.C.

Cost basically is the domain of civil law. The provision of cost is rare in criminal law. Sec – 342 is one of the Sections which deals with costs.

Costs can be granted both in Sec – 340 and 341.

Sec – 343 – Trial – Sec – 195 – Other than police report i.e. complaint case. But its trial will go as per the cases of police report.

Warrant cases –

- (i) Police report after FIR
- (ii) Other than police report i.e. complaint cases on suomoto cognizance.

Sec – 196 – This section is basically deals with effects of public security. Naturally if people spread communal fear or regional fear or degrades religious buildings, or try to divide India or negatively effects are fraternity of our constitution.

Sec – 196 can be divided into 2 parts -

A. Those offences which threatens the security, brotherhood and fraternity of India. Eg: Sec – 153A, 153B, 505, 295, 295A, IPC.

Eg: Two friends making conspiracy to cause simple hurt, this heard by Police Officer and arrest them U/S – 323 R/W 120B of IPC → now the question arises this is very trial matter which may create chaos in court because court has already a lot of matters so that is why govt is involved – U/S – 196 (2) of CrPC. Why – cognizance can't be taken if govt doesn't give permission.

B. Conspiracy Sec – 120B

- a. Offences which are punishable more than 2 years – Sec – 120 (1) punishment will be same as the offence abetted.
- b. Offences which are punishable less than 2 years. – Sec – 120 (2) maximum 6 months. Imp – permission from govt.

Eg: A community is increasing communal tension and they all were made liable U/S – 153A as FIR was registered.

Now court can't take cognizance until and unless govt. sanctions permissions for this.

Sec – 197 – Public servants must be protected if they are not protected, they will not work and will not take any risky decisions.=. If is the duty of law to protect the public servant.

Judges, magistrates are also public servants and since the decisions of the magistrate or a judge one party is definitely going to be aggrieved, that is why they need to be protected as well as all the senior officers who are taking the decisions of our country.

Sec – 197 applies to the senior officers only – even after retirement lower rank officers.

Eg: Constable, sub-inspectors are not covered here.

Gazette Officers are covered U/S – 197 or the officers who are removable only by the government.

Ques. What is the protection being given U/S – 197 CrPC?

Ans. 1. The act must be in pursuance of his duty/ duties. Eg: In pursuance of duty – a police officer takes bribe – it is not in pursuance of his duty.

It must be lawful duty.

Eg: S.S.P – there is rioting in his area, he goes to spot and finds that 100 people are coming with petrol banks, stones etc.

The matters are gone to that level where he finds that tear gas is not going to work and he orders for firing – this is matter of fact finding that whether there need to fire or not?

And now the government will say that no sanction is being given. Is there need granting sanction before the trial or denied before the trial or it can be given during the trial?

Eg: Police has put up nakabandi in Cannaught Place as the police had information that terrorist are going to come; In 1 car, 2 person were sitting and they did not stop the car. Police fire in the air but still they don't stop and now police fired on both the persons, both of them died and later on found that both were businessmen. Now matter went to the Lieutenant Governor and he said no need to fire and sanction was granted (to take cognizance by court) to prosecute for U/S – 302 IPC.

It depends upon the facts which are coming across or even given after the trial. There cannot be set time for giving sanction. Ideal is that sanction is to be given before taking of the cognizance. If no sanction is given the

court cannot take cognizance. During the course of trial if the sanction comes – then the court has to stop middle in (suppose if sanction not give and court takes cognizance but during the course of trial sanction came (give or denied) because during the trial the fact's come out, then the court has to stop in middle)

2. The basic reason of Sec – 197 is to protect the public servant against the vexatious proceedings. Basically, it deals with only senior public servants who are removable only by the sanction of the government. This most important aspect of Sec – 197 is that the alleged offence committed by the officer must have been committed in the discharge of his duties.

3. The protection of Sec – 197 is available not only when the person is available in office but is available even after the officer has retired.

The Act should be done in pursuance of his duty like bribe or rape or abusing, all these cannot be given the protection of Sec – 197.

Ques. What is the test of Sec – 197?

Ans. That the public servant was discharging his public duty and while discharging his official duty the public servant exceeded the limits given to him by his office.

SB Saha v. MS Kochari 1979 S.C.

The Hon'ble SC laid down that there are three facets to be considered that whether protection should be given U/S – 197 or not. These 3 facets are:

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1. Was the Act complaint about? Was it done in the official character of the person?
2. Whether that official status given his that opportunity to do that Act?
3. While committing that alleged offence, was the accused in his official duty?

These are the questions to be kept in mind, before any sanction is given.

Ques. The question arises where a court takes cognizance against a public servant without sanction would it initiate a trial?

Ans. It was held that where sanction is must and it is not taken by the court the whole trial would be vitiated.

Wherever there is abuse of power there are chances that we will have to see whether that abuse of power was inadvertent or it could not have been avoided where a senior police officer abused and assaulted in a police station, it was held that abusing and assaulting person in a police station is not a part of a senior police officer's duty. Hence sanctions were granted. Where sanction is required but it was not granted, in these matters the whole trial vitiates.

As regards corruption is concerned we have the prevention of corruption Act and in Sec – 19 of the Act very clearly says that in cases of public servant sanction is automatic.

There are two types of sanctions:

1. Sec – 197 is a genus
2. Sec – 19 of prevention of Corruption Act – with regards to corruption overrides Sec – 197 CrPC

Paul Verghese v. State of Kerala 2007 S.C.

Prevention of Corruption Act regarding the disproportionate assets etc. There is no need for the authorities to wait for sanction under Sec – 197 CrPC, sanction is automatic in such cases U/S – 19 of prevention of Corruption Act.

That is why Sec – 19 operates on different field and cannot be limited by Sec – 197 CrPC.

Ques. Who all are covered by this Sec – 197?

Ans. Those government servants who are removable by the government as a result only senior officers are removable by government as a result, only senior officers are removable by government as a result, Sarpanch, panches, sub-inspector, head constable, ASI are not covered by Sec – 197 giving or not giving a Sanction is depending upon facts of each case. Every Act of Public servant is not covered by Sec – 197 CrPC. It is only those Acts which are done in his official duties in good faith, only those will be given the protection.

Ques. Whether his Act was in pursuance of good faith or his legal duty?

Ans. It is a question of fact, we cannot generalize it or it depends upon case to case and that is the reason why whether sanction is necessary and whether sanction can be given during the trial, it can be allowed, this matter came up in case of Prabhakar v. Shankar 1969 S.C.

PK Pradhan v. State of Sikkim 2001 S.C.

It was held that sometimes the sanction has to be given only after the facts becomes clear in the trial. Sometimes, the trial can start or the sanction may be given or denied during the course of trial.

Always the thing to be determined is whether the Act of the officer have a reasonable or rational nexus with the official duty.

Sanction – granting or non-granting is not a quasi-judicial function. That is why there is no need for the competent authority to hear the officer whose prosecution has been sanctioned or denied, because it is purely executive in nature. As there is no provision in law that an officer must be given a hearing, so, basically the competent authority has merely to see whether a prima facie case to be made out. If the competent authority is satisfied that the material placed before it is sufficient for prosecution and that he has over stepped his limits not in good faith then sanction can be given.

B.K. Singh v. State of Bihar (2000 S.C.)
Abdul Ansari v. State of Bihar 2000 S.C.

In these judgements the S.C. clarified that sanction can be given at any point of time even at the time of conclusion of trial or even after conviction.

Sec – 197 – Bare Act -

Sec – 197 (3B) – The basic rule is that if there were any president rule anywhere if any act is committed during that time then only the union government will give the sanction. But where the state government had already given sanction then that will be held to be invalid.

Sec – 198 – Marriage offences were earlier too bigamy and adultery, not everybody can move to court, in these cases only limited people can go to court. Marriage offences are basically civil wrongs. Marriage offences are not so to say the offences against the state though they have been elevated to the level of an offence.

A marriage offence is basically an offence between two people as it does not affect the public at large and that is the reason why only few people are allowed to complain on these offences – are basically non-cognizable offences.

Hence these all are complainant cases, naturally the question –

Ques. What is the law in civil law?

Ans. Plaintiff v. Defendant

Similarly, here the competent party has to file complaint are the spouses or they are very close relatives.

As far as adultery is concerned, before, was repealed, it was majorly taken to be an offence against the husband and that is why it is they husband who was allowed to make a complaint.

Sec – 198 – 1. a, b R/W 4, 5, C, 2, 3, 6, 7

Sec – 198B – In our ancient laws, there were no concept of marital rape, but it was introduced in our new laws. Before 1983 marital rape was considered if the girl is below 12 years because at that time the age of consent was 15 years. Slowly the laws changed and the Amendment of 2013 inserted Sec – 376B, if the husband and wife are estranged and the husband commits rape on his own wife, if she is living separately then it is a serious offence U/S – 376-B IPC and its procedure has now been given U/S – 198-B CrPC.

It is not necessary that actual rape has been committed here the provisions of Sec – 375 applies here also that is the power has been given to the court to 1st have prima facie satisfaction that actually the offence must has been committed which means the court has been given a huge power U/S – 376-B that if the court feels that it is a fabricated case by the wife to harm the husband, the court may not take cognizance.

Ques. A newspaper has written the derogatory remarks against the president of India. Discuss the procedure for the process of bringing the accused to book?

Ans. Defamation is basically the offence against mind and reputation. It finds its place in the very end of IPC i.e. Sec 499. Defamation is all about the reputation of a person and reputation of a person differs from person to person in the sense like defamation of the president of India or the governor or the PM of the country that stands at a different footing where we defame an individual who is not highly placed in society and that is the reason why we have divided this whole topic into 2 parts: -

1. Defamation of the constitutional authorities dealt by session court
2. Defamation of an ordinary person – dealt by magistrate – It is not a very serious offence in the sense the punishment is very less.

In such case the defamation of an ordinary person is conducted by a magistrate whereas all the defamation proceeding regarding higher or constitutional bodies is conducted by the sessions court. That is why we

have a special procedure, the topic is why we have a special procedure, the topic of defamation as punishable U/S – 500 IPC will be divided into defamation by individual who is nobody (dealt by magistrate) and of a constitution officer (dealt by sessions court).

Suppose, the constitution officer defamed and their matter taken up in the session court directly the whole procedure which the session court follows U/S – 237 and Sec – 199 lays down the basic procedure but if it is happened to session matter then follows the procedure U/S – 237 of CrPC.

Sec – 237(4) – it is criminal court but there is no bar in civil court to ask the amount as compensation and accused can also file a case U/S – 182, 211 in IPC against public servants U/Sub (6).

Criminal Justice System -

By FIR –

- Lodge in police station
- Only concerns cognizable case
- Sec – 154 to 176
- Arrest, search
- Seizure
- Summons
- Warrant
- Attachment
- Proclamation

By Complaint –

- Non-cognizable acts have to be complained
- Cognizable cases where the informant does not want to go to police station.

- Procedure of Complaint Ch-XV

CHAPTER – XV

Complaints to magistrate

Sec – 200 – Sec – 200 is basically a preliminary inquiry because U/S – 200 magistrates will take statements of the complainant and his witness on oath.

Suppose, if the magistrate finds that it is truth then he will call the accused under Sec – 204. If he found that complainant and his witnesses are not saying the truth then he can dismiss/ reject his complaint under Sec – 203.

Ques. What is the object of Sec – 200?

Ans. Basically the object of Sec – 200 is to conduct a preliminary inquiry, to know what is the truth to know whether the complaint is justiciable, whether the complaint is vexatious, whether it is civil matter or is it really a criminal matter.

Ques. Magistrate have taken cognizance U/S – 200 and also taken evidence of the complainant and his witnesses. Can a magistrate now send it for the police investigation U/S – 156 (3)?

Ans. No, because Sec – 200 is one way process, that is the reason why in case of Rajasthan H.C. – **Dilip Saharan v. State of Rajasthan (2000 Raj. H.C.)** where it was clearly held that once he has recorded the statements under Sec – 200, he cannot send the complainant U/S – 156 (3) to the police for investigation or lodging of an FIR.

Another matter came up before S.C. that what is the basis of Sec – 200 to move forward – should there be prima facie grounds for moving forward or there should be enough grounds for conviction of the accused?

Ans. The only concern is that whether there is any prima facie grounds for moving forward the complaint, conviction can't be the viewpoint of a magistrate.

State of U.P. v. Surinder Mohan (2000 S.C.)

Ques. Does the accused have any right to be heard at this stage?

Ans. S.C. held that accused is been called U/S – 204 before that the accused has not any right to be heard or to cross-examine the witness.

Ques. Whether complainant has to be one or there can be joint complaints?

Ans. There is a dichotomy of opinion of various H.C.'s as Karnataka H.C. says, no it has to be only one.

Madras H.C. – Only one.

Allahabad H.C. – There may be more than one complainant because in general clauses, acts, complainant includes complainants.

Sital Chandra v. Babu Ram (1967 All H.C.)

Ques. Whether complainant can be put up by the advocate not by complainant himself, whether this is barred?

Ans.

Hotline Shares v. Securities Ltd. v. Dinesh Ganeshmal Shah 2002 Karnataka H.C.

Karnataka H.C. held that there is nothing wrong if the pleader represents the complainant and even presents the complainant.

'A' issues cheques to 'B' for January, February, March, April etc. and all are bounced and 'B' filed separate complaints for each month.

S.C. made it mandatory that complainant must file an affidavit that no other complainant is pending in any other court in respect of the same

transaction. Please put up all your matters in one complainant.

Damodar Prabhu v. Sayed Babulal 2010 S.C.

Sec – 201, 202 – when the mind of magistrate is not clear so he can make any other person authorized to conduct investigation.

Sec – 202 – The object of Sec – 202 is given in itself – whether or not there is sufficient ground for proceedings.

- What is the scope of 202?
- It has very limited scope, firstly whether prima facie case or not – whether accused should be called U/S – 204.
- There have been cases where the magistrate sent one statement of witness and send it to the session court. The HC and SC said that send it back to the magistrate and let him record all the statements of complainant and witnesses before it is forwarded to the session court – AD Fernandes v. Rabindra Das 1996 Bombay H.C

Ques. Under what condition magistrate will not order investigation U/S – 202?

Ans. Sec – 202(1) proviso –

(a) Where the matter is exclusively triable by sessions court

(b) Complainant can't go straight way in Sec – 202 without going U/S – 200. Exception – 195.

Ques. Can cross-examination be allowed?

Ans. No, cross-examination can be allowed if a magistrate allows the cross it is an incurable error.

The CrPC does not allow any participation of the accused at the inquiry or pre-trial stage to cross-examine or ask the proceeding to be set asiding as he was not made a party.

Hiralal v. State of Bombay 1963 Bombay
Vishnu Dutt v. Govind Das 1995 Rajasthan H.C.

Kanchan v. Ram Kishan 1908 Cal – even a clerk can be authorized to investigate.

Kishor Kumar v. G.D. Mehrotra 2002 S.C.

If the magistrate does not accept the final report of the police. Now can he take cognizance of the matter and proceed with matter a fresh?

Ans. It was held that yes, he can reject the final report and take that as a complaint case.

Sec – 203 – Dismissal of complaint is not hit by the concept of resjudicate Sec – 11 CPC nor it hit by double jeopardy.

Ques. Complaint can be put again?

Ans. Where a complaint is dismissed on merits a second complaint can be put up even on identical facts provided there are exceptional cases but if there are different facts which had come to life than a fresh complaint despite dismissal U/S – 203 can be taken up.

Whenever a complaint has been dismissed and if there are reasons to be taken a fresh complaint, it is not barred. This thing was clarified by many judgements.

The dismissal of complaint U/S – 203 does not operate as a bar on rehearing of a fresh complaint on the same facts by the same magistrate or by another magistrate if the magistrate has changed.

Poonam Chand Jain v. Fazru 2005 S.C. and 2010
also read

It was very clearly held that after dismissal, on the same facts the re-

hearing is maintainable through under exceptions circumstances.

- Whenever there is dismissal reasons are must, when a complaint is put up U/S – 200, the magistrate has 3 options U/S 203.
 1. He finds no offence has been committed, he dismisses complaint U/S – 203.
 2. He believes that the complainant is telling lies, he dismisses.
 3. He is not sure whether the complainant is lying or not, he conducts a detailed inquiry in Sec – 202 or investigation if needs U/S – 202 and then comes to decision that it has to dismissed.

Ques. What are the remedies available to a complainant if the complaint got dismissed U/S – 203?

Ans. There is no appeal against this order best there is revision (it is done by senior court) U/S – 398, so, Sec – 203 R/W 398 CrPC.

Chapter - XVI

Commencement of proceedings before magistrates

Sec – 204 – Issue of process (calling of accused)

Criminal Justice System: -

- (1) FIR Sec – 154 – Final Report Sec – 173 → 190 magistrates take cognizance → called accused U/S – 204
- (2) Complaint case Sec – 200 → Sec – 190 cognizance → called accused U/S – 204

- Before the issues comes the basic consideration is whether this is enough to carry on the proceedings?
- At this stage, when the accused comes and accused says I will call it

wrong as this is the stage where magistrate discharge the accused.

It is basically a pre-trial process. Once the trial over if the accused is innocent then the magistrate acquits the accused.

- 154 to 173 – 204 – if plead guilty – go jail
- 190 to 200 (2) – 204 If not plead guilty - trial

On discharge (recall the accused) – there is no double jeopardy on acquittal – there is double jeopardy

If some new evidences are found then always a magistrate can recall the accused in discharge.

- When a magistrate issues a process, that order of issuing process need not be a reasoned order.

State v. Arun Kumar 2015 S.C.

Dilawar v. State of Maharashtra (2002 S.C.)

Ques. Whether order U/S – 204 be quashed? If this can be quashed then where it can be quashed?

Ans. The order of Sec – 204 is a revisable order.

Ques. Whether same court can revise the order of Sec – 204?

Ans. In the CrPC – Sec – 482 – No review powers are given unlike CPC U/S – 151. This matter came up before S.C. in case of **Poonam Chand Jain v. Fazru 2010 S.C.** It was clearly held that order issuing process it cannot be reconsidered by the same magistrate. Sec – 482 as it can also be challenged U/S – 482 CrPC.

Ranjeet Singh v. State of U.P. (2000 Allah. Full Bench)

On order for issue a process can be challenged before H.C. U/S – 482 by invoking its extra ordinary power. There is no way that the accused can be send back to the magistrate.

Sec – 205 – There are two provisions in CrPC which can dispense with the personal attendance of accused Sec – 205 and Sec – 317.

Ques. When should the court do allow the dispense with the personal attendance?

Ans.

H.R. Industries Kottayam v. State 1973 S.C.

The accused's attendance can be dispensed when –

1. There is trivial matter.
2. Where there are technical cases, as no moral turpitude is involved.
3. Where the accused are women.
4. Where the accused are old and very sick people.
5. Those who are everyday workers or even industrialists.

Whether the accused should be given the dispense with personal attendance is the matter between the court and the accused, nothing to do with the complainant thus there is no locus standi of the complainant.

Sec – 207 – Matters of police report are covered only here (ii) for the 1st time word FIR has been used.

Except of case diary copy of all the documents were given to accused.

Magistrate will decide which copy is to be given or not.

Naresh Kumar v. Ravinder Kumar 2008 S.C.

In this it was held that an unauthorized access to case diary is very wrong serious note has to be taken and, in these matters, if it pertains to bail, no

bail should be granted.

State of Gujarat v. Anirudh Singh 1997 S.C.

If there are no material evidence and now it takes time to bring documents then the court have to wait, but where some scientific evidence like FSL reports is awaited then the court can move forward.

Sec – 208 – Committed: -

(a) In complaint cases – Sec – 208

(b) In FIR case Sec – 209

Sec – 209 – In Sec – 209 for the first time the word remand has been used.

In Sec – 167 - The word detention has been used.

Ques. Once, the magistrate has remand him U/S – 209, is it necessary for the session judge to again pass further orders?

Ans. No, remand of magistrate will be deemed to be the remand of session judge.

Magistrate can't discharge the accused in a session triable case.

Ajay Parmar v. State of Rajasthan 2013 S.C.

The S.C. very clearly held that once an offence is cognizable by only session court, suppose the matter is purely triable by sessions court, the magistrate cannot probe into the matter. There is no question of his discharging the accused and to apply his mind on the merits of the cases.

The magistrate's court has to merely see whether a prima facie case is made or not. His concern is to whether the offence is triable by session or not as mentioned in the police report if police report is clear that there is sessions triable case, he must just commit it the sessions court after fulfilling the requirements U/S – 207, 208 and just send and do nothing else.

Sec – 193 – says that sessions judge will directly take cognizance.

Another question arose between S.C. that many times magistrates take time and the S.C. held that delay can't be tolerated and infact H.C.'s must pass orders that magistrate can take how much time: and Bombay H.C. held that within 2 months after taking cognizance the magistrate have to commit to session case.

Bholenath Dhamankar v. State of Maharashtra 1995 **Bombay H.C.**

Laid down guidelines that all commitment orders should be precise, clear, must shows application of mind to the fact that all matters must be brought before the accused and they should try to send it within 2 months of receipt of case.

Sec – 210 – Magistrate ask to give affidavit when accused lodge the complaint, that you have not lodge the FIR just to aware.

Ques. Can a complaint case and an FIR be lodged simultaneously?

Ans. Yes, Sec – 210 is a very important right with the accused that if the magistrate is not happy with the police report, then he can proceed with his own complaint. How will he proceed if he had not started his process of complaint.

Chapter XVII

The charge (A) – Form of Charge

Charge word is used with the magistrate charge comes after taking cognizance after application of mind. It is just before the trial that there is framing of charge.

Charge is basically accusation by the magistrate. There are many types of accusations: -

- Accusation by the victim Sec – 154
- Insinuation by the victim Sec – 173 (accusation by police)

Accusation by magistrate i.e. charge

Sec – 2(b) Charge

In criminal law charge relates to the offence that which offence is done by you it is clear in my mind, do you agree with my accusation?

If yes – this will be plead guilty but if not agree – trial

The basic rule of jurisprudence is each offence to be tried separately and each charge to be treated separately and also punished separately. All the charges in one transaction to be tried together. But the basic rule of jurisprudence is that each charge is to be tried separately and punished separately. However, in CrPC we have the provision of trying the charges/offences together in one transaction.

Ques. What is the form of charge?

Ans. Sec – 211, Sec – 211 (7) R/W 236, 298 – How to prove provisions conviction)

Sec – 212 – Mention the date – (eg: Clerk misappropriating them only so we are not sure exactly that when it happened then – they will tell the overall overview)

Sec – 213

Ques. What are the aspects must be cleared in a murder?

Ans. Illustration

Sec – 214, 215 R/W 464

While making the charge or writing the particulars of the charge we have omitted to the offence like didn't write Sec – 302, or there were some

mistakes in the charge – so mere mistake in charge will not vitiate the trial. Even if a wrong charge has been putted up it will not vitiate the trial. The only thing that can vitiate the trial is that the accused was misled. In other words, prejudice was caused to the accused, failure to charge or error in charge per se will not vitiate a trial.

Misled and failure of justice – it will affect to accused.

But if misled but not failure of justice then it will not affect to accused.

Sec – 464 – Always depends how much injustice has been caused to the accused more the prejudice, more the chances of retrial, less the prejudice less the chances of retrial – only that part which was not covered will be covered.

Ques. Under what circumstances can a conviction be quashed?

Ans. Sec – 464 (proviso)

Lallan Rai v. State of Bihar 2003 S.C.

The S.C. clarified that non-framing of charge under a particular section would not vitiate a conviction under that section if no prejudice was caused to the accused.

K. Brahmih v. Public Prosecutor of H.C. of Andhra Pradesh 1999 S.C.

In this case, the Hon'ble S.C. held that omission to frame a charge under particular section though conviction was based on and no prejudice was shown to be caused to the accused persons, it did not affect their conviction.

S.M. Multani v. State of Karnataka 2001 S.C.

In this case, the accused was charged U/S – 302 but it could not be proved but the ingredients of 304B were established and convicted for that.

He was not charged with 304B he could not put up evidences dowry death and the court took a presumption against him Sec – 113B IEA. S.C. said

that serious prejudiced has been caused to the accused, the conviction has to be aside, fresh trial on Sec – 304B must be started.

- There was Sec – 306 but these is not framing of a charge however, Sec – 498A is proved against husband. However, Sec – 306 was not framed but by the help of 464 CrPC they added 306 and the accused is to be convicted U/S – 498A and Sec – 306. Now, this is totally valid, as there is no such prejudice is being caused to the accused.

Sec – 216 The charges can be altered or added but can't be removed.

In CPC, issues can be deleted but in CrPC charges can't be deleted.

1. Any time – means charge can be altered or added even at last stage of the case, i.e. arguments and before the judgement is pronounced.

Main Pal v. State of Haryana 2010 S.C.

On the principle of alteration of charge.

Vibhute Narain v. State of U.P. 2003 Allahabad.

It was very clearly held that a charge once framed can't be deleted but can be altered.

Sec – 216 (1) - the word 'judgement is pronounced' – can the charge add in appeal court?

The appellat court may add or alter in charge even in the judgement of appeal.

Judgement –

1. Trial
2. Appeal

Surinder Kumar v. State of H.P. 2003 H.P. H.C.

Sec – 217 bare – If the charges are added or alter then now need to call

the witness again.

(B) Joinder of charges

The basic principle is that each charge must be treated separately, tried separately and punished separately.

But in CrPC, separate charge in 1 transaction can be tried together. So, that is why joinder of charges is the creation of CrPC.

The word 'District Offence' eg: If 'A' chops the both hand and legs of 'B' – it does not mean that charge of 326 of IPC will be four times and if B died by that chopping then 302 will be charge – So, we see the culminative effect.

Sec – 219 –

1. It means the person has committed up to 3 offences.
2. Of the same kind – same section, same punishment of IPC or of any special or local law.
3. Within the space of 12 months.
4. Whether with respect against same person or different person eg: - 'A' is a master of cheating, he has three separate cases of cheating against 3 different people but it is 420 IPC in 12 months then he may be charged with at 1 trial but any number of them may not exceed 3.

Means victim 'B', 'C' and 'D' were all together against 'A' in a case. 'B', 'C', 'D' (stale) v. 'A'

Sec – 220 Bare Act – 06.06.2022 further page

Sec – 221 Illustration – Bare Act

Case: - Mohd. Azeem v. State of U.P. 2002 All H.C.

Framing of charges U/S – 304B and alternatively U/S – 302 in view of doubt as to which of the offences could have been made out was permissible in

Sec – 221.

Mean we can always 302 and 304B, in case 302 could not prove then 304B, can stand.

This was later on ratified by Supreme Court.

Ques. Can a person be charged with rape and adultery together?

Ans. No, because rape means that the women has not consented but adultery means that the women has consented, so, how these two charges can be putted together. Absolutely in consented charges can't be putted up together.

Narvinder Singh v. State of Punjab 2011 S.C.

In this case, the wife was suffering from depression because her father has been killed by terrorists, the husband started more cruelty on her and her depression also increase due to this. There was no evidence of dowry demand, she has committed suicide.

Case was registered U/S – 304B. Dowry was not proved; the court convicted the husband U/S – 306.

The Sec held this was a correct decision even though Sec – 306 was not charged, but Sec – 304B has an ingredient of abetment of 306 that is the reason why this was upheld even though 306 was not framed as a charge and the charge was framed U/S – 304B. Since, the dowry could not be proved and there was no charge U/S – 306 but it was upheld.

Eg: Sec – 222 - Sub-section (1) – A person is charged U/S – 420 – it is aggravated form of cheating in which dishonest transaction of money, if the money is not involved and not dishonestly then Sec – 420 cannot be invoked, but it is cheating although money is not involved. So, the Sec – 417 can be charge.

Till now we have read charge against 1 person/ accused.

Sec – 223 – What persons may be charged jointly: -

The following persons may be charged and tried together, namely: -

What happens if there are different charges against different person/ accused or same charge against different accused.

Eg: 'A', 'B', 'C' and 'D' goes to murder 'E' and 'E' dies. We can try all 'A', 'B', 'C' and 'D' in same trial which allows by U/S – 223 of CrPC.

Sub-Sec (F) of Sec – 223 – Eg: 'A' have done theft in 2018 and receiving that stolen property by 'B' in 2020, 'B' told to 'C' to conceal that property 2021, now police raid over that stolen property and recovered. It so, now it been 3 years passed and different = 2 case, does not matter. All of them can be tried together.

Proviso of 223 – All these conditions in which they can be tried together having given from a to g, if by chance they don't fall under a to g, even then they can be tried together provided they themselves apply in writing to the magistrate or district session judge that they want to try along with them.

Sec – 224 – Where a person has been charged with more than one charges as he gets convicted in one of the charges then after conviction, the PP or the complainant may withdraw the remaining charge or charges and the withdrawal will amount to acquittal regarding those charges but if in future in the appeal court the charge for which he was convicted, conviction was set asides, if set aside and then those acquittal charges will again become alive (means if in appeal conviction or sentence is set aside them then acquittal also be set aside (now the trial can start on 498A again)

Eg: 'A' charge with 302 & 498A but he convicted in 302 but not 498A then complainant 498A will be consider acquitted but if in appeal the 302 set asides by the court then 498A will become alive it is the exception of double jeopardy.

Lower court will try 498A subject to order of appellate court.

CHAPTER – XVII

TRIAL BEFORE A COURT OF SESSION

Warrant cases: - means a case relating to an offence punishable with death, imprisonment for a term exceeding 2 years.

