

CHAPER – VI

DETAILED STUDY OF CRIMINAL

LAW SYSTEM

CHANGING CRIME SCENERIO IN INDIA AND WORLD

A 'Crime' is a positive or negative act or omission in violation of penal Law. It is violation of those duties which an individual owes to the community and breach of which can be prosecuted by the State.

Crime as a compound concept is constituted only from concurrence of an evil meaning mind with an evil doing hand**1 Guilt is personal but personal guilt may be incurred by joining a conspiracy.

The concept of crime hence is as ancient as the human race. What had changed is formalization of the concept, statutory form and process of prosecution. The social scientist considers phenomenon of crime as inevitable and universal. There is no society that is not confronted with the problem of criminality. Its form changes, the acts thus characterised are not the same every where but everywhere and always there have been man who have behaved in such a way as to draw upon themselves penal reprieve. Crime itself can have abnormal forms for example when its rate is unusually high. Crime thus is a factor of public health and integral part of all healthy societies. Even a society composed of persons possessing angelic qualities would not be free from violation of norms/qualities **2

**1 JUSTICE JACKSON QUOTE IN MORISSETTE V/S. UNITED STATES 342 US 246 (1952)

**2 EMILE DURKHEIM: RULES OF SOCIOLOGICAL METHOD (1950) PG.65.

No civilized country is an exception to commission of crimes and increase in trend of crimes. The following statistics published by Government of India can be of great relevance as far as situation prevailing in various countries on aspect of crime is concerned. The word 'crime rate' here means number of crimes per population per million.

CRIME RATE IN VARIOUS COUNTRIES3**

<u>COUNTRY</u>	<u>POPULATION</u> <u>MILLION</u>	<u>1994</u>	<u>1995</u>
Bangladesh	116.5	644	694
Canada	29.0	103516	91627
China	1208.3	1278	N A
France	58.0	67827	63165
Germany	81.0	80377	-
Hongkong	6.0	14486	14845
India	913.5	1817	1851
Indonesia	194.5	597	-
Japan	125.0	14903	14858
Malaysia	19.7	4544	4012
Nepal	20.9	442	445
Singapore	3.3	13673	13444
Srilanka	265.0	-	2830
U. S. A.	913.5	5374	5278

****3 CRIME IN INDIA 1993 GOVT. OF INDIA BUREAU OF POLICE
RESEARCH AND DEVELOPMENT, NEW DELHI.**

The aforesaid statistics may not be taken, as an absolute indicator to judge that crime rate in India is less. The fact that there is large-scale illiteracy and poverty in the country and there may be tendency on part of the citizens not to report the crime, can not be ignored. It may also be noted that the crime rate in advanced countries like Canada and U.S.A. is relatively high.

The crimes can be broadly divided into following categories as far as their procedural aspects are concerned.

- i) Cognizable and Non-Cognizable.
- ii) Bailable and Non-bailable.
- iii) Compoundable and Non compoundable.

In cognizable offences the police can investigate the matter without waiting for the directives of the court. The police officer can even arrest the person without warrant if he suspects that such person is involved in crime.

Whether crimes have any relation with the increase in population can be studied on the following statistics of India between 1984 and 1993.

TABLE GIVEN ON NEXT PAGE – 268 - A

TABLE
SHOWING POSITION OF POPULATION AND CRIMES IN INDIA

YEAR	POPULATION IN MILLIONS	INCIDENCE OF CRIMES		RATE		PERCENTAGE	
		IPC	LOCAL & TOTAL	IPC	LOCAL & TOTAL	POPUL.	IPC OTHER
1984	735.6	1358660	2916808	1847	3965	5812	1.92%
1985	750.9	1384731	3096481	1844	4124	5968	1.52%
1986	766.1	1405835	2984654	1835	3896	5731	1.02%
1987	781.4	1406992	3589326	1801	4593	6394	1.00%
1988	796.6	1440356	3765669	1808	4727	6535	1.02%
1989	811.8	1529844	3847665	1885	4740	6624	1.06%
1990	827.0	1604449	3293563	1940	3983	5923	1.05%
1991	849.6	1678375	3370971	1975	3968	5943	1.05%
1992	867.7	1689341	3558448	1947	4101	6048	1.01%
1993	883.8	1629936	3803638	1844	4304	6148	0.96%

SOURCE : INFORMATION BY REGISTRAR GENERAL OF INDIA PUBLISHED IN
CRIMINOLOGY, PROBLEMS AND PERSPECTIVES BY A. SIDDIQUE 4TH
EDITION.

CRIME CLASSIFICATION

<u>CLASSIFICATION</u>	<u>DESCRIPTION</u>
Felonies	Serious type of crimes
Misdemeanor	Less serious crimes
Capital crimes	Crime punishable by death
Common Law crimes	Crimes punishable under common law as distinguished from statutory crimes.
Continuous crimes	continuous series of acts after first period of consummation e.g. carrying concealed weapons.
Crime against law of nation	This is the category of crime which all nation agree to punish such as bomb blast, murder, hijacking of Aircraft, Rape etc.
Crime against nature	Pertains to sexual intercourse by or between human beings against the rules of nature.
Crime against property	Object of which is property and not the person e.g. theft.
Crime of omission	Offence the graven of which is failure to act when there is obligation to act.
Crime of Violence	Crimes involving attempted or threatened use of violence against person or property of another.
Crimes mala in se.	They involve acts, which are immoral or wrong such as Burglary, arson, murder etc.,
Infamous crime	Crimes like treason, felony etc. make a person incompetent to testify as a witness because no person will commit such a heinous crime.
Organised crime	Planed crime committed by groups as contrasted with crime planned and committed by individuals.
Quasi crimes	Offences against the public which have not been declared crimes but it is proper that it should be repressed or punished by forfeitures and penalties.
Statutory crimes	Crimes created by statutes which are cognizable.

White collar crime	Very relevant in present day context and includes anti trust violation, bribery, computer crime, environmental crime, bank frauds, criminal copy right infringement, security and tax fraud, theft of trade secrets etc.
Communal crimes	the type of crimes committed during communal riots.
Crimes involving moral Turpitude	Offences which are considered highly deplorable and which disqualifies certain persons from holding positions.
Atrocity Crimes	In India to prevent caste discrimination and atrocities there are special laws governing this type of crimes.
Crimes against undertrials (Custodial crimes)	Crimes involving application of unreasonable police or coercive force against under trials.
Economic offences	Offences that are not crimes under the Indian penal Code but under other laws like FERA, COFEPOSA etc.
Drug Trafficking	Trading/Dealing in drugs and narcotic substances which is increasing .

The crimes in India, its pattern and the machinery for investigation and prosecution has undergone considerable change. According to Hon'ble Justice B. J. Diwan, retired chief justice of Gujarat High Court, with increase of every fifteen lacs persons in population the sessions crimes increases by one hundred. Several new offences under recently enacted laws, further adds to the number of crimes

The tables below shows:-

- (a) Number of persons prosecuted under IPC and various crimes by courts in India in 1996.(TABLE – A)
 - (b) Number of persons prosecuted under state/local laws/others laws by courts in India during 1996. (TABLE – B)
 - (c) District wise incidence of cognizable crimes (IPC) during 1996 in various districts of Gujarat State. (TABLE – C)
 - (d) Number of crimes committed in Baroda city and district during 1997-98. (TABLE – D)
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**DISPOSAL OF PERSONS ARRESTED UNDER IPC CRIMES BY COURTS
DURING 1996 (STATE & UT-WISE)**

S. NO.	STATE/UT	TOTAL NO. OF PERSONS UNDER TRIAL INCLUDING THOSE FROM PREVIOUS YEAR	NO. OF PERSONS WHOSE			NO. OF PERSONS CONVICTED	PENDENCY PERCENTAGE	PERCENTAGE OF PENDENCY TO ALL-INDIA TOTAL
			CASES COMPLETED OR WITHDRAWN	TRIAL COMPLETED	TRIAL REMAINED PENDING			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
STATES:								
	ANDHRA PRADESH	444667	22294	145091	277282	43485	62.4	3.2
	ARUNACHAL PRADESH	11196	169	607	10420	322	93.1	0.1
	ASSAM	156190	6321	30024	119845	5149	76.7	1.4
	BIHAR	1293321	23199	636064	634058	78585	49.0	7.3
	GOA	30473	788	3375	26310	693	86.3	0.3
	GUJARAT	769446	15995	76426	677025	23160	88.0	7.8
	HARYANA	192413	910	47346	144157	12686	74.9	1.7
	HIMACHAL PRADESH	63800	3138	6425	54237	1454	85.0	0.6
	JAMMU & KASHMIR	130271	19077	9021	102173	3275	78.4	1.2
	KARNATAKA	596462	52526	135950	407986	14946	68.4	4.7
	KERALA	421941	24757	89668	307516	18520	72.9	3.5
	MADHYA PRADESH	1584072	101784	165629	1316659	73194	83.1	15.1
	MAHARASHTRA	1804267	62251	167759	1574257	26164	87.3	18.0
	MANIPUR	5660	132	20	5508	2	97.3	0.1
	MEGHALAYA	9707	336	1374	7997	834	82.4	0.1
	MIZORAM	2224	117	610	1497	500	67.3	0.0
	NAGALAND	4315	198	590	3527	415	81.7	0.0
	ORISSA	455008	518	60214	394276	9117	86.7	4.5
	PUNJAB	47075	686	14749	31640	6200	67.2	0.4
	RAJASTHAN	1093978	66306	159859	867813	80762	79.3	9.9
	SIKKIM	1457	282	743	432	617	29.6	0.0
	TAMIL NADU	475546	10770	162374	302402	86100	63.6	3.5
	TRIPURA	10203	658	2714	6831	491	67.0	0.1
	UTTAR PRADESH	1076310	39072	187152	850086	98278	79.0	9.7
	WEST BENGAL	443501	802	31852	410847	3933	92.6	4.7
	TOTAL (STATES)	11123503	453086	2135636	8534781	588882	76.7	97.8
UNION TERRITORIES:								
	ANDAMAN & NICOBAR ISLANDS	3436	2	277	3157	64	91.9	0.0
	CHANDIGARH	7799	27	1669	6103	779	78.3	0.1
	DAMAN & DIU	1874	0	397	1477	80	78.8	0.0
	DAMAN & DIU	483	0	52	431	20	89.2	0.0
	DELHI	204911	0	31139	173772	13400	84.8	2.0
	LAKSHADWEEP	26	0	5	21	4	80.8	0.0
	PONDICHERRY	8076	547	3951	3578	2940	44.3	0.0
	TOTAL (UTs)	226605	576	37490	188539	17267	83.2	2.2
	TOTAL (ALL-INDIA)	11350108	453662	2173126	8723320	606149	76.9	100.0

Note: Percentage less than 0.05 is also shown as 0.0.

