

**Code of Criminal Procedure I**

**LLB 303**

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## Unit – I: Introduction

### a. Definitions

### b. Constitution and powers of Criminal Courts and Offices

#### Definitions.-

In this Code, unless the context otherwise requires, -

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

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

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

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

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

(e)"High Court" means, -

(i) In relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) In relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

- (f)"Indian" means the territories to which this Code extends;
- (g)"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;
- (h)"investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;
- (i)"judicial proceeding" include any proceeding in the course of which evidence is or may be legally taken on oath;
- (j)"local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code;
- (k)"metropolitan area" means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;
- (l)"non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;
- (m)"notification" means a notification published in the Official Gazette;
- (n)"offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871( 1 of 1871);
- (o)"officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;
- (p)"place" includes a house, building, tent, vehicle and vessel;
- (q)"pleader", when used with reference to any proceeding in any Court, means a person authorized by or under any law for the time being in force, to practice in such Court, and

includes any other person appointed with the permission of the Court to act in such proceeding;

( r ) " police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(s)"police report" means a report forwarded by a police officer or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

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

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

(v)"sub-division" means a sub-division of a district;

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

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

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

## **TOPIC**

### **Constitution and powers of Criminal Courts and Offices**

Indian Courts Hierarchy can be broadly categorized into Civil Court and Criminal Court

In civil courts every suit should be instituted before the court of lowest jurisdiction. In the civil side the Munsif's Court is the court of lowest jurisdiction. If the value of the subject matter of the suit is worth rupees one lakh or below, the Munsiff's Court is the competent court to try the suit. If the value exceeds above rupees one lakh the suit should be filed before the Subordinate Judge's Court



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An appeal from the decisions of the Munsiff is filed before the District Court. Appeals from the decisions of the Sub Court filed before the District Court if the subject matter of the suit is of value up to rupees two lakhs. If the value is above two lakhs, the appeal should be filed before the High Court and next to the Supreme Court.

Administration of criminal justice is carried out through Magistrate- Courts and Sessions courts. The hierarchy of criminal courts is given below. The Court at the lowest level is called Judicial Magistrate of the second class. This Court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding three years or with fine upto ten thousand rupees. In the State of Kerala, the second and the First Class Magistrate Courts have been unified. The Chief Judicial Magistrate can impose any fine and punishment up to seven years imprisonment.

The Assistant Sessions Judge is competent to impose punishments up to ten years imprisonment and any fine. The Sessions Judge can impose any punishment authorized by law; but the sentence of death passed by him should be subject to the confirmation by the High Court. (see for details Sections 28 and 29 of Criminal Procedure Code.)

### About High Court

High Court stands at the head of a State's judicial administration. It has power to issue to any person within its jurisdiction writs, orders or directions. Writs are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. Each High Court has powers of superintendence over all Courts and Tribunals within its jurisdiction.

### About Supreme Court

The Supreme Court is the highest court in the country. It has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to Central-State and inter-State disputes. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court for the enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.. The Supreme Court, if satisfied that cases involving substantially the same questions of law of general importance are pending before it and the High Courts, it may withdraw such case and dispose them by itself.

## STRUCTURE AND FUNCTIONING OF CRIMINAL COURTS IN INDIA

Administration of criminal justice is carried out through Magistrate Courts and Sessions Courts.

The hierarchy of criminal courts is given below.

The Indian Penal Code, 1860 (IPC), together with other penal laws' constitutes India's substantive criminal law. The IPC draws inspiration from the English criminal law and has stood the test of time. However, it cannot be self-operative. As a sequel to the IPC, a Code of Criminal Procedure, 1861 was enacted. The 1861 Code was repealed after which a new Code of Criminal Procedure, 1974 (CrPC) was enacted to carry out the process of the administration and enforcement of the substantive criminal law. The CrPC also controls and regulates the working of the machinery setup for the investigation and trial of the offences. In addition to the CrPC, the Indian Evidence Act of 1872 was enacted to guide the process of investigation and trial.

### Categories of Criminal Courts in India:

#### Courts of Session

As per Section 9 of CrPC, the court is established by the State Government for every sessions division. The court is presided over by a Judge, appointed by the High Court of that particular State. The High Court may also appoint Additional Sessions Judges and Assistant Sessions

Judges in this court. It has the power to impose any sentence including capital punishment.