- Death/ life imprisonment/ 10 years
- Less than 10 years
- Up to 7 years
- Up to 3 years.

Cases which are punishable with 2 years or more than 2 years are triable by session court or magistrate.

Less than 2 years – summon case (magistrate tried those case which are left after session triable case)

Cases –

- By magistrate – summon cases –
 - Less than 2 years
 - Summon case trial
- By Session and magistrate – warrant cases trial –
 - Session triable cases (death, LI, exceeding 10 years)
 - Punishable with more than 2 years (triable by magistrate) –
 - FIR
 - Complaint

Cases –

- Summon cases trial
- Warrant case trial

- Triable by session
- Triable by magistrate
 - Police report
 - Other than police report
 - Complaint
 - Suo moto

#Higher the punishment then much more elaborates the procedure, it means session trial is the more elaborate procedure, and the summary or summon trial has the smallest procedure because court does not want the smallest mistake to occur.

Chapter – 18 deals with serious court trial

Before the cases of Nanavati there use to be the session trial a Jury, now the Jury system is no longer existing and it does not find a place in new CrPC.

Sec – 225 – P.P. means appointed U/S – 24 of CrPC and PP and Add. PP appears H.C. & as well as session court. But, Asstt. PP appears in magistrate court U/S – 25 of CrPC.

Sec – 226 – Appears means appearance by himself and brough mean bring by someone. At this stage witness will not come, he just briefing.

Sec – 227 Discharge – For the session judge applies his mind – this is pre-trial inquiry as the trial has not started. If prima facie the court finds that the accused is innocent, then the court will discharge him (Session Judge not framed the charges it just pre-trial inquiry)

Sufficient grounds – Sufficient ground basically means any reasonably prudent will come to a conclusion that there is no ground to sustain the charge against the accused.

Soorajmal v. State of M.P. 1992 M.P. H.C.

In this case, opium was recovered in field. The police implicated the owner

of field merely because he was the owner as there were no evidences session court held that from where the opium has come.

H.C. quashed this order and held that as there is no other evidence, as police and the prosecution has no other evidence to connect the owner with the opium except that the opium was found in his fields.

As field is open area, anybody can put the opium, it is not necessary that opium be fought to owner.

Other evidence to connect the owner with the opium except that the opium was found in his fields.

Basically, it is only a prima facie finding and, in this case, it is not a detailed analysis, we don't have to take evidence of witnesses, it is prima facie as it is clearly visible on the record and from whatever the PP has put up before the court.

Palwinder Singh v. Balvinder Singh 2009 S.C.

In this case a girl had died because she was set on fire. She had made two dying declarations and in a later dying declaration she named accused the court discharged the accused seeing that there are two dying declaration in the 1st one she didn't name him but in the 2nd one she named the accused, now this discharge was set asided. The S.C. said, how could you appreciate the evidence at this stage.

Appreciation of evidence is the matter of trial, so, discharge can be when the is prima facie that accused has no matter in case and there is little chance then he can't be discharge.

Ques. What is the difference between discharge and the acquittal?

Ans. The power of the Judge to discharge is in a pre-trial stage, he has to apply his mind whether prima-facie there does not appear to be enough evidence to carry on the case.

Whenever there is acquittal, it is after the whole integrates of a trial have been gone through.

In discharge if new evidences were found then the accused can be recalled as double jeopardy will not apply but once the accused has been acquitted, he can't be recalled, double jeopardy applies U/S – 300 R/W – Article – 22 (3).

A question came up before Calcutta H.C. –

Ques. Whether discharge amount to acquittal?

Ans. In case of **P. Vishwanathan v. A.K. Burman 2002 Cal H.C.** – It was held that an order of discharge does not tent amount to acquittal of the accused.

Sec – 228 – Framing of charge

Ques. Sec – 302 R/W & 3 section which are magistrate triable so will the session court keep the matter to himself which are triable by Session Court and rest of the matter send to the magistrate or whether the Session Court try the whole matter?

Ans. Session Court are not allowed to segregate the charges despite the fact that some of the section or offences are triable by the magistrate. If one of the Section of offences in session triable then all the offences will be triad by the session court.

Ques. There were 2 cross cases 302 of IPC & other two cross cases – 323, 341 (cross case means victim of 302 is accused of 323, 341, & victim of 323, 341 is accused of 302) so, whether the Sec – 302 of IPC tried by Session Court or Sec – 323, 341 tried by magistrate court?

Ans. Both case Sec – 302, & 323, 341 will be tried by Session Court **Sudhir v. State of M.P. 2001 S.C.**

Framing of Charge

Framing of charge basically is a very important judicial exercise because once a charge has been framed then the trial will be limited only to those matters.

- **State v. Arun Kumar 2015 S.C.**
- **Sajjan Kumar v. C.B.I. 2010 S.C.**
- **Dilawar v. State of Maharashtra 2002 S.C.**

Framing of charge is the basic ground for starting the trial. Before framing of charge the court must apply its judicial mind or evaluate all the materials or documents placed before it. The grounds are basically whether the accused has prima facie committed the crime or not, very clearly S.C. has said many times, charge framing should not be mechanically if without applying judicial mind the court framed charges, these are vitiated charges.

State of Maharashtra v. Somnath Thapa 1996 S.C.

It was held that where the charge is haphazardly made and clearly it could be seen that there was no application of mind that charge framing will be set aside.

At the time of framing of charge the court has merely to see whether there is prima facie enough evidence that the accused must have committed the offence. There is no need to go into detailed analysis. Even if a small remote link is found between the accused and the offence then the charge can be framed. This thing was clarified by S.C. in **Suresh v. State of Maharashtra 2001 S.C.**

State of M.P. v. Mohan Lal Soni 2000 S.C.

It was clarified that the court has only to see whether there is any prima facie case whether there is sufficient ground for proceedings. It is not necessary to appreciate the evidence in detail; a mere prima facie valuation is needed. Also, the test is not whether there is enough material to convict. But the test is whether there is enough material to continue the

trial/ proceedings.

R.K. Jain v. State of Rajasthan 2002 Raj H.C.

It was held at the time of framing of charge the trial court need not discuss every material placed before it by police, it need not go deep into evidentiary value of the material on record. What it has to see whether prima facie enough material exists to start the trial, if it is so there should be straightway framing of charges, (whenever the charge is framed the accused need not to bring his defence material here. The accused does not have a right here. The framing of charge is not a mini trial.)

State of Orissa v. D.N. Padhi 2005 S.C.

The materials of accused can't be considered at this moment only the material which has been put up by prosecution should be considered.

Once the charges have been framed mere reading of charges is not enough it is necessary to explain the charges to the accused. If charges were not explained then this is a major infirmity. So that the accused can understand the charge which were framed against him.

Sec – 228 – for framing of charge need not give reason, after framing of charge – court ask to accused whether he is agreeing or not if not agree then – trial start.

Sec – 229 –

Ques. When an accused can plead guilty?

Ans. This is not cleared, it means the accused can plead guilty at any point before the completion of trial.

Ques. If the accused plead guilty then whether the judge is bound to convict him or is it his discretion that despite the plea of guilt, he may not convict him?

Ans. It is cleared by legislation that the judge may, in his discretion convict him.

- Judges should not convict on the plea of guilty of murder. Because sometimes murder could not prove but culpable homicide proved. So, always try the trial of murder even accused plead guilty.
- Accused must plead guilty himself not through his counsel. Any confession made by pleader is not binding upon accused. Unlike civil law where an admission made by a pleader is binding upon the party.
- Sec – 230 – Ques. 'A' pleaded guilty in a case, the judge decides that he will not pass the judgement on his plea of guilt. What is the procedure he will follow?

Ans. Sec – 230 – The judge will fix a date for the evidence of prosecution.

- When accused plead guilty u/s – 229 but, judge refuse to convict him then judge shall fix the date to examination of prosecution witness that is PW1, PW2, etc.
- Or issue of process, production of document or thing – now once the document brings into the file which will call as that the document has been exhibit.
- Exhibit – for document – EX1, EX2, etc
- Witness – for prosecution – PW1, PW2
- Any material – MO1; MO2 object
- First mark then exhibit that it will prove later.

Ques. If the police didn't take the statement of any person but court finds that person should be called then court u/s 165 IEA has the power to call any person.

Bhima v. State of Orissa 1996 Orissa H.C.

It is courts prerogative that in the interest of justice and to clarify its mind

ask any, person to be examined or recall any witness (this is the power given by Sec – 165 IEA)

Sec – 231 – The word is 'take all such evidence' – means it includes examination in chief, cross-examination and re-examination.

Recall is the step to be taken with great care we should not be recalling at a drop of the hat. They can't be recalled at the matter of the right and definitely not for cross-examination.

Ques. Is it the duty of prosecution to produce the every witness?

No

Pirithi v. State of Haryana (1993 P&H H.C.)

Only material witnesses which are necessary to get to complete prosecution story only they need to be produced.

It is not the duty of the prosecution to produce each and every witness only those witnesses need to be produced who are material in unfolding the story of the prosecution.

Bipin Panchal v. State of Gujarat 2001 S.C.

It was clarified by S.C. that whenever any objection or question arises regarding the admissibility of material witnesses that can't be determine at that time when they arose that they must be determined collectively at the end of trial. Because it saves the time.

Sec – 232 - Acquittal

Kisan Sewa Sehkari Samiti v. Bachan Singh 1993 Allah.

Charge was framed by Session Judge after framing of charge he saw that evidence is not coming forth. Then he dropped the proceedings.

It was held by Allahabad that once a charge was framed then the court have to either acquit the accused or convict the accused, he cannot drop the proceedings. There is no third way.

Now, accused come into the picture. Now the evidence will put up before

the accused which was given in prosecution – that how the accused justify himself – means question answer form u/s – 313 CrPC not under oath.

Sec – 233 – Court can't go with a presumption that defence witnesses are telling lie, so, no opportunity to defence should be disallowed.

Thus, the defence witness must be given some weightage as of the prosecution witness.

1. Defence witness merely a defence witness do not stand at a lower footing than a prosecution witness because as the S.C. said that there is no guaranteed that the prosecution witness tells the truth.
2. But in case if it is the court is convinced that the defence witnesses are been produced to delay or to cause inconvenience or to cause vexation to the opposite party then it can refuse the defence witness. If the court arbitrarily refuse the defence witness then it is the complete failure of justice, not a mere irregularity. It is not curable. The defence evidence is an essential part of trial not a mere formality.

Sec – 234 – Arguments R/W Sec – 314

(When the examination of witness for defence)

Means witness of accused.

- Examination in chief of witness accused in favour of accused
- Cross-examination by P.P
- Re-examination – by accused

And after above the prosecution sum up and the defence (accused do the counter arguments - defence)

Sec – 314 – Written copy of the argument, both are two separate thing –

1. Judgement – it does not get vitiated.
2. Sentencing – it is separately dealt with in the court, if not then sentence will be vitiated.

Sec – 235 – **Santa Singh v. State of Punjab 1976 S.C.**

Where the judgement was given on conviction, then the hearing of question of sentence is to be done separately in details the principle of sentencing.

Sentencing is the judicial function; it has to be performed with at most care.

Character of accused is most important in the sentencing.

- Character of accused is relevant under IEA.
- Is he a 1st time offence? – See the humane aspect that or hate the sin not the sinner. Having small children or not earning people will keep in mind.
- Is the sentence should not be less or more.

- **Jumman Khan v. State of U.P. 1991 S.C. – Balance the individual and public – when given sentence**
- **Dagdu v. State of Maharashtra 1977 S.C**
- **Shiv Mohan Singh v. State Delhi Administration 1977 S.C.**

Difference between sentence and conviction –

- Conviction means person is found guilty sentence means the punishment is given on conviction.
- Sec – 236 – previous conviction means accused has the crime in his veins.
- Sec – 298 R/W – Sec – 75.

Chapter XIX

Trial of Warrant – Cases by magistrate. 'A' cases instituted on a police report.

Warrant cases triable by magistrate: -

- Of which he took cognizance on a police report u/s – 173.
- Other than police report –
 - o Of which he took cognizance on complaint case.
 - Non-cognizance
 - Cognizance cases
 - o Suo moto

Warrant case – Sec – 238 to 250: -

A: - Warrant cases triable by magistrate on police report. (Sec – 238 to 243)

B: - Warrant cases otherwise than on police report – complaint+suo moto (Sec – 244 to 247)

C: - Conclusion of trial – common part (Sec – 248 to 250)

A: - Warrant cases instituted on a police report
Magistrate – can give punishment: -

1. Up to 3 years
2. Up to 6 years consecutively.

Schedule 1 in IPC there is no clear yardstick to determine the particular offence of up to 3 years is triable by magistrate. Thus, we found that magistrate in Schedule I is two types: -

- Judicial Magistrate I class
- Judicial magistrate II class, mostly deals with summon case.

Ques. Can a magistrate try offences punishable with imprisonment more than his power?

Ans. Schedule I IPC yes.

If he wants to give more imprisonment than his power – either he sends it to the CJM or submits to CJM & CJM will now give the sentence to the accused – 7 years or 14 years consecutively.

Sec – 323 – He can commit during the trial to session court.

Sec – 238 – 154 – 173 – 190 – frames charges – trial

Sec – 239 –

P.N. Mukherjee, 1960 S.C.

The accused can be discharged with regard to some offences or may not discharge with regard to some offences.

Ques. Once the magistrate has discharged the accused. Does he loses all his control over the accused?

Ans. No, he can recall the accused at any time.

Merely because there is some error in the record, is no ground for discharge. This matter came up before Orissa H.C. **N. DAS v. Sudarshan 1991 Orissa H.C.** discharge cannot be on any technical ground i.e. manifest error in the record. It has to be only on the fact that the charge is groundless.

So, there is no other option available for the magistrate to discharge. The only one ground which is clearly available here i.e. the charge groundless.

There is no appeal against discharge. However, u/s – 398 where there is revision against the discharge.

Whoever, fresh material is found then the magistrate can take again the cognizance. This matter came up before Rajasthan H.C. **Vijay Bai v. State**

of Rajasthan 1990 Raj. H.C. – It is not amount of review of amount? – held where the fresh (In discharge – reasons must be given)

S.S. Ahlawat v. State of U.P. 2013 S.C.

In matrimonial cases there is the tendency of the victim to rope in every member of the Husband's family so, that we can harass them, now, the question arose – can the court discharge?

Ans. Example – Wife – Husband, mother-in-law, sister-in-law, father-in-law
– Can the court on prima facie evidence discharge these people?

The S.C. held that no, because at this point of time the court is not supposed to go into the merits of the case, as here no charges were framed.

Sec – 240 – 1st test of trial is the competency of a magistrate to try the case adequately punished him –

- Submitted to CJM
- Committed to the session judge

I.e. u/s – 323 & 325 are covered here.

Ques. What is the role of court while framing of charge?

Ans.

State of Delhi v. Gyan Devi 2001 S.C.

It is well settled that at this time or stage at the framing of charge the trial court is not to examine and access in detail all materials placed on record by the prosecution, nor it is for the court use, consider the sufficiency of the secondary material for the purpose of seeing in whether the alleged offence against the accused person is made out at the stage of the charge, the court has examined the material only with the view to be satisfied that a prima facie case has been against the accused.

Sec – 241 – (Victim of rapes should not be recall unless necessary till 242

every provision was same as in session triable Sec – 232 is not given in warrant case triable matter)

Sec – 242 –

Sec – 243 – After 242 – Sec – 313 – each and every incriminating circumstance must be put up to the accused he must be given a chance to answer)

(B) Cases instituted otherwise than on police report. (Sec – 200 – examination on oath – 202 – during this accused was not present so can't use this statement as evidence)

Under Sec – 244 – inquiry for purpose of framing of charge – now we will take all the statement in the present of accused.

Trial start – now, the accused can cross examination again in trial for prosecution.

Sec – 244

Sec – 245

Ques. What is the object of Sec – 244?

Ans. Gopal Krishan v. State of Kerala 2002 Kerala H.C

The object of Sec – 244 is to enable the magistrate to collect materials to find out whether a case is made out against the accused where 244 is an inquiry stage where prosecution of defence is examined in details. The start of evidence of Sec – 244 basically is an inquiry.

Sec – 246 –

Ques. Does the magistrate has any power?

Ans. The principle of natural justice is imperative so, there is no discretion

to the magistrate that to refuse any cross-examination if the accused wishes to do so.

Zamunia v. Ram Tahal 1900 Cal.

Nasawar Ji v. Emperor 1900 Bombay

The fact that already some cross-examination had taken place before framing of charge does not affect the privilege of the accused. The magistrate has no discretion to refuse such an application on the ground that he had already cross-examined his witness.

A complainant come to magistrate, he examined in orally and magistrate convinced that it's a true matter, he took cognizance u/s 190 and magistrate called him with evidences, he came to court u/s 200, magistrate felt that matter is too complicated, he conducted his own inquiry or order for investigation u/s 202 – magistrate came to a conclusion that he must be called u/s 204 (issue of process).

Now, the court start a fresh u/s – 244 and magistrate ask to put up evidence by prosecution while presenting the evidences the accused will be present, if need be may conduct the cross-examination if the magistrate allows to accused.

After 244 the minds of magistrate will be clear that whether he should discharge the accused or frame charge.

If frame charges – u/s 246 (magistrate will ask to accused do you mount to cross-examination of any of the witnesses of prosecution, if say yes then cross-examination taken place so u/s – 246 trial will be start, if prosecution wants they can bring fresh evidences accused will be cross-examined after this trial – the Sec – 313 takes place defence will come up in 247 and after 247 – matter put up for arguments u/s 314.)

From 248 – is common for FIR and complaint cases.

Sec – 220 (1) "If one series _____ some transaction."

In same transaction has different acts and these acts are connected because of that same transaction.

- Proximity of time
- Proximity of place
- Continuity of action
- Community of purpose

These all four of them are one transaction.

Joinder of charges can be done where there is 1 transaction.

Eg: - 'A' going to murder 'B'. 'A' buys a gun for the community of purpose (murder) – Sec – 25 Arm Act.

- Then House breaking -
- Then broke the teeth of B's servant -> 326 of IPC
- Then molest the wife of B -> 354 IPC
- Then murdered the B -> 302 IPC/ so, need not have separate trial for above section.

"More offences than one is committed by the same person."

Eg: - A, B, C goes to murder X → this will come u/s – 223. But in Sec – 220 → 'A' goes to murder 'X', so accused is one though 'A' is committing the series of Acts which are constituting separate distinct offence. → all will try in one case.

But in case there are more than 1 accused i.e., A, B, C are going to murder 'X', they are having the same transaction because they are doing the same thing together this will cover u/s – 223.

(2) Subject to the sub-sec – 2 of Sec – 212.

Eg: - 'A' is working as an accountant in B's office and every month 'A' is swindling some money from B's account and 'B' doesn't know the exact month of 'A', misappropriation or breach. There may be

chances of more than 3 offences, but as per Sec – 219 there must be 3 offences. But Sec – 220(2) says in the matter of criminal breach of trust or dishonest misappropriation of property as u/s – 212 (2), all the offence may be tried in 1 trial.

But, Sec – 477A of IPC has been charged with this offence as it deal with falsification of account, can be tried together with this (breach and misappropriation) as it is related to same transaction.

In other words; in criminal breach of trust there can be multifarious entries and multifarious Acts. Suppose from January to June, the person has committed 11 times criminal breach of trust. It will not be convenient to have 11 separate trials notwithstanding the Sec – 219. It can club all the matters of criminal breach of trust in 1 trial.

Sub-Sec – 3

Illustration (i) There are two offences are committed when cane was hit. The moment person picks up a cane to hit, this is an assault, person may or may not hit, and when the person hits and course the pain will a second offence and that is why there is 2 separate offences however, they both form the part of the same transaction so, it is to be tried in 1 trial.

Illustration (J), Sec – 411 of IPC deal with receiving stolen property and Sec – 414 deals with concealing stolen property. So, both are separate offences but, they both form the part of same transaction. 'A' & 'B' may be tried in 1 trial both the separate offences.

Illustration (L), you have a grouse against a judge and you makes a forge document against judge which is an offence u/s – 167 and you delivered that property to H.C. judge that judge takes the bribe. So, here 'A' may be charge u/s – 471 R/W – 466 & 196 of IPC. So, separate offences in 1 trial as 1 transaction.

Sub-Sec (4) – Eg: - 'A' cuts the arms and u/s 326 of IPC, legs – 326 of IPC – is an offence itself in consequence B died. – So, when we combine the above offence it cumulative effect of the offence u/s – 302 of IPC.

Illustration (m) –

Ques. What is the robbery?

Ans. When anybody commits theft or extortion along with causing death or fear of death, hurt or fear of hurt or wrongful restrain or fear of wrongful restrain i.e., robbery has integral part is hurt.

So, question is if the hurt is part of robbery, then will the section of 323 will be alleged separately?

- Sec – 392 is robbery
- Sec – 394 is causing hurt while doing robbery.

Ques. While doing robbery caused hurt so, should the Sec – 394 will be alleged only or Sec – 323, 392, 394 be alleged?

Ans. Sec – 323, 392, 394 will be put together – why?

Ques. What is hurt?

Ans. Definition u/s – 319 – it say hurt is causing bodily pain, disease or infirmity. Robbery is the property offence and hurt is the body offence. So, both are different section.

Eg: - While committing robbery 'A' killed 'B'. So, Section – 392 and Sec – 302 will be put together as both are different offence.

Hurt = 323.

Robbery = Theft + Hurt Sec – 392.

Sec – 394 – causing hurt while doing robbery.

Ques. What is the difference between Section – 394 and Sec – 323 + Sec – 392?

Eg: - Robbery is fear of hurt, if 'A' shows or apprehend 'B' with lathi or gun to take the chain of gold. So, here the hurt did not cause. But, if 'A' caused little injury to 'B' to take the chain of gold will differently act. Now, its different act which fall u/s – 394.

Sec – 392 – Hurt not caused but only fear of hurt.

Sec – 394 – it includes causing of hurt.

So, that is why Sec – 392 and 394 and 323 are different.

Sub-Sec – (75) – Sec – 71 of IPC.

Cognate offence.

Eg: - Wherever we are charging a person u/s – 326 of IPC then we need not charge u/s – 323 of IPC (hurt).

- Multiple victims mean multiple offences. 'A' slaps 'B' but 'C' interferes between them but 'A' also slaps 'C' these are two different case u/s 323, and when 'A' shot 6 people then it is 6 different cases u/s 302. But the trial can be same. Illustration (b) of Sec – 71 of IPC.

Ques. Does the Sec – 219 is limited only to IPC?

Ans. No, Sec – 219 applies to IPC as well as special and local laws.

Illustration (h) of Sec – 220 – 'A' threatens B, C, D at the same time so, 'A' will be charged for 506 → B, 506 → C, 506 → D = separate charge in 1 trial.

Illustration (e) of Sec – 220 – Sec – 211 IPC can be charged twice for same person. Why?

Ans. Sec – 211 of IPC has two parts

Eg: - 1. Lodge false FIR u/s – 211 & 2. Making false accusation against a person. Both are separate offence, so, i.e., why Sec – 211 can be charged twice for same person. So, two times punishment will be

given of Sec – 211 like 2+2 = 4 years.

(C) Conclusion of Trial

Sec – 248 – Acquittal or Conviction

2. The magistrate finds the accused is guilty and feels that the accused must be given bigger punishment than magistrate submit the matter u/s 325 of CrPC but magistrate does not proceed u/s 325 or and decided that the to give the probation to accused u/s – 360 or use probation of offender Act, then first he pass the judgement, and then he hear the question of sentence another hearing (santa case).

Separate hearing on sentence by session judge u/s 235 and for magistrate u/s 248 (2).

3. Magistrate wants to give enhance punishment because of previous conviction (Sec – 75 IPC) then the previous has to be proved, but, accused does not admit it of previous allegation of conviction or claims that he convicted but in appeal he won. Then magistrate will hear and take the evidences.

Prov – If the accused is not convicted in the present case then does not matter the previous conviction.

Sec – 249

Ques. What happen if in complaint case, the complaint is dismiss?

Ques. What happen if in CPC if the plaintiff is missing? – 0.9

In criminal law, the criminal law + plaint = complaint

Ques. If the magistrate is absent then what is the law in CrPC? Sec – 249.

'On any day fixed' – It means it is not only restricted to first hearing.

Ques. Does the Sec – 249 applies all criminal case?

Ans. No, it applies only to compoundable case given u/s 320 CrPC and applies to non-cognizable cases. It will not apply to cognizable cases.

Now, if the complainant is absent not in the first hearing but in every hearing, any time during the hearing then (in CPC 0.9 dismiss the plaint) magistrate may, before framing of charge, discharge the accused.

How, u/s – 249, discharge is different from earlier discharge. Discharge u/s – 249 is on default but earlier discharge on merit of the case.

Ans.

1. Jurisprudence of discharge (what is discharge)
2. Difference between discharge and acquittal.
3. Discharge why is the matter of pre-trial.
4. Kinds of discharge – u/s – 249 –
 - a. On default
 - b. On merits

In 249, the magistrate does not apply his mind on the evidence in the case hence the order is not on the merits of the case. It is merely because of default of the complainant such an order of discharge can't be called judgement.

Ques. Hence it is not judgement, then can again complaint be file?

Ans. This is a discretionary power, when we talk about discretionary power the magistrate should always keep in mind. The gravity of the offence. If the nature and gravity of offence is such that he should not discharge the accused merely because the complainant has not come it would be unjust, we must remember that an order of discharge u/s 249 is not an acquittal that is the reason why double jeopardy does not apply.

Ques. Can he review his own order?

Ans.

AS Gauraya v. S.N. Thakur 1986 S.C.

Once a magistrate dismisses his complaint on grounds of default of appearance of complainant, he has no power to revive the dismissed complaint. If the complainant puts up a subsequent application or petition for revival, he has no power to revive that dismissed matter. There is no power given u/s 249 or any other law where inherent jurisdiction was to the magistrate. So, he can't revive as matter which has discharged or dismissed u/s 249.

The question arose before the S.C. in same case – can he put up 2nd complaint? Yes, he is not debarred from putting up 2nd complaint.

Discharge is possible for many times as the discharge is always a pre-trial process. Once charges are framed then the only option is trial then there can't be discharge. The question arose that

Ques. Whether if the charges are framed and the complaint dies will the magistrate discharge the accused?

Ans. No, there is absolute unanimity of the opinion on this that wherever once the charge is framed and the complainant dies the matter does not abate. The magistrate must proceed with the case.

The complainant death does not result in abatement of the matter even in an appeal if the accused was found guilty.

The Hon'ble H.C. have been unanimous on this point that in such cases the state should step into the shoes of the complainant and prosecuting the accused.

Sec – 250

Ques. When a complaint file which found a lie or unworthy complaint? What will be the procedure?

Ans. 1. Sec – 182, 211 – IPC

2. Civil suit for damage in CPC.

3. Sec – 250 of CrPC.

These all thrice are simultaneously.

‘This was no reasonable ground’

When we acquit, which means

(a) No ground, or not sufficient ground

(b) Benefit of doubt – means 50:50 magistrate is acquitting because it is a criminal law as the accused is prima innocence until prove guilty. But it can't be said that there is no ground means if there is reasonable ground the 250 will not come into action.

So, there must not be sufficient evidence at all then only Sec – 250 will come into action.

(2) How much of compensation can magistrate give?

Magistrate has fine power of 10,000

And JMHC has fine power of 5,000

Ques. Is the accused debarred from moving criminal or civil action against the informant?

Ans. Sub-Sec (5) accused can go all the 3.

Sec – 250 CrPC

Sec – 182 and 211 IPC

Civil case of damages

Proviso that amount as compensation which has been given will be taken

into the account in awarding compensation in subsequent civil suit.

(3) It is deal with compensation but not fine.

(4) It is default of in payment of compensation but not imprisonment in lieu of fine. Hence, the nature of this imprisonment is as penalty but not sentence.

(6) & (7) deals with the power of JMIIIC

If it is a JMIIIC who can give maximum compensation of Rs.5,000. As per sub-sec (2). If JMIIIC gives more than 100 then the informant or complainant can appeal from the order as if that order is a conviction order. This does not apply JMIIIC.

(7) It is the continuation of sub-sec (6)

If appealable – then pay the compensation when appeal lapsed

If not appealable – then pay the compensation when 1 month from order is passed.

(8) **Ques.** Can magistrate order for compensation in summon-case?

Ans. Yes, false cases registered by a complainant or in the police station which are summon cases can also entail compensation.

Chapter - XX

Trials of Summon – cases by magistrate

Summons case are very small cases. Because has the punishment up to 2 years. But we cannot say that the procedure is short end then doesn't mean we going to cut corner on the justice part. Natural justice must be followed.

Till now, we have seen that framing of charges is very important aspect but in summon case need not to frame the charges.

Sec - 251

Summon cases can be police cases also. Some of the cognizable case is of 6 months also, so, FIR can also be lodge.

Gopal Krishan v. Motilal 1926 Cal.

Particulars are not stated to him, and straightway it was asked that why should we not convict you? It will vitiate the trial.

Ques. As there is no need of framing of charges then what will happen to the joinder of charges or joinder of trial?

Ans.

San Dun v. Emperor 1905

Both will be as it is will be conduct.

Ques. Will a summon case be only held against one person?

