

CODE OF CRIMINAL PROCEDURE, 1973

- **General-** The Code of Criminal Procedure, 1973 is consolidatory and amending Act as to the laws relating to criminal procedure. The Code received the assent of the President of India on 25.1.1974 and came into force on 1st April, 1974.
The Code territorially extends to the whole of India except the State of Jammu and Kashmir.
The provisions of the Code also do not apply to the following except the provisions relating to Chapters VIII, X and XI.
 - (a) to the State of Nagaland
 - (b) to the tribal areas.
- **Definitions-** Section 2 of the Code provides for some definitions of the terms used in the Code. Section 2(7) provides that the meanings of the words and expressions used in this Code and not defined but defined in the Indian Penal Code, 1860 are applicable to this Code.
- Section 2 of the Code defines the following words and expressions, namely-
- **(1) Bailable offence [Section 2(a)]-** For the purpose of bail, offences may be classified as-
 - (i) bailable
 - (ii) non-bailable

“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.
A “non-bailable offence” means any other offence.

Difference between Bailable and Non-bailable offences

Bailable offence	Non-bailable offence
1. A bailable offence is an offence in which bail can be claimed as a right by an accused person.	1. A non-bailable offence is an offence in which bail cannot be claimed as a right.
2. The Court or the officer-in-charge of a police station is bound to release the accused of a bailable offence in custody on bail if he is prepared to give it or on recognizance.	2. Granting or non-granting the bail of accused in case of a non-bailable offence depends upon discretion of the Court.
3. In a bailable offence the Court cannot remand the accused to police custody if he is prepared to give bail.	3. In a non-bailable offence the court may remand the accused to police custody.
4. Bailable offences are generally non-serious in nature.	4. Non-bailable offences are serious in nature.

- The provisions relating to bail are laid down in Chapter XXXIII of the Code of Criminal Procedure.
- Whether an offence is bailable or non-bailable is provided under Column 5 of the First Schedule.
- **(2) Charge [Section 2(b)]-** Section 2(b) of the Code defines the term “charge”. “Charge” includes any head of charge when the charge contains more heads than one. Therefore, the word “charge” does not only mean a single head of charge but it may include more heads than one.
- A charge is a precise formulation of the specific accusation made against a person. It is framed when a prima facie case is disclosed about a certain offence or offences. The object of framing a charge is to give notice of the essential facts which the prosecution proposes to establish to bring home the charge so that the accused may not be prejudiced in his defence.

- A charge is the foundation of the accusation in a criminal trial and an important step in a criminal proceeding which separates the inquiry stage from the trial.
- The provisions relating to the charge are laid down in Chapter XVII [Sections 211-224] of the Code.
- **(3) 'Cognizable offence' and 'Cognizable case' [Section 2(c)]-** Section 2(c) defines 'cognizable offence' and 'Cognizable case'.
- "Cognizable offence" means an offence for which, and "Cognizable case" means a case in which a police officer may, in accordance with the first schedule or under any other law for the time being in force, arrest without warrant.
- A cognizable offence is an offence for which and a cognizable case is a case in which, a police officer is fully empowered to take cognizance without any order of a court or a Magistrate and also to arrest the accused without a warrant. His power to arrest in such cases is unqualified and unconditional.
- A case can include a single offence or more. It must be either a cognizable case or non-cognizable case. The Code does not contemplate any case to be partly cognizable and partly non-cognizable. A case would be a non-cognizable case if every one of the offences in a non-cognizable offence. If one or more (not necessarily all) of the offences in the case are cognizable offences, the case would be a cognizable case.
- The classification of offences into cognizable and non-cognizable are shown in column 4 of the first schedule of the Code.
- Section 2(1) of the Code defines "non-cognizable offence" and "non-cognizable case". A 'non-cognizable offence' means an offence for which, and a 'non-cognizable case' means a case in which, a police officer has no authority to arrest without warrant.

Difference between 'cognizable' and 'non-cognizable' offences

Cognizable offence	Non-cognizable offence
1. Cognizable offences are usually serious in nature.	1. Non-cognizable offences are usually lighter one.
2. In a cognizable offence the police officer may arrest without obtaining a warrant of arrest from a Magistrate.	2. In a non-cognizable offence the police officer cannot arrest without warrant of arrest.
3. In a cognizable offence the police-officer is duty bound to investigate the case without seeking any permission for the same.	3. The police officer may investigate a non-cognizable offence only when so ordered by a Magistrate having power to try such case or commit the case for trial.
4. Proceedings in cognizable cases start by means of 'police report'.	4. Proceedings in non-cognizable cases start generally by means of complaint.