B. TABLE 270-B

**DISPOSAL OF PERSONS ARRESTED UNDER SLL CRIMES BY POLICE DURING 1996
(STATE & UT-WISE)**

SL NO	STATE/UT	TOTAL NO. OF PERSONS UNDER ARREST INCLUDING THOSE FROM PREVIOUS YEAR	NUMBER OF			PENDENCY PERCENTAGE	PERCENTAGE OF PENDENCY TO ALL-INDIA TOTAL
			PERSONS RELEASED BEFORE TRIAL	PERSONS CHARGE-SHEETED	PERSONS UNDER INVESTIGATION AT THE END OF THE YEAR		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
STATES:							
1	ANDHRA PRADESH	934121	6079	769773	58269	7.0	18.8
2	ARUNACHAL PRADESH	63	98	49	16	9.8	0.0
3	ASSAM	1748	1288	2295	8165	69.5	2.6
4	BIHAR	24015	1177	17212	5926	24.4	1.9
5	GOA	271	20	1142	103	8.1	0.0
6	GUJARAT	302105	32	261608	40465	13.4	13.1
7	HARYANA	54489	34	36855	17600	32.3	5.7
8	HIMACHAL PRADESH	7894	53	5695	2146	27.2	0.7
9	JAMMU & KASHMIR	3779	221	3064	494	13.1	0.2
10	KARNATAKA	949671	3839	941949	3883	0.4	1.3
11	KERALA	28474	1247	22134	5093	17.9	1.6
12	MADHYA PRADESH	300397	144	282862	17391	5.8	5.6
13	MAHARASHTRA	408108	530	376581	30997	7.6	10.0
14	MANIPUR	2137	230	1099	808	37.8	0.3
15	MEGHALAYA	702	19	446	237	33.8	0.1
16	MIZORAM	1013	0	874	139	13.7	0.0
17	NAGALAND	1315	24	871	420	31.9	0.1
18	ORISSA	7985	3	7482	500	6.3	0.2
19	PUNJAB	26592	331	19719	6542	24.6	2.1
20	RAJASTHAN	24312	78	23632	602	2.5	0.2
21	SIKKIM	462	2	427	33	7.1	0.0
22	TAMIL NADU	732957	65232	595759	71966	9.8	23.2
23	TRIPURA	212	67	85	60	28.3	0.0
24	UTTAR PRADESH	429697	2907	413040	13750	3.2	4.4
25	WEST BENGAL	797086	3269	774467	19350	2.4	6.2
	TOTAL (STATES)	4951005	86924	4559126	304955	6.2	98.4
UNION TERRITORIES:							
26	A & N ISLANDS	2747	0	1968	779	28.4	0.3
27	CHANDIGARH	192	1	146	45	23.4	0.0
28	D & N HAVELI	52	0	38	14	26.9	0.0
29	DAMAN & DIU	18	0	18	0	0.0	0.0
30	DELHI	23817	336	19316	4165	17.5	1.3
31	LAKSHADWEEP	2	0	2	0	0.0	0.0
32	PONDICHERRY	1677	0	1610	67	4.0	0.0
	TOTAL (UTs)	28505	337	23098	5070	17.8	1.6
	TOTAL (ALL-INDIA)	4979510	87261	4582224	310025	6.2	100.0

NOTE: 1. * IN CUSTODY OR ON BAIL.

2. PERCENTAGE LESS THAN 0.05 IS ALSO SHOWN AS 0.0

C-TABLE**DISTRICT WISE INCIDENCE OF COGNIZABLE CRIMES (IPC)**
DURING 1996 IN VARIOUS DISTRICTS OF GUJARAT STATE.

<u>DISTRICT</u>	<u>NO. OF OFFENCES</u>
AHMEDABAD CITY	15244
AHMEDABAD RURAL	4179
AHWA DANG	152
AMRELI	2209
ANAND	5026
BANASKANTHA	4914
BHARUCH	6259
BHAVNAGAR	4643
GHANDHINAGAR	2091
JAMNAGAR	4197
JUNAGADH	4580
KHEDA NORTH	4517
KUTCH	3313
MEHSANA	6580
PANCHMAHALS	4322
PATAN	3047
PORBANDAR	1162
RAJKOT CITY	3558
RAJKOT RURAL	5338
SABARKANTHA	4057
SURAT CITY	4899
SURAT RURAL	2946
SURENDRANAGAR	3339
VADODARA CITY	6924
VADODARA RURAL	4726
VALSAD	4050
WESTERN RAILWAY	1509
TOTAL	117821

D-TABLE
GROWING CRIMES IN AND AROUND BARODA

<u>OFFENCE</u>	<u>BARODA-CITY</u>		<u>BARODA-DIST.</u>	
	<u>YEAR</u>	<u>YEAR</u>	<u>YEAR</u>	<u>YEAR</u>
	<u>1997</u>	<u>1998</u>	<u>1997</u>	<u>1998</u>
MURDER	34(27)	35(33)	87	98
ATTEMPT TO MURDER	22(20)	16(15)	16	24
BURGLARY	11(7)	6(5)	-	18
DACOITY	26(14)	26(14)	23	14
HOUSE BREAKING	362(61)	424(102)	344	343
THEFT(INCLUDING VEHICLES)	1290(315)	1346(313)	NA	NA
RIOTING/ILLEGAL ASSEMBLY	59(53)	55(48)	43	51
DOWRY AND MARRIAGE RELATED CASES	427	539	NA	NA
OTHER OFFENCES	1638	1850(1690)	1418	1375
	-----	-----	-----	-----
	3869	4297	3050	3101
OTHER ACTS				
GAMBLING	220	299	253	262
PROHIBITION	4183	4434	5483	6197
TRAFFIC OFFE	3579	3346		
.OTHERS	7982	8079		
PERSONS ARRESTED		6835		

- Accused was arrested in 33 cases in 1998 and in 27 in 1997.
- In not a single case Mudamal was recovered.

(Source :Crime Data Published in Sandesh 4/1/99 Page.7)

Criminal Law lays down accurate definitions and provisions for acts forbidden by Law and also lays down the norms, machinery and procedures to determine the violations and prosecution/punishment/acquittal.

Criminology as a study of human behavior is concerned with antisocial conduct or behavior injurious to the society. One may say that any crime is a violation of some social interest. However society itself is a fluctuating, complicated and un-integrated group where interest of one group themselves are in conflict with interest of other group. The contribution of this factor is quite significant. The growth of offences in Bihar by Ranbirsena, in Assam by ULFA and in Nexalite affected areas are the examples of such increase.

The statistics given in the tables further indicate that apart from offences under Indian Penal Code, sizable number of offences were under the new laws which were added at later stage to the statute book.

As observed by Edwm Southland, a scholar on criminology: -

"Laws have accumulated because the mores have been weak and inconsistent and because the laws have not had the support of the mores, they have been relatively ineffective as a means of control. When the mores are non cooperative, the laws are ineffective.**4 The classic examples of such laws in India are Dowry Prohibition Acts Pollution Control Laws and Anti Untouchability laws which have proved somewhat ineffective to change the attitudes of the people in social areas where criminal laws potential is next to nothing.

The constraints in ascertaining exact volumes and trends of the crime are:-

- (i) All crimes are not reported to police.
- (ii) Only after judicial disposal of a case, which taken long time, it can be decided whether at all any crime was committed.
- (iii) Crime data varies with variation in laws and attitude of police, judiciary and community towards particular crimes.

**4 EDWIN SOUTHERLAND AND DONWLAD ERASSEY. PRINCIPLES OF CRIMINOLOGY, 6TH EDITION PAGE 11.

There are some alarming signals as far as crime Scenario in India is concerned:

<u>FACTORS</u>	<u>PARTICULARS</u>
Internationalisation of Certain crimes	Prominent among them are drug trafficking, technology piracies, abuse of children etc.
Penetration of new Crimes In rural areas.	Rural areas are witnessing alarming growth in Terrorist offences, property related offences etc.
Offences with political Motives	This involves cases of interest group organising under one banner and indulging in criminal activity with political motive/agenda.
White collar crime	The concept that crime is committed by poor and down trodden no longer holds good. Professionals, businessmen, politicians and Government officials also now engage in crime and this is increasing.**5
Radical Criminology	It comprises of rebellion and protests by students, workers. Some of such groups look at Criminal Law and system of administration of justice as part of State's instrument of repressor.

The Criminal Laws of any country including India operate with two kinds of jurisdiction as follows:

**5 CRIMINOLOGY, PROBLEMS AND PRESPECTIVES, BY A. SIDDIQUE AT PAGE 20 4TH EDITION.

(a) Territorial Jurisdiction

All persons on Indian soil including foreigners are governed by criminal laws of the country.

(b) Extra Territorial Jurisdiction

Every Nation possesses the right to regulate and govern its citizens and jurisdiction extends to any person on ship or aircraft registered in India.

The overall growth in crime rate poses serious challenge to the system of administration of justice, in particular the criminal justice system where the all India pendency of cases under Indian Penal Code as of 31/12/1996 was as high as 1,13,50,108 and total of other crimes was 49,79,510 as per the available statistics.**5A

I

CRIMINAL COURT AND THEIR POWERS

The hierarchy of criminal courts in India is as under :-

Supreme Court of India
(Appellate jurisdiction)

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High Court

|

Sessions Court

|

Metropolitan Magistrate/

Judicial Magistrate

- First class
- Second Class

**5A DATA PUBLISHED BY MINISTRY OF HOME AFFAIRS

The matter is tried by the court in whose jurisdiction the offence or part of the offence has taken place and is competent to try such offence.