Ans. Hence, in summon case, joint trial is also covered. In summon case, the framing of charges is to be done in joint trial/ charges but charges have to be explained the all accused. So, we have joint trial or joinder of charges also in summon cases.

Sec – 252

Sec – 253 – These deals with petty offences of Sec – 206, CrPC.

- 1) 'Accused can plead guilty even by post' messenger can be advocate also.
- 2) 206 has many more aspect of petty offences as what is the petty offences but Sec – 253 is 'the procedure' per se.

Ques. What are petty offences in CrPC, how is the law regarding the trial of the petty offence different from other and how is the treatment of petty offence different from the plea of guilt which must be taken from the accused.

Ques. In summon cases the procedure is shortened not the justice. Critically examine the statement.

Sec – 254

Ques. Will the Sec – 313 be followed?

Ans. Yes, Sec – 313 will be followed but where the court says the accused is no need to come then 313 will not be followed.

In 254, we started with the trial; while going with trial, magistrate should first start with the prosecution evidence and then go with 313, only in case where magistrate give the exemption to the personal attendance to the accused then need not to with the Sec – 313 – this is also the discretionary power of the magistrate then magistrate takes the evidence of the accused magistrate may order for if the police case, that the witnesses be called by summons. But in complaint cases magistrate may ask the party to deposit the reasonable expenses for the witness so, that he can be summoned by the court.

Ques. Can the magistrate, write the gist of witnesses instead of word by word in summon cases?

Ans. 254 u/s 274

The magistrate can write the gist of the statement of witnesses or memorandum of substances.

But the magistrate can't cut corners by the not examining of all witness. It would be the dereliction of justice.

Any magistrate who refuses to try the witnesses who are formally tendered, vitiates the trial. It is against the principle of natural justice.

Sec – 255: -

Judgement –

- a. Conviction
- b. Acquittal

(1) The judgement is given by the magistrate. In case he feels that the evidence is not sufficient or more evidence is needed or some people

should be called who have been hidden who not been produced by the parties, then Sec – 165 IEA power is supreme he can call any person at any point of time and ask any document, or anything.

The same thing is reflected in Sec – 255(1) and if he found not guilty then record the reason and make the order for acquittal.

Suppose, magistrate finds him guilty, as the punishment is up to 2 years in summon case. So, the maximum use of Sec – 360 CrPC is given here. So, magistrate can release him on probation or he found that maximum punishment should be given then apply Sec – 325.

Magistrate can convert the summon case into warrant case trial.

Ques. What is the sentence as per law?

Ans.

1. Suppose, if it is written imprisonment and fine then both will be given.
2. Where it is written imprisonment or fine or both then magistrate has the choice.
3. Where it is written simple imprisonment then magistrate cannot give rigorous imprisonment if written 'either' then has the choice.

Sec – 255(3) – If different offences is established during trial and other offences are also summon cases then magistrate instead of convicting of 'A' offence, convict him for offence 'B'. Provided that the accused was appraised on it or he had been given the opportunity to represent against it.

Sec – 256 – If the complainant does not come in summon cases? – Sec – 256.

- Magistrate should not be very quick in passing of the judgement of acquittal.

Ques. Will there be double jeopardy of this acquittal u/s 256 (2)?

Ans.

Rasik Tatma v. Bhagwat 1958 Patna

The order of acquittal under this section final order of acquittal which operates as a bar u/s 300 to the fresh trial of same offence.

Amarchand v. Sanjeev Rastogi 2002 Madras.

Ques. If the complainant does not come and accused is abscond and process of issues has been done, then can accused be acquit?

Ans. No, even if the complainant is not coming and accused is already absconded then magistrate should keep on adjourn the case. He should not acquit the accused.

Ques. Is there any provision of revive by magistrate after an order of acquittal?

Ans. No, acquittal mean acquittal and there can be no review of this order.

Associated Cement Company v. Keshav Chand 1998 S.C.

Discretion which has given to magistrate has the far-reaching effects and it's a purely judicial function. It must be exercised by magistrate as judiciously.

Sec – 257 – What will be withdrawal of complaint in summon case?

Ans. It will be acquittal Sec – 257 is only applicable to complaint case not in FIR case.

'May Permit': - It means the reasons for withdrawal must be told to the magistrate and if the magistrate is convinced that the reasons are cogent enough, he may go ahead and acquit the accused.

Ques. Sec – 258 v.IMP – Can the magistrate drop the proceeding in summon case?

Ans. Yes, in otherwise than complaint case, JMIC with previous sanction of CJM, may stop the proceedings at any stage, before preannouncement of any judgement.

This power should be use most sparingly.

S. Ladha v. State 1971 S.C.

Hold that power given to the magistrate to stop the proceeding are extreme power should be used very sparingly in exceptional and unusual circumstances.

The underline objective of this section, is that wherever the magistrate is convinced that it is unnecessary with the carrying on the proceedings in the interest of justice, in such case it is better to drop the proceeding.

Effect of dropping

1. If we have already taken the principal's witness's evidence then it will have the effect of acquittal, double jeopardy will apply.
2. In case the principal's witnesses' evidence has not been taken then it will have the effect of discharge.

Ques. Whether Sec -258 is an interlocutory order?

Ans.

1. If it is an interlocutory order then the revision would not be taken place.
2. And if it is acquittal then it is matter of appeal

State of Gujarat v. Maganlal, Gordhan Dass 1995 Guj H.C.

Since these proceedings are not interlocutory, wherever it has the effect of acquittal an appeal would lie u/s 378 CrPC. If the consequences were discharge them, the revision would lie 397 CrPC.

Ques. Sec – 259 – Can a summon case be convert into the warrant case?

Ans. Yes

Ques. If false complain of summon case file, then is there any compensation?

Ans. Yes, Sec – 250(8) – R/W – 274

Chapter XXI

Summary trials

Summary trials basically imply speedy disposal. It is a simple process. It is not for complicated cases.

It involves very small offences.

Basically, summary trials have been added to CrPC and CPC not to cut short justice but to give a speedy disposal of case. Right to speedy trial is not against law in fact it is part of right to life. That is the reason why special procedure has been prescribed which will be a much short end procedure in CrPC. But that does not mean we are cutting corners on the grounds of justice.

Both CPC and CrPC elaborately prescribes for the summary matters. Naturally since in summon cases no formal charge is required. In summary trials also no charge is required.

In summary trial only summon case are covered. There can be no appeal of such a matter as these are petty matters.

Summary trials must be done with great care and caution because it is the discretion of magistrate to try summarily. There is no 'SHALL' the word is 'MAY'.

Sec – 261 Summary trial by magistrate of second class.

- When more than one offence is charged out of which one is summarily triable or other is not, now whether the magistrate can

leave all other matter which are not triable summarily and can we try only matter which is summarily triable?

Ans. No

Ques. What are basically the powers of a magistrate in a summary trial?

Ans. The summary trial in this matter is only the summary trial for the purpose of record not in respect of proceeding themselves.

Sec – 262 Maximum Imprisonment in summary trial is 3 months.

Ques. Whether this is only for 1 offence or for all offences for which the person was charged?

Ans. Whenever in a summary trial the accused person is convicted of more than one offence the aggregate cannot exceed more than 3 months.

- If for 1 offence the imprisonment is 2 month and other offence the imprisonment is 3 month and both will run together.

So, it exceeds to 3 months. Is it possible?

Ans. In this situation, the imprisonment will run concurrent but not consecutive.

- If imprisonment in lieu of fine is 1 month and imprisonment is 3 months given the total is 4 months.
- 4 months – it will be valid punishment because 3 months punishment is substantive imprisonment and 1 month is not substantive punishment.

Record in Summary Trial

Sec - 263

Sec - 264

Sec – 265

Chapter XXI A Plea Bargaining

There was no concept of Plea Bargaining in 1973 code. This concept was added by amendment of 2005.

Ques. What is the concept of Plea Bargaining?

Ans. A person if he commits an offence, he has to suffer the punishment as prescribed by law.

Means there is no more judicial discretion to dilute the punishment. Plea Bargaining is an exception, we see that there is certain exception to the fact that each offence, if conviction is there must be suffered.

In the ancient times there was the concept of blood money which is of course too primitive in nature. This concept of blood money is not only primitive it somewhere appeals to be a misfit in the modern world because if we go with the theories of punishment, one of the very important facets of the punishment is prevention.

In CrPC we have compounding of offences. Compounding of offences – where compounding can make a person to escape prison.

Ques. What was the need for Plea Bargaining?

Ans. Basic need was that there has been a huge buildup of cases in our country. The backlog of cases all over the country is to say the release of monitors. There are thousands of cases pending all over the country in various courts and with the offences increasing day by day there which are not very serious offences.

Not a very serious offence: -

Any offence which is not imprisonment 7 or more than 7 years or offences against women or children or socio-economic offence.

In these offences, we can't give any benefit in these sections because otherwise the deterrent effect of law will be lost. But suppose it happens to be offence which is punishable with less than 7 years of imprisonment then

Ques. Is it better that it should remain pending for 10 years or is it better that we do give small punishment and yet we also allow the victim to be compensated?

Ans. As a result in Plea Bargaining, we have now both the aspect i.e. punishment + compensation.

Plea Bargaining means it is a plea to be allowed to bargain on the quantum of the sentence. Naturally the question arises.

Ques. If I want to bargain on my plea, then I have to confess – court asked both the parties to do settlement outside court and then goes and do settlement and after return to court and say to court that they are happy with the settlement and court can release the accused on probation as a benefit u/s 360 even if there is minimum punishment.

Ans. There is no provision in any law to give less than minimum punishment but here under plea bargaining half of the minimum punishment can be given.

Ques. Now, the question arises Isn't this handling as on the one hand we are talking about strict law of criminal law detergency and on the other hand talking about bargaining and is this law somewhere not smacking of injustice? Will it not prompt everybody to commit offences? Will it not have a non-deterrent effect? Is it not against the basic principle of justice?

Murlidhar Meghray v. State of Mah. 1976 S.C.

In this case for the 1st time the Hon'ble S.C. had talked about plea bargaining much before it came and then it has said that this is a necessary evil, seeing a huge backlog of cases in our country, because 'justice delayed is justice denied' and that is the reason why it was declared

unnecessary evil.

Just three years later, there came in another case;

Kasam Bhai v. State of Gujarat 1980 S.C.

S.C. declared that any effects of plea bargaining are illegal, we should not allow this.

Thippaswamy v. State of Karnataka 1983 S.C.

It was held that it is violative right to life i.e. Article – 21.

State of U.P. v. Chandrika 2000 S.C.

It was held that it is against public policy and against the concept of justice.

Despite the unhappiness, uneasiness and dissatisfaction with such laws, invoking the principle of necessity because of huge pendency of criminal cases, the legislature passed this law and added Ch-21A in CrPC. But then it made certain safeguard to not to grant plea bargaining in following cases.

1. Not all offences but offences punishable the 7 years.
2. Any offence committed against a child or women below 14 years of age.
3. Any offences which is socio-economic.

Malimath Committee – Allowed plea bargaining.

4. Where the accused is a habitual offender.

Sec – 265A

FIR and Complaint – both has same yardstick up to 7 years, not exceeding 7 years can also be read as up to 7 years not more than 7 years.

In a complaint case u/s 265 (1)(b) only after 204 the accused ask to plea

bargaining, then it will be allowed. Plea bargaining will not be allowed after 190. But in FIR case the PB may be allowed after 190.

State of Gujarat v. Natural Marchandji Thokar 2005 **Gujarat H.C. D.B.**

It was held that plea bargaining means pre-trial negotiations between the accused and the prosecution during which accused agrees to plead guilty in exchange for certain concessions by the prosecution.

Step no. 1 is to confession by accused before court and ask for PB. Any confession which is not voluntary i.e. induced or threatened confessions so the accused must visit the court alone firstly record its confession.

Ques. Which offences are not covered for PB?

Ans.

1. Death, life imprisonment or above to 7 years
2. Socio-economic offences
3. Woman, child below 14 years
4. Previously convicted accused of same offences.

Sec – 265B

1. Step 1 – accused file the application of P.B.
2. (a) Brief description of case
(b) Affidavit of voluntary that
3. Step 2 the court shall issue a notice to PP or complainant the word 'PP' includes 'APP' – explanation 265J because PB is for up to 7 years so matter is magistrate triable, so PP will not be as PP's are for session triable.

Sec – 265B Procedure

(4) 'Accused in camera ---- APP voluntarily: -

The court must be sure that the confession which the accused impliedly making is voluntarily because to rule out any nefarious pressure which may have been put up by the opposite party.

As the tended confession is no value in Law.

Sec – 265C – who will sit out of the court, Sec – 265C deal with that.

- (a) If case instituted on police report – court shall issue notice to PP + PO + victim + accused → He may bring his pleader also = meeting must be voluntarily
- (b) If case instituted on complaint – court shall issue notice to victim + accused = may bring his pleader = must be voluntarily

Sec – 265D to 265F bare

Sec – 265G

Gamdoo Singh v. State of Punjab 1981 P&H H.C.

Plea of guilty obtained by trickery is not a plea of guilty and the accused is entitled to satisfy the court that there was in fact no plea of guilty. S.C. held that once a plea-bargaining sentence has been given by the trial court the question arises –

If the court gives 1 year punishment instead the offences has 7 years punishment and complaint goes for revision as the appeal can't be lie and revision court increases the punishment from 1 year to 3 years.

Ans. Then S.C. said this is not allowed because plea bargaining has the basic foundation to give the minimum punishment and u/s 265G also says that the judgement is final unless the writ given u/a 226, 227 of H.C. & SLP u/a – 136.

Thippe Swamy v. State S.C.

As the judgement has the finality as it is not based on the merit of the case and court even did not discuss the merit of the case. It was purely based

on the plea of guilt that made on the condition that you will give lesser sentence.

If we compare with approver u/s – 306 there he is getting the complete pardon because he is becoming the prosecution witness which is something very different but here the accused knows that he is getting some punishment that punishment will be desired mutually by both the party. The court come in picture at the end. When both the parties have come to a conclusion. They have gone to the court and merely court acts as rubber stamp.

Sec – 265H Bare

[Plea bargaining is on sentence not on charge. Charges can't be bargaining.]

Sec – 265 I Eg: - If the accused had been arrested before and kept in police custody for 5 days and then in judicial custody for 1 month and latter accused ask for plea bargaining in which he gets the punishment for 3 months. So, now the imprisonment of police custody and judicial custody will be set off in 3 months imprisonment i.e. (1 month+ 5 days) – 3 months

Sec – 265J – This plea bargaining overrides the entire CrPC nothing of CrPC, otherwise, will apply to PB.

Sec – 265K – We have already read in IEA that former statement of the parties can be used to contradict or to corroborate but u/265K says plea bargaining's statement/ confession can't be use anywhere or u/s 145, 157 of IEA.

Sec – 265L – This chapter of plea bargaining will not apply to JJ Act, 2000.

Chapter – XXIII

Evidence in inquiries and Trials

For evidence we have IEA. Certain provision of IEA is common both CPC & CrPC but there is provision of evidence which are specific for CrPC and CPC those provisions which are specific evidence to CrPC are given in Chapter 23. It goes in hand in hand with IEA.

(A) Mode of taking and recording evidence.

Sec – 272 Bare

Sec – 273 – If the accused is not present then whole trial will be vitiated. So, throughout the trial it is necessary that the accused must be present but when accused misbehave in trial then court can expel him for certain time.

Ques. Evidence had been recorded in the theft of accused in case in case no. 1 and in case no. 2 another case of theft of same accused come now the evidence recorded in case 1 can be use in case 2 as there is same accused and same offence?

Ans. This is not allowed. Each case must have the fresh evidence even though the parties and matter may be the same held in **Mithulal v. State 1975 S.C.**

Ques. Can the presence of accused be made by audio or video means?

Ans.

State of Maharashtra v. Dr. Praful B. desai 2003

We can go for video conferencing evidence recorded by video conferencing would fully meet the requirements of Sec – 270 of CrPC. In another word, it should be as per the procedural established by law.

So, the word 'presence' does not mean the physical presence.

Sec – 274 – Deals with summon cases.

Sec – 275 – Deals with warrant cases.

Sec – 276 – Deals with session court triable cases.

Ques. Sec – 275 (3) What is deposition?

Ans. Any statement given in the court under oath.

Ques. What is narrative?

Ans. Any deposition of witnesses must be in narrative form – means ‘I was going... I saw... etc.’ and (opposite of narrative is question answer form) → Depends upon discretion of court

Ques. Question raised over the presence of accused by way of audio or video.

Ans. In the beginning, there were lots of reaction.

National Textile worker’s Union v. PR Ramakrishanan **1983 S.C.**

We can’t allow the dead hand of the past to stifle the growth of living present. Law can’t stand still it must change with the changing social concept and value. If the bark that protects the tree fails to grow and expands along with the tree it will either choke tree or if it is a living tree it will shed that bark and grow a new living bark itself. Similarly, if law fails to respond to the need of the changing society, then either it will stifle the growth of the society and choke its progress or if the society is rigorous enough it will cast away that law which stands in the way of its growth. Law must therefore constantly be on the move, adopting itself to the fast-changing society and not lag behind.

This judgement can be used anywhere like Hindu Law, Triple Talaq.

Sec – 276 – 277 bare.

Sec – 278 (1) Once magistrate has read the statement to the witness in the presence of the accused, and the witness now says ‘yes’ – when

magistrate ask to witness because it's always safer to give a small certificate that the entire statement, deposition was read over to the witness in the presence of the accused and the witness agreed to this -> Now get the sign of witness.

Sec – 280 – Remarks respecting demeanor of witness

Ques. Why do we record the demeanor of witness?

Ans. We record the demeanor of witness for two reasons:

1. The court while writing the judgement remembers that this witness should not be trusted, or he is not worthy of credit.
2. When the appellate court appreciate the evidence.

Ganesh Bhai Shankar Bhai v. State 1972 S.C.

Held – Demeanour of witness which is made u/s 280 should be given due weight by the appellate court in the appraisal of evidence given by such witness specially when he is a material witness.

Sec – 281 R/w 164 –

Sec – 164 talks about confession of the accused and the method is given u/s 281. **Sec – 281 Sub-Sec 1** – is discard by the S.C.

Kaushalya Das v. State 1966 S.C.

In this Sub-sec (1) held that if the confession is given by the accused, then not to record the substance but record the entire verbatim statement of the accused.

Confession u/s 164 is not under oath by it is signed statement u/s 281.

Sec – 282 Bare

Ques. Sec – 283 Does CrPC apply to H.C. while taking the examination of witnesses?

Ans. No, but case H.C. says we are going to apply CrPC then good enough but when H.C. makes his own rules then those rules will dominate

over CrPC.

(B) Commission for the examination of witnesses

In CrPC Sec 75-78 and Order 26 deals with commission. Commissions in Sec – 75 CrPC can be for various purposes it is not only for examinations of witnesses. In CrPC, the power which have been for commissions is very limited power. So, if we compare the power between CrPC and CPC relation to commission, the CPC power is far wider than CrPC. In CrPC the commission is only restricted to examination of witnesses. Commission is only restricted to examination of witnesses. Commission must be issued only in extreme emergency or urgencies. Or when there is no other option. It should not be for the asking when any witness could not come to court and his evidence is very necessary then court send to him the commission to take the evidence or anywhere Eg: President.

Sec – 284

Dharmanand Panth v. State 1957 S.C.

The general rule in criminal proceedings that all important witnesses must come to the court for examination but examination by commission is an exception. Its only where there are extreme cases of delay, expenses or inconveniences or there are such important constitutional heads, only there we need to go for commission.

The word 'witness' also includes the 'complaint'

Sec – 285 (Procedure)

Sub-Sec (3) Commission → Ministry of External Affairs → Tied up with → In other country to our embassy → Nodel officer of such other country → Concerned court

Sec – 286

Evidence includes → Examination-in-chief + Cross accused + his pleader also includes

Trial as like warrant cases.

Sec – 287

Since we can't call him again and again and can't issue the commission again and again. The opposite party can do one thing; it can make a set of interrogation – Order 11.

Sec – 288-290 Bare

Opinion Evidence

Sec - 291

Ques. A matter came up before the Orissa H.C. (1966), if the doctor is dead then can be taken his statement u/s – 32 of IEA?

Ans. Yes, because it was covered by under common course of business u/s – 32(2) and his report can be admissible without calling the doctor.

Sec – 291A -

It deals with executive magistrate when any document made by EM, to prove that document need not to call EM.

Sec – 67 of IEA has the exception of Sec – 291A.

(↓)

To prove any document the maker of the document must be called.

<ul style="list-style-type: none">• Sec – 292 officers of any mint – makes the coin	First (I)
<ul style="list-style-type: none">• Officer security printing press – makes the currency note	
<ul style="list-style-type: none">• Officer of controller of stamps and stationery	

<ul style="list-style-type: none">• Forensic Department	Second (II)
<ul style="list-style-type: none">• Division of Forensic Science Laboratory	

Any Government Examiner of questioned document	Handwriting expert (III)
State Examiner of questioned document	

Sec – 293

Ram Dayal v. M.C.D. 1970 S.C.

The court has to see whether prayer to call the experts is made for the purpose of vexation or delay or for defeating the ends of justice.

Nirmal v. State of Punjab 2002 P&H H.C.

The respect of a handwriting report always needs the handwriting expert to come and prove in the court and opportunity to be given for cross-examining.

As far as handwriting experts are concerned, they stand at a different footing from other expert because, if necessary, they must be called because weakest type of opinion evidence is hand writing evidence.

Sec – 294

Sec – 295

In CPC Order – 19 R/w Sec – 1 IEA R/w Sec – 295, 296

Ques. Whether affidavit can be taken as evidence in CrPC?

Ans. Affidavits are under oath it takes just to ensure that deponent is say truth and pleading are on affidavit. But affidavit can't be taken as evidence because some people also speak lie i.e. why Sec -1 of IEA not consider the affidavit as evidence but it has some exception is Sec – 30 CPC R/w O-19 and in CrPC Sec – 295, 296, 297.

Ques. What is the meaning of 'other proceeding'?

Ans. We talk inquiry, trial or other proceedings in a court – so, other proceeding must be in a court – So, other proceeding must be in a court. Other proceedings include – Commission, committal, submission, adjournment, disposal of property etc.

Sec – 295.

I can start the process with an affidavit the reason being some of the people scared from public servant. So, person can give an application with affidavit against public servant.

Sec – 296

Ques. What is formal character evidence?

Ans. Which does not includes the merit and only use for day routine work.

So, no need to come in formal character evidence. The basically object of this section is to speedy disposal of the case because there is unnecessary wastage of time and expenses in calling the witnesses. Formal character basically means which does not go to the root of the matter or which does not affect the merit of the case basically we have many official matters where a lot of formal evidences have to be given. In fact, lot of time of the courts can be saved by ordering that formal evidences given by affidavit.

Ques. How will you reduce the pendency?

Ans. U/s – 296 formal evidences through affidavit

Mandvi Cooperative Bank v. Nimesh Thakore 2010 S.C.

The normal mode of giving evidence by examining the witness in the code. But that course quiet often involves loss of time to the witness the triable to reach the court and wait till he is called by the court besides all the strain in answering question and cross-examination in an open court and it also involve costs which on many occasions are not small the enabling provision in Sec – 296 of CrPC is thus a departure from the usual mode of giving evidence. The object of providing such an exception is to help the

court to save time and cost beside relieving the witness of his trouble when all that the witness has to say in the court relate only to some formal points.

Ques. Sec – 297 Who can swear the affidavit?

Ans. Sworn → In the name of God

Affirm → For atheist

'Any Judge' → H.C. Judge, Session Judge, Add. Session Judge, Asst. Session Judge.

Sec – 298 – 2 ways to prove the previous conviction.

Sec – 299 R/w 33 IEA

This based on the principle of necessity just as Sec – 33 of IEA is based on the Doctrine of necessity. We can say that though 299 incorporates the principle laid down by Sec – 33 of IEA but in a way, we can say it is an exception to Sec – 33 of IEA. Because in Sec – 33 IEA, if any witness has been died or unable to produce in court or unreasonable expenses may occurred or cannot be found etc and that witness already given the previous statement in the court and he had been cross-examined and the parties were the same then even tomorrow that witness died, we can use his previous statement in present circumstances. But with condition as following: -

(a) The cross-examination has been done

(b) Party must be the same.

This is the exception to the principle that evidence can be given by a person alive and who have appeared in the court. That is why Sec – 32 and 33 of IEA are exception to the rule that all evidence must be given in court by living person.

Ques. Why 299 is an exception to Sec – 33 of IEA?

Ans. Sub-Sec (1) → “If it is proved .. has absconded”

So, first thing I have to prove that accused person has absconded and despite my best efforts, I’m unable to arrest him and bring him to the court then court will invoke the doctrine of necessity and invoke to some extent Sec – 33 of IEA.

The accused has absconded and also proved that he has absconded and it is not possible for future of his arrest. So, court will ask the prosecution to put up the prosecution witnesses for recording their statement. Now, since the accused is not present then there will be no cross-examination and if this prosecution witness dies and later accused was found or arrested and starts the trial. Now, that witness has been died, his evidence has already been taken but not cross-examined still this record we will use against the accused even though this prosecution witness is no longer available and the basic of Sec – 33 of IEA i.e. he must be cross-examined are not fulfilled.

Sec – 299 has 2 Aspect

1. Punitive: - That why did accuse has been absconded and if he absconded then without the cross-examination of statement of witness will be used against accused. So, giving the punishment to accused.
2. Doctrine of Necessity – Sub-Sec (2) – We have bomb blast cases, we have many witnesses who are in the hospital after the bomb blast, they are at dying stage then we invoke Sec – 299(2) to session court direct to magistrate to take the evidences of those witnesses, later they died now their statements can be used subsequent stages even though they died.

Chapter – 24

General Provision as to inquiries and trials Sec – 300 to 327

This chapter is like backbone of CrPC because these provisions apply to every matter.

Sec – 300 – This section is statutory reflection of Article – 20 (2), This whole

section is based on the basic principle of 'Nemo debet bis vexari' means a person cannot be vexed twice after he has been tried.

Sec – 300 is the detailed analysis of the Article – 20(2). The concept of double jeopardy which is enshrined in Article – 20(2) is completely reflected under Sec – 300 of CrPC. The scope of Sec – 300 is bigger than Article – 20. Article – 20 may say that no person shall be prosecuted and punished for the same offence more than once.

Ques. What is the same offence?

Ans. Some offence has to be seen in a much broader way means talk about the ingredient of that offence.

Sec – 300

1. The person has been tried by competent court for 1 offence.
2. He has been convicted or acquitted at the trial.
3. Till that conviction and acquittal has not been set aside means remains in force.

Sub-Sec (1) 'Nor on the same facts.. u/s – Sub-Sec - 221(1)

Eg: If A takes a book from library and B makes the charge against A of theft but later it was proved that it is not theft but criminal breach of trust so here name is changed but the ingredients are the same that A has taken the book from library So, A can't try again just because the name is different.

Sec – 221(1) Charge of theft, misappropriation or criminal breach of trust.

Sub-Sec (2) In same transaction had distinct offence which was not tried.

Eg: - Under Sec – 138 of NI Act cheque bounce has been occurred of A during trial we got to know that A all has the intention of cheating as he had not money but B did not allege the case of cheating against A, so, both are different offences this matter went to S.C.

Sangeeta Ben Mahendra Bhai Patel v. State of Gujarat **2012 S.C.**

Where a person is tried for the dishonored of cheque u/s 138 NI Act he can be again tried for the offence of criminal breach of trust, cheating and abatement since the ingredients of these offences are not the same hence the doctrine of double jeopardy does not apply.

AA Mulla v. State of Maharashtra 1999 S.C.

Accused was tried u/s – 409 IPC i.e. criminal breach of trust by public servant and u/s – 5 of prevention corruption act because he had some gold, when the gold was examined, found that it is smuggled gold. So, he also charged with custom act and FERA. Now, accused takes the plea of double jeopardy matter went to the S.C., held that the ingredients of custom act and FERA are completely different from Sec – 409 IPC and Sec – 5 of prevention of corruption Act, it is like chalk and cheese so, accused can be charge for custom and FERA Act again as this is not the matter of double jeopardy.

Sub-Sec (3)

Eg: A cuts the hand and legs of B, A charged for 326 of IPC. A convicted for that and B is in hospital from that time when the offence committed. Consequently, B dies. Now, whether it be converted into 302 of IPC or whether the trial be conducted u/s – 302 of IPC?

Ans.

Yes, R/w Illustration (B) (D)

(↓)

'A' charged with 323, now afterwards A may not be charged for 325 →
Why?

- For grievous hurt, intention must be for G.H. + G.H. must be caused so, if A has the intention of 323 but 325 caused then it will not be considered that he has caused G.H. i.e. why it will be considering u/s – 325 of IPC.

Sub-Sec (4) R/w Illustration (e) & (f)

'A' is charged for theft by JMIIIC but later found that A is also liable for

robbery → robbery is not triable by the JMHC as robbery includes wrong full restraint and hurt also. So, whether the fresh trial be conducted on robbery?

Ans. Yes, because ingredients have been changed.

Illustration (f) this is not clear in Bare Act

A, B, C charged by magistrate of first class for robbing D. A, B, C may afterwards be charged, provided it is now found out that there were 5 people committing the robbery → now they are charged for dacoity as this is triable by session court, so ingredients changed – trial will be conducted again on dacoity.