### Courts of Judicial Magistrates

Section 11 of CrPC states that in every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class and at such places, as the State Government may after consultation with the High Court, by notification specify. Courts of Judicial Magistrate of First Class are at the second lowest level of the Criminal Court structure in India. According to Section 15 of the CrPC, a Judicial Magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Judicial Magistrate. In terms of Section 29 of the CrPC, a Judicial Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees or of both.

### Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.

In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate. A Chief Judicial Magistrate may impose a sentence except (a) sentence of death, (b) imprisonment of life, or (c) imprisonment for a term exceeding seven years. A Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

### Metropolitan Magistrates

The Courts of Metropolitan Magistrates were created by Section 16 of the Criminal Procedure Code. The Court of Chief Metropolitan Magistrate and those of The Additional Chief Metropolitan Magistrates were created by Section 17 of the Code. Section 18 of the Code also provided for Special Metropolitan Magistrates. The towns having population exceeding one million could be declared as Metropolitan Areas. A Metropolitan magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Metropolitan Magistrate.



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### Executive Magistrates

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

### District Magistrate.

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

### Special Executive Magistrates

Under Section 21 of the CrPC, the State Government may appoint, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit. The Court at the lowest level is called Judicial Magistrate of the Second Class. This Court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding three years or with fine up to ten thousand rupees. In States such as Kerala, the Second and the First Class Magistrate Courts have been unified. The Chief Judicial Magistrate can impose any fine and impose punishment up to seven years of imprisonment. The Assistant Sessions Judge is competent to impose punishments up to ten years imprisonment and impose any fine. The Sessions Judge can impose any punishment authorized by law, but the sentence of death passed by him should be subject to the confirmation by the High Court. (See for details Sections 28 and 29 of CrPC).



## **Unit – II: Provisions for Investigations**

### **a. Arrest and Bail provisions**

### **b. Information to the Police and their powers to investigate**

#### Arrest and Rights of the Arrested Person

Under Section 57/167 of the CrPC, the accused must be produced before a Magistrate within 24 hours of arrest. If the investigation cannot be concluded within this time, a Magistrate may order for the remand of the arrested person to police custody u/s 167 (3) of the Cr.P.C. The Magistrate should be fully satisfied that there is good ground to remand the accused to police custody.

Under Section 50 of the CrPC, the arrested person is to be informed of the particulars of the offence or any other grounds for arrest. Further, if arrested without a warrant for an offence which is bailable, he/she must be informed that he/she is entitled to be released on bail.

Under Section 50A of the CrPC, the arrested person is entitled to have a person nominated by him informed about the arrest and moreover the Magistrate is required to satisfy himself that the provisions of this Section are complied with. The Supreme Court has also recognized the right of the arrested person to have access to a lawyer in *Nandini Satpathy* [(1978) 2SCC 424] and *DK Basu* [(1997) 1 SCC 410].

Under Section 51 CrPC, a person who is arrested may be searched and a list shall be prepared of any articles found on his person. This personal search memo is especially important if there is any allegation of recovery of incriminating material from the person of the accused.

Under Section 54 CrPC, the arrested person can request that he/she be examined by a medical practitioner if the examination of his person will either disprove the commission of the offence by him, or will prove the commission of any offence against his body by another person. Under Section 53 and 53A CrPC, the police can send the arrested person for medical examination.

“Arrest” means:

*“a seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge.” [Legal Dictionary by Farlex]*

The purpose of an arrest is to bring the arrestee before a court or otherwise secure the administration of the law. An arrest serves the function of notifying the community that an individual has been accused of a crime and also may admonish and deter the arrested individual from committing other crimes. Arrests can be made on both criminal charges and civil charges, although civil arrest is a drastic measure that is not looked upon with favor by the courts. The federal Constitution imposes limits on both civil and criminal arrests.

### **ARREST HOW MADE:**

Section 46 of Criminal Procedure Code (hereinafter Cr.P.C) –

*(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.*

*(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.*

*(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.*

*[(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.] {Ins. by Act 25 of 2005, S. 6 (w.e.f 23-6-2006)}*

ARREST means a curtailment of personal liberty, for legal purposes. Arrest means preventing a person from having free movement by applying the authority under law.

### Who can arrest

: 1. A police officer may arrest without a warrant under Cr. P.C. Sections 41 (1) to 151; under a warrant under Sections 72 to 74; under the written order of an officer in charge under Sections 55 and 157; under the orders of magistrate u/s 44 and in non cognizable offence u/s 42 Cr. P.C. 2. A superior officer u/s 36 Cr. P.C. 3. An Officer-in-Charge of a Police Station u/s 42 (2) and 157 Cr. P.C. 4. A magistrate u/s 44 Cr. P.C. 5. A military officer u/s 130 and 131 Cr. P.C. 6. A private person without warrant u/s 43 Cr. P.C., with warrant u/s 72 and 73, under order of a Police officer u/s 37 and under order of a magistrate u/s 37 and 44 Cr. P.C. and also 60 (1) Cr. P.C.