- **(4) Complaint [Section 2(d)]**- Section 2(d) of the Code defines the term 'complaint'-
"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:
- **Essentials of a valid complaint:-**
 - (1) There must be an allegation about the commission of an offence.
 - (2) It must be made to a Magistrate.
 - (3) It must be made with a view to his taking action (A mere statement to a Magistrate by way of information without asking him to take action does not amount to a complaint).
 - (4) The action taken by Magistrate must be under the Code of Criminal Procedure, 1973.
 - (5) It must not be a 'police report'.
 - (6) It must be against some person, whether known or unknown who has committed an offence.
- A complaint may be made orally or in writing. No particular format is prescribed. It is sufficient if the complainant lays before the Magistrate, matter, which if proved, would constitute an offence. The Code nowhere provides that section of the offence be stated in a complaint.
- An affidavit containing allegations of commission of offence amounts to a complaint.
- A complaint may ever be sent by telegram or by registered post. [State v. S.D. Gupta, 1978, Cr. L.J. 999].
- A complaint is required to set out in the complaint all the evidences or all details of prosecution story.
- A complaint need not be a person aggrieved. Except in cases falling under Sections 195 to 199 of the Code, any person having knowledge of the commission of any offence can file a complaint.
- An application with a simple prayer to direct the police officer to register a case is not a complaint.
- Some special and Local Acts (e.g. The Cattle Trespass Act, The Prevention of Food Adulteration Act, Employees Provident Fund Act etc.) provide that a complaint should be made only by some particular persons.

Difference between Complaint and Information

Complaint	Information
1. A Magistrate acts on complaint because the complainant has asked him to act.	1. A Magistrate acts on information on his own initiative, i.e. it is purely a matter of his discretion to act or not to act on an information.
2. The principle element in a complaint is the prayer for prosecution.	2. The principle element in an information is the disclosure of an offence.
3. In case of a complaint the Magistrate is asked to prosecute the persons named as accused therein and he has then to decide whether he will accede to the request or not. If he does not, then he must record its reasons and may either make an inquiry himself or direct an inquiry or investigation under Section 202 or dismiss the complaint under Section 203 after recording his reasons.	3. In case of information he is not asked by anyone to issue process and if he does not choose to act on the information, he need not record any reasons or pass any order.
4. In case of complaint the complainant is examined on oath under Section 202 unless he is a public servant acting in discharge of his official duty.	4. In case of information the informant is not required to be examined on oath.
5. Provisions of Section 191 is not applicable in case of a complaint.	5. Provisions of Section 191 is applicable in case of information.

- Protest Petition- Where a person, aggrieved by police investigation or final report, intends to move the Magistrate for taking cognizance of the offence on the facts stated in the police report or for direction of further investigation then he should move a protest petition before the Magistrate. A protest petition and a complaint are two different things. A Magistrate can dispose of a protest petition in the manner he thinks fit and proper; but, when a complaint is filed he is bound to follow the provisions of Chapter XV [Sections 200-203].
- A report to a judge is not a complaint. A complaint should always be made to a Magistrate.
- The dismissal of a former complaint does not bar re-hearing of a subsequent complaint, on the same facts, by the same Magistrate or by any other Magistrate.
- **(5) Inquiry [Section 2(g)]-** Section 2(g) of the Code defines the term 'inquiry'. "Inquiry" means every "inquiry", other than a trial, conducted under this Code by a Magistrate or court.
- An inquiry is a proceeding conducted under the Code, by a Magistrate or a court, other than a trial for ascertaining or verifying facts with a view to take some action under the Code.
- Proceedings under Sections 107, 108, 109, 110, 125, 133, 144, 145, 147, 148, 202, 340 of the Code have been held to be inquiries.
- Inquiry preparatory to commitment is an inquiry.
- An inquiry is something different from a trial and when inquiry stops, trial begins.
- **(6) Trial-** The term 'trial' has not been defined in the Code. The Privy Council held that a 'trial' means all proceedings including the sentence. Therefore, 'trial' may be said to be a judicial proceeding ending in conviction or acquittal of the accused. A trial ends when judgment is pronounced.
- **(7) Investigation [Section 2(h)]-** Section 2(h) of the Code defines the term "investigation". "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by

a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

Therefore, a proceeding by a police officer or by any authorised person other than a Magistrate for the collection of evidence for ascertaining as to whether any offence has been committed is known as investigation.

- An investigation, generally, consists of the following steps:
 - (1) proceeding to the spot.
 - (2) ascertainment of the facts and circumstances of the case.
 - (3) discovery and arrest of the suspected offenders.
 - (4) collection of evidence.
 - (5) formation of opinion as to whether on the material collected there is a case to produce the accused before a Magistrate for trial and if so, taking necessary steps for the same by filing of a 'charge-sheet' under Section 173 of the Code.
- There is no provision for delegation of investigation, but superior officers may only supervise or participate in the investigation proceeding under Section 36.
- An officer-in-charge of a police station may depute some subordinate officer to conduct investigation under his responsibility and such subordinate officer should report the result to the officer-in-charge of the police station [Section 168], because formation of the opinion as to whether or not there is a case against the accused is the prime duty of the officer-in-charge of the police station.
- An investigation starts when, being in possession of matters of fact under inquiry the police officer proceeds to collect evidence in respect of those facts.