Sub-Sec (5)

We have the concept of discharge and acquittal. Second trial is barred when there is conviction or any acquittal. The word acquittal should not be taken synonymous with the word discharge. Discharge of the accused does not amount to acquittal. Person is said to be discharged when he is not heard on merit and order of discharge is not an order of judgement. However, it is not a final order also it is a result of preliminary inquiry on the ground that there is no prima facie evidence of accused. But if tomorrow some evidence comes up then the discharged person can be recalled and the trial can be ordered against him.

Sub-Sec (6) Sec – 26 of General Clauses Act

Where an act and omission constitute an offence under 2 or more enactments.

Eg: An offence is same in 2 enactments then the offender shall be liable for punishment under either any of that enactment but shall not be liable for punishment twice for the same offence because the ingredient is the same.

Sec – 188 of CrPC: -

Where a person has committed an offence outside India he may be tried anywhere in India. So, Sec – 188 of CrPC is not hit by Sec – 300 CrPC. Sec – 188 says when person has committed an offence outside India then with

the permission of Central Govt., he may be tried, prosecuted etc anywhere in India wherever he found.

Sec – 301, 302, 303, 304 → deals with appearance in the court.

Sec – 301 (2)

Ques. Can victim bring his private pleader?

Ans. Victim always be PP or APP despite that victim bring any private pleader. Private pleader will assist the PP and APP and work under the direction of PP, APP, and at the time of submission of written argument need the permission of the court.

Sama Ram v. State of Raj. 2002 Raj. H.C.

A privately engaged pleader can do everything in the case provided if it is done under the control or direction of the PP.

B.J. cetty v. A.K. Parthasarathi 2000 AP High Court

It was held that no private can totally obliterated the role of PP, the pleader have to assist the PP. He has no locus standi or right to plead on behalf of PP and conduct the case alone.

Sec – 302 R/W Sec – Sec – 24, 25

Sec - 303

It deals with accused and has the reflection of Article – 22.

Ques. Can a pleader appear as pleader in his own case?

Ans. Yes

Ques. If a pleader is co-accused with another person. Can now he plead as pleader of his co-accused as well himself?

Ans. No, **Subramaniam Sarma v. Emperor Mad H.C. 1941**

Accused as an advocate cannot appear in the same matter as a counsel

as well as party.

Sec – 304

It deals with legal aid; legal aid is a directive principle and in some of judgement the Hon'ble S.C. has held that legal aid as a part of Article – 21. So, legal aid is a part of fundamental right because of the fact that merely because a person is poor. He should not be denied justice.

RM Wasawa v. State 1974 S.C.

Justice Krishna Iyer held that indigent should never be ground for denial of fair trial and equal justice. Particular attention should be paid to appoint competent advocate equal to handling complex cases not patronizing gesture to raw and extrants to the bar. Sufficient time and complete papers should also be made available, so, that the advocate chosen may serve the cause of justice.

- Legal aid (it is a constitution right) actually starts u/s – 57 of CrPC

Khatri v. State of Bihar 1981 S.C.

Sec – 304 (1) Ashok Kumar v. State of Rajasthan 1995 S.C.

Accused was rich person and to save the money, he ask for legal aid for an advocate at the expense of the state. Raj. H.C. scold him that any person who having sufficient means cannot claim legal aid.

Mohd. Ajmal Mohd. Amir Kasab 2012 S.C.

He asks for pleader of his choice from Pakistan. But it was denied, later one of the pleaders represent him from India. Accused challenge it S.C. held that legal aid will give only from India.

Ques. Corporation is a juristic person, what happens if a corporation is an accused? Who will represent corporation?

Ans. Sec - 305

Sec – 305

- (3) Basic law is accused (i.e. representative) will examine, represent the case so this representative will obviously be present, interrogate him etc. will be deemed that jurist person of corporation is present.
- (4) If representative not appear then corporation is not being represented.
- (5) If members of the corporation give in writing a statement that particular person will represent the corporation then court presume that he has appointed for that unless contrary is proved. Eg: Sometime director of corporation appoint tea stole person.

Sec - 306

Approver is the creation of CrPC. In IEA, we saw there was an accomplice, also known as approved he can be a co-accused and if there is no evidence available against accused then 1 of the accused may now be made a prosecution witness. Naturally, it is a quit pro quo relationship based on the principle of necessity and also on the doctrine of salvage in which the accused become a PW to give evidence his fellow i.e. accomplices.

Flow for his evidence can be taken we have seen in 30 R/w 113 IEA, when the evidence can be given and what is the evidentiary value all we have seen in IEA. Once we know the evidentiary value, then conviction can be based even though on the uncorroborated testimony of an accomplice that is Sec – 133 of IEA become the bases of Sec – 306 of CrPC. Sec – 306 of CrPC talk about approver and approver as the word shows, the approver is basically who switch side or ready to spill the bean against all his accomplices.

Ques. What he wants in return?

Ans. He wants the complete pardon. Pardon is not the forte of judiciary because the concept of pardon is basically given to the heads of the state. But this is the only exception where pardon is given to the judiciary but pardon of judiciary and pardon of constitution has many differences. The pardon u/s – 306 and 307 is much different from pardon of governor, president → This is not quit pro quo but pardon u/s – 306 and 307 is quit pro quo.

Ques. Who can tender the pardon?

Ans. CJM, MM, JMIC → JMIC can't give during investigation.

CJM, MM can give pardon at any point of time. Means at investigation, pre-trial, during trial.

Ques. Can the accused move to the court and become approver? Or is it PP who will ask to the court?

Ans. Accused can also move the court to become an approver. Prosecution will see whether the case is strong or there is need of approver or not.

Ques. In which case pardon can be given?

Ans. Only offences, if they are punishable with 7 years or more then only approver is allowed less than 7 years no approver is allowed or pardon will not be given.

Ques. What will be the procedure?

Ans. The procedure is that the evidence of the approver will be recorded under oath by magistrate and after recording, if the matter is session triable then committed to the session courts or otherwise he will send it to the CJM → given this procedure u/s – 306.

Situation: -

Magistrate takes the cognizance u/s 190 and prosecution ask to magistrate that he wants to make the approver of accused no. 1 and the offences is murdered which is triable by session court. So, whether the magistrate can pardon him?

Ans. No, magistrate will record the statement u/s oath and then commit to session court. Now, session will give the pardon → This aspect was clarified by S.C. in **A Devinder v. State of T.N. 1998 S.C.** once the

matter has been committed to grand pardon thereafter lies only with a court to which the case has been committed.

Harshad Mehta v. State of Maharashtra 2001 S.C.

It was held that the power to give pardon is only in Sec – 306. It is not any inherent power to every criminal court.

Ques. Under which proceeding, pardoning process come?

Ans.

R. Basu v. State of W.B. 2000 S.C.

State of Himachal Pardesh v. Surinder Mohan 2000 S.C.

In this the Hon'ble S.C. held that the proceeding which takes place in 306 is neither an inquiry nor trial.

Ques. So, if it is neither inquiry nor trial then can it be done in the chamber of the magistrate or has it to be done in open court?

Ans. It need not to be in open court because it is not inquiry or trial. But it can be done in the chamber of the magistrate and while the magistrate taking the statement of approver, there is no need to the presence of other accused.

Ques. Can the accused ask that he wants to become an approver?

Ans. Yes, it is not necessary that it has always to be at the request of the prosecution, so, accused can also ask for that.

Ques. Is the pardon order appealable or revisable?

Ans. It is revisable order → **Kailash Nath v. State 1973 S.C.**

- It merely because an accused gives a self-incriminatory statement voluntarily, he does not become an approver. In other words, there is no grant of pardon. Approver can only become an approver when he fulfills the condition of Sec – 306.

Ques. Once the pardon has granted to approver but in trial the accused breaks him and acquitted, will the pardon be cancelled?

Ans. No, pardon once given can't be cancelled unless it fulfills the condition of Sec – 307.

Ques. At what time pardon can be apply?

Ans. Pardon can be granted at any point of time.

Ques. What is the test for good approver?

Ans.

- (i) How much he is reliable? → 114(b) of IEA
- (ii) How much he is incriminating himself.

Ques. 'He will remain in custody' → Why, what is the object to remain in custody?

Ans. We are keeping him in custody not to punish him; he has become the PW. But, suppose when we let him go the co-accused may apprehend him. So, we keep in custody till the trial to protect him.

JK Ralhan v. State of Delhi 1984 S.C.

In case there is a simultaneously proceeding of police (FIR) as well as complaint case. Can, the statement given in FIR by accused be use in a complaint case?

Ans. Yes.

Ques. Who can give the pardon?

Ans. CJM, MM, JMIC but not JMIIIC, Session court, Asst. Session judge (ADJ)

Ques. Who has the prerogative to give pardon?

Ans.

Commander P. Fernandes v. State of Maharashtra 1968

S.C.

It is for the prosecution to decide the necessity for pardon. Once the prosecution decides then step no. 2 is court must agree because court has to give the pardon.

- If the accused moves to the court directly, the court should not make him an approver, it must refer the matter to the prosecution and on the prosecution report and when the court is convinced then the court should grant the pardon.

Sec – 308

When the approver turns to his statement or resile. In other words, he becomes hostile. Then there is double punishment for him. Because –

1. His statement given under oath, can be used against him as his confession.
2. His own trial now takes place.

Sub-Sec (3) of Sec - 308

Approver is allowed to give his defence of allegation of the prosecution that he is not giving the entire truth and based on that now if the court convinced that he is not telling the truth then only we will take action. So, there is in built mechanism of defence. It is not that prosecution can hold him ransom.

Sec – 309 R/W O-17 of CPC.

309 talks about 2 things –

1. Remand
2. No adjournment

Sec – 309

A Narayan Reddy v. State of Andhra Pradesh 1992 AP

Whenever court extend the remand of accused, he must produce before such court otherwise that accused has right for bail and also makes the serious trouble to the magistrate.

Sec – 310 Local Inspection.

Eg: When witness says that he saw him as he was firing at that place but defence says that he cannot see as there was a tree. So, a judge finalizes unless goes to the spot i.e. called inspection of the spot. This is not creating evidence but clearing the mind and a judge can't be cross-examined for that. It is only basically to use it as an appreciation of evidence.

K. Kumar Singh v. State of Manipur 1985 S.C. **State of M.P v. Mishrilal 2003 S.C.**

Whenever there is deficiency of evidence nor not clarity in the mind of the judge while appreciating the evidence, he must go to the place of occurrence. In such case the trial judge should record the memo of the inspection.

Ques. If judge does not make the memorandum. Does it vitiate the trial?

Ans. No, it is mere an irregularity and not illegality unless it causes prejudice to the opposite party.

Chandran v. State 1974 S.C.

If judge see any lacuna in any case then judge cannot go for inspection to fill the lacuna.

Sec -311 – R/W – 165 of IEA - which say any court can call any witness at any time or any party – so, it is a judicial discretion given in IEA. Same power reflects in order – 18 R-17. Of CPC and Sec-311 CrPC.

Recall of witness is an extreme step. It is not which should be taken very readily. Because once the evidence has been taken to recall the witness always has problem like witness may change their statement or may be inconvenienced etc. but, suppose witness says that he was forced to give statement now he will make right statement then judge in the interest of justice recall him. It is the inherent power of court. **Hussain Umar v. Dalip Singh 1970 S.C.**

Sec – 311 Bare

Ques. Pleader or any party ask for recall to court and court deny then what to do?

Ans. The order to refuse the recall of the witness is a revisable order.

'To summon or not to summon'

It is completely discretionary power of the court, whenever the discretion comes it always must be a judiciously discretion not an arbitrary discretion. Clarified in **Zahira Sheikh v. State of Gujarat 2006 S.C.**

Himanshu Sabharwal v. State of M.P 2008 S.C.

The power of court u/s – 165 of IEA is complementary to power u/s – 311 of CrPC. These power though very wide but they require corresponding caution.

Ques. After end of the evidence (chief+cross re-exam) can again recall then?

Ans.

Nirmal v. State of Punjab 2002 P&H H.C.

Ques. If both the party close their case and magistrate feels that particular person's evidence is not clear which is essential?

Ans. In such cases, he can always adjourn the judgement and recall any witness.

Ques. If IO is not available, now examination of an IO will be suicidal for a case?

Ans.

State of Karnataka v. Bhaskar Kotharkar 2004 S.C.

When the IO is not able to come (dead, retire etc.) non-production of the IO is not fatal for the case. Unless serious contradiction which can't be cleared by any other except IO.

Sec – 311A forcefully signature and handwriting can be taken by the order of JMIC → This provision was added after 2005 Amendment Act.

Proviso –

We have to ensure that we shouldn't make in trouble innocent person. This order only be made if an arrest was magistrate whether it is a bailable or non-bailable offence. In case the person was not arrested then this order can't be passed by Magistrate.

Sec – 311A came by the judgement of State of U.P. v. Rambabu Mishra 1980 S.C. In this the S.C. suggested that there should be suitable legislature for this purpose because lots of accused use to refuse does not matter that the court takes presumption or not but they refuse it and since they never give his hand writing, there were not match i.e. why this judgement was introduced.

Sec – 312 Bare Act

Sec – 313

Sec – 313 is based on two aspect: -

1. There is presumption of innocence with every accused – given by criminal jurisprudence.
2. The principle of natural justice demands that the accused should not be condemn without being heard.

Sec – 313 situation arises when all the prosecution evidence has come up and after the evidence are over the all-incriminating circumstances are

clear before us. Now, we are giving first chance to the accused to directly talk to the court and the court now bound by the principle of natural justice to put up each and every incriminating circumstance which is come up during the course of prosecution evidence to be put before the accused to be explained by him.

The statement given by accused u/s – 313 is not under oath because if he speak lie then he can prosecute u/s – 193 of IPC. If the statement under oath or 195 of CrPC can be used against him for perjury.

Sec – 313 always come after the prosecution evidences are over.

Ques. What is the use of Sec – 313?

Ans. Sec – 313 is not under oath so it is not substantive piece of evidence.

Sec – 313

- Use to the accused
- Use to the judge

Even if tomorrow the accused lies then can't be force to speak because he is protected u/Article – 20(3).

As far as accused is concerned: -

- (i) Since each and every incriminating circumstances put up before him, he can give a plausible explanation for that incrimination circumstance.
- (ii) He can also say that he can produced his evidences to prove these aspects wrong which can be called defence evidences. So, naturally defence evidence follows Sec – 313.

As far as Judge is concerned: -

As we have said 313 is not substantive piece of evidence then what is the use – Can the judge say that in 313 he can keep quiet, that would be using

his evidence. So, judge can't write in the judgement that when I asked to him the question, he remained quite his silence means to a confession or when I asked him that have you committed the murder, he was remained quiet, silence as conduct by which I invoke the Sec – 8 of IEA i.e. Silence as conduct. So, liable for conviction → This thing should not be given by the judge. As accused has the right to remain quiet and judge cannot take the right to remain quiet and judge cannot take the deduction out of it or deduce anything.

Ques. Then what is the benefit of Sec – 313 to Judges?

Ans. To quote the Hon'ble Supreme Court, it is a missing link. When the judgement writes that when the particular aspect was asked to accused u/s – 313, he could have explained it but he chose to remain quiet → not that we are using the evidence against we have given an opportunity to explain and to negate it but he chose not to do so. So, this is the benefit to judges while writing the judgement.

Ques. Does Sec – 313 only happen after the prosecution evidence?

Ans. Sec – 165 of IEA says that Judge can ask any question at any point of time to anybody. So, that is why when the judges want to ask, they 'may' ask to anybody or 'shall' ask after end of the prosecution evidence. But every and each incriminating circumstances should be put up separately – in question answer form.

Suppose, judge do not ask any incriminating circumstances to anybody or accused then the doctrine of natural justice comes in front of him. So, the question which did not ask to accused, can't be put in the judgement.

Sec – 313(1), object: - This section gives the help to defence.

'Without prevising warning' → Without notice

Object

Subhash Chand v. St. of Rajasthan 2002 S.C.

The object laid by S.C. that Sec – 313 afford the opportunity to the accused to explain all the incriminating circumstances appearing in the evidences against him.

Ashok Kumar v. State of Haryana 2010 S.C.

The evidency value of 313, a conviction can't be based on the statement u/313 but it, can be used by the court as a missing link.

- No presumption should be taken ipso facto from the silence of the accused person because accused person always has a right to remain silent if he so wishes. The silence of the accused can never be substantive proof against him.
- Merely because the accused refuses to answer the question, it can't be taken as a substitute for the evidence which the prosecution must give. The prosecution can't use it as a weapon against him utmost what can be said is that accused has left his unexplained the incriminating circumstances which have appeared against him.

Jagroop v. St. of Punj 2002 S.C.

Sec – 313 is statement may provide the missing link for completing the chain of circumstances. Specifically in case which are based on circumstantial evidences.

Ratan Singh v. State of H.P. 1997 S.C.

The examination of accused u/s – 313 is not mere formality, these answers have the practical utility for criminal courts. It help the court to appreciate the evidence.

Dehal Singh v. State of H.P. 2010 S.C.

The statement of accused u/s – 313 is not substantive evidence. It can't be a substitute for the evidence of the prosecution. The statement u/s – 313 can be used to appreciate the evidence laid by the prosecution can accept it or reject it on the basis of Sec – 313. The main object of 313 is to

establish a direct dialogue between court and accused. It gives the important opportunity to accused to explain his position.

Jai Dev v. State 1963 S.C.

The judge must ask each and every incriminating circumstance separately. Where the judge asks all the question in one go, and ask to accused what he wants to say about it, it vitiated the trial. It is the duty of judge to ask the question separately and accused answers separately of every question. It is not proper read out the long string of question and ask the accused whether the statement is correct.

Rana Shankar v. State 1962 S.C.

Rolling up of several district matter in one single question is also not allowed the object of 313 must be kept in mind by the judge which is to afford the accused a proper opportunity of explaining each and every incriminating circumstance which have come up during prosecution evidence.

Labh Chand Jain v. State of Maharashtra 1975 S.C.

Ques. In case proper questions are not asked, or the 313 is not complied properly should the conviction be set aside by the appellate court?

Ans. Yes, non-examination or faulty examination u/s – 313 creates huge prejudice against the accused. It is material prejudice which is enough to set aside the conviction.

Sec – 313 apply to summon trial summary trial, warrant case trial. But not apply to maintenance proceeding u/s – 125 of CrPC.

State of U.P. v. Mohd. Iqram 2011 S.C.

It was held, if any incriminating not put up the before accused u/s – 313 can't be used against him.

Where there are separate accused each of them must be examined separately u/s – 313 there can't be a joined 313.

Shri Ram v. State 1975 S.C.

It was held that while accused is being examined u/s – 313 he can't be subject to cross-examination.

Ajay Singh v. State of Maharashtra 2007 S.C.

It was held that, the question should be asked in such simple way that even a illiterate person will be able to understand and appreciate the question.

Sec – 314 bare

Pre- Sec – 315

It reflects the one aspect of Sec – 118 of IEA, the accused can be defence witness just as he is a competent witness against other co-accused, he is a competent defence witness for himself or other also.

Proviso

- (a) If accused wants to appear as a defence witness he must put up a petition as a request for his own defence in writing.
- (b) In case the accused does not give any evidence then we can't make a presumption that he must be at fault. It is always accused volition.

Sub-Sec – 2)

It is based on executive magistrate proceeding in all these matters mentioned under this sub-sec (2), in case a person does not become a witness to himself it does not appear as defence witness or himself – no presumption can be taken.

R.B. Chaudhari v. State 1968 S.C.

The court can't draw any adverse inference if the accused refuses to come up as his own defence witness. In case the accused voluntarily examine himself as defence witness the prosecution is entitled to cross-examine him and then the evidence can be used against the accused.

- The accused can be a competent witness in favour of himself, the power flows from 118 IEA and we can say that Sec – 118 is a genus and Sec – 315 is specie.

Sec – 316 The statement of the accused must be free and voluntarily and fair. No, inducement or threat should be used except Sec – 306, 307.

Sec – 317 R/W – 205, as Sec – 317 is general in nature but Sec – 205 is specific.

Sec – 317 deals with two things:

- (i) Under what circumstances can the personal attendant of an accused be exempted?
- (ii) What happen if the accused disturbs the proceedings consistently.

(i) Exemption of accused in condition:

The basic aspect of criminal law is that the accused must be present throughout the proceeding but some matter is trivial where the moral turpitude is not involved or where the accused are ladies, sick people, students' daily wages earners like factories labours or industrialist etc such people we would like to give them exemption from personal attendance their pleader can be appear on their behalf.

Sec – 318 These deals with deaf and dumb people specifically, but does not apply unsounded people.

Ques. If the accused find that he is deaf and dumb, will the magistrate hold the trial?

Ans. Magistrate allow to proceed with pre-trial, inquiry or trial there is no bar in trying deaf and dumb people.

If the accused is deaf and dumb – trial will proceed:

- If conviction – then no conviction order will be passed or no sentence will be passed or no sentence will passed, judge and magistrate as the case may be send the entire file to H.C. with a report to entire circumstances of the case.
- If acquittal

Now, the H.C. will pursue the whole aspect and come to an independent conclusion whether this person should be convicted or acquitted or any other order.

- 1 is deaf and dumb and second is can't be made to understand the proceeding, hi language is totally different **eg:** Nigro(african). Naturally we will involve the interpreter but, in such case, the word is 'not able to understand the proceeding then there is application of Sec – 318 but if the accused is only deaf and dumb but able to under the proceeding then there will not be application of Sec – 318.

Isso v. St. 1943

H.C. has all the power H.C. can convict, acquit, discharge and recall etc all power.

Ques. What happens if there is 2 accused, 1 is okay and another is deaf and dumb, what will we do?

Ans. Then the magistrate should not refer the proceeding the both the people to H.C. because H.C. have no jurisdiction to deal with the person who is absolutely fine. Only deal and dumb matter or person will send to H.C.

Ques. Sec – 319 Does the court have the power to start the trial against a person who is not an accused?

Ans. The magistrate can array an accused in pre-trial and during trial.

In pre-trial he can be arrayed as an accused while taking cognizance u/s – 190 or if it happens to be a judge while framing charge, he may array anybody as an accused only of the basis of the records or protest petition.

In a trial, once evidence starts coming or the evidence reveals that there is another accused the magistrate or judge can array a person as an

accused on the basis of evidence.

Sec – 319 (1) has the application is only during course inquiry or trial.

The word 'from the evidence' separates Sec – 319 from the pre-trial cognizance by the magistrate or judge.

- When a person is arrayed as an accused the proceeding will commenced against him afresh because principle of natural justice apply and all witness will have to reheard however, it is not deemed that there is the cognizance has been taken late we will deem that accused person was arrayed as an accused right from the beginning. Sec – 319 power must be use sparingly as it is very extraordinary power, it must be apply when only if compelling reasons exist.
- Sometimes, informant gives the name of 6 or 7 person as an accused but police make only 3-4 accused over which informant object before the court that police did not arrayed the other person as accused. So, merely because the informant say so the court should not make them accused there should be sufficient and cogent reasons. If there are no sufficient and cogent reasons. If there are no sufficient and cogent reason mere assertion by the informant or victim that there were more people, should not be enough ground for arraying u/s – 319 as accused.

Ques. Under what ground do we make him as accused?

Ans. It is only based on the evidences which have come up before judge during the trial those evidences which are reliable enough that any person would make them an accused.

Rakesh v. State of Haryana 2001 S.C.

The statement of prosecution witnesses can be prima facie material to enable the court to decide whether a person should be arrayed as an accused or not or involved in the crime or not also it does not give the power to accused of cross-examination at this stage.

M.C.D. v. Ram Kishan Rastogi 1983 S.C.

Ques. Proceeding against a person was quashed by the H.C. but in a trial of other person found that person was involved in the crime with some cogent evidence shown. Now the question that quashing by the H.C. against a person can be again arrayed in the case?

Ans. Yes, because that quashing was not on the basis of evidence, so Sec – 319 will be applied.

Ques. The session judge summons to accused u/s – 319 before the recording of the evidence.

Ans. It was held this can't be allowed. Sec – 319 is only based on evidence during the trial.

Ques. Is there any difference between 319 or 202 or CrPC?

Ans. 319 applies when there is prima facie case against other person whereas Sec – 202 is inquiry after 202 trial is yet to be start. *Irshad v. State of U.P.* Allah. H.C.

Ques. Whether 319 applies to magistrate or all the courts (session courts)

Ans. Yes, it applies to all courts.

Nazar Ahmad v. State of U.P. 2002 All. H.C.

The trial court found out the prima facie evidence against petitioner (accused and summon him). When the accused came to court and court felt that there is no allegation in the complaint involving the accused in the commission of the crime, the court which had issued summon after taking cognizance of the offence can review his own order and drop the proceeding?

Ans. So, once it was satisfied that there is prima facie evidence regarding involvement of the petitioner in the alleged incident and according summoned him to face the trial then the magistrate could not recall or review his order u/s – 319, because Sec-319 is not an interlocutory order

magistrate cannot review or recalled his order. Once the person has arrayed has accused then it would be convicted or acquitted.

Ques. Once the cognizance taken then what to do next?

Ans. Court can take the bail or may put into the judicial custody so he stands at the equal footing with the other accused.

Sec – 320 Compounding of offences

When we see the classification of offences of IPC or special law or local law which always mention, section, name of offences, triable by which court, bailable/NB, cognizable or non-cognizable, but compoundable offence does not mention so, Sec – 320 mentions the case which are compoundable and 320 only covers the section of IPC.

Compounding is an exception to criminal law. In criminal law the basic jurisprudence is that whenever an act prohibited by the law is committed the only answer is there must be punishable sentence basically is a punishment. In criminal law the punishment has to be suffered there is no other way out. But 320 is an exception to that golden rule. The concept of blood money which were there in the primitive societies is longer valid laws and i.e. the reason we find that the offences which is an offence there is a punishment and must be suffered.

Ques. Why of Sec – 320

Ans. This made up of those offences:

- (a) Which are very trivial in nature and more than triviality these are basically civil nature case which means it does not effect the society as whole there is many matters which should have remained within the domain of civil law but we have graduated then or have upgraded to the level of criminal law so, basically all offences given in Sec – 320 are of civil in nature or would have been wrong civil wrong but which have been levated to the level of offence in IPC and that is the reason why we are allowing the compounding of such offence.

Sub-Sec – 8 of 320

Ques. What will be the effect of compounding?

Ans. The composition of an offence shall have the effect of an acquittal of the accused with whom the offence has been compounded.

Aslam Mia v. Emperor 1917 Cal.

Case may be compounded at any time before the sentences even just before when he is writing a judgement.

Case has been transferred and the order of transfer has been received then the magistrate – can't be compound.

KV Antony v. J. Sherafuddin 1996 Kerala H.C.

Ques. Some of the state started to compound the Sec – 138 of NI.

Ans. Kerala H.C. and money other H.C. held that Sec – 138 of NI is not a compoundable offence as there is neither specific provision in the NI Act nor it is covered by Sec – 320 of CrPC.

Ques. Whether H.C. can use its inherit power to compound the Sec – 138 of N1 Act?

Ans. No, Gulab das v. State of M.P. 2012 S.C.

An offence which is not compoundable under any law or 320 of CrPC can't be allowed to be compounded even if there is settlement between the parties however that settlement can be considered for determining the quantum of sentence.

Rajendra Singh v. Delhi Administration 1980 S.C.

S.C. held that 307 of IPC as compounding offence but then this was later declare this case as aberration. Ultimately, after a lot of discussion the Orissa H.C. came to conclusion that we should not allow the compromise u/s – 307 even though Rajendra Singh has done. Now matter went to the S.C., then S.C. held that don't make it as obiter dicta and then mention Sub-Sec – 320 of CrPC.

Sec – 322 to 325

When the magistrate for some reason or other, sends the case to the higher court, higher court can be session court committal or it can be CJM or it can be even other court if you don't have jurisdiction to try.

Sec – 322 – No Jurisdiction

Baba Abdul Khan v. AD Sawant 1994 Bombay H.C.

In this case there were very big robbery and the matter to JMIC, he could try but the matter was so big and there was huge hue and cry against that robbery a lot of press, people were there, in view of seriousness of the offence, this JMIC keeping in mind the public importance and the seriousness of the case sent to the CJM, the party went to the H.C., the H.C. said it was absolutely justified as the matter was for huge public importance and JMIC just joined about 6 months back. So, it is a valid decision.

Sec – 323

Committal (sending the matter to session judge):

- Pre-trial – Sec - 209
- During/post-trial – Sec - 323

Situation 1:

A JMIC or CJM is trying a case, they find that the accused very habitual offender so he must be liable for bigger punishment.

Eg: Sec – 409 of IPC – L.I. punishment and triable by JMIC accused is a government servant who siphoned of government fund to the tune of 700 Cr. There is enough evidence to prove his guilt. Now, JMIC is trying this matter who has power of punishment up to 3 years or if he send to C.J.M. who has the power to punish up to 7 years. But JMIC wants to give more punishment then he can directly commit to session judge for L.I.

Situation 2:

Second is if the matter is such where the JMIC or CJM can give the

punishment but the matter has so much public importance, press or politics involve etc then in all wisdom of the magistrate it should be the session judge who should be dealing with it in that committal, can be done under Sec – 322 of CrPC.

Whenever the lower court JMIC commit to the session or submit to C.J.M. It is not that they are bound by the JMIC's work. It is entirely their prerogative they can do the whole thing afresh or they may continue where the JMIC left.

Krishanji Khadikar v. Emperor 1929 Bombay H.C.