The process as such begins by initiation of a complaint either on the basis of the police report or by way of private complaint. The power to pass sentence is vested in various courts as given below :-

<u>COURT</u>	<u>POWER</u>
Chief Judicial Magistrate	Any sentence authorised by law except death sentences or sentence for imprisonment of life or for term exceeding 7 years.
Judicial Magistrate First Class	Imprisonment for term not exceeding 3 years or fine not exceeding Rs.5000/- or both.
Judicial Magistrate Second Class	Imprisonment not exceeding 1 year and fine not exceeding Rs.1000/-.
Chief Metropolitan Magistrate	Same powers as Chief Judicial Magistrate.
Sessions Court	All sentences under the IPC. In case of death sentence confirmation from High Court is required.
High Court	Appellate Revision and inherent jurisdiction as vested under the Constitution.
Supreme Court of India	Same as High Court and additional special power under constitution.

In case of death sentence mercy petition lies to the President which strictly is not a judicial function.

The powers of the court interalia also includes the following powers which are incidental to the trial.

1. Power to issue a process by way of summons or warrant. The warrant may be bailable or non-bailable warrant.
2. Power to issue search warrant for production of things.**6
3. Power to direct production of security for good behavior.**7
4. Power to pass orders for maintenance for wife, children and parents. (Section 125, Criminal Procedure Code)
5. Power to direct the police to investigate in the matters where private complaint is filed.**8
6. Power to cause investigation before issuing of process.
7. Power to dismiss a complaint, if no sufficient ground exists for proceeding with the complaint.
8. Power to frame the charge or frame separate charges for distinct offences.
9. Power to stop proceedings in certain cases.
10. Power to try summarily.
11. Power to grant bail.
12. Power to grant anticipatory bail (only District Court and High Court).**9
13. Power to transfer the cases, which can be tried by Supreme Court, High Court and Sessions Court.

The aforesaid powers have been vested to enable the court to carry out effective trial and impose punishment in accordance with law.

**6 SECTION 94 OF CRPC

**7 SECTION 109 OF CRPC

**8 SECTION 156 OF CRPC

**9 SECTION 438 OF CRPC

II**POLICE AND THEIR VITAL ROLE IN ADMINISTRATION
OF CRIMINAL JUSTICE.**

Any crime is an offence against the state and it is the duty of the State to investigate into such crimes, to identify the offenders and initiate appropriate proceedings. The various stages involved in a Criminal offence are discovery, investigation, apprehension, trial, acquittal/conviction, imposing of sentence and custody of offenders. An impartial, objective and thorough investigation of the offence is basic and vital requirement of administration of justice. Character, education and good manner are the qualities expected of police. A complaint often heard against the police is that they evade/refuse registering cases for taking up investigation when specific complaints are lodged. A study regarding "image of police in India" shows that non-registration of complaint is a common mal-practice in police stations. The other complaints against police are showing partiality towards rich or influential people in cases involving them or reported by them. **10

The statistical approach for assessing the crime situation and evaluating crime position is not much helpful. It is a legal responsibility of the officer in charge to register a case in form of First Information Report (FIR) as soon as information of cognizable offence is received. **11

**10 STUDY CONDUCTED BY INDIAN INSTITUTE OF PUBLIC OPINION, NEW DELHI PARA 15.9 OF SECOND REPORT OF NATIONAL POLICE COMMISSION.

**11 SECTION 154 OF CRPC.

The power of the police to investigate involves visit of the place where the offence is committed and getting information from the persons there. Pandit Jawaharlal Nehru referred to the change role of police in following words:

"Police can not function without the closest co-operation of the public. The entire concept of relations between public and police has undergone a change since the advent of independence in the country and the first thing the police officers have to remember is that their functions today are different from those in Britisher's rule, that the police in task of maintaining law and order and their efficiency would depend on extent of co-operation they succeed in getting from the public and that it could have a great deal in detection of crimes. The police officers should maintain the highest standards of integrity and earn confidence of the people."**12

One of the good qualities expected of an investigator is that he should not start with preconceived notion because it may lead him to wrong track and secondly if may help the real offender.**13

There are growing complaints regarding the lack of efficiency and effectiveness of the police. Whether there is sufficient police force in India, keeping in view the increase in population and increase in crimes can be examined from the following data.

**12 JAWAHARLAL NEHRU IN HIS ADDRESS TO TRAINEES AT POLICE TRAINING COLLEGE, MT.ABU IN OCTOBER 1958.

**13 INVESTIGATION AND ROLE OF POLICE IN CRIMINAL TRIALS BY MALLICK AT PG.29.

TABLE
COGNIZABLE CRIME AND STRENGTH OF POLICE

<u>YEAR</u>	<u>TOTAL</u> <u>COGNIZABLE</u> <u>CRIME(IPC)</u>	<u>POLICE</u> <u>FORCE</u>	<u>NO.OF</u> <u>POLICEMEN</u> <u>PER 100 SQ.KMS.</u>	<u>NO.OF</u> <u>POLICEMEN</u> <u>FOR 100000</u> <u>POPULATION</u>
1968	8,61,962	6,17,173	20	120 K
1971	9,52,581	7,06,895	22	130
1976	10,93,897	7,59,674	23	120
1981	13,85,757	8,97,830	27	130
1985	13,84,731	10,08,073	31	130
1986	14,05,835	10,32,312	29	130
1987	14,06,992	9,48,429	34	120
1988	14,40,356	10,65,869	34	130
1989	15,29,844	11,25,627	34	140
1990	16,04,449	11,26,662	N.A.	N.A.
1993	15,04,396	N.A.	N.A.	N.A.
1994	16,03,000	12,30,000	38	137
1995	17,00,000	12,51,000	40	137
1996	17,01,000	12,50,000	40	134

SOURCE : CRIMA IN INDIA - 1996

The recruitment, training and service conditions of local police comes within the domain of State Government and from that point of view, State wise crime and Police strength also assumes importance. This can be established from table given on page 280 – A.

TABLE-

280-A

**ACTUAL POLICE STRENGTH IN RELATION TO AREA, POPULATION, COGNIZABLE CRIMES
AND PER CAPITA EXPENDITURE ON POLICEMEN DURING 1996**

SL NO	STATE/UT	AREA (in Sq. kms.)	ESTIMATED MID-YEAR POPULA- TION (in 000)	TOTAL CASES FOR INVESTIGATION (INCLUDING PENDING CASES FROM PREVIOUS YEAR)			ACTUAL POLICE STRENGTH			PERCENT- AGE OF CIVIL POLICE TO TOTAL POLICE
				IPC	SLL	TOTAL	CIVIL	ARMED	TOTAL	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
STATES:										
1	ANDHRA PRADESH	275045	72881	147477	829608	977085	62045	10666	72711	85.3
2	ARUNACHAL PRADESH	83743	985	3092	98	3190	2766	1366	4132	66.9
3	ASSAM	78438	25109	72331	6786	79117	28649	20009	48658	58.9
4	BIHAR	173877	96867	173772	14152	187924	62479	17646	80125	78.0
5	GOA	3702	1299	3867	812	4679	2017	628	2645	76.3
6	GUJARAT	196024	45384	138078	255436	393514	34272	30431	64703	53.0
7	HARYANA	44212	18433	38932	47210	86142	25771	4575	30346	84.9
8	HIMACHAL PRADESH	55673	5719	14282	7013	21295	8201	3709	11910	68.9
9	JAMMU & KASHMIR *	101387	8688	23196	9118	32314	21890	14124	36014	60.8
10	KARNATAKA	191791	48730	153018	1286613	1439631	50924	8259	59183	86.0
11	KERALA	38863	31324	108924	16360	125284	36439	5138	41577	87.6
12	MADHYA PRADESH	443446	73486	205869	246712	452581	52769	22264	75033	70.3
13	MAHARASHTRA	307713	87548	228820	369811	598631	120909	12914	133823	90.3
14	MANIPUR	22327	2079	6355	2482	8837	4363	6382	10745	40.6
15	MEGHALAYA	22429	2006	3447	529	3976	5793	1801	7594	76.3
16	MIZORAM	21081	814	4546	463	5009	2418	3559	5977	40.5
17	NAGALAND	16579	1431	2726	1112	3838	7642	9355	16997	45.0
18	ORISSA	155707	34867	62199	3403	65602	26445	7216	33661	78.6
19	PUNJAB	50362	21921	17878	23185	41063	50272	17903	68275	73.8
20	RAJASTHAN	342239	49142	165967	19926	185893	47600	10678	58278	81.7
21	SIKKIM	7096	482	901	559	1460	2454	837	3291	74.6
22	TAMIL NADU	130058	58832	181487	698438	879925	65033	9595	74628	87.1
23	TRIPURA	10486	3117	5366	247	5613	6780	6020	12800	53.0
24	UTTAR PRADESH	294411	152618	196624	385668	582292	123941	33293	157234	78.8
25	WEST BENGAL	88752	74429	98757	578971	677728	57536	21612	79148	72.7
	TOTAL (STATES)	3155441	918191	2057911	4804712	6862623	909508	279980	1189488	76.5
UNION TERRITORIES:										
26	A & N ISLANDS	8249	340	518	2515	3033	2003	509	2512	79.7
27	CHANDIGARH	114	811	2536	124	2660	2503	1517	4020	62.3
28	D & N HAVELI	491	160	493	37	530	224	0	224	100.0
29	DAMAN & DIU	112	113	315	11	326	251	0	251	100.0
30	DELHI	1483	11356	102128	25959	128087	40697	10516	51213	79.5
31	LAKSHADWEEP	32	59	102	5	107	333	0	333	100.0
32	PONDICHERRY	492	900	2615	1081	3696	1101	881	1982	55.5
	TOTAL (UTs)	10973	13739	108707	29732	138439	47112	13423	60535	77.8
	TOTAL (ALL-INDIA)	3166414	931930	2166618	4834444	7001062	956620	293403	1250023	76.5

* Only the operational area has been considered. (Total area of the state: 222236 Sq. Kms.)

Source: For Col. 23 'Data on Police Organisation' by BPR&D

The stage of investigation by police comprises of:-

- (i) Proceeding to spot
- (ii) Ascertainment of the facts and circumstances of the case.
- (iii) Discovery and arrest of suspected offender.
- (iv) Collection of Evidence relating to commission of offence.
- (v) Formation of opinion as to whether on basis of material collected there is a case to place the accused before a Magistrate.