Distinction between Inquiry and Investigation

Inquiry	Investigation
1. An inquiry is made by a Magistrate or court.	1. An investigation is made by a police officer or by any person other than a Magistrate who is authorised by a Magistrate in this behalf.
2. The object of an inquiry is to ascertain the truth or falsify of certain facts for action other than conviction or acquittal.	2. The object of an investigation is the collection of evidence.
3. An inquiry may be a judicial or non-judicial proceeding.	3. An investigation is always a non-judicial proceeding.

Distinction between Trial and Inquiry

Trial	Inquiry
1. A trial always ends in either conviction or acquittal.	1. Inquiries end in various orders according to facts and circumstances except the order of conviction or acquittal.
2. A trial is always a judicial proceedings.	2. An inquiry may or may not be a judicial proceeding.
3. A trial is always in respect of an offence.	3. An inquiry may be in respect of an offence as well as in respect of other matters which are not offences.
4. A trial may at any of its interlocutory stages involves an inquiry.	4. An inquiry does not include a trial.

<p>5. A trial ends in a judgment which is a determination of some jural relations.</p> <p>6. A trial cannot be held without appearance of the accused either personally or through counsel.</p>	<p>5. An inquiry ends in a final order as determined by the scope of the inquiry.</p> <p>6. An inquiry may be conducted ex-parte.</p>
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Distinction between Trial and Investigation

Trial	Investigation
1. A trial is a judicial proceeding.	1. An investigation, is always a non-judicial proceeding.
2. The object of a trial is always conviction or acquittal.	2. The object of an investigation is collection of evidence.
3. A trial is always in respect of an offence.	3. An investigation may be in matters other than offences.
4. A trial is always conducted by a Magistrate or court.	4. An investigation is a proceeding by the police or by a person other than a Magistrate authorised by a Magistrate in this behalf.
5. An oath is essential process in a trial.	5. No oath is administered in investigation.
6. A trial cannot be conducted ex-parte.	6. An investigation is always an ex-parte proceeding.
7. A trial ends in conviction or acquittal.	7. An investigation ends in a police-report.

- **(8) Judicial Proceeding [Section 2(i)]**- Section 2(i) defines the expression 'judicial proceeding'. 'Judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath.
- **(9) Metropolitan Area [Section 2(k)]**- 'Metropolitan area' means an area declared as a metropolitan area under Section 8 of the Code.
- Section 8 provides that the State Government may, by notification, declare any area as a metropolitan area in the State comprising a city or town whose population exceeds one million (i.e. 10 lacs).
- **(10) Offence [Section 2(n)]**- Section 2(n) provides a very narrow definition of the term 'offence'. An 'offence' means-
 - (a) any act or omission made punishable by any law for the time being in force; and
 - (b) any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871.
- Neglect to maintain one's wife or children or father or mother under Section 125 of the Code does not amount to an offence. [Anil Kumar Jha v. State of Bihar, 1992 Cr. L.J. 251 (Patna)].

Distinction between Charge and offence

Charge	Offence
1. The term 'charge' is defined in Section 2(b). The definition provided in Section 2(b) is incomplete.	1. The term 'offence' is defined in Section 2(n) which provides a complete definition.
2. A charge states the offence which an accused has to face. It is framed after the inquiry for the offence alleged to have	2. After framing the charge, the accused is tried for the offences charged.

<p>been committed.</p> <p>3. A charge is a precise formulation of the specific accusation made against a person.</p>	<p>3. An offence is an act or omission made punishable by law for the time being in force.</p>
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- **(11) Police-report [Section 2(r)]**- Section 2(r) defines the expression 'police report'. A 'police-report' means a report forwarded by a police-officer to a Magistrate under Section 173(2) of the Code. It is commonly known as 'charge-sheet'.
- **(12) Summons Case [Section 2(w)] and Warrant Case [Section 2(x)]**- Section 2(w) defines the expression 'summons-case'. 'Summons-case' means a case relating to an offence, and not being a warrant case.
- Section 2(x) defines the expression 'warrant case'. 'warrant-case' means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
- Above classification of cases is important for the purpose of procedure. Whether a case is 'summons-case' or a 'warrant-case' depends on the nature and the measure of punishment attached to the offence. It does not depend on the ultimate sentence actually passed on conviction.