There was an editor of daily newspaper who is very popular and he was charged with various sections for which the CJM was empowered to try, however, there were a lot of reaction of the public he sent it to the court of session, the H.C. said it is correct decision.

Sudhir v. State of M.P. 2001 S.C.

If one charge is triable by the session court or another charge is triable by the magistrate court (i.e. cross case). In such matter it does not necessary that session triable offence should be tried by the session court or another offence should be tried by the session court or another offence should be by magistrate. Court held that both offence matter will be tried by session court.

Sec – 324

It deals with habitual offender there are two chapter which deals with the habitual offender:

- Chapter XII of IPC
- Chapter XVII of IPC
- The person has been convicted of the offence for which the punishment is of 3 years or upwards so, that means he already been convicted – previous conviction and now he is accused of another trial, in either of those chapter which is again punishable again 3 or more years. i.e. means he is a habitual offender, and prima facie there is enough evidence to see that this accused has actually

committed this offence then magistrate will send it to the CJM (7 years) or commit it to the session court (L.I.).

Committal is given:

- u/s – 209
- u/s – 323
- u/s – 324

Sub-Sec(2) – A is accused in theft in which he has been convicted where punishment is above to 3 years. But, now in next case of theft A and B were indulge and both are going to try in trial but B is not a habitual offender. So, question arises:

Ques. Whether trial of both will be same or separate?

Ans. When the magistrate send to CJM or commit to session send both of them together and will be tried jointly but A may get the punishment as like habitual offender but B will not get the punishment of habitual but as like ordinary he will get.

Sec – 325 Submission to CJM

Magistrate conducted the trial but when he came to sentencing magistrate realized that his power is only 3 years but magistrate wants to give enhance punishment then he will sent to CJM.

Now, CJM – has discretion.

Sub-Sec (3) –

1. For retrial
 2. Give the direct punishment without re-trial.
 3. Commit to the session court – u/s – 323
- Difference between 322 and 325 – reached at the end of the trial

Sub-Sec – (2) JMJC was trying ABC and he considers that only A should get the enhanced punishment and B & C should get normal punishment,

then always all three ABC have to be sent to the CJM even though JMIC is competent to punish to B & C.

Situation:

A is a magistrate trying X, he is a renounced thief. He already gets 10 convictions. Now A wants that X should get higher punishment. A submits the case to CJM. CJM u/s – 75 of IPC believes he should get L.I. Now, he commits to the session court – u/s provision 323.

Abdulla v. Emperor 1880 Bombay Full Bench

Thakur Dayal v. Emperor 1904 Allahabad

Chinnimarigadu 1876 Madras Full Bench

CJM can commit the case to the session even if the matter submitted to him u/s 325.

- Once the JMIC have submitted the proceeding to the CJM u/s – 325 of CrPC the CJM cannot return the proceedings to JMIC for ground that he JMIC is competent.

Sec – 326 – Judges keep on changing for many reasons like retires, or dies so, new judge come. So, it deems that as if he only had been carrying on the earlier proceedings this aspect is covered u/s – 326.

So, the presumption is there that whenever a new judge takes place then he steps into the shoes of old judge.

Proviso – In case he finds that some re-examination should be proper or he want to recall any witness they can use his power u/s – 311 in the interest of justice.

- (2) Whenever any transfer of cases by S.C. or H.C. or session court, the same law will apply.
- (3) This section does not apply in summary trial; fresh summary trial has to be started.

Submitted to CJM u/s – 325 CJM may start fresh trial u/s – 326.

NitinBhai Shah v. Mannu Bhai 2011 S.C.

Sec – 326 (3) does not permit the magistrate to act upon the substance of evidence recorded by predecessor. Hence magistrate can't proceed with a trial on evidence recorded by his predecessor in a summary trial. He has to try the case Denovo.

Sec – 327 Bare

Chapter XXV

Provision as to accused persons of unsound mind

A person who is unsound mind is not able of conducting his own defence which is against the natural justice. To balance this given this chapter:

- (A) If the accused is insane then we can't carry on his trial.
- (B) He is of unsound mind till he became okay his trial will not proceed.

A person whose of unsound mind at the time of commission of offence then he gets benefit under section 84 of IPC as general exception to criminalizing. If the accused lunatic at the time of trial then their can be two combinations:

1. A person was lunatic at the time when he committed the offence
2. A person is lunatic when the trial starts.

Basically we are more concerned, with a person when he comes to the court that whether he was lunatic when he committed the offence or lunatic when trials starts, no trial no inquiry take place.

Criminal Jurisprudence that no person shall be condemn without being heard. At the same time, the basic jurisprudence of criminal procedure that whenever any proceeding take place the accused must be present in the court. So, that no prejudice caused to him and he is able to understand the proceedings and hence give his defence so that is why

this whole chapter have been made.

So, this chapter is first divided into inquiry and then trial.

Sec – 328 – it deals with inquiry, here inquiry means pre-trial process. Here no need to prove that he is unsound mind.

- Mental retardation – by birth – he cannot be cure
- Unsoundness of mind – not by birth, but many types – court will accordingly treat the case.

Proviso: Psychology report can't be take as final report so we have a provision of appeal against the report of the psychologies this appeal will go to the complete medical board.

Sec – 329 – deal with trial before the magistrate or session court.

The word trial also include the appeal so when session court has convicted a person in appeal the same law will apply by the H.C. **Sindhi v. State 1975 S.C.**

Sec – 330 (1) bail shall be taken of the person of unsounded accused whether he has committed bailable or non-bailable offence.

Sec – 331 to 334 Bare

Sec – 335

Sec - 336

We are sending him in a lunatic asylum; this is basically a jail so his doctor will deem to officer-in-charge of the jail who will make the report of that person and his report will be consider like inspector general of prisons made it.

Sec – 337

1. 'Detained in a jail' – psychiatrist ward of hospital

2. Lunatic asylum – pagal khana – If accused in asylum then the visitor testimony or opinion regarding capability of accused defence will be taken before the magistrate or received as evidence or if in psychiatrist ward of the hospital will be taken as evidence and trial can take place.

We were on law of consecutive sentences, as a general rule all offences must be treated separately, tried separately and punished separately. We can't combine the punishment when we are giving the separate punishment the question which arises that in anybody mind is, will the punishment of all offences start on the same day or will the convict has to face the punishment of 1 offence finished and then go to the other one as a general rule by the criminal jurisprudence each punishment has to be suffered separately and sec – 31 basically reflects this sentiment and we saw that basically we can divide the aspect of consecutive sentence into two parts:

1. Where consecutive sentences given in 1 trial (1 transaction)
2. Where consecutive sentences are to be given in different trial.

Sec – 31 deals with the same trial i.e. 1 transaction Sec – 427 deals with the different transaction i.e. more than 1 trial.

In both the basic law of jurisprudence applies, each punishment must be suffered separately and i.e. why consecutive is the rule however, if the courts sought deems fit in the interest of justice, then may the court lenient view and allow concurrent sentences but when we given consecutive sentences same basic inherent problem arise.

1. That the power of the magistrate are limited to 3 years, if the transaction involved many offence may be the total is 20 years. So, naturally the question arises how to mix and match? The power given u/s – 329 of CrPC and if the same magistrate is to give various sentences on various offences which are committed during 1 transaction. How to reconcile both?

This reconciling took place in sub-section – 2 where basically said as a general rule there is no need to send it to higher court subject to 2 important things.

1. One magistrate court can give maximum of 14 years consecutive sentence totally.
2. The magistrate can't give more than double his power u/s 29.

Naturally the question came up in Muthoo Ramalingam case that since all sentences are consecutive what will happen if there are two L.I.? The main issue to be resolved by Muthoo Ramalingam was what happens if there are 2 L.I. There was dichotomy of opinion that were 2 judgements which said they should be consecutive and 2 which said it should be concurrent. Naturally to let the matter right and to settle the dust on this matter Muthoo Ramalingam case. And now they first analysis the meaning of L.I. which meant imprisonment for the entire life. We are not bothered about the commutation which is allowed by Sec – 55 IPC, 433 of CrPC. Because that is the state power which may or may not exercise. Once a person has given L.I. it means till he dies' Hence we were to give him term imprisonment then that imprisonment should be given earlier because power of giving punishment to one of the offences earlier is given to the magistrate u/s – 31. The word was in such order the court may direct as a result it is the prerogative of the court if the court give L.I. first then all term sentences will be concurrent because life means life but if give term imprisonment first then term imprisonment will first be suffered and then the L.I. will start tomorrow if accused get a commutation after 14 years. Suppose, he has got 10 years of term imprisonment and after L.I. starts he gets 14 years of term imprisonment and after L.I. starts he gets 14 years after that he get the commutation he will spend 24 hours. But it will start life imprisonment then all other term imprisonment will start concurrently. Now aspect which Muthoo Ramalingam dealt was that even CrPC Sec – 427 clearly says that if there are 2 different trials and 2 different L.I. are given they will be run concurrent, so, since 427 of CrPC, legislative statute itself tells us that if 2 L.I. are given they will be concurrent, another aspect which they clarified was that suppose a person suffering from 2 or more L.I. then

commutation means commutation of 1 L.I. if state government or union government 1 sentence it does not mean it automatic commutation of all life sentences, in that case all life sentences must be commuted otherwise he will remain till his death.

The Police Act, 1861

Preamble:

- Expedient to reorganise the police
- And make police more efficient
 - To prevent and detection of crime.

Sec – 1 – Interpretation clause: - The word 'magistrate – chief officer charged for executive of the district – It includes all persons within the general police district – CrPC.

'Police' – All persons involved under act:

- Presidency
- State of police or
- Any part of presidency
- Or State or place in which this act shall be order to take effect
- 'District superintendent' &
- 'District superintendent of police' including any Asst. DS or other person appointed by general or special order of state government.
- 'property' includes any movable property, money or valuable security.
- 'person' includes company or corporation.

Sec – 2 – Constitution of force – by state government

- Entire police establishment be deemed 1 police force under state government

Sec – 3 Superintendence in the state government

- Superintendence of police – vest all powers of GPD, shall be

exercised by State government.

- Except no person, officer of court will not be empowered by state government to supersede any police functionality.

Sec – 4 Inspector general of police etc

1. Director general of police
2. Add DGP
3. IGP – sec – 4
4. Deputy IGP
5. Superintendent of police
6. Add. SP
7. Deputy SP
8. Police inspector
9. ASI
10. SI
11. Asst. SI
12. H.C.
13. C

Chapter – 26

Provision as to offences Affecting the administration of justice

Sec – 340 to 343 – read with 195

Sec – 344 -

We have substantive law coming up here it is basically exception to the rule that the victim cannot be trying his own case. It is exception to criminal jurisprudence or rule of natural justice. So, the coming section from Sec – 344 onwards in this chapter where if anybody commit any perjury or any false evidence then the victim court try the same matter. It

is a stark contrast to the well-established principle that the victim can't try his own case. So, why we added these provision if it is against the natural justice, we are invoking the principle of convenience and necessity that is case we give you very less punishment and take a summary procedure then lot of pendency will be taken care of because it's a very long process like first he will go under section – 195 of IPC then 340 then appeals under 341, in very cumbersome process. If we were given a power then there and then I can start a small trial regarding false evidence you have given. If someone gives false evidence then the punishment is 7 years u/s – 193 of IPC but if maximum term is 3 months or 5000 fine only well this appears a much better way/ It would be beneficial to both the party. The magistrate will be able to do justice and the accused the will get away with very less punishment.

Sec – 344 is giving his own punishment which is different from the IPC. So, we can say that CrPC is a procedural but it has a bit substantive part. Because nowhere is the punishment of 3 months of perjury so, these section aberration to the rule of jurisprudence.

Sec – 344 – 'While delivery of judgement' it means when the final judgement is being to be announced, or final order is being given up. It is only two courts have the power session court, or magistrate court of first only. JMHC has not this power. These courts expressing his opinion that witness who had appeared has given the false evidence knowingly or has fabricated false evidence with the intention that it should be used in a proceeding then the magistrate or session court has the two options:

- (1) If it wants to give more punishment if say 7 years then proceed u/s 195 of CrPC r/w 340, 341, 342, 343
- (2) In case if he feels that no need to give 7 years but to small punishment in the interest of justice then he will try this matter summarily he will take the cognizance of the offence and start a very small process and give straightway show cause notice to the offender and punish for 3 months or 5000 fine.

Sub-Sec – 4 – It is appealable judgement or order in Section 351 of CrPC.

Perjury before a court: -

- Substantive part
 - o Sec – 190 – defines
 - o Sec – 193 of IPC – punish
 - o Ordinary procedure is – Sec – 195 CrPC r/w 340, 341, 342, 343
- Sec – 344 a summary trial
 - o Procedure - 344
 - o Substantive – 3months or 5000 fine

Sec – 345 - bare

Sec – 346 – If the court does not want to go under section – 345, suppose anybody has insulted the court and court feels that Rs 200 is too small deterrent, so Sec – 345 does not bar you from taking a regular action under IPC and regular course of trial i.e. why alternate is given u/s – 346.

Offences mentioned in Sec – 345 are the offences are the contempt of court but should not confused with contempt of court 1952 both are different.

Sec – 347 to 351 Bare

Sec – 352 -

Judge and magistrate can try their case if they are victims – means if the matter does not fall u/s – 344, 345, 349, 350 then no judge is empowered to try the case if his court is a victim. Suppose if the court is a victim of perjury or forgery then he can't go under mentioned section if he already taken the cognizance under 195 of CrPC then he has only option is Sec – 340 and if judge does not take cognizance u/s – 195 then court can go straight way u/s – 344, 345, 349, 350 of CrPC.

Ques. Are there any provision in CrPC where the judge if he is a complainant can try his own case. If so, refer to the relevant provision in

CrPC?

Ques. 'A complainant can't be a judge of his own case' Critically examine?

Ques. If the court is a complainant of perjury or forgery committed against it. What is the detailed procedure to bring the culprit to book also discuss if a summary procedure is available for such an act before the court?

Ques. A is an accused throws a sleeper out of vengeance on the judge what offence he has committed and what is the procedure which the magistrate or judge will follow to bring the culprit to book?

Chapter XXVII The judgement

The pronouncement of a judgement is a very important aspect because if a wrong judgement is pronounced or pronounced in a wrong way it can prejudice to the accused that is why pronouncing a judgement are almost is common in civil and criminal law. In order – 20 CPC read the details. Similarly, chapter – 27 of CrPC lays almost similar rule regarding the pronouncement. Always a judgement has been pronounced in an open court that is why the word is 'pronouncement of judgement'. The manner in which the judgement is to be delivered and what procedural should a judgement contained, these are the 2 aspects of a judgement.

As a general rule of criminal jurisprudence, a judge who hears the case, sees the evidences etc should be writing that judgement.

Ques. What is a judgement?

Ans. Judgement is the end product of a trial and it is basically expression of the opinion of judge or magistrate which he has arrived at after due consideration of evidences which were adduced before him during the course of trial. In simple words, a judgement is an appreciation of evidences which the judge has appreciated during the course of trial before him. Since, justice delayed is justice denied, that is the reason why

there should no delay in pronouncement of judgement. Normally, because of extreme workload we find there are inordinate delays. That is why S.C. come out many judgement on this.

Anil Rai v. State of Bihar 2001 S.C.
Amina Ahmad v. State of Maharashtra 2001 S.C.
(at some subsequent time)

In which S.C. laid down the policy that there should be no delay in passing a judgement though the time is not written in CrPC and CPC but the S.C. held that the pronouncement judgement in civil case should not go beyond 2 months whereas judgement in criminal court should not be more than 6 weeks from end of trial. Even for H.C. the S.C. laid down procedure because there is no time period given for pronouncement of judgement by H.C. in CrPC and CPC then S.C. said H.C. should be very quick with the judgement. A speedy justice forms the part right to life and that is why society has the complete expectation for speedy justice.

Sec – 353 (8) any judgement suffers from any technicality error does not matter Sec – 465 will take care.

Sec – 354 (3) In CPC order – 20

Ram Naresh v. State of Chhattisgarh 2012 S.C.

In this judgement the Hon'ble S.C. given the principle when death penalty should be awarded?

- (i) Court has to determine whether it is a rarest of rare case
- (ii) The court feels that any other punishment or lesser punishment would be completely inadequate and would not be just.

No, doubt L.I. is the rule and death is an exception so, basically the standard of test will be on the basis of public view that how it effect the psyche of public then death penalty would be given then it is rarest of rare.

Yardstick would be inhumanity, brutality.

Ques. Does Sec – 354 applies only to trial court or as well as appellate court?

Ans. Ramakrishna v. State 2009 S.C. – Appellate court have the same responsibility. It has to say all the point of determination of decision and also if it is not agreeing with the lower court then why it is not agree with lower court.

State of Karnataka v. Hema Reddy 1981 S.C.

Where the appellate court agreed with the trial court then there is no need to write down all the decision.

Sec – 354 – Community Service – came –
Police Station Lodhi Colony Delhi v. Sanjeev Nanda 2012 S.C.

For the first time it talks about the concept of community service while sentencing they said lets try to rehabilitate the convict in the society followed the principle applied in many countries. In many countries various convicts come forward voluntarily to serve the community specially in motor vehicle crime. So, by serving the society basically it is not a real punishment but the convict pays back to the community and also he is appreciated by the society and they give him less guilt. As a result community services also awarded to Sanjeev Nanda in place of jail.

Sec – 355 – How the MM court will write the judgement?

Sec – 356 – This section is preventive in nature. This section is crafted to ensure that a person who has been punished with certain mentioned section. It is necessary to check on him even after his out of jail by asking his residence.

Sec – 357 – It is a new branch of criminal jurisprudence which deal with victimology. The concept of victimology is spread in a lot of place in CrPC, in victimology we don't only give adequate and correct punishment to the accused but also give compensation to the victim.

Compensation is not the forte of criminal law but there are certain aspect defined that compensation has made its way today in criminal law.

Sec – 357 (1) Wherever fine also is being given. This fine can be given as compensation. The fine power of JMIC is 10k and JMIIC is 5k. But suppose, you want to give more fine Eg: 1 lakh fine want to give then such magistrate send it to the CJM in Sec – 325, CJM has unlimited fine power. Now the CJM will award 2 lakh fine and now this fine can be given to the victim.

Sub-Sec -

- (i) Cost given to complainant
- (ii) Fine will be given as compensation
- (iii) When person dies in fatal accidents act, then this fine can be given as compensation.
- (iv) A purchases a car from B, A genuinely thinking that this car is not stolen and give the whole amount of car to B later A got to know this car is stolen car of C. Now case went to court and fine imposed on B. Now this fine will be given to A.

Sub-Sec – 4 – Appellate and revisional court can also give compensation in those cases where fine has not been awarded.

- We have 2 options where: -
 - (a) Fine is given
 - (b) Fine is not given

These both applies to JMIC and JMIIC because CJM, session judge, HC judges, has unlimited power of fine.

So, problem arises for JMIC and JMIIC because there fine powers is limited, so, magistrate can submit to CJM where CJM can order for compensation unlimited or magistrate instead of fine (where or fine is given then cancel the fine and give the compensation unlimited) order for compensation which can be unlimited.

Ques. To whom the compensation will be given?

Ans. To victim u/s – 2 (WA) of CrPC

Ques. What will be the quantum of compensation?

Ans. **Rachpal Singh v. State of Punjab 2002 S.C.**

The two determination are for compensation:

1. What is the level of injury suffered by the victim.
2. What is the capacity of the accused to pay.

Pankaj Bhai Patel v. State of Gujarat 2001 S.C.

There is no limit of compensation but at the same time we must remember:

- a) Firstly what are the facts of the case
- b) What is the paying capacity of the accused.

Manish Jalam v. State of Karnataka S.C. 2008

The determinant of compensation is nature of the crime, the injury caused or the capacity of the convict to pay the compensation.

Sec – 357 ABC bare – These are as per the amended CrPC. Sec – 357A is inserted by AA, 2008 i.e. victim compensation scheme. It is the duty of the state to ensure the safety of their citizens, life, property.

Sec – 358 Compensation to persons groundlessly arrested. This section is not bar to the person to proceed u/s – 182, 211 of IPC for falsely implicating him.

Sec – 359 – Suppose one non-cognizable case is there and person has made complaint for non-cognizable. Now, the trial takes place and it is found to be true. The court convicts the accused so, naturally this a complaint case as the state is not involved. So, all the expenses beared by the complainant which can be claim u/s – 359. In this the cost of the proceeding has been given. Cost is the forte of CPC in the CrPC the only

Section is Sec – 359 provided complaint was found to be true.

Sec – 360 – This is the only section which deals with the 3rd part of criminal justice system i.e. 1st – Investigation

2nd – Trial

3rd – Reformation (Sec - 360)

As far as the reformation is concerned, CrPC doesn't talk about much reformation because we have got the prison act, and state prison manual act of every state.

We want to release the accused on probation or probation of offender act after conviction then Sec – 360 applies.

Sub-Sec – 1 –

- (i) Any person above 21 – 7 years
- (ii) any person below 21 and Any woman of any age – not committed of offence punishable of death or L.I.
- (iii) No previous conviction

Sub-Sec (3) – It deals with admonition.

The admonition will be given only to IPC offences only but not to special or local law.

Application of admonition on summon case of IPC i.e. punishment should not be more than 2 years and no previous conviction is proved against him.

Sec – 361 – It tells us that wherever you could have released a person on probation and you are not releasing him then you must give reasons.

Sec – 362 – Once the judgement has been signed then no alternation is allowed except clerical or arithmetical error.

Ques. Can a H.C. change its judgement?

Ans. **Moti Lal v. St. of M.P. 1994 S.C.**

The H.C. does not have the power of altering its own judgement but the question came before a S.C. that can the H.C. by invoking his power u/s – 482 change its power? S.C. has held that Sec – 362 is all pervasive and no H.C. can invoke his power u/s – 482 CrPC to review, set aside, or change its judgement.

Kapoor Singh v. State of Punjab 1988 H.C.

Changing the sentence from consecutive to concurrent or vice versa means review of the judgement and can't be consider to be a correction for clerical error.

Sec – 363 – whenever a judgement is passed the copies must be given specially when there is imprisonment because the convict has the right to appeal. So, this section written with the view of natural justice.

Sec – 364 and 365 bare

Chapter – 28

Submission of Death sentences for confirmation

- JMHC can give maximum sentence of 1 year
- JMHC can give maximum sentence of 3 years
- CJM can give maximum sentence of 7 years
- Asst. Session Judge can give maximum sentence of 10 years

However there are 2 courts which can give any sentences –

1. Session court
2. H.C.

However, the session court one aspect where his power is not supreme i.e. death penalty because it concerns the life of a person, that is why it is needed to be confirmed by the H.C. But, H.C. has the absolute power.

Sec – 366 (1) – Will a single judge of the H.C. confirm it or do we need more than 1 judge?

Ans. R/w Sec – 369 – signed by at least 2 of them. Suppose these 2 of them have the different opinion then r/w 370, 392 refer to the 3rd judge.

Sub-Sec (2) whenever the death penalty given no bail will be granted.

Ques. Session court has convicted A and give him death penalty.

Now –

1. Session court must send this judgement for confirmation.
2. A. has by virtue of CrPC 'right to appeal' against session court's judgement i.e. sentence.

Both point are separate thing as print first mentioned in Sec – 366 which is mandatory and second is about to right of accused.

Ques. Now will there be 2 hearings?

Ans. Both the matter can be heard together. However, until the appeal proceeding is heard, no confirmation proceeding of sentence can be heard. So, as soon as the accused file for appeal then both the matter can be heard concurrently or together.

- Till then of appeal tenure the H.C. will not confirm of sentence of death proceeding.

So, now the H.C. has two act –

1. Where H.C. is dealing with the confirmation matter then the H.C. basically dealing with the court of reference.
2. But, where H.C. acting as an appellate court is the other thing.

Held Narayan Ram Chandra v. State 1947 Bombay H.C.

Where both the confirmation and appeal arise from the same order of conviction, the uniform practice of H.C. has been to hear both the confirmation and the appeal preferred by the accused together and to deal with the merits of the case on the basis that all material question of fact and law can be agitated by the accused in 1 matter. This practice is

fully justified by provision.

Absolute sentencing power means we can give sentence without intervention of any other court.

Sec – 367

Ques. What does the H.C. do in confirmation?

Sub-Sec (1) Balak Ram v. St. 1974 S.C.

The H.C. has to come to own independent conclusion regarding the innocence or guilt of the accused, independently of the opinion of the session judge.

Iftikar Khan v. State 1973 S.C.

The H.C. is duty bound to independently consider the matter carefully and examine all relevant and material evidence while confirming the capital sentence. A H.C. is under an obligation to itself consider what sentence should be imposed and whether death penalty should be given or not.

- So, the H.C. while confirming is not a mere stamp. It must appreciate the evidence afresh just like an appeal court and then come to a independent conclusion. If need be it can take fresh evidence and conduct fresh inquiry and look at the whole thing afresh. It can even direct the court of session to take the evidence and sent it to H.C.

Sub-Sec – 2

General rule is whenever any evidence is taken accused must be present. Whenever the H.C. proceeding goes on there is no need for accused to be present. So, it is exception to general rule because he may in jail.

Sec – 368

Ques. What are the power of H.C. while confirming the death penalty?

Ans. Sec – 368

Kai Kushru v. State of Bombay 1952 Bombay H.C.

Ques. While confirming the death penalty, is the H.C. competent to go into other charges against the same accused as well?

Ans. Everywhere the word use 'in any case' which means the whole case. Whenever the death penalty is under consideration all the minor offences which the accused may charged of will also be taken into consideration by the H.C. while dealing with death penalty.

Chapter – 29

Appeal

Ques. What is appeal and why an appeal?

Ans. A judgement is basically an opinion of a judge. This opinion is based on the appreciation of evidences which were put up before him during the course of trial. So, every judge appreciate the evidence the evidence on his way or other way it's a matter of human perception that is why an concept of appeal has been introduced that opinion of one judge could be wrong and if wrong execution of wrong judgement is done then convicted 's fundamental right will be infringed.

Appeal basically means the right, the of carrying a particular matter from an inferior to superior court with a view to ascertain whether the judgement is sustainable or not. The power of appeal basically is fulfill and to cover up the basic principle of natural justice. Appeal is a fresh look in the same matter by a superior court which is more experienced that is why appeal lies to a superior court.

Ques. Is every judgement or order subject to appeal?

Ans. Legislature determines this that which matter is appealable or not. So, legislature all its wisdom decides that which matter is appealable or not that is why we have a statement i.e. 'appeal is a creation of statute' means appeal is not absolute right unless law specifically allow it.

Ques. What is the difference between appeal and revision?

Ans. The basic difference between appeal and revision is revision is not a right. It is prerogative of the court i.e. revisional court. It depends on the leave of the court. But appeal will become a right when legislature allow it.

Sec – 372 -

(1) It is lay down the basic jurisprudence of appeal in CrPC. Appeal is a creation of statute in CrPC also. If CrPC does not provide specifically for an appeal it will not be allowed. In which section appeal is allowed?

Ans. – Sec – 86, 237, 250, 341, 351, 360, 449, 454, 458, 372 to 394 etc.

Division of chapter of appeal:-

- Appeal against order of executive magistrate
- Appeal against conviction
- Appeal against inadequacy of sentence
- Appeal against power of any appellate court (386)
- CrPC does not talk about appeal of SC, as far as Supreme Court is concerned, we have appeal under SC by virtue of article – 132, 134, 136 of constitution and we have a statute i.e. Sec – 379 of CrPC.

Sec – 379 – This section reflecting the article – 134 of Indian Constitution. I can't go in appeal to SC as appeal is the creation of statute Sec – 379 is a very small recognition of article – 134. Now, the question arises that we need to have special leave of HC to move the SC?

Ans. Yes, Article – 132 says that but why the answer is the background of English law. Dillet 1887 case. Law quoted the line 'his majesty will not review, or interfere with course of criminal proceeding unless it is shown that why have disregard the form of legal process or some violation of the natural justice substantial and grave, injustice have been done.'

Ques. Where will the appeal lie?

Ans. Bare

Sec – 372 proviso

This proviso is a reflection of a new aspect of criminal jurisprudence the concept of victimology.

For the first time now, we are realizing that victim has his own power and he need not be at the mercy of the state. He can go directly to the court in an appeal – added 200's

- (i) Against acquittal of an accused
- (ii) If accused has convicted for a lesser offence - eg given 304 instead of 302.
- (iii) If there has been inadequate compensation paid to him.

Malika Arjun Kodagali v. State of Karnataka 2018 S.C.

Ques. Can a victim straight way appeal in the HC without the leave of the HC?

Ans. Yes, full power is being given by the proviso. A victim can straightway file in the HC without the leave of the HC u/s 378 of CrPC.

Sec – 373 bare deal with executive magistrate

Sec – 374 Appeal against conviction.

All accused have a presumption of innocence, every accused is shrouded with the presumption of innocence that is why whenever there is a conviction accused has a right to appeal.

Ques. To which court does the appeal against conviction lies?

Ans. **Sub-Sec 1** – 'convicted on a trial held by HC' u/s 407 of CrPC HC takes up any case from any lower court and tries it itself. HC has not any power of trial power except 407 and tries it as original jurisdiction – may appeal to SC.

Sub-Sec – 2 of Sec – 374 – The i.e. CJM – his power is 7 years and consecutive is 14 years r/w – Sec – 31 CrPC appeal from session judge and additional session judge and magistrate who held the trial and given conviction will send to provided where the sentence is more than 7 years.