The final step is the formation of opinion as to whether or not there is a case to place the accused on trial it is the duty of officer in charge of police station. There is no provision permitting delegation thereof. Superior officer can Supervise the same.**14 If the investigation is to be carried out by an officer below the designated rank, the Magistrate has to apply his mind and general sanction for such delegation can not be given.**15

If during course of evidence a new interpretation of evidence is brought to the notice of investigating officer, the powers of investigation can not be curbed down because of enumeration of new circumstances or discovery of new material.**16

An accused has right to have his counsel present during interrogation. Request if made by counsel is also valid. There is kind of legal identify between counsel and the accused and police should allow the same if it wants to escape the censure that interrogation is carried on in secrecy or by physical and psychic torture.**17

**14 H. N. RISHBUD V/s. STATE OF DELHI, AIR 1955 SC 196.

**15 M. B. THARADA V/s. STATE OF GUJARAT, AIR 1969 GUJARAT 362

**16 DIPAK D. PATEL V/s. STATE OF GUJARAT, 1980, CR.C.J.29(GUJ)

**17 SMT.NANDINI SATPATHY V/s. SMT.DANI AIR – 1978 – SC 1025.

III**PUBLIC PROSECUTORS AND GOVT. PLEADERS**

Public Prosecutors (P.P.), plays an important role in criminal proceedings. They appear on behalf of the State. They may appear and plead without any written authority before the court. The rights of public prosecutor are restricted to the inquiry, trial or appeal. In case of revision it is the discretion of the court whether to hear a party or his pleader, except in a case in which it is contemplated to make an order to the prejudice of accused person. Public Prosecutor may also avail assistance of counsel retained by a private individual.

The counsel for the prosecution has most accurately conceived duty, which is to assist the court in the furtherance of justice, and not to act as counsel for any particular person or party. His only object should be to aid the court in discovering the truth. A public prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side. There should be on his part no bias or suppression/distortion of facts.

The Calcutta High Court has also expressed the view that objective of prosecution is to achieve goal of justice in following words :

"The only legitimate object of a prosecution is to secure not a conviction but that a justice is done. The prosecutor is not therefore free to choose how much evidence he will bring before the court. It is prima facie his duty to call all witnesses, or adverse inference may be drawn if witnesses are not called without sufficient reason."**18

**18 RAG V/s. KASHINATH DINKAR HCR 126 AT PAGE 153

Under the English Law, it is the duty of Public Prosecutor to conduct the case for crown. His object should not be to achieve unrighteous conviction, but as representative of crown to see that justice is vindicated.**19

The Public Prosecutor in High Court is appointed by Central Government/State Government and for every District Court such prosecutors are appointed by State Government. In the District Courts, the District Judge can prepare panel of names from whom public prosecutor can be selected.

The role of prosecutor in any criminal case or trial is to safeguard the interest of both complainant and the accused. The prosecutor is bound by law and professional Ethics and by his role as an officer to employ only fair measures.**20 The State has a duty to see that offenders against the law are prosecuted and punished and the public prosecutor represents the State in prosecution.**21

The Public Prosecutor is to conduct the case on following lines:

- (i) Clear and concise statement of charge and description of offence.
- (ii) Material facts relied upon by prosecution needs to be stated.
- (iii) No submissions in anticipation of defence should be setup.

In criminal cases, the cases have to be conducted by Public Prosecutors. If the requisite information is provided to the public prosecutor well in time and they are well prepared in advance for agnomens with the facts of the cases, they can substantially contribute for speedy disposal of the cases. The optimum number of cases, which can be argued, can be worked out, and the schedule can be planned well in advance to expedite the disposal of old pending cases.

**19 PER JUSTICE PARKE IN REG V/s. CASSIDY, 2 CAR & KIR 520.

**20 STATE V/s. VIJAY VADIA 1986 CR.LJ 2093 PARA 13 (BOM)

**21 SARKAR ON CRIMINAL PROCEDURE, 7TH EDITION PAGE 750.

Remuneration paid to the public Prosecutors also needs fresh look to secure the promptness, objectivity, impartiality and sustain the motivation and interest of the prosecutors and prevent them from taking up additional private work which conflicts with the work as prosecutors.

IV

PROCESS TO COMPELL APPEARANCE

The appearance of accused is basic requirement for progress of trial. Hence Chapter VI of Criminal Procedure Code deals with the aspect of process to compel appearance.

A. SUMMONS

The mildest form of process is summons. It may be issued for appearance or for producing a document or thing. Summons is issued in duplicate under seal of the court and shall be served by police officer or officer of the court or public servant and shall be served as far as possible personally on the accused.

Summons should be clear and specific in terms of title of the suit and place, date and time when attendance is required.**22 It also gives brief description of the offence charged.

The police have power to issue summons, directing a person to remain present for any investigation.**23 When the summons is to be served on a corporation service may be effected by serving it on secretary or other principal officer by sending a letter by Regd. Post A. D. addressed to Chief Officer of the company and it is deemed to be a good service. Summons can be served on a bank incorporated under a statute in this manner.**24

**22 THE CODE OF CRIMINAL PROCEDURE – 15TH EDITION BY
RATANLAL AND DHIRAJLAL AT PAGE 67.

**23 SECTION 160 CRIMINAL PROCEDURE CODE

**24 RE : CENTRAL BANK OF INDIA CRIMINAL LAW JOURNAL 147 (DELHI)

Where person summonsed can not be found, the summons may be served on some adult male member of the family (not servant) who shall sign receipt on back of it. Where summons can not be served, as per the aforesaid procedure the serving officer shall affix one of the summonses to some conspicuous part of the house. If the person concerned is in Government service the court shall send it to the head of office in which such person is employed. If the person stays out of jurisdiction of court it may be sent to magistrate within whose jurisdiction such person ordinarily resides. A Summons to be sent to witness can be sent by Regd. Post. This provision was inserted in 1977 to avoid delay in service of summons by providing for service by post in addition to or in usual way.**25

The procedure of service of summons, by Regd. Post can not be adopted for summoning accused. **26 Delay in service of summons and process is a major factor in delays of trial. In offences involving bouncing of cheques, petty crimes etc; the service of summons by Regd. Post can be allowed to avoid such delay.

B. WARRANT

If the accused does not appear despite service or the court otherwise think it fit, it may issue warrant of arrest.

Warrant of arrest shall remain in force until the court, which issued it cancels it, or until it is executed.**27

The requirements of a valid warrant are:

- (i) The warrant must be in writing and in prescribed form.
- (ii) It must bear the name and designation of the person who is to execute it.
- (iii) It must give full name and description of person to be arrested.
- (iv) Must State the offence charged.

**25 RATANLAL AND DHIRAJLAL, CRIMINAL PROCEDURE CODE PAGE 70.

**26 SARKAR CRIMINAL PROCEDURE CODE, 7TH EDITION.

**27 SECTION 70(2) CRIMINAL PROCEDURE CODE, PAGE 115.

- (v) It must be signed by presiding officer of court.
- (vi) It must be sealed.**28

It a person involved in offence is implicated for minor involvement like abatement, bailable warrant may be issued.**29

Warrant shall be directed to person in charge of police station. The court may also direct that if the person furnishes sufficient surety or security for his attendance his endorsement maybe taken and he may be released on bail. Such warrants are called bailable warrants.

Warrant of arrest may be executed at any place in India. The court may also send the warrant to superintendent of police in that area.

If the court has reason to believe that person against whom warrant is issued is concealing himself, the court may issue written proclamation which may be published in the manner directed by court including in newspaper and also direct attachment of property, movable or immovable or both. Court may also appoint receiver of his properties. If proclaimed person appears the attachment may be cancelled. **30 If the court has reason to believe that a person has absconded or will not obey the summons or has not appeared after service of summons, it may issue warrant of arrest.

The police also are required to report the position of summons and warrants served/not served on persons residing within their jurisdiction to their controlling offices.

**28 REPANGIR'S CASE AIR 1960, RAJ.168 .

**29 DULICHAND V/s. STATE OF RAJASTHAN 1993 CR.L.J.827 (RAJ.)

**30 CHANDRASHEKHAR V/s. STATE 1978 CRIMINAL LAW JOURNAL 540
ALL.

V

PROCESS TO COMPELL PRODUCTION OF THINGS

Production of document or thing may be necessary for the purpose of investigation and prosecution. Unless such documents or things are produced the trial may get delayed.

Whenever any court or any officer in charge of police station considers that production of any document or thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding the court may issue summons or officer may issue written order directing the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or produce it.

The language of section is wide but the discretion needs to be exercised cautiously and judiciously. **31

There should be direct connection between the subject matter and the offence. In one of the case the charge was of acquiring money by forging a cheque and money thus obtained was deposited by the accused in the bank, seizure of money by warrant on the bank is improper. The money was the property of the Bank and the accused had only an actionable claim against the Bank, which can not be produced in court.**32

The section does not override provisions of Bankers Books Evidence Act, 1891. It provides that in any legal proceedings to which the bank is not a party no officer of a bank shall be compelled to produce any banker's book, contents of which can be proved by a certified copy except by order of court. **33

**31 SECTION 91 CRIMINAL PROCEDURE CODE.

**32 LLOYDS BANK, 58 K B, 152

**33 AS RECOMMENDED BY LAW COMMISSION OF INDIA, 37TH REPORT
PARA 242

The section does not empower the court to direct banker for payment of money. A cashier of a firm was absconding with cash of Rs.1 lac and case was filed against him under section 406 of Indian Penal Code. The accused was arrested and passbook was seized from him. On application of the proprietor, the Magistrate made an order directing the accused to convert the cash standing in the account of accused cashier into a draft and produce it in the court. It was held that order was without jurisdiction.**34

Search warrant is another important weapon created by criminal procedure code for production of things or documents. Such warrant is issued when any court has reason to believe that a person to whom summons is issued will not or may not produce document or thing. The search warrant may specify the particular place or part thereof which is to be searched.

Issuing of search warrant at pre-inquiry stage is permissible.

The power to issue search warrant can not be exercised in a mechanical manner. The court is required to record reasons for such order otherwise the whole seizure will be vitiated.**35

Even when search warrant is sought under economic offences like Foreign Exchange Regulation Act (FERA), search warrant can not be issued without any representation in writing and without production of authorisation from the Director of Enforcement. Such warrant is illegal.

The court also has power to direct search of place suspected to contain stolen property, forged documents etc. If any persons are found wrongfully confined search might be directed for their production.**36

**34 JAGDISH PRASAD SHARMA 1988 CRIMINAL LAW JOURNAL 287

**35 JUSTICE SABHARWAL IN S. M. SAKHDEV V/s. STATE, 1991 CRIMINAL LAW JOURNAL 300.

**36 SECTION 97, CRIMINAL PROCEDURE CODE.

The police officers also have power to seize property, which is alleged or suspected to have been stolen, or which may be found under circumstances, which creates suspicion of offence. Such seizure has to be reported to Magistrate having jurisdiction.