Distinction between a Summons-case and a Warrant Case

Warrant-case	Summons-case
1. 'Warrant-case' relates to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.	1. 'Summons-case' relates to an offence punishable with two years or less.
2. In a warrant-case the framing of a formal charge is necessary.	2. There is no need to frame formal charge.
3. In a warrant-case, the accused gets more than one opportunity to cross-examine the prosecution witnesses. [Sections 242 & 246(5)]	3. In a summons-case, the accused gets only one-opportunity to cross-examine the prosecution witnesses.
4. In a warrant-case the complainant cannot withdraw his complaint.	4. In a summons-case the complaint may withdraw complaint with the permission of the Magistrate.
5. In a warrant-case the absence of the complainant may result in the discharge of the accused under Section 249.	5. In a summons-case such absence of the complainant may result in the acquittal of the accused under Section 256.
6. A warrant case cannot be converted into a summons-case.	6. Under Section 259, the Magistrate is empowered to convert a summons-case into a warrant-case.
7. In a warrant-case, after convicting the accused, the Magistrate may take evidence in respect of alleged previous conviction and shall record a finding thereon.	7. In a summons-case the Magistrate is not empowered so.
8. In a warrant case, the proceedings cannot be stopped without pronouncing the judgment.	8. In a summons-case, instituted otherwise than upon complaint, the proceedings may be stopped at any stage without pronouncing the judgment under Section

<p>9. For the trial of warrant cases by Magistrates, two procedures are prescribed under Chapter XIX of the Code.</p> <p>(i) procedure in a case instituted on police report [Sections 238-243 and Sections 248-250].</p> <p>(ii) procedure in a case instituted otherwise than on a police-report. [Sections 244-247 and Sections 248-250]</p> <p>10. The trial of a warrant case as a summons-case is such an irregularity which would vitiate the trial only if he accused has been prejudiced.</p>	<p>258.</p> <p>9. There is only one procedure prescribed for the trial of a summons-case whether instituted on a police-report or on a complaint.</p> <p>10. The trial of a summons case as a warrant case is such an irregularity curable under Section 465.</p>
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- **(13) Victim [Section 2(wa)]**- Section 2(wa) is inserted by Cr.P.C. (Amendment) Act, 2008 (5 of 2009) (w.e.f. 31.12.2009). It defines the term 'victim'.
- "Victim" means a person who has suffered any loss or inquiry caused by reason of the act or omission for which the accused person has been charged.
- The expression 'victim' also includes his or her guardian or legal heir.
- Sections 5 and 484 provide for savings.

Constitution of Criminal Courts and Offices [Chapter II, Sections 6-25A]

- Section 6 provides for classes of Criminal Courts. According to it, the Criminal Courts are-
 - (1) High Courts
 - (2) Courts constituted under any law other than the Code of Criminal Procedure.
 - (3) Courts of Session
 - (4) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates.
 - (5) Judicial Magistrates of the second class.
 - (6) Executive Magistrates.
- Section 9 deals with the power of the State Government to establish Courts of Sessions and the power of High Court to appoint judges thereto.
- Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges are appointed by High Court under Section 9.
- Section 10 provides for subordination of Assistant Sessions Judges. They are subordinate to Sessions Judge in whose court they exercise jurisdiction.
- Under Section 10(3) the Sessions Judge may make provision for the disposal of any urgent application by the Chief Judicial Magistrate in absence of Additional or Assistant Sessions Judge.
- Section 11 provides for establishment of Courts of Judicial Magistrates in every district (not being a metropolitan area) by the State Government and appointment of such Magistrates therein by the High Court.
- Section 12 provides that in every district the High Court shall appoint a judicial Magistrate of first class to be the Chief Judicial Magistrate.
- Section 13 provides for Special Judicial Magistrates. They are appointed by the High Court on request of the Central or the State Government in respect to particular case or particular classes of cases.