Powers of the Police to arrest : Sections 41, 42, 151 Cr. P.C. and a Police officer may arrest without warrant u/s 41 Cr. P.C. in the following conditions :- a. Who has been concerned in any cognizable offence b. Who has in possession, without, lawful excuse, of any house breaking weapon c. Who has been proclaimed as an offender either under Cr. P.C. or by order of the State Govt. d. Who is in possession of any stolen property e. Who obstructs a police officer while in the execution of his duty or who has escaped, or attempts to escape, from lawful custody f. Who is reasonably suspected of being a deserter from any of the Armed forces of the Union g. Who has been concerned in any law relating to extradition h. Who, being a released convict commits a breach of any rule made under sub-section (5) of Section 356 Cr. P.C. (i) For whose arrest any requisition has been received from another police officer specifying the person to be arrested and the offence and other cause for which the arrest is to be made.

### RIGHTS OF ARRESTED PERSON:

Article 22 of the Constitution provided certain fundamental rights for the arrested persons –  
a. Right to know the grounds of his arrest b. Right to consult the lawyer of his choice c. Right to be defended through a counsel d. Right to be produced before the magistrate within 24



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hours of arrest e. Right not to be detained beyond 24 hours f. Right to a corresponding duty of the police officer to procure a direction from the Magistrate if the detention is needed beyond 24 hours. In a JUDGEMENT the Supreme Court of India recognised some more rights of an arrested person under Articles 21 and 22 (2) of the Constitution of India – g. Right to communicate the information of arrest to a friend, relative or well wisher. h. Right to consult a lawyer i. Right to be informed about his right to seek information to relative friends, well wisher through the police j. Right to a corresponding duty that a police officer has to record the details of the person to whom the information about the arrest is given, in a diary. Besides, the arrested person must be produced before a registered medical officer for treatment and checkup immediately after arrest.

There are two types of rights of arrested person: -

- (i) At the time of arrest
- (ii) At the time of trial

In India accused have more rights as compared to victim: -

- (a) Right to be informed of ground of arrest.

Section 50 (1) of Cr. P.C.: *Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.*

Object: – It is one of the principles of natural justice.

- (b) Obligation of person making arrest to inform about the arrest etc. to a nominated person.

Section 50 A of Cr. P.C.: *[(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where as may be disclosed or nominated by the arrested person for the purpose of giving such information.*

*(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.*



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(3) *An entry of the fact as to who has been informed of the arrest of such form as may be prescribed in this behalf by the State Government.*

(4) *It shall be the duty of the Magistrate before whom such arrested person produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.]*

(c) Right to be informed of right to bail.

Section 50 (2) of Cr. P.C.: *Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.*

(d) Right to be produced before the Magistrate without delay.

Section 56 of Cr. P.C.: *Person arrested to be taken before Magistrate or officer in charge of police station. –A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.*

(e) Right of not being detained for more than twenty-four hours.

Section 76 of Cr. P.C.: *Person arrested to be brought before Court without delay. –The police officer or other person executing a warrant of arrest shall (subject to the provisions of Section 71 as to security) without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person:*

*Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*

(f) Right of not being detained for more than twenty-four hours without judicial scrutiny.

Section 57 of Cr. P.C.: *No police officer shall detain in custody a person arrested without warrant for a longer period than under all circumstances of the case is reasonable, and such period shall not, in the absence of special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*



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Arrest has far reaching consequences; the social status and dignity of an individual suspect becomes at stake, even his discharge cannot blot out the stigma consequent upon arrest. There are financial implications for the arrested person and his family. The public suffers its repercussion as we. Naturally, it needs to be ensured that arrests are not effected in a frivolous manner and that the rights of arrested persons are fully guaranteed. Towards this effect, The Cr.P.C. lays down safeguards such that the rights of persons enshrined in Art. 21 and 22(1) are not violated. However, it has been some time before the statutory provisions have been understood in all its implication and they have been given effect to. Mostly the criminal administration system ignores such safeguards and the judiciary for quite some time has been lax about ensuring the proper observance of prisoner's rights. So there have been many later declarations and statutory enactments which reaffirm the faith in the rights of arrested persons. The endeavor is to look into various rights of arrested persons, enshrined in statutes, conventions and judicial pronouncements