In one of the recent cases Central Bureau of Investigation (C.B.I.) issued directions to the bank for freezing the accounts of the petitioner who had opened account in the name of his wife, sons etc. by forging their signatures. The forgery itself pointed out accusing finger against the petitioner and petition to quash the order was rejected by Delhi High Court.**37

The presence of panchas though desirable is not a mandatory requirement. The Gujarat High Court has held that when Narcotic substances were recovered from possession of the accused on search by raiding party, the search was not vitiated because no prejudice was caused by not calling panchas.**38

VI

MAINTAINANCE CASES

It is the natural and fundamental duty of every man to maintain his wife, children and parents so long as they are unable to maintain themselves. The provisions of section 125 to 128 relating to maintenance have been enacted with such purpose in mind.

The Supreme Court in Shahbano's case held that Section 125 was applicable to all irrespective of their religion, and hence applies to Muslim women also.**39

**37 P. K. PARMAR V/s. UNION OF INDIA, 1992 CR. L J 499 DELHI

**38 D. B. THAKUR V/s. STATE OF GUJARAT, 1995 CR. L. J. 3751(GUJ)

**39 MOHD.AHMED KHAN V/s. SHAH BANO BEGAM, AIR 1985 SC 945.

After passing of Muslim Women's (Protection of rights on Divorce) Act, 1986 providing other remedies to Muslim Women, the view is that remedy is available to Muslim Women only if husband consents to it. Consent of husband in writing under Section 5 of new Act is a must for prosecution

The Magistrate can pass order for maintenance if any person having sufficient means neglects or refuses to maintain:-

- (i) His Wife unable to maintain herself or
- (ii) His legitimate or illegitimate minor child whether married or not, unable to maintain itself.
- (iii) His legitimate or illegitimate child who has attained majority where child is unable to maintain herself.
- (iv) His father mother unable to maintain her.

The monthly rate of maintenance shall not exceed Rs.500 in the whole. If the amount is not paid court may issue warrant for levying the amount due and sentence the person for whole or part of month's allowance to imprisonment for month or till such time it is paid which ever is earlier. Wife is not entitled to receive an allowance from her husband under this section if she is living in adultery or if they have separated by mutual consent. The section provides a speedy Remedy and summary mode for enforcing the order. The right to receive such maintenance is personal and does not create any charge on property of person. As interpreted by Supreme Court, the words "any person" under the section includes married daughter also.**40

When cases for maintenance of wife and child are involved, persons have gone to the extent of disputing the very paternity of child and demanded paternity tests. Such applications apart from its effect on delaying the procedures have serious impact even from social viewpoint. The Supreme Court has hence laid down following principles: -

****40 VIJAYA V/s. KASHIRAO AIR 1987 SC 1100**

- (a) Blood Test should not be ordered as matter of course
- (b) If prayer is made for making roving inquiry it should not be allowed.
- (c) Husband must establish non-access to dispel presumption under section 112 of Evidence Act.
- (d) Court must examine consequences of ordering blood-test whether it will brand the child as bastard
- (e) No one can be compelled to give blood sample for analysis.**41

The purpose and effectiveness of this remedy will be defeated if tight jacket formula is applied on point of territorial jurisdiction. Hence the proceedings can be initiated by the person in any district where he is or where he or his wife resides or where he last resided with wife or with mother of illegitimate child. After desertion by husband, the wife with minor daughter shifted to Bareilly. Allahabad High Court has held that Bareilly court has jurisdiction in the matter. **42

The Section serves limited purpose in the sense that it imposes total ceiling of Rs.500 on amount proceedings or order under this section does not bar remedy for maintenance in Civil Court under Hindu maintenance Act. If there is inconsistency in decision the decision of Civil Court prevails though otherwise such decision is irrelevant for Civil Proceedings. Even an agreement between husband and wife to pay the maintenance enforceable in Civil Court does not oust the jurisdiction of Criminal Court.

If a proof of change in circumstances of such person receiving allowance is produced the Magistrate may alter the order. If the woman remarries after passing of order the court can cancel the order. **43

**41 GAUTAM V/s. STATE OF WEST BENGAL, AIR 1993 SC 2295.

**42 MOTIRAM V/s. ADDL.DIST.JUDGE, 1992 CRIMINAL LAW JOURNAL 1007 (ALL)

**43 DAHYALAL V/s. BAI MADHUKANTA, AIR 1965 GUJ.247.

One of the traditional litigation to delay and defeat maintenance proceedings is filing of suit for restitution of conjugal right, with a motive not to take the wife back but to evade payment of maintenance. In such case the Magistrate may look into the order passed by Civil Court and ascertain to what extent it is complied. Mere obtaining decree for restitution of conjugal rights does not operate as bar against proceedings under section 125. **44

VII

INVESTIGATION AND POWERS OF POLICE

The police is investigating wing of the State whose duty is to inquire collect evidence and launch prosecution. The various stages involved in investigation can be better explained under following table :-

TABLE

VARIOUS STAGES OF INVESTIGATION

FIRST INFO.REPORT (FIR) (S.154) REGISTRATION OF FIR SENDING REPORTS TO HIGHER POLICE OFFICER AND COURT INSPECTION OF PLACE OF OFFENCE EXAMINING THE PERSONS ACQUAINTED WITH FACTS OF OCCURRENCE, CONDUCT INQUEST, POST. MORTEM EXAM. ARREST OF ACCUSED AND SEIZURE OF MUDAMAL SKETCH AND OTHER PREPARATIONS MAKING REQUEST TO MEGISTRATE TO SEND MO FOR CHEMICAL EXAMINATION COLLECTION OF ALL EVIDENCE FILING CHALLAN (CHARGESHEET)	 INQUIRY DIRECTED BY COURT (BEFORE ISSUE OF PROCESS)	 INVESTIGATION DIRECTED BY COURTS SEC.156(3)
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****44 LEELABEN V/s. GOSWAMI 1987, CRIMINAL LAW JOURNAL 1637 (GUJ)**

Every information relating to commission of cognizable offence if given orally to an officer in charge of police station shall be reduced in writing and substance thereof shall be reduced in a book. This report is called First Information Report. (FIR). When any such information disclosing cognizable offence is laid before officer in charge of police station, he is duty bound to register the case on basis thereof.**45 FIR is a very vital and valuable element of crime because the machinery is set in motion.

DELAY in lodging the FIR is by itself a matter to be investigated because the information provided might not be correct or material facts may be suppressed. The Allahabad High Court in one of the cases held that genesis of the FIR became shrouded in mystery when it was lodged after 22 days of occurrence and when delay could not be explained satisfactorily. **46

There is a noticeable tendency in India in reporting sex-related offences like rape. In one of the cases the FIR was challenged on the ground of delay but the Supreme Court held that the explanation that since the owner of family was involved, the complaint was delayed was found satisfactory. **47

In a similar case when a rustic woman was molested in a field and meeting of village committee was held but matter could not be settled amicably delay was properly explained. **48 The position has been summarized by learned authors Ratanlal and Dhirajlal in following words:

"Mere delay in lodging FIR is not fatal but the delay must be explained and accounted for by the prosecution"***49

**45 STATE OF HARYANA V/s. BHAJANLAL AIR 1992 SC 604

**46 KARAMSINGH V/s. STATE OF UP 1994 CR L J 3446

**47 HARPALSINGH V/s. STATE OF HIMACHAL PRADESH AIR 1981 SC 361

**48 PRAMADKUMAR V/s. STATE OF ORRISA 1996 CRIMINAL LAW JOURNAL 4357.

**49 RATANLAL AND DHIRAJLAL PG.215 EDITION 15TH CRPC.

Where there was inordinate delay in lodging FIR without any plausible explanation and contents of FIR are doubtful the benefit goes to the accused.**50 In remote village areas the police station may be far away and there may be delay. Any telephonic information if specific and recorded by the police can be treated as FIR but an anonymous telephone message which did not disclose commission of cognizable offence can not be taken as information.**51 The information is then entered in a book called police diary. On the basis of the information, if officer has reason to suspect commission of an offence, he shall forthwith report the same to the magistrate and proceed for investigation.

The validity of investigation is not vitiated because of irregularity or illegality by the investigating officer, if there is trustworthy and reliable evidence, which can be, cast aside to support the prosecution.**52

For the purpose of investigation the police officer can by order in writing require attendance of any person within his own limits or adjourning police station. A woman shall not be required to attend except at the place where she resides. The police have a power to orally examine any person supposed to be acquainted with facts and circumstances of the case.

Delay in examination under section 161 will not affect the credibility of statement if the evidence of the victims is found cogent, clear, truthful and convincing.**53 The person making the statement shall not be required to sign it and the statement is not to be used for any purpose except inquiry.

**50 KHEMRAJ V/S. STATE OF MAHARASTRA 1995 CRLJ 2271 BOM.

**51 SOMABHAI V/s. STATE OF GUJARAT AIR 1975 SC 1453.

**52 STATE OF RAJ. V/s. KISHORE AIR 1996 SC 3035

**53 PARESH BHAVSAR V/s. SADIQ YAKUBBHAI AIR 1993 SC 1544

The police have power to arrest and detain a person in case of cognizable offences. The person of course has to be produced before the magistrate. The police may also request for remand of person in police custody.**54 The accused has right to move application for bail. The order for remand can be sustained even under economic offences like offences under Foreign Exchange Regulation Act. Allahbad High Court has confirmed that Section 167(2) is applicable in such case.**55

The maximum period for which magistrate can authorise detention including one or more remand is 15 days. If upon investigation the officer in-charge of police station finds no sufficient evidence or reasonable ground for forwarding the accused tot he magistrate he will release the person on execution of bond with sureties. If there is sufficient evidence or reasonable grounds the officer shall forward the accused along with police report and commit him to trial. The complainant or witness is not required to accompany the police officer.

Police Diary is an important document but there is general complaint that it is maintained in haphazard manner. The Supreme Court has criticised this aspect and observed that it defeats the very purpose for which police diary is to be maintained.**56 The clear mandate of law is that the investigation shall be completed without unnecessary delay and upon completion police station will sent report. The report is to be sent alongwith all documents and papers.