- Any person who holds or has held any post under the Government may be appointed as Special Judicial Magistrates if he possesses such qualification or experience in relation to legal affairs as specified by the High Court.
- Special Judicial Magistrates may be appointed for a term not exceeding one year at a time.
- Section 15 deals with subordination of Judicial Magistrates. Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge. Every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.
- Section 16 relates to the establishment of courts of Metropolitan Magistrates.
- Section 17 relates to the appointment of Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.
- Section 18 relates to special Metropolitan Magistrate.
- Section 19 relates to the subordination of Metropolitan Magistrates.
- Section 20 relates to the appointment of Executive Magistrates in district and in metropolitan area.
- Executive Magistrates are appointed by the State Government.
- Section 21 provides for Special Executive Magistrates. They are, also, appointed by the State Government.
- Section 22 provides for local jurisdiction of Executive Magistrates.
- Section 23 provides for subordination of Executive Magistrates.
- All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate.
- Every Executive Magistrate, exercising powers in a sub-division shall also be subordinate to the sub-divisional Magistrate, subject to the general control of the District Magistrate.
- Section 24 provides for appointment and qualification of Public Prosecutors in the High Court and in districts.
- For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and one or more Additional Public Prosecutors. For conducting any prosecution, appeal or other proceeding on behalf of the respective Government.
- The Central Government may appoint one or more Public Prosecutors for conducting any case or class of cases in any district, or local area.
- For every district, the State Government shall appoint a Public Prosecutor and may appoint one or more Additional Public Prosecutors.
- The District Magistrate is empowered to prepare panel of names of persons fit to appointed as Public Prosecutors or Additional Public Prosecutors with the consult of the Sessions Judge.
- A person can be appointed as Public Prosecutor or Additional Public Prosecutor, only if he has been in practice as an advocate for not less than seven years.
- Section 24(8) provides for appointment of special Public Prosecutors by the Central Government or the State Government for any case or class of cases.
- Only a person who has been in practice as an advocate for not less than ten years can be appointed as a Special Public Prosecutor.
- In Section 24(8) a proviso has been inserted by Cr.P.C. (Amendment) Act, 2008, which provides that the court may permit the victim to engage an advocate of his choice to assist the prosecution.
- Section 25 provides for the appointment of Assistant Public Prosecutors in every district for conducting prosecutions in the Courts of Magistrates.
- The Central and the State, both the Governments are empowered to appoint Assistant Public Prosecutors.
- Generally, no police officer is eligible to be appointed as an Assistant Public Prosecutor; but, if any Assistant Public Prosecutor is not available for a particular case, the District Magistrate is empowered

to appoint any other person to be Assistant Public Prosecutor in charge of that particular case only. Provided that a police-officer shall not be so appointed-

- (a) if he has taken any part in the investigation into the offence for which the accused is being prosecuted, or
- (b) if he is below the rank of Inspector.
- An Assistant Public Prosecutor cannot be permitted to defend the accused person. He is appointed only to conduct prosecution. [Kannappan v. Abbas, 1986 Cr. L.J. 1022].
- **Directorate of Prosecution [Section 25-A]**- Section 25-A (1) provides that the State Government may establish a Directorate of Prosecution consisting of-
 - (a) a Director of Prosecution; and
 - (b) Deputy Directors of Prosecution.
- Appointment of Director or Deputy Director of Prosecution shall be made with the concurrence of the Chief Justice of the High Court.
- Only a person, who has been in practice as an advocate for not less than ten years is eligible for the appointment of Director or Deputy Director of Prosecution.
- The Director of Prosecution shall be the Head of the Directorate of Prosecution and he shall function under the administrative control of the Head of the Home Department in the State.
- Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.
- Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed under Section 24 to conduct cases-
 - (i) in the High Court, shall be subordinate to the Director of Prosecution.
 - (ii) in the District Courts, shall be subordinate to the Deputy Director of Prosecution.
 - (iii) Every Assistant Public Prosecutor shall be subordinate to the Deputy Director of Prosecution.

Power of Courts **[Chapter III, Sections 26-35]**

- Section 26 deals with the description of offences cognizable by several courts constituted under the Code.
- Section 26 provides that-
 - (a) an offence under the Indian Penal Code may be tried by-
 - (i) the High Court, or
 - (ii) the Court of Session, or
 - (iii) any other court by which such offence is shown in the first schedule to be triable.
 - (b) an offence under any other law shall be tried by the court mentioned in such law in this behalf. But, when no court is mentioned, it may be tried by-
 - (i) the High Court, or
 - (ii) any other court by which such offence is shown in the first schedule to be triable.
- In Section 26 a proviso is inserted by the Cr.P.C. (Amendment) Act, 2008. It provides that any offence under Section 376 and Sections 376-A to 376-D of Indian Penal Code shall be tried as far as practicable by a court presided over by a woman.
- Section 27 provides that any offence (not punishable with death or imprisonment for life) committed by a person who at the date of appearance before the court is under the age of sixteen years, may be tried by the court of a Chief judicial Magistrate or by any court specially empowered under the Children Act, 1960 or any other law.
- Sentences which High Courts and Sessions Judges may pass (Section 28) and sentences which Magistrates may pass (Section 29).

Courts/ Judges	Sentences which they may pass
(1) High Court	- Any sentence authorised by law.
(2) Sessions Judge/ Additional Sessions Judge	- Any sentence authorised by law. (but a sentence of death shall be subject to confirmation by the High Court).
(3) Assistant Sessions Judge	- Any sentence authorised by law except sentence of death life imprisonment or 'imprisonment exceeding ten years.
(4) Chief Judicial Magistrate/ Chief Metropolitan Magistrate	- Any sentence authorised by law, except death sentence, life imprisonment or imprisonment exceeding 7 years
(5) Magistrate of First Class/ Metropolitan	- Imprisonment up to 3 years or fine up to 10,000 rupees or both.
(6) Magistrate	- Imprisonment upto 1 year, or fine up to 5,000 rupees, or both.