### **BAIL:**

*The system that governs the status of individuals charged with committing crimes, from the time of their arrest to the time of their trial, and pending appeal, with the major purpose of ensuring their presence at trial.*

In general, an individual accused of a crime must be held in the custody of the court until his or her guilt or innocence is determined. However, the court has the option of releasing the individual before that determination is made, and this option is called bail. Bail is set by the judge during the defendant's first appearance. For many misdemeanors, bail need not be set. For example, the defendant may be released on the issuance of a citation such as a ticket for a driving violation or when booked for a minor misdemeanor at a police station or jail. But for major misdemeanors and felonies, the defendant must appear before a judge before bail is determined.

The courts have several methods available for releasing defendants on bail. The judge determines which of these methods is used. One alternative is for the defendant to post a bail bond or pledge of money. The bond can be signed by a professional surety holder, the accused, or the family and friends of the accused. Signing the bail bond is a promise that the

defendant will appear in the specified criminal proceeding. The defendant's failure to appear will cause the signers of the bond to pay to the court the amount designated. The amount of bail is generally an amount determined in light of the seriousness of the alleged offense.

A defendant can also be released upon her or his own recognizance, which is the defendant's written, uninsured promise to return for trial. Such a release occurs only if the suspect has steady employment, stable family ties, and a history of residence in the community. Willful violation of the terms of a personal recognizance constitutes a crime.

Other conditions may also be set regarding the release of the defendant. The Bail Reform Act of 1984 (18 U.S.C.A. §§ 3141–3150) provided for many additional conditions that do not rely upon finances and that reflected current trends to move away from financial requirements for freedom. These conditions came about, in part, owing to concerns regarding the discriminatory nature of bail toward the poor. The Bail Reform Act allows for conditional releases dependent upon such circumstances as maintaining employment, meeting curfews, and receiving medical or psychiatric treatment.

Section 436 Cr. P.C. provides that when a person is arrested in a bailable case, bail is a right to the arrested person. Section 437 Cr. P.C. – It relates to non bailable offences. Section 438 Cr. P.C. directions for grant of bail to person apprehending arrest. When any person has reason to believe that the may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or Court of Sessions for a direction under this section, and that Court may, if it thinks fir, direct that in the event of such arrest, he shall be released on bail. Section 439 Cr. P.C. – Special powers of High Court or Court of Sessions regarding bail. The directions of the Supreme Court should strictly be followed in the matter of arrest of any person under any law

### **Anticipatory Bail**

Section 438 of the CrPC enables the superior courts to grant anticipatory bail. An anticipatory bail can be applied for when the person has reason to believe that he/ she may be arrested. An application for anticipatory bail can be made to the Sessions Court, the High Court or even the Supreme Court. However, normally it is to be presumed that the Court of Sessions would be first approached for grant of anticipatory bail. The court may consider the following aspects when considering an application for anticipatory bail:



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- (i) the nature and gravity of accusation;
- (ii) the antecedents of the applicant;
- (iii) The possibility that the accused may flee from justice; and
- (iv) The accusation appears to be aimed at humiliating the applicant.

The CrPC has not given any test or criterion to determine cognizable or non-cognizable offences. The First Schedule of CrPC, however, indicates that all offences punishable with imprisonment for not less than three years are taken as serious offences and are treated as cognizable. Offences such as murder, robbery, dacoity, rape and kidnapping are cognizable offences. Offences relating to marriage including bigamy and adultery are punishable with more than five years imprisonment, yet they have been included in the category of non-cognizable offences. Other offences though serious have been considered as non-cognizable only.

- (i) such person shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- (ii) such person shall not be so released if such offence is a cognizable offence and he has been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence.
- (iii) Provided that the Court may direct that a person referred to in clause (1) of clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:
- (iv) Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:
- (v) Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.
- (vi) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that





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the accused has committed a non-bailable offence, but there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of Section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided

- (vii) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court may impose any condition which the Court considers necessary,-
- (a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
- (viii) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or otherwise in the interests of Justice.
- (ix) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons, for so doing.
- (x) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.
- (xi) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
- (xii) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any

such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered

### **First Information Report (FIR)**

FIR is the abbreviated form of First Information Report. It is the information recorded by the police officer on duty, given either by the aggrieved person or any other person about the commission of cognizable offence. The statement of the informant as recorded under Section 154 will be treated as the FIR. The main object of the FIR from point of view of the informant is to set the criminal law in motion (Hasib v. State of Bihar, AIR 1972 SC 283). The police cannot refuse to register the complaint. The power of police to lodge an FIR cannot be usurped by the Magistrate. If any person is aggrieved by a refusal on the part of the Police officer in charge of police station to record the information, he may send by post the substance of such information in writing to the Superintendent of Police concerned [Section 154(3)].