If any person has committed suicide or killed by anyone or by accident than post mortam is required to be carried out. It is mandatory in following circumstances :-

**54 SECTION 167 OF CRPC

**55 ANILKUMAR V/s. SUPRITENDENT CENTRAL JAIL 1993 CR L J 1814
ALLAHBAD.

**56 BHAGWANTSINGH V/s. POLICE AIR 1983 SC 826

1. Case involving suicide by a woman within 7 years of her marriage.
2. Suspicious death of a woman within 7 years of the marriage.
3. In case of death of woman within 7 years of marriage at the request of the relative.
4. There is otherwise any doubt about cause of the death.

The time involved in investigation of offences is substantially high due to inadequacy of police staff, multiple duties (including for bandobast) where police force is required to be deployed and inadequacy of scientific and latest equipment which can substantially help in reducing the time for investigation. In the police training school more technical and professional training needs to be provided keeping in view the current. Till such time investigation is completed the accused is under hanging sword and hence it is in the interest of both state and accused that investigation is completed early. At times remand demanded by the police is refused when the case is based on documentary evidence and no further facts are required to be brought on record from the accused.

VIII

INQUIRIES AND TRIALS JURISDICTION

OF CRIMINAL COURTS

The word "Inquiry" as defined under code of criminal Procedure includes every inquiry other than a trial conducted by Magistrate of Court. Inquiry thus is not synonymous with trial. For the purpose of Criminal Law trial begins when the charge is read and explained to the accused and he is asked whether he pleads guilty or claims to be tried.**57

The accused may get discharge before trial begins. All proceedings, which precede order of discharge though, it does not involve taking of evidence, constitutes pretrial stage. Upto the stage when proceedings can result in discharge they are only in nature of inquiry. From the point when they result either in acquittal or conviction they assume the character of trial.

****57 MALIK TRIAL AND ITS INCIDENTS-CRIMINAL TRAILS 3RD EDITION
PAGE 3.**

The following stages after filing of FIR/Complaint hence constitutes inquiries:

- (i) Furnishing to the accused copies of Police Report.
- (ii) The FIR itself.
- (iii) Statements recorded by Police under Section 161 of Criminal Procedure Code.
- (iv) Recovery of confessions and statements under Section 164 Criminal Procedure Code.
- (v) Collection/recording of other documents accompanying the police report.
- (vi) Examination of witness of a person accepting pardon Under Section 306 of Criminal Procedure Code.

In contrast to this the word trial actually starts when the accused is made to appear before the court who is empowered to convict him upon a charge of an offence committed by him and upon conviction to sentence him to one of the punishments. The trial commences when accused is called upon to plead guilty or refute the charge.

In offences involving punishment for more than 7 years, when the magistrate takes cognizance of offence and decides that the offence is exclusively triable by a court of session, the proceeding upto that stage till such time the matter is remanded to the sessions court constitutes an inquiry.

Though prosecution should be promptly launched and it should be as precise as possible, the prosecution can not be actually instituted unless the following basic criteria are fulfilled :-**58

- (a) An offence has been committed.
- (b) The commission of offence has become known to investigating agency.
- (c) The offender is identified.

**58 STATE OF MAHARASHTRA V/s PUJARI 1979 CR. L. J. 1152.

The prosecution till such time would be stillborn and bad ab initio. If the accused is a public servant and the offence is committed by the accused while acting or purporting to act in discharge of his official duty than prior sanction is required before competent authority for trial. Sanction has to be obtained before the cognizance of offence is taken. View that sanction can be obtained at later stage is erroneous.**59 When a person himself pleads guilty to a charge he ipso-facto ceases to be an accused person. The question to be decided in respect of him is award of sentence/penalty.

The word "Judgement" can not be included within the meaning of word trial. Conclusion of trial takes place before judgement is delivered and hence judgement is outside the scope and not a part of trial. Where trial has commenced against an accused it is concluded either by conviction or acquittal and not by discharge.

The Criminal Courts exercises jurisdiction in various matters depending on gravity of offence. The criteria to decide it is the maximum punishment provided under the Act and the penalty/fine, which can be levied. All incidental powers including powers to discharge are exercised by the court vested with the jurisdiction to decide the matter.

IX

INITIATION OF PROCEEDINGS

Under the code of Criminal Procedure, the Criminal Proceedings can be initiated by any of the following methods. :-

**59 KALYAN SINGH V/s. STATE OF RAJASTHAN, 1992(1) CRIMES 425.

(i) **By Filing First Information Report**
 (Section 154, Criminal Procedure Code)

The information of any cognizable offence will have to be given to the nearest police station or the police station within whose jurisdiction the offence has taken place and the officer in charge of police station can investigate the same. If its registration is refused aggrieved person can write to supritendant of police.

(ii) **By way of Private Complaint**

Such complaint can be filed in competent court and the Magistrate may

- (a) After due verification register the complaint and issue process.
- (b) Direct investigation under Section 156(3), Criminal Procedure Code.
- (c) Postpone the issue of process and direct investigation to be made by police officer.

During such Inquiry the Inquiry Officer has to satisfy himself simply whether Prima-facie case is made out so as to put proposed accused on regular bail.**60

The proceedings can also be initiated upon receipt of information from any person other than a police officer or upon his own knowledge as per the provisions of Section 190 of Criminal Procedure Code.

**60 MOHINDERSINGH V/s. GULWANT SINGH AIR 1992 SC 1894.

When cognizance of offence has been taken by the court upon information received from a person other than police-officer or suo moto by own knowledge of the court, the accused has to be informed that he is entitled to be tried by other magistrate and Chief Judicial Magistrate may transfer the case to any other magistrate competent to try it.**61 This provision ensures fair trial for the accused and rebuts the allegation of prior knowledge and bias on part of the court taking cognizance of the matters.

The initiation of proceedings before Sessions Courts is not by way of original jurisdiction. It does not take cognizance of offence directly but only when the accused is committed to it by competent magistrate.

The proceedings can be initiated in aforesaid manner, directly by complainant approaching the police/court. In following cases direct cognizance of offence can not be taken by the court and hence proceedings can not be initiated unless the requisite conditions are fulfilled:

<u>TYPE OF CASES</u>	<u>PRECONDITION TO BE COMPLIED</u>
(i) Contempt of lawful Authority of Public Servant (Section 172 to 188 IPC)	Complaint in writing by Public Servant concerned or Public Servant to whom he is administrative subordinate.
(ii) Offences against Public Justice (Section 193-196, 199, 200, 205 -211, 228 IPC)	Complaint in writing by such court or the court to which it is subordinate.
(iii) Offences relating to documents given in Evidence (Sec.463, 471, which evidence is produced.**62 475, 476 IPC)	Complaint in writing by the court in

**61 ANIL SARAN V/s. STATE OF BIHAR AIR 1996, SC 204.

**62 M. B. MAHAJAN V/S. STATE OF MAHARASHTRA AIR 1994 SC 1549.

- | | | |
|--------|--|---|
| (iv) | Offences against state Punishable under section 153A or Section 295A. | Previous sanction of Central or State Government. |
| (v) | Criminal Conspiracy Under Sec.120 B except conspiracy to commit offence punishable with death, Imprisonment, rigorous imprisonment for 2 years or upwards. | Consent by State Govt. or Dist. Magistrate. |
| (vi) | Offence committed by Judge Magistrate, Public Servant while Acting in discharge of duty | Permission by the appropriate Govt. |
| (vii) | Offences committed by member of Armed Forces | Permission by Central Govt. |
| (viii) | Cruelty to a woman by her Husband or other relatives(Sec. 498 A) | Complaint by concerned woman or her Father, mother, brother, sister, uncle etc. |

Hence this is an additional requirement to be complied in such cases.

X

DIRECT COMPLAINT TO MAGISTRATES

The aggrieved party can file criminal complaint directly before the Magistrate. In some cases law itself may stipulate that the complaint will be filed before the magistrate and only he can take cognizance of the offence.

Whenever such complaint is filed the course open to the magistrate is as under :-

1. He can examine the complaint on oath and also examined the witness if any and reduce the substance of such examination in writing and the same will be signed by the complainant. The magistrate must not refer the complaint to a police officer. He is bound to receive the complaint unless prima facie it is frivolous or vexatious.**63 The Magistrate may take cognizance of the offence and question of issuing summons comes only at a later stage.**64
2. If the magistrate finds that he is not competent to take cognizance than he may return the same and direct the complainant to present it before proper court. If on the same matter any police inquiry is pending than he will have to examine the issue of jurisdiction from that angle.**65
3. The magistrate may postpone issue of process against the accused and either inquire into the case himself or direct an investigation. The discretion vested in the magistrate is judicial and has to be supported by reasons to establish prime facie case.
4. If the magistrate after inquiry is satisfied that there is no ground for proceeding he shall dismiss the complaint after briefly recording the reasons for doing so.**66

The Delhi High Court has held that one of the criteria to decide about dismissal of the complaint is delay in filing when there was delay of 8 months in filing the complaint, there was enough justification in absence of explanation.**67

****63** RATANLAL & DHIRAJLAL CODE OF CRI.PROCEDURE 15TH EDITION
EDITED BY JUSTICE Y.V.CHANDRACHUD AT PG.329.

****64** NITIN BHIMANI V/s. A R BASU 1995 CRLJ AT PG.1974 CAL.

****65** BRIJKISHORE SINGH V/s. NUTAN SINGH 1995 CRLJ 1486 ORRISA

****66** SECTION 203 OF CRPC

****67** JAGDISHCHAND V/s. STATE 1995 CRLJ 2253 DELHI.

If the complainant after filing the complaint remains absent in the summons case the court is entitled to dismiss the case.**68 Since this is not a dismissal on merit it does not operate as a bar to rehearing of fresh complaint on the same facts by the same magistrate or by any other magistrate. Hence such a dismissal is vulnerable to challenge and has potential for giving rise to further litigation in form of revision or fresh complaint.**69

5. The magistrate may straight way issue process in form of summons or warrant if he is satisfied by documentary evidence on record, prima facie about commission of an offence. Generally in case of offences like bouncing of cheques, summons is issued by the court.
6. The magistrate also has power to direct police inquiry under Section 156(3) of Criminal Procedure Code and direct the police to inquire into the matter.

Whenever a police inquiry is ordered the police is directed to complete the same within time prescribed by the court, which is generally one month. In most of the cases because of the preoccupation of the police such report is not received and as a result there is delay in further proceedings. There is a need for improvement on this point.