- **Power of a Magistrate to sentence of imprisonment in default of fine [Section 30]-** Section 30 provides that the Court of a Magistrate may award such terms of imprisonment in default of payment of fine as is authorised by law in case of such default:
Provided that-
 - (a) the term is not in excess of the Magistrate's power under Section 29.
 - (b) the term shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the period of the imprisonment which such Magistrate is competent to inflict as punishment in the offence.
- The imprisonment awarded under Section 30 may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29.
- Section 30 of the Cr.P.C. should be read with Sections 64-67 of I.P.C., 1860 which provide for award of imprisonment in default of fine.
- **Rule as to sentence in case of conviction of Several offences at one trial [Section 31]-** Section 31(1) provides that where a person is convicted by several offences at one trial and sentenced separately to imprisonment such sentences have to run consecutively (i.e. one after the other), unless the Court directs that such punishments shall run concurrently.
- Section 31 (2) provides that in the case of consecutive sentences, the aggregate of sentences may exceed the power of court, but this is subject to following limitations:-
 - (i) the aggregate sentence of imprisonment shall not be longer than 14 years, and
 - (ii) the aggregate punishment shall not be more than twice the punishment which the court is competent to inflict for a single offence.
 Section 31(3) provides that for the purpose of appeal, the aggregate of the consecutive sentences passed against a convicted person shall be deemed to be a single sentence.
- Provisions of Section 31 are subject to limitations prescribed under Section 71 of the I.P.C. 1860.
- Section 31 does not apply when the person is convicted in separate trials.

Powers of Superior Officers of Police
[Chapter IV, Section 36]

- Section 36 provides that a superior police officer may exercise the same powers throughout the local area to which he is appointed, as may be exercised by an officer-in-charge of a police station within the local limits of his station.

Aid to the Magistrates and the Police
[Chapter IV, Sections 37-40]

- Section 37 provides that every person is bound to assist a Magistrate or police officer reasonably demanding his aid-
 - (a) in the taking or preventing the escape of a person whom such Magistrate or police officer is authorised to arrest, or
 - (b) in the prevention or suppression of a breach of the peace; or
 - (c) in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.
- Refusal to aid of a valid demand amounts to an offence under Section 187 of the I.P.C. 1860.
- Section 38 provides for aid to a person who is executing a warrant and who is not a police officer.
- Section 39 imposes a duty on every person (except the offender) of general public aware of the commission of or of the intention of any other person to commit any of the offences specified in this section to inform the nearest Magistrate or police officer.
- Failure to give information is punishable under Section 176 or 202 of the I.P.C., 1860.
- For the purpose of Section 39, the term "offence" includes any Act committed at any place out of India which would constitute an offence if committed in India.
- Similarly, Section 40 imposes a duty on every officer employed in connection with the affairs of a village and every person residing in a village to communicate to the nearest Magistrate or to the officer-in-charge of the nearest police station, any information which he possess regarding the matters specified in this section.

Arrest of Persons
[Chapter V, Sections 41-60A]

- A legal process which takes away personal liberty of a person is termed as 'arrest', That is, an arrest is restraint on the personal liberty of a person which is a guaranteed fundamental right of a person under Article 21 of the Constitution.
- The object of arrest is to bring a person before a court of law.
- An arrest consists of the actual seizure or touching of the body of a person arrested with a view to his detention.
- An arrest is a mode of taking a person formally in police custody. However, 'arrest' and 'custody' are not synonymous terms. In every arrest, there is custody but vice-versa is not true. The term 'custody' only denote surveillance or restriction on the movements of person, which may be complete (as in the case of an arrested person) or may be partial.
- The Code of Criminal Procedure deals about two types of arrests-
 - (1) arrests made under warrant issued by courts; and
 - (2) arrests made without warrant.
- **Arrest without warrant- A police-officer can arrest a person without a warrant under Sections 41, 42, 151, 356(5) and 432(3) of the Cr.P.C.**
- **Section 41(1)** has been amended by the Cr.P.C. (Amendment) Act, 2008.
- **Section 41(1)** provides that any police officer may, without an order from a Magistrate and without a warrant, arrest any person-
 - (1) who commits a cognizable offence in the presence of a police officer.
 - (2) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment up to seven years with or without fine, if the following conditions are satisfied-
 - (i)The police officer has reason to believe on the basis of such complaint, information or suspicion that such person has committed the said offence,
 - (ii)The police officer is satisfied that such arrest is necessary for the following purposes:-
 - (a) to prevent such person from committing any further offence.
 - (b) for proper investigation.
 - (c) to prevent from causing the evidence of the offence to disappear, or tampering in any manner.
 - (d) to prevent from making any inducement, threat or promise.
 - (e) to ensure presence in the court. The police officer shall record, while making such arrest, his reasons in writing.
 - (3) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for more than seven years (with or without fine) or with death sentence.
 - (4) who is proclaimed offender.
 - (5) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing.
 - (6) who obstructs a police officer from executing his duty or who has escaped from lawful custody.
 - (7) who has been concerned in any act committed outside India which would have been punishable in India and for which he is under any law relating to extradition or otherwise liable to be apprehended or detained in custody in India.
 - (8) who, being a released convict, commits a breach of any rule made under Section 356(5).
 - (9) for whose arrest any requisition (written or oral) has been received from another police officer.
- **Section 41(2)** provides that, subject to the provisions of Section 42, a person concerned in a non-cognizable offence shall not be arrested except under a warrant or order of Magistrate.