Sub-Section – 3 – appeal to session judge by –

- (1) Person convicted by MM, Asst. Session judge (10 years), JMIC, JMIIIC
- (2) Sentence by CJM u/s – 325 (less than 7 years)
- (3) Sentence u/s – 360 by magistrate

D Hariba v. State 1970 S.C.

The HC also should not summarily reject appeal reasoned order must be given by the HC also.

Badri v. State of Rajasthan 2000 SC

Ques. How will HC deal with an appeal?

Ans. The HC has to arrive at an independent conclusion and it is duty bound to examine the evidence on record so as to arrive its own conclusion.

Jinnat Mia v. State of Assam 1998 SC

The HC has full in appeal to review the entire evidence and come to its own conclusion it should not merely echo what the trial court has said.

State of Karnataka v. Bheemappa SC 1993

'Falsus in uno, falsus in omnibus' it does not apply to Indian law. The HC should not set aside the conviction only because 1 circumstance was in favour of the accused.

Niranjan Nayak v. RK Mohapatra 1994 Orissa HC

Default in imprisonment in lieu of fine is not to be added to substantive sentence of imprisonment to compute the 7 years given in Sec – 374.

N. Venkaiah v. State of Andhra Pradesh 2002

Like the principle that no innocent man should be punished it is an equally a principle that no guilty man should be allow to go unpunished. Wrong acquittal of accused should be said to be wrong signal to the

society. Wrong acquittal has its chained reaction. The law breakers would continue to break the law with impunity and people would lose its confidence in the criminal justice system and would tend to settle their scores on states themselves.

If accused plead guilty then appeal shall not be lie.

Appeal can be of two things:

- Conviction – no appeal against conviction to HC and lower court
- Sentence – Appeal against sentence not there in HC but in lower courts only to the extent or legality.

State of UP v. Dharmendra Singh 1999 SC

Suppose, someone filed SLP to enhance the sentence of accused, now does the accused has right as given u/s – 377 (3) before SC?

SC held that no, as Sec – 377(3) is applicable only when the matter is before the HC and not applicable to SC as an appeal regarding criminal matter to SC is not provided by CrPC. Hence, Sec – 377 can't be made applicable to SC.

Chandrakant Patil v. State 1998 S.C.

While exercising its jurisdiction SC is not bound by the rules given in CrPC. These may be applicable to court below SC however jurisdiction u/s – 136 is limited only by its own discretion. Hence Sec – 377 (3) does not apply to appeals u/s – Article – 136.

Asst. Collector Central Excise v. Krishna Moorthy 1997 SC

It is the public prosecutor who can file an appeal regarding the inadequacy of sentence. The complainant has no locus standi on this.

Sec – 378

This appeal against acquittal stands at a different footing from appeal against conviction. In criminal jurisprudence there is a presumption of innocence with the accused and if he is acquitted this presumption of innocence has been fortified. Hence, it is the double presumption in

favour of accused. This is the reason why appeal against acquittal stands at a different footing from that of appeal against conviction.

In an appeal against acquittal to set an acquittal aside the appellate court have to work double hard because first it must dispel piece by piece the judgement of acquittals then give cogent reasons for reversing the two presumption of innocence and infact convert it into a conviction.

State of UP v. Nahar Singh 1998 SC

If two views are possible that convict and acquittal then courts should take in favour of acquittal.

Ques. What are the guidelines on this?

Ans. She Swarup v. Emperor 1934 PC

- Noor Khan v. State 1964 SC
 - Lekha Yadav v. State 1973 SC
 - Roop Singh v. State 1973 SC
1. The appellate court must keep in view the view of the trial judge because trial judge has the benefit of seeing the witnesses. This benefit is not available to the appellate court.
 2. The presumption of innocence is in favour of the accused and this presumption had been confirmed by an acquittal.
 3. The accused always has the right to benefit of doubt merely because he has moved to HC this does not mean that his this right ends.
 4. Whenever an acquittal has been arrived at by lower court the appellate court should be slow in over turning that decision because the trial court had that distinct advantage of seeing the witnesses and dealing with it is much more detail.

Suraj Pal Singh v. State 1952 SC

The presumption of innocence of accused is further reinforced by acquittal by the trial court also the trial court had an advantage of seeing the witnesses and hearing them personally. Hence, if the trial court's

acquittal has to be reversed it must be under very substantial and compelling reasons.

Sec – 378(1) It was completely changed and substituted by the CrPC Amendment Act, 2005 because earlier all appeal against acquittal were heard only by HC which gives a lot of load over the HC, hence by 2005 AA delegated some power to the session courts.

Sub-Sec – 1, 2, 3 – Assume FIR cases

4, 5, 6 – complaint cases – First file the application to HC to grant permission for appeal.

(4) Malakarjun Kodgali v. State of Karnataka 2018 S.C.

Victim can file an appeal to HC without any leave to HC u/s – 372 provisos.

Sec – 379

Sec - 380

Whenever there are more than one accused in any trial and the judgement is an appellable judgement then all of them have the right to appeal. In other words, even if the co-accused does not appeal. The other co-accused have their own right of appeal.

Shingara Singh v. State of Haryana 2004 SC

It was held by SC that if in one trial there are co-accused they can file appeal collectively they have a right.

There was son convicted u/s – 302 and father convicted u/s – 34 of IPC both went separately for appeal in SC u/a – 136 by father and by son against conviction. The SC said why did file separate appeal, both could file petition along with his son.

Sec – 381 – This is basically a procedural matter that how an appeal to be heard.

2. This is the only place where asst. Session Judge and CJM becomes the appellate court to the JMHC – for the appeal conviction.

Sec – 382 – Petition of appeal

Ramprakash v. State of Maharashtra 1973 SC

Supposed several accused person are jointly tried and are acquitted by the trial court. Now the question arose that

Ques. Whether state govt can file one appeal against acquittal of all persons?

Ans. This case cleared that yes, state can file one appeal against all.

Sec – 383 procedure when appellant in jail: -

Accused in jail – fears that his appeal's time is about to end or ends. And he had made petition of appeal from jail through jail officer. Now, the question arises that if that petition is dismissed and in meantime between family members hire new advocate and he files fresh petition. Now can this petition heard?

Whether 2nd petition can be heard by court or not?

Sec – 383, 384

Sec – 384 – Summary dismissal of appeal -

If the appellate court finds that there is no sufficient ground or substance to hear that appeal then the appellate court summarily dismiss the appeal.

Summary dismissal should always be accompanied with a reasoned order. In limine orders are against the principle of justice.

Raghunath Laxman v. State of Maharashtra 1986 SC

SC has held that even though the HC has the power to dismiss matters in limine yet the HC should restrain it should not dismiss by inlimine orders always a reasoned order must accompany the summarily dismissal whichever be the forum. If don't dismiss summarily then detailed hearing u/s – 385.

Sec – 385

Sec – 386

This section is divided on the basis of the type of appeal by which the

person is moving to court. Eg: Appeal against conviction acquittal, enhance of sentence, cost, incidental matters etc then what will happen? – Sec – 386.

- Dismissal after proper hearing in Sec – 386
- The appellate court may dismiss the appeal after hearing everybody and going through the record and finds there is no merits in appeal hence dismissed the appeal.

(a) Appeal against acquittal.

(b) Appeal against conviction

(c) Appeal for enhancement of sentence

(d) Appeal from any other order

(e) Consequential or incidental matters.

Then 2 provisos.

a. Appeal against acquittal: -

- i. Reverse such order
- ii. Direct further inquiry
- iii. Retrial of accused. If magistrate then committed to session
- iv. Committed to sessions court
- v. Find him guilty – conviction.

b. Appeal against conviction: -

- i. Reverse the finding and sentence and acquit or discharge the accused, committal for trial, retrial competent court – subordinate to appellate court or committed to session.
- ii. Alter the finding, maintaining the sentence.

Conviction is correct but finding should be changed eg; charged u/s – 304 instead of 302.

- iii. With or without altering the finding – after the mature or extent of the sentence but not so as to enhance the same.

As this is appeal against conviction by accused, you can't enhance my conviction, but alter the finding or change the sentence eg charged u/s – 304A instead of 302 rigorous to simple.

c. Dismiss

d.

e.

Proviso

Proviso 2 – Appellate court cannot inflict greater punishment than of the trial court.

Sahadevan v. St. of TN 2012 SC.

The question arose that suppose there is a judgement in which both the accused has same role to play. One of the accused appeals and gets the benefit. Now the question arises

Ques. Will the benefit be given to the non-appealing accused?

Ans. It was held that whenever such things happen that one of the accused appeal and other accused stands on the same footing then even though he has not appealed the benefit will accrue to the non-appealing accused.

Ques. What is the law on retrial?

Ans.

State of Karnataka v. Kappuswamy 1987 SC

Whenever a retrial is ordered it can't be called the 2nd prosecution it will not be hit by double jeopardy. Retrial is the continuance of the same prosecution. It is not to be taken as fresh trial so whenever there is acquittal and re-trial takes place and the persons is convicted now it will not be hit double jeopardy.

However SC held that order of retrial be made in very few exceptional cases even if a court which has a territorial jurisdiction but it otherwise completed. If it tries the case even then no retrial should be ordered. So, whenever we have de novo trial or a retrial – it is a continuation of same trial. It cannot be taken as fresh prosecution on fresh trial. Hence it will not be hit by double jeopardy.

Bishambar Nath v. State of UP 1986 Allahabad HC.

Sec – 387 – This law which governs the entire topic of judgement also applies to appeals example: -

Judgement can't be altered once it has been written. The HC is not covered here. HC has its own rules.

Proviso – We read that accused must be present while delivering the judgement but in appeal appellate is not present than his pleader is sufficient, no need for appellate to present.

No where it is written that appellant must be present to hear the judgement unless there is question of sentence or directed by appellant court.

The entire rule of the judgement also applies squarely to the judgement of appellant court.

Sec – 388 – Once the HC has decided a matter then what is step further? Naturally the HC will certify back to the concerned trial court.

Execution of sentence is done by trial court not by HC but that to be certified by the higher court.

Sec – 389 – Suspension of sentence pending the appeal, release of appellant on bail.

Ques. What is the suspension of sentence?

Ques. How is it different from suspension of conviction?

Ques. Whether trial court can suspend that sentence while awarding the sentence?

Ans. Sub-sec (3) of Sec – 389

- Not suspension from conviction but from the sentence.

Suspension of sentence basically means that your sentence has been suspended. In other words, the execution of sentence have been suspended. It does not mean that your sentence has already been started and the time you are not going to jail will minus. It means sentence has been held in abeyance by which accused can ask for bail etc.

(a) The appellant is a convict already he has been convicted.

(b) Already he has been sentenced but practically he has not been send to jail.

Whenever we are suspending his sentence there can be many reasons: -

1. He is going to appeal or he can prepare for his appeal.
2. Naturally we will not suspend his sentence if we think that he is gong to apprehend for the purpose that he will appear in his appeal we are suspending his sentence and give him bail.

Suspending conviction means: -

- He is no longer a convict/ convicted
- Then he has all the rights which he had when he was not convicted.
- This is the reason why there is no suspension from conviction.

Navjot Singh Sindhu v. State of Punjab 2007 SC

KC Sareen v. CBI 2001 SC

In this judgement, SC observed that suspension of sentence is different from suspension of conviction – it is an extremely exceptional matter merely because a person appeals to challenge his conviction is no reason why a court should suspend the order of conviction especially in corruption cases the conviction of public servant should not be

suspended though the sentence of imprisonment can be suspended so that he can apply for bail in any other matters.

It is a matter of public policy that the convicted public servant should be kept under a disability because if you will remove it you will suspend his conviction, he will demand all his rights prior to conviction which is against public policy.

As far as suspension of sentence is concerned

State of MP v. Chintama 1989 SC

It was held that suspension of sentence is a normal rule whenever a person is convicted and he wishes to go for an appeal and his sentence is pending the sentence passed on him should be suspended unless there are some exceptional reasons for denial of the same.

This matter came up in case of

Navjot Singh Sidhu v. State of Punjab 2007 SC

On this case, the SC has suspended his conviction and said it is the rarest of the rare case but the way he has behaved he resigned and set an example of high standard in public life. If his conviction was not suspended he would have an irreparable loss. This SC suspended the conviction of Sidhu.

For suspension of sentence, the court must have to give reasons. Once you got bail from trial court, then what will be the duration of bail – only till you can apply to the appellate court which is only 3 months.

Sec – 389 (3): -

Ques. Whether trial court can suspend the sentence while awarding the sentence?

Ans.

1. When trial court convicts the accused, the accused can apply bail to the sentencing court (trial court) – conditioned
 - (i) It is bailable offence or he is already given bail in non bailable offence or he can be punishable with any time like he may be imprisoned more than 7 years etc. does not but court given

imprisonment up to 3 years.

- (ii) Bailable offence or on bail then court shall order be released on bail and now person will go to appellate court for regular bail.

State of Haryana v. Hasmat 2004 SC

Ques. Can the HC suspend the sentence during the pendency of the appeal?

Ans. It was held that the HC can suspend the sentence even in NDPS during the pendency of appeal subject to the conditions and limitations laid down in Sec – 37 of NDPS Act.

Sec – 390 Arrest of accused in appeal from acquittal

Sec - 391

Ques. Can an appellate court takes further evidence?

Ans. This section is not intended to fill in the lacunas/ gaps which are left by the negligence of prosecution or laches of prosecution. The appellate court is not a prosecuting court and merely because the prosecution has failed to put up adequate evidence the appellate court cannot be an agent acting for the prosecution that is the reason why additional evidence has always be taken in the interest of justice and not in the interest of prosecution.

Ashok Bhutti v. State of Sikkim 2011 SC

Sec – 392 Procedure where judges of court are equally divided: -

It is applicable only when the bench of HC is equally divided then automatically the 3rd judge came into picture.

Prov. If 3rd judge refers to larger bench then it will refer to large bench.

Sec – 393 Finality of judgements and orders on appeal: -

- There is no 2nd appeal in CrPC as a legislature can provided in Sec – 393 except in cases of Sec – 377, 378, 384 (4)
- 2nd appeal in article – 134, 132, 133 of Indian Constitution.
- Anything which is appealable after appeal in SC by Indian

Constitution.

Proviso –

- A – convicted – file appeal to cancel conviction but did not cancel.
- B – Acquitted
- C – very less punishment given

All the accused are in robbery.

Now, the question arises can the state now go against acquittal or enhancement of B and C?

Ans. Yes, state can go.

Sec – 394

2. Except an appeal from a sentence of fine as a debt.

Which fine is this: -

- Only imprisonment or fine
- Imprisonment and fine

This matter came up before

SC Harnam Singh v. State 1975 SC

It was held that the word is not 'from a sentence of fine only' – It means it will include both the above mentioned case.

Proviso.

Chapter – XXX

Reference and Revision r/w CPC

Reference basically is made by lower court to a higher court for the purpose of clearing his mind on a point of law. Sometimes there are very archaic laws, regulations, ordinance, as the modern content the law is old and probably the lower courts feels that it is unconstitutional then it refers the matters to HC and HC will clarify the matter and certify it to the lower court and now accordingly the lower court will take a decision. Powers of reference in civil law were more or less uniform and they were very wide but here in CrPC there are different powers for different courts. CJM and MM has wide power of reference, on the other hand lower magistrates has limited power in comparison with the Court of Session

or MM.

Sec – 395 Reference to HC.

1. 'Any court' – Session court, CJM, MM or any lower court.
That a case has been pending before it and question arose in that case regarding the validity (it is valid or not see on the angle of constitution) of any act, ordinance or regulation.
2. This sub-sec only deals with sessions or metropolitan magistrate in any case, matter is not about the validity of act, ordinance regulations before session court or MM but other matter in which question of law arises then refer to HC.

It is always a question of law and never a question of fact.

State of Orissa v. RC Aggarwal 1970 SC Qazi Mohd. v. Mumtaz Begum 1990 Bombay HC

- The Session Judge & MM can't refer points on the decision of the HC that lower courts are bound to the decision of HC.

Sec - 396

Once the matter has been referred to the HC, the HC will pass the requisite order and then it will send the judgement to court which referred the matter then the trial court will make an order which is in conformity with the order of HC.

Revision

Sec - 397

Revision basically is an inherent thing in an hierarchical system of judiciary. There are two types of powers which the HC has over the lower courts i.e.

- (a) Administrative controls – daily routine of judges
- (b) Judicial controls – **either through appeals** (if it is given by statutory right – right to be heard, it is limited to certain matter like if allow by law that particular matter is liable to appeal so it is limited.)

or through revision – Extra ordinary power having wide power can be on any matter whether of procedure, substantive law, irregularity or illegality anything. Now the question arises

Ques. Can I go to revision in every matter?

Ans. No, that is why it is no right to be heard but in appeal there is right to be heard but in revision it is the prerogative of the revisional court to grant leave or not to grant the leave.

Appeal is limited to certain matter u/s – 372 if any matter is not appealable and there is illegality, or irregularity in procedure, it is by court then we have another way for getting justice i.e. revision.

Suppose A has given in appeal and that appeal suffers very infirmity as there is a procedural lapse and there is also substantive i.e. illegality lopes in appeal. **Now, whether A can go in revision against that appeal?** Sec – 393 CrPC – chapter 30 mentioned, yes he can go in revision.

- Interlocutory orders are not revisable because interlocutory are interim order means same court can correct it but it has exception.

Sources of Revision

1. CrPC Sec – 397 to 401
2. Article – 227 of COI – even go for an interlocutory order.
3. Write Article – 32 – writ of certiorari is also a revisional power.

Ques. When will the matter be taken by the revisional court as there is need to take the leave. When should the revision court give leave?

Ans. Broadly speaking when does a revision lie: -

1. When the decision is grossly erroneous
2. Where the trial court or lower court has no complied within provision of law.
3. Where the finding facts are not based on evidences in court means

has not applied mind.

4. Where the material evidences of the parties has not been considered.

5. Where judicial discretion has been exercised arbitrarily.

Eg: Discharge of accused on the face of record there is nothing incorrect revision should not be likely to set off the discharge.

Eg: Merely because the accused is discharge is no ground for revision because the magistrate has applied his mind, so on the face of record if there is nothing unreasonable, incorrect on the face of it then revision should not be likely to set off the discharge.

Sec – 397 tells two things

(a) Which are the courts in CrPC for revision?

(b) Under what circumstances they can take up revision?

Sec – 397 provides for what are the revisional courts and under which powers can they take up revision since there are only two revisional courts i.e. Session Judge (ADJ) or HC(Sec – 401, provides with the powers of HC and session judge, ADJ have same power as HC), the power are the same.

'May call for' – it can be of two ways

(a) It can be suo moto calling for record

(b) It can be at the behest of the petition which has been tendered by any party.

Sec – 397 – Inferior criminal courts – given in explanation

Whenever a revision is called for then the question arises.

Ques. Can the revisional court takes Addl. Evidence?

Ans.

Vinod Kumar v. Mohrawati (1990 Allahabad HC)

It was held that revisional court is allowed to take additional evidences in revision also a revisional court can ask a lower court to conduct an inquiry and certify it to the revisional court.

- **Pardon 306 - revision**

An order granting a pardon is a very important, order and definitely is subject to revision. Whether the pardon has been given correctly, legally or propriety. It can come up for revision.

- Similarly, when an order of maintenance is given u/s – 125 CrPC in these matters also the court can re-appreciate the evidence regarding the correctness, legality and propriety by the revisional court.

- The question arose that **What are the suo moto power?**

Ans. Sec – 397 envisages suo moto powers to the revisional court in the interest of justice whenever it comes to notice that some matters is not been covered with correctness, legality or propriety at stake then the court can take suo moto action under this section.

- Suppose – 313 – The court omitted to ask important question –

State of Punjab v. Naib Din 2001 SC

All incriminated circumstances must be put up before the accused and if they are not put up then they cannot be used in the judgement.

Now the question arises

Ques. Should the trial be set aside?

Ans. Now, in this case SC held that mere omission to put up question by trial court to put forward all the circumstances does not vitiate the trial even if the omission is of vital nature there is no reason for setting aside the conviction, you can set right the lapses in revision.

In case it caused prejudiced to the accused in that matter the lapses can be set right by the revisional court.

Ques. What about revision order u/s – 156(3)?

Ans. Yes, **Sabir v. Jaswant (2002 Allahabad HC)**

- Sometimes, the revisional court do not go to the details of these words correctness, legality or propriety **Paul George v. State 2002 SC**

Interlocutory orders

Interlocutory orders – on this Punjab HC and Bombay HC said that on grant of bail putting up onerous Eg: Surety of IPC officer, condition is amounts to denial of bail. Person can go in revision.

Any interlocutory orders whichever touches the fundamental rights and liabilities of a person does not remain as interlocutory order.

Hasmukh Zaveri v. Shella Dadlani 1981 Bombay

Eg: - Sec – 94 CPC arrest, temporary injunction etc are appealable u/o 43. Because touching fundamental right.

Framing of charges: - Delhi HC has held that framing of charge is only an interlocutory order where as it also held that summoning of an accused is not interlocutory u/s – 204 because it is touching the fundamental rights so summoning of accused is revisable.

Similarly, Bombay HC differs: -

Priya Sharma v. State of Mah 1995 Bombay

That how framing of charges is an interlocutory order because it touches the deprivation liberty and status it is definitely affecting his right to life as he is facing a complete trial.

Even Jharkhand HC is same as Bombay HC.

Conclusion: -

My conclusion is, after reading many judgement that in case anything touches the propriety – if say framing of charge is a mere interlocutory order does it not effect my life? I will have to undergo a whole trial, is it not effecting my right to life.

Can I say it is a mere interim order – In my view, no, in this matter I agree with Bombay and Jharkhand HC.

Is this interlocutory order hitting my fundamental rights? If this answer is yes, then it is definitely touching the correctness, legality, and propriety of finding and not treated as interlocutory order and if revision court refuses to take then I will go u/s – 227.

Satya Narayan Maharaj v. Kantilal dave 1976 Guj HC
Mangla Thammal v. M. Thevor 1988 Madras HC

Suppose a person goes to HC u/s – 397 without 1st going to session court. It was held in these two judgements that HC has no power to deny revision that person has not approached to session court 1st.

However, if he choose to go session court 1st then he can't go to HC.

Ques. Weather 397 effects the power of HC – 482 of CrPC?

Ans. If an order has been passed u/s – 397 there is nothing called 2nd revision, whether Sec – 397 effects the powers u/s – 482?

Ans. Once a decision came by revision court against me u/s – 397 then I go to HC u/s – 482 as I couldn't get the relief u/s – 397. In these cases you can't go u/s – 482 – **Jagir Singh v. State of Haryana (2018 P&H HC)**
It was held that power u/s – 482 CrPC cannot be invoked as a 2nd revision. It can't neutralize the bar given u/s – 397 CrPC.

U/s – 482

- (a) No inherent power can override legislative law.
- (b) If there is any remedy in any statutory law then the doors of Sec – 482 are closed.

Prasanta Kumar Dev v. State of WB 2002 SC

2nd Revision is barred no doubt about it. A matter of maintenance came before sessions court. A orders of maintenance was passed in this case. Session court dismissed this order. Now the person went to HC as a 2nd revision – HC rejected this as mentioned 397(3). Matter went to SC and SC held that this is not the correct order of maintenance as there is

absence of application of mind by court of magistrate or the session court - SC held that HC must have to look up once into this matter prima facie not to reject the revision on the technical grounds of maintainability prima facie if these are no merits then can reject on the technical grounds by if it is hit by correctness, legality or propriety then it must use its power.

The question arose that if a person has gone in revision and the revision court does not give him any benefit or relief. Now, there is no re-revision.

Suppose, if the person wants to go for quashing then he can go under Sec – 482 CrPC. Because revision does not cover the quashing.

Shakuntla Devi v. Chamru Mahto 2009 SC

It was held that though Sec – 397 (3) that where the revision has been put up before the session court or HC the other courts have been bared, this bar does not apply to quashing u/s – 482.

Sec – 398 to 400 Bare

Sec – 401(3) HC's Power of Revision

3. In revision an acquittal can't be converted into conviction.
4. No straight way revision lies by skipping the appeal provided by law.

Revisional power is extraordinary jurisdiction and it is to be exercised only in exceptional cases when there is a glaring defect of procedure or manifest error of law or miscarriage of justice.

State of Orissa v. Nakula Sahu 1979 SC

Sec – 402 Revision put by convicted

Sec – 403 to 405 Bare

Chapter XXXI

Transfer of Criminal Cases

There are 5 classes of Transfers: -

- (a) Transfer by Supreme Court
- (b) Transfer by High Court
- (c) Transfer by Session Judge
- (d) Transfer by CJM
- (e) Transfer by District Magistrate

Transfer is always an exceptional matter whenever any matter is transferred it always casts aspersions especially when HC transfer or session court transfers, on the transfer or court.

Whenever there is a request of transfer that transferring court has to keep many things in mind.

Ques. Why of transfer?

Ans.

- 1. Inconvenience of parties
- 2. In the interest of justice eg; Jailalitha Corruption Case

Where there are multiple defendants then wherever it is convenient to everybody.

Ques. From where this power comes to transfer the case from one court to other court?

Ans. Article – 228 of COI

Sec – 406 power of SC to transfer cases and appeals: -

- 1. SC can transfer
 - a. From HC to the HC of another state
 - b. From criminal court subordinate to HC to another criminal court of equal or superior jurisdiction subordinate to another HC.

- HC – HC
- HC – Session Court – Session Court of same HC
- CJM of this HC – CJM of this HC
- Or
- CJM – Session Court
- CJM – but not to lower level.

Ques. Who will move to SC for transfer?

Ans.

- (a) Either the attorney general of India
- (b) Party interested – application must be supported by affidavit

(2) It is a compensation, it is not a penalty fine, punishment, but compensation.

Bala Krishnan Pillai v. State of Kerala 2000 SC

While allegation, suspicion, conjecture, surmises should not be the base of any transfer.

Sec – 407 Power of HC to transfer cases and appeals: -

It can be HC acting suo moto, the lower court may apply for transfer or the party may apply for transfer.

Five Conditions must be fulfilled when will a transfer be affected: -

1. A fair or impartial inquiry or trial cannot be held.
2. Some question of law of unusual difficulty is likely to arise (question of law)
3. An order under this section is required by any provision of this code.
4. It will tend to general inconvenience of the parties or witnesses.
5. It is expedient for the ends of justice.

Ques. What types of orders can a HC pass?

Ans. Four types of orders can a HC pass:

- (a) Offence be tried by a court not covered u/s – 177 to 188.
- (b) That any case a proceeding be transferred to another criminal court or to stay the proceedings.
- (c) The case be committed to the court of session.
- (d) Particular case or appeal be transferred to and tried before itself (HC).

Ques. HC has transferred the matter from the JMFC to itself, what will be the procedure?

Ans.

Fatima Riswana v. State 2005 SC

Sec – 408 to 412 Bare

409(2) – If the trial of case started the session judge can't withdraw case from ADJ except withdraw before the trial and the word revision is not written here but we have to go liberal interpretation of statutes and we will not allow so superior court can't withdraw even in revision.

Chapter XXXII R/W Order 21 CPC Execution, suspension, and remission and Commutation of sentence

The end product of every justice system is the remedy in civil law and punishment in criminal law.

Who will give the punishment and what will be the style of punishment all these things have to be made clear.

Punishment in criminal law:

1. Death sentence
2. Imprisonment
3. Fine
4. Remission

5. Commutation

As a result, we have only all types of execution Sec – 413 to 435. Entire chapter of sentences – death, fine, imprisonment, remission, and commutation.

A. Death Sentence

- Sec – 413 Confirmation of HC
- Certificate of confirmation to session court
- Session court issues black warrant form no. 42.

Sec – 414

Sec – 415 you will hold the death penalty in abeyance.

Sec - 416

Natini v. State of Tamil Nadu

B. Imprisonment

Imprisonment can be term imprisonment, life, substantive or in lieu of imprisonment + preventive imprisonment (detention), Rigorous or simple.

Sec – 417, 418, 420 and 430 – procedure

C. Levy of fine

Upon non-payment of fine the court has two options –

1. To sell his property
2. If he has no property then imprisonment in lieu of fine.

If court got to know that accused has movable property, the court send the distress warrant by court.

Distress warrant is sent when the accused is unable to pay the fine then the court pass a warrant for the sale of his movable property. If he has immovable property then inform to collector to impound.

If he has only movable property then the distress warrant is issued,

normally the word recovery warrant is used.

Anything which is not a fine but comes u/CrPC – is covered u/s – 431.

Eg: Maintenance

421

422

Ques. Can a court pass a distress warrant for the movable property outside his jurisdiction?

Ans. Yes, then court will write to district magistrate and then the DM to all the inquiry regarding where about of property, value etc and then comes to conclusion and endorses to the court then court will attach and sell that property.

Sec – 423 r/w Article – 261 (3) of COI

Though CrPC does not apply in some area but it is deem that CrPC apply.

Sec – 424 – Suspension of execution of imprisonment in lieu of fine.

Sec – 424 – applies only those sentence where are imprisonment or fine and only fine or punishable only fine.

Ques. Can an imprisonment in lieu of fine which is given for only fine be suspended?

Ans. Yes, if it is fine only

D. General provision regarding execution

Sec – 425

Sec – 426

1. Merely because he is an escaped convict does not mean that his later sentence will be suspended it will come into action immediately.