XI

FRAMING OF CHARGE

The word charge in context of Criminal jurisprudence means the specific crime the defendant is accused of having committed. Accusation of a crime is by a formal complaint, information or indictment.**70

**68 FOOD INSPECTOR V/s. KADIR VANI 1996 CRLJ 1618 J & K.

**69 P. NATH V/S. SURENDRA MOHAN AIR 1962 SC 876

**70 BLACK'S LAW DISCTIONARY 6TH EDITION.

The purpose of framing a charge is to tell a accused person as precisely and concisely as possible with the matter with which he is charged and must convey to him with sufficient clearness and certainty what the prosecution intends to prove against him and of which he has to defend himself. Framing of proper charge is vital to a criminal trial on which the courts are expected to bestow most careful attention.**71

In summons case no formal charge is required to be framed. In such case when accused appears the particulars of offence will be stated to him and he will be asked whether he pleads guilty or has any defence to make and in such case it will not be necessary to frame formal charge. This is called recording of plea of the accused and mandatory function of the court in summons triable cases.**72

In warrant cases if the court is of the opinion that prima facie, an offence is committed it must frame the charge. When there is ground for presuming that accused has committed offence the court is duty bound to frame the charge.

Precision and unambiguity in framing of charge is vital. The charge must State particulars as to time and place of alleged offence and person against whom or thing in respect of which it is committed and should be reasonably sufficient to keep notice of matter which he is charged. In respect of charge for criminal breach of trust, for criminal misappropriation it is sufficient to state the amount unless the accused has certain and accurate knowledge he is seriously prejudiced in his defence. **73 The charge should also give sufficient notice of other matters including the manner in which the offence was committed.

**71 PRATAPSINGH V/s. RAJASTHAN 1996 CRLJ 4214(RAJ.)

**72 STATE OF GUJARAT V/s. LALIT MOHAN 1990 CRLJ 2341(GUJ.)

**73 CHITRANJANDAS AIR 1963 SC 1696

No error in stating either the offence or the particulars required or the omission to State the same shall be regarded as material error in trial unless the accused was misled by such error or omission and it has resulted in failure of justice.**74 Even when charge of substantive offences of murder, murderous assault or causing grievous hurt was not mentioned, the Bombay High Court upheld the trial because no prejudice is thereby caused to the accused.**75

The court may also alter or add any charge any time before pronouncement of the judgement after communicating the same to the accused. However the provision can not be used to stretch the trial beyond rational limits. When the accused was discharged of all the charges and no charge existed against them, an application for adding the charge under section 216 is not maintainable.**76

For every distinct offence there has to be a separate charge and it has to be tried separately. It is however open to the accused to apply for joinder of charges under section 218 of Criminal Procedure Code. A person accused of more offences than one of the same kind committed within the space of twelve months whether in respect of same person or not may be tried at one trial.

A casual joinder of charges may invite further complications and constitute mis-joinder of charges. Where the offence amounts to falsification of book of account than every act of falsification would amount to an offence under this section and not more than 3 of them can be tried together. Alternative charges also may be placed if it is doubtful which specific offence has been committed.

**74 SECTION 215 OF CRPC

**75 PANDURANG PUNAPPA V/s. STATE OF MAHARASHTRA 1993 CRLJ 2302(BOM.)

**76 SOHANLAL V/s. STATE OF RAJ AIR 1990 SC 2158.

When a person is charged with an offence he may be convicted for attempt to commit the offence even with no specific charge is made for such attempt. When charges have been framed under more than one head and conviction is given for one such charge the complainant may withdraw the charges if he so desires.

XII

TRIAL OF WARRANT CASES

The warrant cases may be divided into 2 classes as under :-

- (a) Cases instituted on Police report.
- (b) Cases instituted otherwise than on police report.

The procedural aspect of the warrant cases instituted on the basis of police report is summarised as under :-

1. The magistrate will satisfy himself that the documents namely the police report, the first information report, confessions and statements recorded and any other documents or extract thereof is furnished to the accused. The aforesaid document has to be supplied to the accused free of cost without delay.
2. If the magistrate considers the charge to be groundless he has the power to discharge.**77
3. If the magistrate is of the opinion that accused has committed an offence which he is competent to try he will frame a charge, explain and communicate it to the accused and ask him whether he pleads guilty to it.
4. If the accused pleads guilty the magistrate shall record the plea and accused may be convicted.**78

**77 SECTION 239 OF CRPC

**78 SECTION 241 OF CRPC

5. If he refuses to plead guilty or claims to be tried or not convicted by the magistrate, Magistrate shall fix a date for the examination.
6. Accused shall be called upon to enter his defence and produce his evidence. He may also request the court for calling witness for examination. If the accused puts any written statement the same shall be taken on record.

The procedure in case of warrant cases instituted otherwise than on police report is as under :-

- (i) When the accused appears the magistrate will hear the prosecution and take supportive evidence. Witnesses will than be summoned.
- (ii) If after taking the evidence no case is found the accused may be discharged.**79
- (iii) If there is sufficient material charge may be framed and accused will be asked to reply.

After the aforesaid procedure if the magistrate finds the accused is not guilty he will record order of acquittal and if he finds that accused will be guilty sentence will be awarded. The magistrate is bound to hear the accused on question of sentence. It is not mere oral submission but includes all materials, which has bearing on the sentence.**80

If the complainant is absent on the day of hearing and offence is lawfully compoundable and not cognizable the magistrate may discharge the accused before framing of charge.

**79 SECTION 242 OF CRIMINAL PROCEDURE CODE.

**80 BABURAO V/s. STATE 1977 CRIMINAL LAW JOURNAL 1980 (DELHI)

One of the reasons for increase in backlog of cases, is fake and frivolous complaints filed by the persons. Section 250 of Criminal Procedure Code provides for payment of compensation when there was no reasonable ground for the complaint. The compensation shall not exceed the amount of fine, which the judge is competent to impose. Payment of such compensation does not exempt from other civil or criminal proceedings.

During the research study it was found that this provision was invoked in very few cases though there are numbers of cases where acquittals come. The provisions should be more strictly enforced to reduce false and frivolous complaints.

XIII

TRIAL OF SUMMONS CASES

The procedure under the summons cases is comparatively simple and is summarised below :-

1. The first stage is stating the particulars of offence and inquiring whether he pleads guilty or not.
2. If he pleads guilty admission is recorded in his own words and he is convicted.
3. In case of petty offence he may remit the payment of fine and plead guilty.**81
4. If the accused does not plead guilty prosecution will start and summons will be issued.
5. If the magistrate finds that the person is not guilty he may acquit him, if he is guilty sentence may be passed.
6. Before a final order is passed complainant may withdraw complaint and if there are sufficient grounds and thereupon accused will be acquittal. **82

**81 SECTION 206 OF CRPC

**82 SECTION 257 OF CRPC

The High Court will not interfere with the proceedings including issue of process unless it is established that the whole prosecution is false, frivolous, vexatious or abuse of process of law.**83 The courts must take into account all the materials produced by the accused along with evidence in order to form an opinion whether charges should be framed or further prosecution be continued.**84 When the case is instituted on the basis of a police report, the magistrate can not exercise power of acquittal on an application of withdrawal made by person at whose instance the police moved in the case.**85

In summons case instituted otherwise than on complaint the magistrate with previous sanction of Chief Judicial Magistrate stop the proceedings without pronouncing the judgement and after recording statement of principal witnesses and release the accused which shall have the effect of discharge. The order is not interlocutory and remedy for prosecution in such case, is appeal under section 378 Criminal Procedure Code or revision under Section 297 Criminal Procedure Code.**86

XIV

SUMMARY TRIALS

For speedy disposal of cases concept of summary trial was introduced. Summary case is a case, which can be tried and disposed off at once if there is record sufficient for purpose of justice and speedy disposal is possible. All magistrates are not empowered to try cases in a summary manner. The High Court empowers the category of judges for that purpose.

**83 STATE OF UP V/s. MANMOHAN AIR 1956 SC 1652.

**84 SATISH MEHRA V/s. DELHI ADMINISTRATION 1996 SCC(CR)1104.

**85 B P JINNAH 1970 CRLJ 919

**86 STATE OF GUJARAT V/s. MAGANLAL GORDHANDAS 1995 CRLJ 1581 GUJ.

The offences, which can be tried in summary manner, can be listed below:-

- (i) Offences not punishable with death, imprisonment with life, imprisonment exceeding two years.
- (ii) Theft where value of property does not exceed Rs.200
- (iii) Receiving or retaining stolen property where value does not exceed Rs.200.
- (iv) Offences of lurking trespass
- (v) Insult and criminal intimidation.
- (vi) Abetment of any of the offences including attempt.
- (vii) Offences under Cattle Trespass Act.

The procedure in such cases is simple. The magistrate enters in the prescribe form, the requisite particulars including the plea of the accused. Offences under special or local Acts, if punishable with imprisonment of less than 2 years can be tried summarily. There is no limit about imposing fine in a summary trial. If a person is convicted under this chapter no sentence of imprisonment exceeding 3 months shall be passed. If the accused does not plead guilty the magistrate records the substance and brief statement of evidence along with his reasons for finding. The option to try summarily is at the discretion of the concerned magistrate and is restricted to the offences specified in the section. **87

XV

TAKING EVIDENCES IN INQUIRY AND TRIALS

Fair trial is a basic requirement of administration of justice. There are several hurdles in smooth and fair trial. The Supreme Court has observed, "If a fair trial is a main object of criminal procedure any threat to a fair trial must be immediately arrested. If an accused by his own conduct puts fair trial in jeopardy the court will ensure that the trial proceeds smoothly without interruption or obstruction".**88

**87 RAMNANDAN AIR 1959 ALL.11

**88 TALAB HAJI HUSSAIN V/s. STATE AIR 1958 SC 356.

The evidence taken in course of trial will be taken in his presence except when his personal attendance is dispensed with. In all summons cases the magistrate shall record deposition of witnesses in form of memorandum. In all warrant cases the magistrate shall take down the facts in writing.

In Sessions Court the evidence will be reduced to writing or taken down as per his directives. Whenever any evidence is taken or given in a language not understood by the accused it shall be interpreted to him in the language he understands. There is also a provision for taking services of interpreter.

The court may also issue commission for examination for witnesses and take evidence. There are special provisions governing certain categories of witnesses like medical witnesses, scientific experts, evidence of mint officer's etc.