FIR can be filed in the police station of the concerned area in whose jurisdiction the offence has occurred. FIR can be registered either on written or verbal statement of complainant which is later reduced in writing by police officer and is signed by the complainant. It must be made to the officer-in-charge of the police station and if he is not available, the Assistant Sub-Inspector is competent to enter the same upon the investigation. On the basis of the FIR the police starts its investigation.

Section 154 of the CrPC provides for the manner in which such information is to be recorded. Following manner could be drawn from Section 154 (1) of the CrPC:

### **Some Important Facts about FIR**

1. Information of cognizable offence can be given by any person to police having jurisdiction in the area where the commission of crime took place.
2. FIR is not substantive piece of evidence. It has to be duly proved as any other fact by evidence and can be used as relevant fact in order to prove the substantive issue.
3. Police officer shall reduce such information in writing.

4. Informant's signature must be obtained.
5. Contents of such information should be read over to Informant and must be entered in record by the police officer.
6. Police officer shall give a copy of such information to the informant forthwith.
7. Original FIR must be sent to the Magistrate forthwith.
8. Despite a police officer refusing to register an FIR, the aggrieved person can send such information to the Superintendent of Police by post.
9. FIR is to be made immediately after the occurrence of an incident, when the memory of the person giving it is fresh in his mind about the occurrence.
10. Telephonic information from an ascertained person which discloses commission of the cognizable offence would also constitute FIR.

#### **Information to the Police as to non-cognizable offence**

Section 155 of CrPC provides that if any person gives information to an officer in charge of police station of the commission of non-cognizable offence, the officer shall enter or cause to be entered the substance of the information in a book prescribed for this purpose. The Police officer has no further duty unless Magistrate directs the Police officer to investigate the case. Generally speaking, non-cognizable offences are more or less considered as private criminal wrongs. The basic rule is that no police officer shall investigate a non-cognizable case without the order of a magistrate having power to try such case or commit the case for trial.

In a situation where a criminal case consists of both cognizable and non-cognizable offences, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

#### **Function and Role of Police**

The Police Act, 1861 describes the structure and function of the police in general. The Police Force is an instrument for the prevention and detection of crime (see Preamble, The Police Act, 1861). The overall administration of the police in a state is vested with the Director-



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General of Police (DGP). The administration of police in every district vests in the District Superintendent of Police under the general control and direction of the District Magistrate who is usually the District Collector. Every Police officer appointed to the police force other than Inspector-General of Police (or Deputy or Assistant Inspector General of Police) and the District Superintendent of Police (or Assistant District Superintendent of Police) receives a certificate in prescribed form by virtue of which he/she is vested with the powers, functions and privileges of a police officer. On the other hand, the Police Act, 1949 creates a police force for the Union Territories, following the pattern of the Police Act of 1861.

The Cr.P.C. confers specific powers, e.g., power to make arrest, search, etc. on the members of the police force who are enrolled as police officers. Section 23 of the Police Act, 1861 provides that 'it shall be the duty of every Police officer ... to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisance; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient grounds exist'.

### **Unit – III: Process to Compel Appearance and Production of things**

- a. Summons for Appearance**
- b. Warrant of arrest**
- c. Proclamation and attachment**
- d. Other rules regarding processes**
- e. Summons procedure**
- f. Search Warrants**
- g. General provisions as to search**
- h. Miscellaneous**

## PROCESSES TO COMPEL APPEARANCE

### Summons

Form of summons—Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

### Summons how served

(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

### Service of summons on corporate bodies and societies

Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed, to have been effected when the letter would arrive in ordinary course of post.

Explanation—In this section "corporation" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860)

### Service when persons summoned cannot be found —

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate

Explanation—A servant is not a member of the family within the meaning of this section 65. Procedure when service cannot be effected as before provided If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper. Service on Government servant

(1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service

#### Service of summons outside local limits

When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

#### Proof of service in such cases and when serving officer not present –

(1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court

#### Service of summons on witness by post



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(1) Notwithstanding anything contained in the preceding section of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain

2) When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served

#### Form of warrant of arrest and duration

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed

#### Power to direct security to be taken

(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court the officer to whom the warrant is directed shall take such security and shall release such person from custody

#### Warrants to whom directed

(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same. (2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them

#### Warrant may be directed to any person



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- (1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest
- (2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge
- (3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

#### Warrant directed to police officer

A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed .

#### Notification of substance of warrant

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

#### Person arrested to be brought before Court without delay

The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

#### Where warrant may be executed

A warrant of arrest may be executed at any place in India

Warrant forwarded for execution outside jurisdiction





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(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person

Warrant directed to police officer for execution outside jurisdiction -

(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it

Procedure of arrest of person against whom warrant issued

When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police

or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner

Procedure by Magistrate before whom such person arrested is brought

(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78 to release such person on bail

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71 Proclamation and attachment

Proclamation for person absconding

(1) If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation

(2) The proclamation shall be published as follows—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides

Attachment of property of person absconding

(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

(2) Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,— (a) is about to dispose of the whole or any part of his property, or (b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit



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- (4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases— (a) by taking possession; or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods, as the Court thinks fit
- (5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court
- (6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908

#### Other rules regarding processes

#### Issue of warrant in lieu of, or in addition to, summons

A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

- (a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or
- (b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure

#### Power to take bond for appearance

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial

#### Arrest on breach of bond for appearance

When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him

#### Provisions of this Chapter generally applicable to summons and warrants of arrest

The provisions contained in this Chapter relating to a summons and warrants, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code

### **PROCESSES TO COMPEL THE PRODUCTION OF THINGS**

#### Summons to produce document or other thing

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same

(3) Nothing in this section shall be deemed— (a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891(13 of 1891), or (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

#### **Search-warrants**

### When search-warrant may be issued

(1) (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or (b) where such document or thing is not known to the Court to be in the possession of any person, or (c) where the Court considers that the purposes of any inquiry, trial or other proceeding

### **—General provisions relating to searches**

Direction, etc, of search-warrants

The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or section 97

Persons in charge of closed place to allow search

(1) Whenever any place liable to search of inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such

officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860)

### **Miscellaneous**

Power of police officer to seize certain property—

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

## **Unit-IV: Proceedings before Magistrate**

- a. Conditions requisite for initiation of proceedings**
- b. Complaints to Magistrates**
- c. Commencement of proceedings before Magistrates**
- d. Security Proceedings**

### **CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS**

Cognizance of offences by Magistrates -

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence— (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try

Transfer on application of the accused –

When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf

Making over of cases to Magistrates –

(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him



(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

### **COMPLAINTS TO MAGISTRATES**

Examination of complainant -

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the

Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) If a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter

Magistrate need not re-examine them.

Procedure by Magistrate not competent to take cognizance of the case -

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall,—

(a) If the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) If the complaint is not in writing, direct the complainant to the proper Court

Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant

Dismissal of complaint -

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

### **COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES**

### **Issue of process**

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

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

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

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list

of the prosecution witnesses has been filed

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

(4) When by any law for the time being in force any process-fees or other fees are payable, no

process shall be issued until the fees are paid and, if such fees are not paid within a reasonable

time, the Magistrate may dismiss the complaint

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

Magistrate may dispense with personal attendance of accused -

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

## **SECURITY PROCEEDINGS**

Security for keeping the peace on conviction—

(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit

(2) The offences referred to in sub-section (1) are— a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence, punishable under section 153A or section 153B or section 154 thereof; (b) any offence which consists of, or includes, assault or using criminal force or committing mischief; (c) any offence of criminal intimidation; (d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision

### **SEC 107. Security for keeping the peace in other cases**

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of

the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction Comments Under trial prisoners are not released on bail and remained in jail for 6 months Release of undertrial due to delay in trial is proper; RD Upadhayaya v State of Andhra Pradesh, 1999 (1) Scale 139

Security for good behaviour from persons disseminating seditious matters

(1) When an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,— (i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,— (a) any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code (45 of 1860), or (b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code (ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code (45 of 1860), and the magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit

(2) No proceeding shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf

Security for good behaviour from suspected persons

When an Executive Magistrate receive information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to



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execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

References:

1. R.V. Kelkar – Code of Criminal Procedure
2. Ganguly – Criminal Court, Practice and Procedure
3. Rattan Lal & Dhirajlal – Code of Criminal Procedure
4. [www. indiankanoon.org](http://www.indiankanoon.org)