Ques. Which sentence will have to be undertaken 1st?

Ans.

- (a) If the new sentence is more severe than that which will immediately take effect.
- (b) Bare act. Eg: He is an escaped convict he is already going for life imprisonment later in case he gets 5 years imprisonment, so 5 years will follow life imprisonment – it will be the first imprisonment.

Sec – 427 r/w Sec – 31

- Court's prerogative to make consecutive to concurrent but in this case if jurisdiction is different then consecutive only.

2. A has committed an offence in Delhi. A is already indulging in imprisonment in Tihar Jail – 7 years.

Now A is convicted of another offence in Mumbai. – 7 years

Consecutive is the rule concurrent is exception.

Bombay HC has held that we can't make this concurrent. HC can only make concurrent of the sentence which are in its area of jurisdiction.

Babi Bai v. Emperor 1943

In like case accused can prefer special leave petition.

Sec – 428 Set off.

The time period which the accused has already spent time in the police custody + judicial custody will be set off against his conviction. But not first 24 hours.

Eg: Ques. Suppose accused on bail then bail then period is not set off.

Ques. When court sends the accused on parole eg: for Marriage, Death etc for 1 month then 1 month will be deducted from conviction but bail period not be.

- Parole and furlough are synonymous as the furlough is used in British time.
- Whenever there is any imprisonment in lieu of fine that also cannot be subjected to set off. So, that means whenever there is any imprisonment in lieu of fine is not covered by set off.

State of Maharashtra v. Najakat Ali 2001 SC

It was clarified that imprisonment in default of payment fine it cannot be subjected to set off by the period of detention undergone by the convict.

The entire aspect of set off is based on natural justice and that is the reason why a person cannot be made to undergo his less of liberty more than its prescribed by law r/w Article – 21. Sec – 428 Bare

Cumulative Custody

A is a thief and 2 FIR lodged against him.

A is thief – FIR 1 – custody taken by police for 7 days

A – FIR 2 – 8 days custody

Police took both the custodies on same day.

In FIR 1 – 6 months imprisonment – 7 days will be deducted.

FIR 2 – 2 years – 8 days will be deducted.

As every charge treated separately so, 7 and 8 days will set off from his conviction.

This is known as cumulative custody – thus – benefit will be given to the convicted, however he is already undergoing an imprisonment.

However, if A is already going in imprisonment of 3 years in first case i.e. FIR 1 and meanwhile we got to know that A is also in case of theft i.e. FIR 2 has been lodged and police got the custody of police for 10 days so

from jail to lockup (police custody) the accused brought. Now this 10 days of police custody will not be set off –

Raghubir Singh v. State of Haryana 1984 SC

When a person undergoing in the sentence of imprisonment imposed by a court on being convicted of an offence in 1 case, during the period of investigation, inquiry or trial. In some other case, he can't claimed that the period occupied during such investigation, inquiry or trial should be set off against the sentence of imprisonment to be imposed the later case. (only one benefit at a time)

Sec – 429 Saving

1. If a convict has escaped or he is sentenced to another offence, then under no circumstances he can avoid the conviction. Every punishment he has to undergone.
2. In other words all substantive offences must be undergone before imprisonment in lieu of fine.

Sec – 430

Sec – 431

Sec – 431 (other money other than fine) is an extension of Sec – 421 (only fine)

Whenever there is any levy of fine i.e. covered under Sec – 421 or if there is any compensation u/s – 357 then it will be covered u/s – 431.

1. Either it is fine which is a sentence.

Or It is a maintenance order

Or false complaint's compensation

Or non-cognizable case compensation etc are covered here, if not paid.

Proviso – In Sec – 421, read 359 instead of 357 word (recover as if fine)

E. Suspension, remission and commutations of sentence

Suspension of sentence we have already covered to some extent.

The executive has actually three powers, but in constitution we find that there were five powers given to the President/ Governor. The concept of pardon by executive is given to the executive or i.e. Governor/ President.

The pardon in CrPC is restricted only Sec – 306. The executive has been bestowed because it is the state which is the victim. So, the question arises:

Ques. Can the state reduce the intensity of your sentence? Can there be remittance?

Ans. In other words, this power came from President/Governor – Govern their power from constitution. Since both are the heads of the executive and by the statute (this statute is now in Sec – 432 CrPC) it is governed by the lower department.

In this chapter, we have to deal with two aspects i.e. remission and commutation.

In remission – nature of sentence can't be changed but only the intensity of sentence can be changed. If reducing the nature of sentence – 433. How much to remit is the decision of the government. Death sentence can also be reduced which is commutation.

But now the question arises that

Ques. Whether that reduction will be remission or commutation?

Ans. That is commutation.

Sec – 432 – 'Appropriate Govt.' means if the offence is union, then Central Government. If offence is state then State Government.

This power of remission is subject to judicial review. In constitution we have read that all these powers though. They are with the constitutional heads and these can be delegated to their home department or other but these are not above judicial review.

Firstly, in case there are malafide blatantly wrong order passed u/s – 432 then it can be challenged or subject to judicial review.

Maru Ram Case

Secondly if the remission is passed without any conditions it cannot be cancelled later on.

Venkatesh v. Emperor 1940 Nagpur

Wherever any person was sentenced to punishment for an offence.

Whether Sec – 432 allows a pardon?

Devinderpal Singh v. State NCT of Delhi (2002 SC)

The power to grant the pardon is to be exercised by the head of the state. The word remit is not a pardon.

Ques. What is pardon and its effect?

Ans.

K.M. Nanawati v. State of Bombay 1960 SC

The SC reiterated that no doubt that governor has full power to pardon at any time. This power of pardon is called mercy jurisdiction of the President/ Governor. Whenever a pardon is given even after he has been convicted by the court, the effect that it completely absolves him from all punishment/ disqualification which are attached to a conviction. That is why power of pardon has been given to the highest executive heads and constitutional heads in our constitution.

Sec – 432 naturally follows out of the constitution. The appropriate government which is headed by the President or the Governor have been given these powers in constitution. Sec – 432 is basically a statutory recognition of those constitutional powers.

Sangeet v. State of Haryana 2013 SC (Landmark)

The question which came up was courts starts to give 20-30 years imprisonment with no power of state government to remission. In this case SC held that which law allows the court to take away the power of remission under Sec – 432?

This is absolutely wrong order, court can't take away. Only those laws which comes fresh up provides for life till the remainder of life. Eg: rape case.

The appropriated government can't be told that it is prohibited from granting remission of sentence.

- The power of 14 years commutation again is given by law – The power which is provided by law, can't be removed or taken away by judiciary.

State of Haryana v. Jai Singh 2003 SC

In this case, the Haryana Government classified that to whom convicts can remission be granted or not.

This was challenged on the ground of arbitrariness. In this case SC held that state has powers to make a classification based on the nature of offence committed by them, the gravity of the offence is a very valid classification. It is not arbitrary, not violative of Article – 14.

Sec – 433 Power to commute sentence

- Change the nature of sentence

Ques. Can death penalty be committed to fine?

Ans. Yes 1 as 2.

Mohan Singh v. State of M.P. 1981 (MPHC)

Remission can't be granted on the ground of SC and ST, remission has no caste, religion, class etc.

3. RI – SI/fine

4. SI – fine

Life imprisonment is always a RI with effect from Jan 1, 1956 – this was cleared by SC in case of **Satpal v. State of Haryana 1993 SC**

State of Haryana v. Jagdish 2010 SC

Judicial review:

In this case, SC cleared that these powers of pardon remission of the President or Governor under these sections, these are subject to judicial review. Though these are only to a limited extent where these powers are used perversely only if it is malafidely then only we can use the judicial review.

Maru Ram – Judicial review

Sec – 433A – This section was basically inserted by Amendment Act of 1978.

Since Sec – 433 provides that LI – can be committed into term imprisonment of 14 years that person may have got lot of remission – on good behaviour in jail – minimum 14 years for life imprisonment, the accused must serve.

A convicted for LI – remission given for 14 years. Now, during 14 years, he got some remission which is in total 6 years when 6 years minus from 14 years then he released from jail after 8 years then this matter went to court and held that after 14 years no remission could be given to convicted person.

No remission can be counted here in minimum 14 years. After 14 years, it is not the right of convict to get released.

Why good behaviour – if convicted has bad behaviour then jail department will give the negative report against convicted.

Where death has been actually commuted to LI – then that person has actually to spend 14 years in jail/ imprisonment.

Sangeet v. State of Haryana 2013 SC

Sec – 433A laid down not only a procedural but a substantive check on the convict, wherever, commutations or remission is granted in a capital sentence, where death is one of the punishments the convict must serve at least 14 years imprisonment. There is no indefeasible right of a

prisoner on completion of 14 years to get a commutation. It is a totally the prerogative of the appropriate government to remit or commute.

Whenever a LI has been granted to a prisoner, it means he is required to be in the custody till the end of his life. This matter came up in case of

Maru Ram v. UOI 1980 SC

Ques. Whether this is violative of fundamental rights? Does it offend the fundamental rights of a prisoner?

Ans. In this case it was held that this does not offend any fundamental rights of a prisoner.

Sec - 434

Ques. How do you interlink 432 and 433 with the COI?

Ans. All power of remission, commutation the executive powers are given in the COI to the President and the Governor. But not given to CM or PM, but then since the President and the Governor are the head of the executive, automatically this power persuades to the lower officers. This is why the constitutional aspects are given in the COI and the procedural aspects are given in the CrPC. Since the home department has to work on it, the jail department has to work in Unison, constitutionally speaking the benefits ever given to them as the President or the Governor can give.

But, statutorily speaking it is the state government headed by government or then the President. So, basically 432 and 433 are powers which are laid down in COI now we are giving them all statutorily aspects.

Death penalty can be pardon only by Central Government but not Governor. If Governor commuting death penalty into LI then follow Sec – 433A.

When all the petition of appeal of death ends then mercy petition.

Clemency Petition/ Mercy Petition

No time limit prescribed but SC provided for time period in case of K.P.

Mohd. v. State of Kerala 1985 SC as a rule of self-imposed discipline. Mercy petition should be decided by President of India within a period of 3 months from the date of presentation.

Fact – Mercy petition was pending for 14 years,, before President then SC used its inherent power and held that.

Sec - 435

Chapter – XXXII

Provisions as to bail and bonds

Sec – 436 to 450

Arrest is never a punishment. The object of detention of accused is basically to secure his attendance and appearance so that he does not stop or interfere with the criminal justice system. Whenever there is an arrest, the question arises that

Ques. Whether he should be released on bail?

Ans. There are two types of offences:

- (a) Bailable
- (b) Non-Bailable

Bailable offence – it is the right of the arrested person to be release on bail as these offences are mostly less serious. Because when we compare the bailable offence with Article – 21 of right to liberty. Then Article – 21 is weightier.

There is a weigh scale in bailable offences: -

- (a) The offence and its effect on society
- (b) Individual rights + Fundamental rights as enshrined in Article – 21.

Whether to give bail or not is always a balance between the rights of the pubic with effect. If bail will be granted to that person what will be the negative effect of that on that society – if there are negative effect of that on society then to weigh that bail will be denied.

If individual rights are outweighed the negative effect on public then bail should be granted.

The main reasons for dividing the offences into bailable and non-bailable is basically a balance because if we were to divide the offences into not very serious offences and very serious offences – when serious – What is the yardstick to measure?

The effect on society is the main yardstick of determining the gravity of offences 1st safe guard is provided by CrPC by dividing the offences into bailable (schedule 1) and non-bailable offences.

Punishment is lesser which has less effect on the society.

In bailable cases the accused has always the right of bail as a indefeasible right. But in non-bailable cases it is always the prerogative of the court to give or not to give.

In non-bailable cases the weighing scale is negative effect on society viz a viz the fundamental rights of person. Then the court will always keep in mind –

- (a) Seriousness of the offences
- (b) The nature of evidence
- (c) The severity of punishment which is prescribed for the offence.
- (d) The character of the accused, the standing of the accused, antecedents of the accused.
- (e) What are the chances that he will run away or tempter the evidences and hamper the investigation.
- (f) What are the chances that he may commit another offence.

Justice Iyer 'bail and not jail' cannot be taken as thumb rule, denying or giving bail is a judicial decision, it is not only a judicial decision but a duty judiciously. It involves the complete appraisal of reason or of the actual condition which are prevailing.

Chapter – 33

- Bailable offences
 - Sec – 436 – Amendment by Hussainare Khatoon case.
 - Non-bailable offences
 - Sec – 439 r/w Sec -439 and by virtue of Article – 21 on the face of it which person is innocent can't be arrested because sometimes the CJS is misused by the various elements then we have anticipatory bail – 438.
-
- Bails are covered u/s – 436 to 439.
 - Bonds are covered u/s – 440 to 450 it deals with the procedure

Sec – 436

Ques. In what cases bail to be taken?

Ans.

1. The proviso is a piece of beneficial legislation. Bail always means a monetary surety then (instead of taking bail, person) personal bond can be executed to release an indigent person.
2. There is only one condition in which court can cancel your bail in bailable case. When he did not appeared on next date then his bail can be cancelled (forfeiture of bond) – in a bailable offence.

Ques. Is there any provision in Sec - 436 for cancellation when a person on bail tried to temper evidence?

Ans. No other ground given for cancellation except 1.

No, if his conduct subsequent to bail is not good there, is no provision in Sec – 436 but for this purpose of cancellation of bail we have to go u/s – 482 or 439.

Talab Haji Hussain v. Madhukar Mandkar 1958 SC

In this case it was held that though a person is accused in bailable offence is entitled to be released on bail, pending his trial if his conduct

subsequently to his release is found to be prejudicial is a fair trial. Such forfeiture can be made effective either by invoking Sec – 439 or 482 CrPC.

State of Rajasthan v. Balchand 1978 SC

In case of bailable offence, the fundamental principle is that a person should not be deprived of his liberty except for a distinct breach of law basic rule is to release it unless the circumstances are such i.e. if he is set free, he will not let justice happen.

Also, one aspect SC made clear is case of **Moti Ram v. State of MP 1978 SC** that unnecessary granting condition granting bail. Imposing onerous conditions which the accused can't meet tantamount to rejection of bail. Surety of IAS etc condition.

Ques. Can that person put up successive bails?

Ans. Bail is more or less an interlocutory order. There is no provision which bars successive applications for bail provided of course there are fresh conditions put up in the fresh petition.

State of Maharashtra v. BS Rao 1989 SC

The question came up that if once the HC rejected the bail on merits then can the lower court take the bail?

Ans. It was held that where successively HC rejected the bail looking at the gravity of the offence the lower court taking the bail was wrong and improper and it was illegal.

Ques. Whether the HC can cancel the bail u/s – 482 if it's a bailable offence?

Ans.

Hazari Lal v. Rameshwar Prasad 1972 SC

It was held that there is no bar u/s – 482 to cancel a bail u/a bailable offence.

Kanti Shah v. State of WB 2000 SC

It was held that while giving a bail order, the court should avoid giving detailed opinion on any matters which come up in the trial.

VD Choudhary v. State of UP 2005 SC

A – Bailable offence – bail granted

During investigation it was found that it is a non-bailable offence. **Now whether bail can be cancelled?**

Ans. It was cleared by SC that yes, and now he is to be arrested freshly.

Sec – 436A – it was also deal with indigent people.

Maximum period for which an undertrial prisoner can be detained.

This section was added by the 2005 Amendment Act. The basis of this section was **Hussainara Khatoun v. State of Bihar** – when the SC judges visited jails jail they shocked that under trials were undergone more than their sentence which could be.

That is why they ordered that legislative must pass the law. Any undertrial prisoner who has completed sentence already or more than period of his sentence must be released immediately.

If half of the punishment undergone by an undertrial prison then he must be released depending upon the trial order of court.

Sec – 437

Ques. When bail may be taken in case of non-bailable offence?

Ans. There is no right to bail inn a non-bailable offence.

Ques. Who can give bail in a non-bailable offence?

Ans. Sec - 457 deals with magistrate court + police officer not below the rank of officer in charge.

There is no bar on an officer in charge of a police station to take a bail in a non-bailable offence.

1, 2, 3, 4 Sub-Sec – 5 is clear provision of cancellation of bail. Denial of bail (you can apply again) or cancellation of bail (it means court given you bail but you did not comply with it. Hence, you can't be trusted) are two different things.

6. If it is a magistrate triable case and from the date of the trial when the 1st evidence (i.e. pw1) was taken computing from that date. If within 60 days a non-bailable case trial is not over and the person is in judicial custody from 60 days, then the magistrate shall take bail, in case he does not then he has to give specific reason. (otherwise, it would deem that default on behalf of magistrate)

7. Venkatramanappa v. State of Karnataka 1992 Karnataka HC

This section gives a court or also a police officer the power to release an accused on bail in a non-bailable offence.

Ques. What should the court keep in mind while giving bail?

Ans. **State v. Jaspal Singh Gill 1984 SC**

- Nature and seriousness of offence
- Circumstances which are particular to the accused, character of evidence.
- Reasonable possibility of the presence of accused not secured during the trial.
- Reasonable apprehension of witnesses being tampered with.
- Interest of the state.
- Interest of public and similar other conditions.

Principle of bail

Mansab Ali v. Irfan 2003 SC

Though the power of bail is discretionary it has to be exercised with

great care and caution by balancing the individual right of liberty with the interest of the society in general. The court must always give some reason for its order.

Ram Govind v. Sudharshan Singh 2002 SC

Chandra Swami v. CBI 1997 SC

Satya Jain v. State of Bihar 2000 SC

Guideline given in these judgements:

1. Grant of a bail though it is discretionary orders needs the completely judicious mind. So, a bail should not be ordered as a matter of course, and unreasoned order for bail cannot be sustained. They have to consider many things before granting or refusing bail u/s – 437.
2. Placement of the accused in the society though it is not an important factor it is a guiding factor.

The nature of the offence is one of the basic consideration for granting a bail, more heinous the crime, greater the chance of rejection the bail, certain other things which can be considered are:

- (a) The nature of the accusation
- (b) Severity of punishment
- (c) The nature of supporting evidence
- (d) Reasonable apprehension of tampering of witnesses.
- (e) Apprehension of threat to the complainant
- (f) Prima facie satisfaction of the court that the matter appears to be true.
- (g) How genuine or the frivolous is the prosecution.
- (h) In case of criminal misappropriation or criminal breach of trust what is the amount involved.

One reason for grant of bail cannot be a long period for imprisonment. Merely because the person has been in a jail for very long time is no reason to grant bail.

Rajesh Ranjan Yadav v. CBI 2007 SC

The Hon'ble SC has held that even if he is MP mere fact that he is a MP does not entitle him to bail. In this case, the allegation against the MP was very serious merely because he is a MP does not entitle him to bail. However, having said this there are no hard and fast rules these are illustrative matters not the exhaustive.

Each case must be considered on the merits of the case. Vague allegations of the prosecution that if the prisoner is released he will tempter the evidence can't be taken into consideration.

Allegation must be based on the fact and the character of the accused. Normal defence like the accused suffering from depression etc are no grounds for bail without a proper medical check up.

Abdul Hamiddan v. State of Gujarat 1989 Gujarat HC

It was held that magistrate should not grant bail in those matters which are triable by sessions while taking cognizance he should not grant bail.

Bashir v. State of Haryana 1978 SC

If a default bail was granted u/s – 167. **Can it be cancelled under Sec - 437?**

Ans. It was held that yes, Sec – 437 can be employed to cancel bail granted u/s – 167.

Also one of the important factors is that whenever the accused was given bail or released on parole he never misused his temporary bail. This matter came in **G.N. Singala v. State of Gujarat 2008 SC**

In the beginning before the trial starts, the only material which the magistrate has Sec – 161 CrPC statement.

Ques. Can the magistrate take a decision on the basis of Sec – 161 statements?

Ans. Yes, where the accused has unequivocally stating that the accused has committed the offence u/s – 161. This can before of the grounds for

refusal of bail.

Dhruv Jaisawal v. State of Bihar 2000 SC

It was held that every court which gives or denies bail even if it is a HC it must give a speaking order (+ reasoned order).

Prahalad Singh v. NCT Delhi 2001 SC

Whenever there is a punishment which is life imprisonment or death and the offences are exclusively triable by sessions court, the magistrate has no right to grant bail unless it is covered by the proviso.

Ques. Suppose an anticipatory bail was granted in lesser (305 and 498A) offence and later on it is proved that there was another serious (302) offence would he get bail in that also?

Ans. In this case magistrate has no right to give bail.

Biman Chatterjee v. Sanchita Chatterjee 2004 SC

- Both parties came – that they are going to compromise, court granted.
- Later, wife came that compromise has not taken bail should be cancel then the court cancelled the bail.
- SC held that no bails can be granted on basis of assurance of compromise and no bail can be cancelled on this ground that the compromises didn't take place.

Kalyan v. State of MP 1989 MP SC

Once a judge has granted the bail and he gets transferred and a new judge came his place and he feels that bail has been granted wrongly then

Ques. Can he cancel the bail?

Ans. Yes, here the court held that if the 2nd magistrate thinks that the grant of bail has been misused and on the 1st instance the bail shouldn't

be granted.

Ques. What are the grounds for cancellation of bail?

Ans.

Ram Govind v. Sudarshan Singh 2002 SC

In this case the question came that what are the conditions for cancellation on of bail?

Ans. 5 grounds

- (a) Where the person on bail commits the same offence and he proves himself utterly unfit for the bail.
- (b) HC hampers the investigation, forcibly prevents the search of place interfere with the police investigation.
- (c) He tampers with evidence, intimidate prosecution witnesses, tries to remove traces of proof.
- (d) If he becomes undergrounds or flees to a foreign country or goes beyond the control of surety.
- (e) If he commits act of violence in revenge against the police, prosecution witness, complainant or anybody else.

Kalyan Chanra v. Rajesh Ranjan 2005 HC

Ques. Where I am making successive bail application? Can I revoke Article – 21 COI?

Ans. SC held in this case, the guarantee under Article – 21, does not allow aggrieved person to make successive bail application on the ground which is already rejected by the court.

Ramdas v. State of T.N. 1993 Madras HC

It was held that once a bail is granted court cannot suo moto cancel it without hearing both the parties, natural justice must be followed.

Chunni Lal v. State of Punjab 1986 P & H HC

It was held that once the bail now been granted, the court suo moto can't cancel a bail, he must give a right to the accused to be heard and if the notice has been sent and accused refuses to appear in those cases only, he must cancel cancellation should not be at drop of the head or without application of mind.

Dinesh v. State of Gujarat 2008 SC

No appeal lies against a grant of bail order.

Sec – 437A – Inserted by 2008 AA

Now, lower court takes the bail if it seems that party will go to superior court in appeal. So, trial court takes the bail bond or appellate court takes the bail bond if accused appear before the higher court – bare act.

- If the anticipatory bail is rejected than you can apply u/s – 437 as anticipatory has no bearing on regular bail.
- This section is introduced that any fraudulent prosecution does not take place. Sometimes, influential people implicated by the opposite parties. There a lot of vexatious and frivolous proceeding which continuous. As a sort of safety valve for those people who may be deployed in false case. The why of this section is laid down by law commission.

Sec – 438

An anticipation bail is not a prohibition against arrest, the arrested person should be released on bail in a non-bailable case immediately.

Person must have reason to believe that he may be arrested. It should not be based on conjecture and surmises.

Anticipatory bail is a very exceptional matter if should not be granted very easily.

Balchand Jain v. State of MP 1977 SC

The power of anticipatory bail has to be used sparingly and in exceptional cases only.

Ques. What all should be considered by court while granting anticipatory bail?

Ans.

Savitri Aggarwal v. State of Maharashtra 2009 SC

1. The nature and the seriousness of the accusation.
2. How severe the offence is
3. What is the nature of the evidence collected
4. What is the behaviour of the accused
5. What are the chances of his absconding
6. What are the chances of him tampering the evidence
7. What is in the largest interest of the people

Sec – 438 Anticipatory bails

1(A)

If court grant interim order, then court give 7 days' notice to PP, if he wants to contest the anticipatory bail then come with your points.

7 Days' notice to superintendent of police that during these 7 days or whatever period of time given, SP shall not arrest the accused.

Gurbaksh Singh Sibia v. State of Punjab 1980 SC

SS Mhetre v. State of Maharashtra 2011 SC

It was held that the nature and gravity of accusation and what is the exact role of accused.

- Possibility of applicant to file from justice.
- Antecedents of applicant or the fact that whether he has undergone a previous sentence.

- The possibility of accused to commit similar more offences.
- Whether the accusation has been made with an object of injuring or humiliating the applicant.
- What will be the impact of granting anticipatory bail if it affects large number of people
- Whether the accused is capable of tempering witnesses or evidences
- Frivolity of prosecution
- The court must evaluate the entire material available against the accused especially about the exact role of accused.

There are two balancing factors: -

- No prejudice should be caused to a free, fair and complete investigation on one hand.
- The individual rights prevent the harassment and humiliation and unjustified detention of the accused.

SS Mhetre v. State of Maharashtra 2011 SC

Ques. Once an anticipatory bail has been granted, does he need to go for fresh application of bail?

Ans. It was clarified that once an anticipatory bail has been given, ordinarily it will continue till the end of the trial unless bail is cancelled due to some circumstances.

State of MP v. R.K. Balothia 1995 SC

It was held that any person who is an accused of SC/ST act, anticipatory bail will not be made available to them.

Anticipatory bail is not a right; nobody can claim anticipatory bail as a matter of right.

Onkar Nath v. State of U.P. 1976 Allahabad

Ques. Is the jurisdiction of session courts or HC concurrent? Can the person choose to go either of them?

Ans. It was held that anybody can move the HC straightway instead of session court but other HC says unless exceptional circumstances are there first applicant should go to session court.

Blanket Bail – should not be given – Means he is getting bail in all the matters any order giving a blanket bail and too for unlimited period is bad in law.

Sunita Devi v. Bihar State 2005 SC

Blanket bail must be in rarest of rare cases and there should be justifiable reasons.

Sec - 439

Concurrent powers used under this section. This section gives HC or sessions court complete control over bail.

Interim bail is granted to an accused before the hearing for the grant of normal bail or anticipatory bail.

Jurisprudence of Sec - 439

Sec – 439 is very important, the reason being that bail order are not appealable and many HC or lower session court Sometime say bail being an interim order by due to come to us. But we have fundamental right u/s – 21 (liberty). If the lower court denies bail then we do need a court which can act now as a revisional or appellate but appellate court means basically giving into aspect given by lower court. We don't want bail to become a matter of appeal. Because it will harm to the accused so we will give concurrent power to session as well as HC. This Sec – 439 gives complete control over the bail by higher court.

The condition of Sec – 439 are same as the conditions in Sec – 437. This section gives an unfettered discretion to HC or court of session to admit a person to bail on to cancel a bail or to modify his bail. This is in the consonance of constitution where the constitution has given extreme powers in hierarchy of courts. This section is a sought of revisional power but then we can't call it revision because the lower court's order can't be

dissected here, they are taking up afresh that is why it can't be said that Sec – 439 is appeal or revision. Though some elements may be of a revisional court.

The ground of bail all same in Sec – 437, 438 and 439.

Cancellation of bail – Same aspect as given in Sec – 437.

Cancellation of bail is a very serious matter, it can't be cancelled on mere surmises and conjecture and it always revisional order.

Interim bail concept – we have the concept of interim bail in ordinary bail also. It is basically a matter of justice, so court has on jurisdiction to release an accused on interim bail sending the final disposal of bail petition. No hard and fast rule is there regarding interim bail, no particularly section given.

Normally interim bail should be granted to: -

- Women
- Old people
- Students
- Trivial matters
- Labourers
- Industrialists.

Merely because court has granted interim bail does not mean that you will get bail. A bail order is always on merits. It's normally no desirable to give interim bail in serious matters like punishable with death, LI, SC/ST Act, NDPS, POCSO etc (No interim bail given in these matter)

Shankar Lal v. State of Rajasthan 2002 SC

Ques. A habeas corpus writ was filed before HC and HC said no bail petition will be entertained by session court?

Ans. In this SC held that HC cannot bar session judge for exercising his bail power. It is against the law.

There is between rejection and cancellation of bail. Rejection basically means court feels that it is not meritorious. Cancellation is serious matter. Court has given bail already but accused proving himself unworthy of bail or failed to comply with condition, cancellation should not be in routine in mechanical manner but rejection can.

Savitri Aggarwal v. State of Maharashtra 2009 SC

Ques. Can the court cancel the bail suo moto?

Puran v. Rambila 2001 SC

Yes, it is totally the prerogative of court, if any incriminating matter comes before court, it can suo moto cancel the bail.

Need of bail is not 3 times i.e. investigation, trial and jail.

Bail and Bonds – Sec – 440 to 450

Bail needs for –

(1) During investigation

(2) During trial

(3) During jail

(As the arrest made 3 times)

Once a person is arrested, he remains in custody. If he gets bail law allows him to set free. Naturally, if a court is setting him free, court needs a guarantee that wherever he will be needed, he will be present. This guarantee comes in the form of bails and bond.

Basically, bond is that a person binds himself by certain conditions that as and when he is required, he will present himself before the authorities or courts.

Bonds can be of two types:

- Secure bonds – bail order – Accused actually pays money to court or puts hi property paper to seek his release that is called in India

bail order.

- Surety bond – unsecured bond – it is also called other persons signs document that he will pay either money or property if the accused breaks his bond conditions.

Ques. How to secure the presence of accused?