- **Section 41(2)** has been substituted by the Cr.P.C. (Amendment) Act, 2008. Before substitution, it was as under-
“(2) Any officer-in-charge of a police station may arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in Section 109 or Section 110.
- Similarly, clauses (a) and (b) of Section 41(1) has been substituted by the Cr.P.C. (Amendment) Act, 2008. Before their substitution they run as under-
 - (a) Who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credit information has been received, or a reasonable suspicion exists, of his having been so concerned.
 - (b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking.
- **Section 41-A, 41-B, 41-C and 41-D** are newly inserted sections, inserted by the Cr.P.C. (Amendment) Act, 2008.
 - Section 41-A – Notice of appearance before police officer.
 - Section 41-B – Procedure of arrest and duties of officer making arrest.
 - Section 41-C – Control room at districts.
 - Section 41-D – Right of arrested person to meet an advocate of his choice during interrogation.
- **Section 42** deals with arrest of a person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence. Such arrest may be made, if on demand of such officer, he refuses to give his name and residence or gives a false name and residence. When the true name and residence of such person have been ascertained, he shall be released on his executing a bond (with or without sureties) to appear before a Magistrate if so required. If the true name and residence of such person is not ascertained within 24 hours from the time of arrest or if he fails to execute a bond, or to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.
- Section 43 provides for arrest by private persons and for procedure on such arrest.
- Who may be arrested by a private person.
 - (a) Any person who commits a non-bailable and cognizable offence in his presence.
 - (b) Any proclaimed offender.
- After the arrest, without unnecessary delay, such person will bring the arrested person to the police officer or to the nearest police-station. If such person comes under the provisions of Section 41, the police officer shall re-arrest him. if he does not re-arrest the arrest is illegal.
- A private person cannot arrest on mere suspicion.
- If there is reason to believe that the person so arrested has committed a non-cognizable offence and if he refuses to give his name, residence etc., the action under Section 42 is to be taken, but if there is no sufficient ground to believe that he has committed any offence, the person shall be released at once.
- Section 44 empowers a Magistrate (judicial or executive) to arrest or to get arrested any person in following circumstances-
 - (1) When any offence (cognizable or non-cognizable, bailable or non-bailable) is committed in his presence within his local jurisdiction.
 - (2) If he is competent to issue a warrant of arrest and the accused is presented before him in his local jurisdiction though the offence has not been committed in his presence.
- **Section 45** protects the members of Armed Forces of the Union and some members of the State forces from arrest without under Sections 41 to 44 and provides for the consent of the Central Government or the State Government.