Ans. There are 4 ways: -

- Cash – In India, cash is paid to court are called bail bond stipulated money is deposited in court if he breaks any conditions his money is forfeiting.
- Sureties
- Property
- Own promise of accused without any money – does not pay any money and is allowed to go on his mere promise then it is called a personal bond.

Unsecured appearance bond – Mostly prevalent in USA not in India only allowed to indigent people in proviso of Sec – 437.

It is merely an oral undertaking without any money.

Ques. What is bond?

Ans. Bond is a restrained, it binds the accused to follow the orders of the court regarding his appearance. In CrPC we have bail bonds and person bonds – with sureties or without sureties.

Sec – 440 Amount of bond and reduction these of: -

- Bonds will be as per the circumstances of case and shall not excessive and if bond in excessive then sub-sec (2), whenever we accepting a surety, 3 things need to see i.e. –
 - Identity
 - Solvency
 - Reliability of surety

Sec – 441 –

- Bond should be properly filled.

Ques. What about security of artificial persons?

Eg: Companies banks

Ans. Surety bonds can be executed only against natural persons. Surety by artificial persons is not envisaged by bails and bonds, company and bank cannot stand a surety.

- Sec – 441A
- Sec – 442
- Sec – 443

Forfeiture of bond – Basically it means the accused has broken the condition of bond and now bond is getting forfeited, amount of surety be seized etc, even in other thing etc court can order of standing the surety in jail.

- Sec – 444
- Sec – 445
- Sec – 446 – When condition of bonds is not fulfilled.
- Sec – 446A – Cancellation of bond.

V. Naidu v. Emperor 1912 Madras HC.

For whom, the surety provides bonds, died then the bond shall be released, of the surety and the sureties are discharged.

- If the accused is arrested in other offences, then surety will be discharge.

Sec – 446A to 450 Bare

Chapter – XXXIV

Disposal of property: -

- During trial (Sec - 451)
- After completions of trial (Sec - 452)

Sec – 451

Ashok Kumar v. State of Bihar 2001 SC

Rajendra Prasad v. State of Bihar 2001 SC

It is not advisable to keep the vehicle in court compound or police compound indefinitely; much more advisable way is release them to the owner subject to certain conditions. However, it can be returned to the actual owner only, in case of a car the registration book can be retained or to give copy of RC with its seal and that to be send to concerned transport authority.

Supurdagi Supardari

1. It has to be given only to the registered owner not to other
2. If any owner is contesting, this is not the right time to discuss about the ownership rights – only decide custody not decide rights.

Jurisprudence of disposal of property (handwritten)

- A lot of property is seized by the court or in police station eg: drugs, diamonds, called as malkhana.
- Now, if the person gets his property back eg: if robbery, or theft happens at any house and the court recover it then the person who belong it to such property get back – i.e. known as disposal property (Supardari) or Supudaginama.
- When: -
 - During trail (451)
 - After completion of trial (452)

B.K.D. Patil v. State of Mysore 1977 SC

If the property is not found (stolen, loss etc) from custody of court or police then the in charge of that malkhana (it is a custodia legis) will pay for it as it is the court's duty to produce the property as it is.

Drugs not given back, stolen, property be identify.

Sec – 452 – Order for disposal of property at conclusion of trial.

- Identification of property is necessary
- Sometimes, any property like gold which can be transformed into something else, they have to see gold part not the identification.

An order under Sub-Sec – 2 will not be carried out for 2 months.

N. Madhan v. State of Kerala 1979 SC

Sec – 453 payment to innocent purchaser of money found on accused
r/w – Sec – 357 (d). 1s aspect money found at accused house given to purchaser.

Sec – 454

Sec – 455

Sec – 456 Power to restore possession of immovable property

If anybody hold property by force (by force or by intimidation) then you filed the case against him and convicted him but he has no regret as he still says that what happen if goes to jail he got the house then in this situation court get back house from him and give it to the owner.

Ram Nath v. State 1982 Delhi

Anybody who had taken property by force or criminal intimidation –
Delhi HC held that if the criminal intimidation is used anytime before or after dispossession is covered u/s – 456.

HP Gupta v. Manohar Lal 1979 SC

The question which came up that there is a limit of one month for a trial while convicting

Ques. Is there any limit for the appeal court or revisional court?

Ans. It was held that this one-month trial is applicable to trial court. It is not applicable to appellate or revisional courts.

Sec – 457 Procedure by police upon Seizure of Property

This is applicable to the property seized u/s – 102 CrPC by police under Nakabandi, now what police do with road block this property – 457.

Police report – 3 – Submitted to Magistrate – public notice.

There can be no disposal of property by police.

Ganesh v. State of Rajasthan 1988 HC

In this case the police officer released the seized property there was no order of Sec – 457. It was held to be an illegal order.

Sec – 458

Sec - 459

Chapter - XXXV

Irregular proceedings

Sec – 462 to 466

The key note of this chapter is failure of justice as the procedure is always hand made of justice and all those procedures which may not be followed but they don't create any injustice. We have similar provision in Sec – 99 CPC. If some procedures are not followed or wrongly followed and by following wrongly these procedure or not following these procedure, nothing much happens to the trial. Basically, those are irregular proceedings and the revisional court can set right these problems.

If caused prejudice and can't be set right is illegal proceeding Sec – 461.

Sec – 460 – Whenever to issue set aside the procedure then a denovo trial is to be held.

State of MP v. Bhoomragi 2001 SC

SC provides general rules on denovo trial: -

SC held that denovo trial should be the last resort and that too when any other course is just not possible. It is an extreme exigencies on failure of justice omission and even small illegalities are no ground for denovo trial.

Sec – 461

Additional Clauses other than: -

- Sec – 326(3) in summary trial whenever a new successor magistrate comes he will start denovo trial

Nitin Bhai Shah v. Manu Bhai Panchal 2011 SC

If the successor magistrate u/s – 326 (3) appreciated the evidence recorded by his predecessor magistrate and recorded his findings then it is a void finding and cannot be arrayed u/s – 460 must conduct a denovo trial.

Sec - 462

Suppose a magistrate/ JM has no territorial jurisdiction but he is otherwise competent then it will not be void or not vitiate or proceedings.

Sec – 463

Nazir Ahmed v. State of Delhi 2002 SC

This section has been enacted in order that technicalities may not succeed in defending the ends of justice.

Sec – 465 r/w Sec – 99 CPC sister Section – procedure is a hand made of justice.

Basically there are innocuous illegalities which do not cause miscarriage of justice.

Failure of justice: -

Abdul Rahman v. Emperor 1926 PC

When the procedure which would give the person a better opportunity to clear his position. If that procedure is provided then the accused will be able to clear his different, then it can be said to be a case of failure of justice.

Example

1. Failure to examine complainant witness on oath – irregularity
2. Omission to record any relevant fact observed by magistrate under local inspection – irregularity
3. Omission to pronounce the judgement before convicting or sentencing – irregularity
4. Refusal by magistrate to take defence witness – illegality
5. Complaint by person – without giving reason dismissed by magistrate – illegality

Ashraf Khan v. State of Gujarat 2013 SC

The SC held that you can't say that Sec – 465 is a panacea for all error Sec – 465 can't be applied to patent effect of jurisdiction. We can only apply to latent effects to jurisdiction.

The scope of Sec – 99 CPC is very limited. But, CrPC is unlimited.

S. Devendran v. State of T.N. 1998 SC

Sec – 465 cannot be applied to patent effects of jurisdiction they can be applied to only to latent effects where no miscarriage of justice happened.

Sec - 466

Court made an attachment and later found that it is a wrong attachment will not be deemed unlawful and the person whom the court orders will not be consider trespasser.

Chapter - XXXVI

Limitations for taking cognizance of certain offence. Limitation act per se does not later much to criminal law. However, criminal law only restricted

to the article i.e. appeals matter covered by limitation act, in CrPC we have limitation for certain matter.

Ques. Is there a need for limitation for criminal law?

Ans. **Offences for limitation purposes in CrPC-**

- (a) Not very serious – punishable up to 3 years, to allow this after 10 to 20 years is naturally against natural justice.
- (b) Serious offence – punishable with more than 3 years harm no limitation is required.

Sec – 467 Definitions – Period of limitation is strict by governed by Sec – 468.

Sec – 468 – There is an exception to this section. There are many economics offences which are punishable with less than 3 years.

Ques. Suppose the department does not move, are they barred by limitation?

Ans. We have the economic offences (in applicability of limitation) Act, 1974. In this act, there are 21 economic offences, are provided in which this law is not applicable (limitation chapter XXXVI of CrPC)

Why of this Sec – 468 is -

G.D. Iyer v. State (1978 Delhi)

Basically, the object of this legislation is to put pressure on criminal prosecution and their agencies so that they can detect and punish the crime expeditiously.

Now, the question arises – chargesheet of police was not submitted within 1 year (FIR – 1 year POL – investigation not completed yet) now, it will be barred by limitation.

Appu Ramani v. State of Andhra Pradesh 1993 AP HC

HC held that the close should not be so stingy, in case the police officer

explains the satisfaction of the court, the reason for delay, then the court should allow the matter to be taken.

That's why this is a law in which there is a need of balance.

Sec – 473 Extension of POL in certain cases: -

Any court – It is judicial discretion – this judicial discretion must be applied by great care caution.

If court is taking cognizable of matter which is barred by limitation, must give reasons for this because Sec – 473 is not a right.

State of Himachal Pradesh v. Tara Dutt 2000 SC

That extension conferred by court u/s – 473 has to be exercised judiciously and on well recognized principles, this being a discretion, the same must be a speaking order, clearly showing the satisfaction of the court in condoning the delay.

In limitation the period will start from LOA. But in criminal law 0 from the date of offence.

Sec – 469 – Clause (b) & (c) of Sub – 1 are exceptions to clause (a) of Sub-Sec (1).

Sec – 470 – Exclusion of time in certain cases: -

1. Wrong court – same as Sec – 14 of limitation

Rayala sima agro enterprises v. Gujarat Agro Industries **(2003 AP HC)**

Cheque was dishonoured – he filed in court, after 8 months – cheque was returned.

When he moved to 2nd court – court said that your POL has been expired.

AP HC held that this is the clear case of 470 (1) benefit must be given as 1st court took 8 months' time.

Muthia Chettiar v. Shan Mugham 1969 SC

To exclude the limitation when the accused is absent from India it is in the interest of justice.

Sec – 471

Sec – 472 – In continuing offence – the POL will be count from last day of commission of offence.

Chapter - XXXVII

Miscellaneous Sec – 474 to 484

Sec – 474 – Trials before HC

Sec – 475 – Delivery to commanding officers of persons liable to be tried by court martial.

The court martial and the criminal courts both have the jurisdiction, the decision is to be taken by the army officer. A case can't be tried by both court at same because double jeopardy then what court we should go?

Suppose the captain had committed rape and murder then it will be the GOV – top rank of army, martial, who will decide that whether the matter should go to criminal court or whether it should be tried by court martial.

Ques. Which law gives power to concerned army senior officer to decide whether the proceedings should be initiated in criminal court or in court martial?

Ans. For this we have law which is called the criminal court and court martial (adjustment of jurisdiction) rules, 1952.

- Sec – 125 Army Act, 1950

- BSF also have its own courts.

Sec – 476, Forms: - Sec – 476 Validates all the forms which are given in schedule 2. They are given legal sanctity and validity to all the forms given in schedule – 2 – applied to pan India.

Sec – 477 to 481

Sec – 482 Saving of inherent powers of HC – It is the only section which gives inherent powers as the inherent powers in CrPC the limited only to the HC. No, other criminal court has got any inherent power.

Bare Act – This section is similar Sec – 151 CPC the only difference is that in CPC even the lower court has this power but in CrPC only HC has inherent power.

Sec – 482 can be used:

- (a) To give effect to any order under CrPC.
- (b) To prevent the abuse of any process of court.
- (c) Otherwise, to secure the ends of justice.

Mohd. Naim v. State 1964 SC

This section does not give any increased power to HC there powers are intrinsic to HC and hence we cannot say that these powers are given to HC by virtue of Sec – 482 CrPC.

It merely tells us that HC has already these powers and now it can use those powers whenever needed.

However, though this jurisdiction exists, the basic rule of Sec – 482 is -

1. It should be used in exceptional cases.
 - SC Mitra v. Raja Kali Charan 1927 Lucknow
 - Kurukshetra University v. State of Haryana 1977 SC

Ques. When will the power of Sec – 482 will be used?

- Madhu Limaya v. State of Maharashtra 1978 SC
- Amarnath v. State of Haryana 1977 SC
- Randhir Singh v. Delhi Administration 1977 SC

(a) This inherent power is only available with the HC or no other lower criminal court.

(b) If there is any specific provision which gives relief in CrPC or any other law then Sec – 482 should not be resorted.

(c) Sec – 482 – power should be used most sparingly only for the three things laid down in Sec – 482.

- To give effect to any order under this code.
- To prevent abuse of the process of any court.
- Otherwise, to secure the ends of justice. It is not a panacea for all problems.

(d) If there is any specific bar of law in CrPC or any other law then Sec – 482 cannot be invoked.

Ques. Whether Sec – 482 powers can be said to be appellate power or revisional court or both when HC acts u/s – 482?

Ans. The answer of this was given by Hon'ble SC in case of **Andhra Pradesh v. A Venkanna 2009 SC** and here SC held that in exercising its inherent powers the court does not function as a court of appeal or revision. It is a different type of power which can't be limited to be called a role of appellate or revisional court.

Whenever any remedy is available in CrPC no 482 should be allowed.

B.N. Jha v. Sitaram 2008 SC

No, rule can be laid down that how the powers u/s – 482 will be exercised. You can't treat the court using its 482 powers as an appellate court, revisional court. Inherent powers are very wide they cannot be limited to appellate or revisional court.

Now, question arises

Ques. What is the limitation period to go to 482?

Ans. This matter came up before Allahabad HC **Harlal v. Beti Bai 1996 Allahabad HC** it was held that no limitation period can be prescribed for Sec – 482. However, the law of laches applies to all laws. Sec – 482 CrPC resembles Sec – 151 CPC.

Ram Narain v. Moolchand 1960 Allahabad

- (a) Grave injustice and not trivial injustice is caused.
- (b) That injustice should be clear and not based on conjectures and surmiser.
- (c) There is no other provision by which the aggrieved party can seek relief.

Sec – 482 is not a matter of review,

V.D. Roy v. State of Kerala 2001 SC

Under the cloud of this section the court cannot use the power of review.

Sec – 482 is applicable to all application even those application which are not covered by this code, Sec – 482 basically gives the HC those powers to deal with those matters, applications which all not contemplated by CrPC. Basically, to meet the ends of justice, it is no necessary that all applications are dealt by CrPC.

Example – Sometime courts pass skathing remarks against police officers – pass remarks which are negative in nature. That remarks can go u/s – 482.

Suppose, if session court pass remarks against any IO then he can go u/s – 482.

K.P. Tiwari v. State of Madhya Pradesh 1994 SC

Now-a-days judges mostly pass remarks against other judges – now in this case the MP HC passed very insulting remarks against sessions judges. The SC expunged those remarks and said that these structure

lower down the prestige of judiciary. People can use faith in judiciary.

Whenever any judge is passing negative remarks to any other judge, he must keep three things in mind: -

1. No person should be condemned without being heard.
2. Your criticism should be based only on the available record.
3. All criticism of executive or judiciary should be done in a sense of sobourity the complete sense of responsibility.

- Another aspect of Sec – 482 is that the HC can either is revision or even under Sec – 482 can order sentences to run concurrent eg: if 3 session court given punishment – 3 convictions can be run concurrent by HC.
- Where there are different sessions division and they all have different decisions and different sentences – to these HC's can make concurrent.
- Quashing – Means raising it to the ground there is no where provided for the quashing word, more importantly.

Quashing can be for (quashing under Sec - 482)–

- FIRs
- Orders

Whoever there is quashing, it is an extra ordinary step taken by HC quashing should not be based on preliminary hearing. There must be very cogent evidences to prove that quashing is must. Quashing must be sustained only on the facts and circumstances of the case. The SC laid down the guidelines for the quashing in cases.

Andhra Pradesh v. R. Kanthaaiah 2009 SC

State of Haryana v. Bhajan Lal 1992 SC

The SC laid down many guidelines for quashing.

- **Quashing of an FIR** – There is no concept of quashing of an FIR. Once an FIR has been lodged there can be discharge of the

accused or acquittal of the accused but to quash very FIR, is an extreme step and that is the reason why the SC has umpteen number of judgements to clarify the entire concept of quashing of FIR.

Rupan Deol Bajaj v. KPS Gill 1996 SC

UOI v. Prabash Injuja 2003 SC

- When the allegations made in FIR, do not prima facie constitute any offence.
- Where the allegation in an FIR do not disclose a cognizable offence.
- Where the offence is clearly a non-cognizable offence.
- Where the offence is clearly a non-cognizable offence.
- Where the allegations made in FIR are so exert and so improper that no prudent person can proceed against the accused.
- Where the criminal proceeding is clearly malafides, there is a clear malacious intention, ulterior motive to insult the accused because there are person grudges.

At the same time caution is there, power of quashing should be exercised extremely sparingly in rarest of rare cases. A court cannot act arbitrarily or as per its wings to quash a criminal proceedings at this state the HC is not supposed to consider the whole matter as a trial, it cannot embarred on an inquiry, the matter must be prima facie very clear at the very 1st instance.

Jagdish Chanana v. State of Haryana 2008 SC

Civil matters must be quashed; there is no place for civil matter in CrPC. So, wherever the FIR clearly shows that it is civil matter the HC should quash it u/s – 482.

Dimpy Gujral v. Union territory of Chandigarh 2013 SC

The SC widened the expanse of quashing that trial of offence of person nature which are neither heinous nor against society and parties make a compromise then to continue the criminal proceedings would be an abuse of the process of the court. So, wherever an offence was non-

compoundable there the FIR could be quashed especially in cruelty matters between husband and wife.

Charan Singh v. SDM Jalandhar (P & H HC)

Ques. Can interlocutory matter be brought up in Sec – 482?

Ans. Yes, though interlocutory matters can't be brought up for revision but there is no bar to bring up interlocutory orders.

Pooran v. Ram Bilas 2001 SC

Even if it is an interlocutory order the HC's inherent jurisdiction u/s – 482 is not affected by Sec – 397 CrPC.

It is not limited by Sec – 397 CrPC for securing the ends of justice the HC can interfere in any order including interlocutory orders.

Ques. Can delay be the ground for quashing?

Ans.

Ranjan Dwivedi v. CBI (2012 SC)

SC held that now it is a settled law that a criminal offence is against the whole society even if it is committed against an individual normally in serious offences merely because there is delay is no ground to quash the proceedings. However, each matter must be taken on its own merits a hard and fast rule is that delay ipso facto cannot form the base of quashing.

Mary Angel v. State of T.N. 1999 SC

Ques. Can the HC impose exemplary costs?

Ans. It was held that in fact the HC should impose exemplary costs on the petition which is frivolous, vexatious.

Ques. Whether transfer of cases can be covered u/s – 482?

Dara Singh v. UOI

Orissa HC held that there is specific section – 407 CrPC, there Sec – 482 can't be applied.

State of Bihar v. Mohd. Khalique 2002 SC

As a general rule HC should not interfere with investigation, it can be in the rarest of rare matters. Investigation is a technical matter only if there is blatant miscarriage of justice then the HC should interfere only.

State of West Bengal v. R. Dass 2000 SC

Quashing should not be on anticipation so any apprehension by petitioner there should not be any quashing so quashing should only be in –

(a) Existing matters

(b) Prima facie they show that no case is made up conjectures and surmises by the petitioner cannot form the basis of any quashing.

G.S. Suri v. State of UP (2000 SC)

Quashing can be done at any time even though the application of discharge is pending there is no time framing for quashing. The basic aspect of quashing is absolutely injustice.

The SC held in many cases that HC it is very common that husband wife have cases of Sec – 498A very normally the wife label allegation against husband and his family without any specific allegations Sec – 498A is not compoundable and normally there is a settlement between parties. It is pointless to carry on any criminal proceedings if there is a settlement. The best thing is to quash the FIR and restart to 482.

Compounding of a non-compoundable offence is illegal but where the matter has last theme quashing is always possible.

M. Krishnan v. Vijay Singh 2001 SC

Merely because a civil suit has been instituted is no ground for quashing a criminal prosecution, any civil proceeding have no bearing on criminal proceedings and that is the reason why no quashing should be done

automatically because there was a civil suit instituted on the same matter.

Ques. Suppose the person is sick, infirm, or whether on this quashing can be done?

Ans. Almost every HC is unanimous on this that no, a complaint cannot be quashed u/s – 482 on the ground that a woman is old, infirm etc.

Rajendra Singh v. State of UP (2007 SC)

A plea of Alibi cannot be determined by HC it should be raised at lower court during trial.

K. Rekha Naik v. Manoj Kumar Pradhan (2011 SC)

Mere because an accused is MP or minister does not allow the HC to release him or quash proceeding u/s – 482 as every person has a right to equality.

Maintenance was also in 1898 code. Sec – 488 CrPC of 1898 corresponded with the present sec – 125 CrPC. The present code of CrPC is improvisation. Firstly, a divorced wife was not allowed to get maintenance earlier but now she can get. Earlier any wife would get maintenance but now only those who is unable maintenance herself. Earlier only married daughter can get but now of daughter become major then she will not get maintenance.

Chapter IX

Order for maintenance of wives, children and parents

The 1st question arises that

Ques. Why maintenance is in CrPC?

Ans. Because it is purely quasi civil matter.

K. Vimale v. Veerswamy 1991 SC

Because maintenance needs a speedy remedy and more summary

procedure. Criminal law is much faster than civil law and that is the reason why it finds its place in CrPC.

Maintenance in 1898 Code

1. Divorced wife was not allowed to get maintenance.
2. Any wife could get maintenance.
3. Married daughter can get maintenance. Now to only minor.
4. Now children were included, now here him includes here – children have to maintain their parents now, even if the daughter is not married even then she has a duty to maintain her parents.

Vijaya Arbat v. Kashi Rao 1987 SC

Married daughter has duty to maintain her parents.

5. There was no concept of interim maintenance in 1898 CrPC code – it is a new concept added by 1973 code.
6. Maximum maintenance – 500rs. Earlier
7. Now – unlimited.

Sec – 125 – Order for maintenance of wives, children and parents -

Laws on maintenance

- Secular law
- Personal law

All the laws can be applied simultaneously.

Eg: Hindu Adoption Act (Sec – 4b), and Maintenance (Sec - 125)

- Nanak Chand v. Kishore Aggarwal 1978 SC
- Jagdish Gupta v. Manjulata 2000 SC
- Noor Sabha Khatoon v. Mohd Kaseen

Unmarried major daughter notwithstanding with CrPC Sec – 125 can be given maintenance in personal laws.

1. In criminal law, nature of proceedings u/s – 125 CrPC is summary nature – no need to prove marriage - valid marriage mostly presumed. This is not a civil proceeding in determining.
2. This inquiry is quasi criminal in nature – or quashi civil – if we say quashi civil that does not mean that magistrate gets the powers of a civil court.

Civil Proceeding can't be imposed into CrPC.

Ram Chander v. Jivan Bai 1958 PC

3. The proceeding u/s – 125 are basically civil in nature and the relief is essentially civil in nature however, they are dealt with criminal court so that summary disposal can takes place thus, they find their space in CrPC because of speedy disposal.

Jagir Kaur v. Jaswant Singh 1963 SC

4.

Ques. Are the finding of magistrate u/s – 125 CrPC final?

Ans. No, person can go in civil proceeding also.

Nandlal Mishra v. KL Mishra 1966 SC

And person can always agitate for their right in a civil court.

- U/S – 125 court passes an order not decree – If husband died then this order can't be enforced against the property of husband.

If it is a decree under civil law – there is that can be enforced against the estate property of died husband. **Nandlal Mishra v. KL Mishra 1966 SC**

Sec – 125 does not bar any other remedy. All maintenances are allowed simultaneously. But the amount of maintenance granted u/s – 175 should be kept in mind while granting or determining the amount of

maintenance in any other law.

Sec – 125 can't be use to determine the validity of marriage, it is a matter concerning the maintenance held in **Sree Rangan v. Selvi 2003 Bombay HC**.

6.

Ques. Whether in order of interim maintenance, is it an interlocutory order?

Sunil Kumar Sabharwal v. Neelam Sabharwal 1991 (P & H HC)

Though the word interim has been used it is not an interlocutory order it effects the rights of parties. Hence, revision against interim maintenance is not barred. Hence, it is a revisable order.

- The allowance may be payable from the date of the order or even from the date of application but not beyond it.

Bhupinder Singh v. Daljeet Kaur 1979 SC

Basically an order of maintenance has been passed u/s – 125 – there was resumption of cohabitation between husband and wife, it does not mean that Sec – 125 order is cancelled, it would remain dormant. If tomorrow wife separates again the order of Sec – 125 CrPC will become alive again.

'Any Person' – It basically does not mean wife but includes a daughter or even includes married daughter, a Hindu who is not divided from HUF, then maintenance cannot be charge against a HUF.

'Sufficient means' – It is not actual money, but means how much ability he has to earn or his acumen to earn money.

- Neglect and refuses to maintain – Eg: Husband is impotent, making cruelty etc.

Ashok Kumar v. Addl. Session Judge 1995 SC

A wife may be MA, bed, but unemployed and then she is still unable to maintain herself.

Badshah v. Urmila Badshah 2013 SC

There was a subsisting legally wedded wife, husband married again but to 2nd wife he kept in dark, later on it was found that he was already married SC held that if a 2nd wife was under a misconception that the husband has not been married earlier, she is also entitled to maintenance u/s – 125.

Maintenance in Hindu Law: -

- 16.01.2022
- 22.01.2022
- 23.01.2022

But in normal course of event –

- A wife means legally wedded wife.
- Unmarried daughter does not get maintenance under Sec – 125 CrPC – but gets under Hindu and Muslim Law i.e. HAMA.
- Unable to maintain – Means a complete livelihood and has bread meaning.
- Father and mother and maintenance r/w maintenance of welfare of Senior Citizens Act 2007 includes step parents + grandparents.
- 'Monthly rate' (process on payment) – Basically means you can't give and monthly maintenance.
- If husband does not pay then 421 distress warrant
- 1 month imprisonment for nonpayment.

Shahdara Khatoon v. A Mjad Ali 1999 SC

It was held that the language of 125 is very clear here it is one month at a time eg: no paid for 11 months then imprisonment will be 1 month jail – this 1-month jail is not in lieu punishment of 11 months husband have to pay 11 months maintenance after 1 month jail.

Kuldeep Kaur v. Surinder Singh 1989 SC

That merely because you are going to jail is no reason that your maintenance is over. It is not in lieu of maintenance; it is merely a coercive measure to make you pay maintenance.

- Occasional lapses from virtue will not – disentitle women – Rast act and occasional act will not consider in adultery (eg: lived in) not living in.
- Mutual Consent – means a voluntary consent means both the consents are free from force or fraud.

Sec - 126

Sec – 127

Sec - 128

1. Order of maintenance must be given free of cost
2. Suppose the husband is not in the jurisdiction of the court eg: can order of maintenance of Chandigarh be execute in Bombay where husband is living?

Ques. Suppose the maintenance order is cancelled u/s – 127 will it be retrospective or prospective?

Ans.

Hari Krishna v. Shanti Devi 1989 Raj, HC

It was held that order of cancellation of maintenance always operates prospectively and never retrospectively.

Ques. Should we ask her to refund the entire money?

Ans. No, the benefit to women will be given as per Article – 15 COI even if it right to equality.

Ques. What about earning capacity of wife?

Ans. Earning capacity of wife is no criteria. The actual income of the wife

will be taken into reckoning but not the earning capacity. Eg: if a wife is advocate but not earning will be consider that she can't maintain herself.

- Living in adultery – If the wife 1 or 2 time having sexual intercourse that would not be living in adultery/ It can be sufficient for divorce, but it is not enough for refusing maintenance.
- Sec – 65 of IPC says ¼ the of the offence – broader power.
- Sec – 30 of CrPC says ¼ of his power = mar magistrate.

Why – Because some of the matter of LI JMIC can try.

Eg: 409, 465 – there punishment is LI. So, as per Sec – 65 if Sec – 65 would apply magistrate then in lieu of fine punishment's power will be 5 years of LI which is above the power of magistrate – this can't be that is why Sec – 30 CrPC is apply magistrate and Sec – 65 of IPC is limited to magistrate.

Conclusion:

If magistrate gives punishment as per Sec – 65 it will create confusion.

Eg: - Magistrate JMIC power – 7 years, 3 years and 1 year – if they gives lieu imprisonment i.e. ¼ of offence then in case of LI the punishment will be bigger than their power. So, to away this confusion section 30 was created in CrPC.

Life Imprisonment

New law is as per 2013 Amendment under Sec – 376 (ii) says 'till the remainder of life' now the question arose that

'Will this new law decrease the value of Sec – 55 of IPC?

Can government commute the punishment now u/s – 432, 433 of CrPC?

Ans. No, because it is a legislative law which means Government's discretionary power can't be above to laid down statutes.

Conclusion is where is written 'till the remainder of life' then no commutation, remission is allowed means Sec – 55 of IPC, 432, 433 will not apply but Article – 72 and 161 allowed.

Means Government can't commute but if Article – 72 and Article – 161 allow then Government can commute.

Dis