- **Section 46** provides for manner of arrest. In making an arrest the police officer or other person shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action.
- 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, but his does not give a right to cause the death of a person unless he is accused of an offence punishable with death or life imprisonment.
- **Section 46(4)** puts a bar on the arrest of a woman after sunset and before sunrise, save in exceptional circumstances. If exceptional circumstances exist, the woman police-officer shall make a report in writing to the Judicial Magistrate first class within whose local jurisdiction the offence is committed or the arrest is to be made and obtain his prior permission.
- An illegal arrest does not vitiate the trial. [Mubarak Ali Ahmad v. State of Bombay, AIR 1957 SC 857].
- In D.K. Basu v. State of West Bengal, AIR 1997, S.C. 610, the Supreme Court laid down some basic requirements in all cases of arrest and detention to prevent custodial violence.
- **Section 48** provides that a police officer may, for the purpose of arresting a person without warrant, pursue such person into any place in India.
- **Section 49** provides that the person arrested shall not be subjected to more resistant than is necessary to prevent his escape.
- **Section 53** provides for medical examination of accused by 'registered medical practitioner' at the request of police-officer (not below the rank of a sub-Inspector).
- Such medical examination shall be limited to that extent and nature as is necessary in order to ascertain the facts which may afford evidence to the commission of the offence.
- A Magistrate cannot order medical examination under this section. Before the Cr.P.C. (Amendment) Act, 2008 (w.e.f. 31.12.2009), a Magistrate has power to direct medical examination of the accused at the request of him under Section 54. But, now provisions of Section 54 are made mandatory. No request need be made by such arrested person.
- **The Explanation to Section 53** has been amended by the Cr.P.C. (Amendment) Act, 2005. Setting at rest the various controversies among different High Courts and the Supreme Court regarding medical examination, now, it includes the examination of blood-stains, swabs, sputum and sweat, hair samples and finger nail clippings by the use of the modern and scientific techniques including D.N.A. profiling and such other tests which the registered medical practitioner thinks so necessary in a case.
- A three Judges Bench of the Supreme Court comprising (C.J.) K.G. Balakrishnan, Justice R.V. Raveendran and Justice J. M. Panchal has held forcible narco-analysis polygraph and brain-electrical activation profile or brain mapping test unconstitutional. [Selvi v. State of Karnataka, AIR 2010 SC 1974].
- **Section 53-A** provides for medical examination of accused of rape.
- **Section 54-A** relates to the identification of arrested person.
- **Section 55-A** relates to the health and safety of arrested person.
- **Section 57** provides that an arrested person cannot be detained in custody of a police officer more than 24 hours (excluding the time necessary for journey) without special order of a Magistrate under Section 167.
- **Section 58** provides that officer-in-charge of police station shall report (all the cases of arrest) to the District Magistrate, or if he so directs, to the sub-divisional Magistrate Section 60 gives power to pursue and retake a person escaped from lawful custody in any place in India. This power can be exercised by a private person also.

**Processes to Compel Appearance
[Chapter VI, Sections 61-90]**

- **Kinds of processes-** There are three kinds of processes to compel appearance of a person in Court.
 - (1) Summons (Sections 61-69)
 - (2) Warrant of Arrest (Sections 70-81)
 - (3) Proclamation and Attachment (Sections 82-86)
- **Sections 87-90** provide for other rules regarding processes.

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(1) Summons

- **Sections 61** provides for forms of summons. Summons are issued according to form No. 1 of Second Schedule.
- The requisities of a valid summons are-
 - (1) It must be in writing.
 - (2) It must be in duplicate.
 - (3) It must be signed by the Presiding officer of the court or any other officer authorised by the High Court.
 - (4) It must bear seal of the Court.
 - (5) It should be accompanied by a copy of the complaint in complaint cases. (However, it need not contain the name of the complaint)
 - (6) It must state the particulars of the place and time of appearance and nature and particulars of the offence charged. (Failure to mention such particular is fatal).
- **Mode of Service of Summons**
- **Section 62 provides that-**
 - (1) Summons shall be served by-
 - (a) a police officer, or
 - (b) any officer of the court issuing summons or by any other public servant (if they are authorised under the rules made by the State Government).
 - (2) If practicable a summons shall be served personally on the person summoned by delivering or tendering one of the duplicates of the summons.
 - (3) The person on whom summons is served shall, if so required by the serving officer, sign a receipt therefrom the back of the other duplicate.
- **Section 63** relates a service of summons on corporate bodies and societies. It may be served on the secretary, the local manager or other principal officer of the corporation or by sending it by registered post addressed to the chief officer of the corporation in India.
- **Section 64** makes provision for 'extended service', i.e. service of summons on an adult make member of the family of the person summoned, if he cannot be found after exercising due diligence. In such a case, summons cannot be served on a servant because according to Explanation to Section 64 is not a family member.
- **Section 65** makes provision for substituted service or service by affixture. Where the summons cannot be served in the manner as prescribed in Sections 62, 63 and 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house in which the person summoned ordinarily resides.
- **Section 66** relates to service of summons on Government servants. Where the person summoned is in the active service of the Government, the service of summons may be made effective by sending in duplicate to the head of the office in which such person is employed. The head of the office shall cause the summons to be served personally and return it to the court, with the endorsement of the person to be served and with his own signature. This signature shall be evidence of due service.
- **Section 68** relates to the proof of service of summons when serving officer is not present at the hearing of the case.
- **Section 69** relates to the service of summons on witnesses by post.
Note:- A service of summons by post can be effected only on witnesses. An accused or a party to the proceedings cannot be served by post.
- Under Section 69 the service of summons by post must be in addition to the service in person.
- Formal defects in the summons and minute irregularities in its service does not vitiate the trial if the person summoned appears before the court.