There are two situations which may delay the trial. The same are:

- (a) Absconding of the offender
- (b) Offender is not known

In the first case the court may examine prosecution and record the deposition, which may be used against him when he is arrested.

If the offence punishable with death or imprisonment for life has been committed by some unknown person the High Court or Sessions Court may direct First Class Magistrate to hold inquiry and examine witnesses which may be used against the accused.**89

XVI

OFFENCES RELATING TO ADMINISTRATION OF JUSTICE

The offences connected with administration of justice have been dealt in section 172 to 188 of IPC. Since the offences have direct relation with administration of justice the relevant sections have been briefly summarized below:

**89 SECTION 299 OF CRPC

<u>SEC.</u>	<u>CONTENT</u>	<u>PUNISHMENT</u>
172	Absconding to avoid service of summons Or other proceeding	1 month imprisonment or RS.500 fine.
178	Refusing oath or affirmation when duly required by public servant	Imprisonment upto 6mths. or fine of Rs.500.
180	Refusing to sign statement required by public Servant	Imprisonment upto 3mths or fine of Rs.500
181	False statement on oath or affirmation to public servant	Imprisonment upto 3 years or fine
186	Obstructing Public servant in discharge of public functions	Imprisonment upto 3mths or fine of Rs.500
191	Giving false evidence	Imprisonment upto 3 years and liability to fine.
192	Fabricating false evidence	Imprisonment upto 3years and liability to fine.
194	Fabricating false evidence with intent to procure conviction for capital offence	Imprisonment upto 10 years or fine
201	Causing disappearance of evidence of offence or screening of an offence	Imprisonment upto 7 years or fine
202	Omission to inform about offence	Imprisonment upto 6 months and liability to fine

204	Destruction of document to prevent production in evidence	Imprisonment upto 2years or fine or both.
205	False personating.	Imprisonment upto 3 years or fine or both.
206	Fraudulent removal of property for preventing seizure	Imprisonment upto 2 years or fine or both
207	Fraudulent claim to property to prevent seizure	Imprisonment upto 2 years or fine or both
209	Dishonestly making false claim in court.	Imprisonment upto 2years or fine or both.
210	Fraudulently obtaining decree	Imprisonment upto 2years or fine or both.
211	False charge of offence with intent to injure	Imprisonment upto 2years or fine or both.
212	Harbouring offender	Imprisonment upto 5years or fine or both.
213	Taking gift to screen offender	Imprisonment upto 7years or fine or both.
215	Taking gift to help recover stolen property	Imprisonment upto 2years or fine or both.

217	Public servant disobeying directives of law	Imprisonment upto 2years or fine or both.
219	Public servant making false report in judicial proceeding	Imprisonment upto 7years or fine or both.
224	Resistance to lawful apprehension	Imprisonment upto 2years or fine or both
228	Intentional insult to public servant in judicial Proceeding	Imprisonment upto 6 months or fine upto Rs.1000.
228A	Disclosing identity of victim of certain offences	Imprisonment upto 2days or fine or both.

All the aforesaid provisions gives sufficient power to the judicial system to punish litigants/witnesses who attempt to abuse the process of court for their selfish motive and resort to malicious litigation. The number of persons prosecuted under this provision, compared to the acquittals in criminal cases is very less. There is hence need to apply these provisions and judiciary in appropriate cases, can initiate stern action under these sections against those who file false cases and increase workload of judicial system. People indulging in perjury and false evidence also can be prosecuted. All that is needed is the will and zeal to apply these provisions, of course judiciously in deserving cases.

The condition precedent for exercise of the power is expression of opinion by the court at time of delivering and court is satisfied that it is in interest of justice that such person is tried summarily for such offence.**90

****90 DWARKA PRASAD V/s. STATE OF MP 1992 CRLJ 2227 (MP)**

XVII**CONFIRMATION OF DEATH SENTENCES MERCY****PETITION-EXECUTION**

In cases where death sentence is passed by the Sessions Court, the Judge should refer the proceedings to the High Court and the High Court can only deal with them as a court of reference. Upon such reference the High Court will satisfy itself about the facts and law on the case and confirm or modify the sentence. In an interesting question concerning death penalty the Supreme Court held that the object of the person being committed to jail awaiting the death sentence is to keep him secured till the death sentence is executed. It does not amount to punishment of imprisonment in addition to death sentence. It is not double jeopardy and hence Art.20 is not violated. He should not be put in salutary confinement.**91

If the High Court thinks that a further inquiry should be made into or additional evidence should be taken upon on any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take evidence itself or direct the evidence to be taken by court of Session.

The High Court has the following powers in this case :-

- (i) It may confirm the sentence or pass any other sentence warranted by law.
- (ii) May annul the conviction, and convict the accused of any offence of which the court of Session might have convicted him or order a new trial on the same or an amended charge or
- (iii) May acquitt the accused person.**92

No order of confirmation shall be made until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed off.

**91 TRIVENIBEN V/s. STATE OF GUJARAT 1990 CRLJ 1810(GUJ)

**92 SECTION 368, CRIMINAL PROCEDURE CODE.

While Death sentence has to be awarded in rarest of the rare cases, the trend of the courts in dealing with gruesome murders where victims are children, women etc. is to confirm the sentence. In a recent case the Allahabad High Court has confirmed the death sentence where the accused committed a cold blooded murder of his real nephew and niece aged about 13 months and 4 years respectively and mercilessly assaulted his brother's wife and two minor nieces, the court found it to be rarest of rare case where death sentence should be awarded.**93 The confirmation or new sentence should be atleast by two or more of them. (Division Bench)

The proper officer of the High Court is required to convey without delay the order made by the High Court in the matter to Sessions Court.

The accused can also prefer an appeal against order of Death Sentence. Where both confirmation case and appeal arises the tendency of the High Courts is to hear both the matters together and to deal with the matter on merits on basis of all material questions and issues.

XVIII

APPEALS

Appeals means approaching a Superior Court to review the decision of inferior (trial) Court on the ground that any error or injustice is caused by a lower tribunal.**94

The appeals under the Code of Criminal Procedure can be divided into:-

- (a) Appeals from orders
- (b) Appeals from conviction
- (c) Appeals from acquittals
- (d) Appeal against sentence

**93 BALRAJ V/s. STATE OF UP, 1993 CR.LJ 3201 (ALL.)

**94 BLACK'S DICTIONARY, 6TH EDITION, PAGE.96.

An appeal against the order under section 117 to give security or for keeping peace or good behavior or rejecting a surety can be filed.**95

The position of Appeals on convictions is as given below :-

<u>CONVICTING COURT</u>	<u>APPELLATE COURT</u>
High Court in Extra ordinary Criminal Jurisdiction	Supreme Court
Sessions Court or Additional Sessions Court Metropolitan Court or	High Court
Second class magistrate or under Summary Procedure	Sessions Court

No appeal lies when the conviction is based on the accused pleading guilty except on question of legality of sentence.

The appeal does not lie in petty cases as narrated below :-

SENTENCE BY	PUNISHMENT
High Court	Imprisonment not exceeding 6 months and fine not exceeding Rs.1000/-
Court of Session	Imprisonment upto 6 months or fine not exceeding Rs.200
First Class Magistrate	Fine not exceeding Rs.100/- or When tried summarily and only fine is imposed.

**95 SECTION 373, CRIMINAL PROCEDURE CODE.

The State also may prefer an appeal against the order of acquittal or quantum of sentence. If the appellant is in jail he may present the petition through person in charge of jail. An appeal may be summarily dismissed if upon examination of the petition of appeal and copy of judgement and after giving reasonable opportunity to be heard to the appellant.**96 Under Article 136(1) the Supreme Court may in its discretion, has the power to allow special leave petition and review the sentence awarded by lower courts in any offence. The power of the appellate court to reassess the evidence and reach its own conclusions in any appeal against acquittal are as extensive as in appeal against conviction.**97 If the appeal is not summarily dismissed by the Appellate court, it shall give notice to the appellant, to the proper officer of the Govt. and to the complainant. The appellate court may :-

IN APPEAL AGAINST ACQUITTAL

- (a) (i) Reverse the order and direct fresh inquiry or
- (ii) Order retrial of accused or
- (iii) Direct commitment of a trial
- (b) Find the accused guilty and pass sentence on him.

IN APPEAL AGAINST CONVICTION

- (a) Reverse the finding and sentence and
 - Acquit or discharge the accused or
 - Order him to be retried by court of competent jurisdiction.
- (b) Alter the finding, maintaining the sentence.
- (c) Alter the nature and extent of sentence.

**96 SECTION 384 CODE OF CRIMINAL PROCEDURE

**97 BATAL SINGH^V STATE OF MP AIR 1996 SC 2770

IN APPEAL FOR ENHANCEMENT OF SENTENCE

- (a) Reverse the finding and sentence and
 - Acquit or discharge the accused,
 - Order him to be retried by court.
- (b) Alter the finding, maintaining the sentence.
- (c) Alter the nature and/or extent of sentence so as to enhance or reduce the same.

The Supreme court has recently given detailed guidelines in exercising discretion by the Appellate court for suspension of conviction and sentence during pendency of appeal or revision.**98

XIX

REFERENCE AND REVISION

Uniformity of law is essential for its easy and proper implementation. Reference can be made if any court is satisfied that:-

- (a) a case pending before it involves a question as to validity of any Act, Ordinance or Regulation or of any provision of any Act, Ordinance or Regulation and
- (b) Is of the opinion that such Act, ordinance or provision is invalid or inoperative but has not been so declared by the High Court to which that court is subordinate or by the Supreme court the court shall state a case setting out its opinion and the reasons therefore and refer the same for decision of the High Court.**99

**98 STATE OF TAMILNADU V/s. A. JAGANNATHAN AIR 1996, SC 2449.

**99. SECTION 395, CODE OF CRIMINAL PROCEDURE.

A subordinate court can not make the reference on the ground that a different view of law was taken by some other High Court. It must obey the law laid down by the High Court to which that court is subordinate.**100 In exercise of powers of revision the High Court or Sessions Judge may call and examine the record of any proceeding before any interior Criminal Court situate within its local jurisdiction for the purpose of satisfying itself or himself as to correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court and may when calling for such record, direct that the execution of any sentence or order be suspended and if the accused is in confinement he may be released on bail. Merely looking at the case from different angle does not justify enhancement and the Supreme Court reversed the Kerala High Court's judgement converting 10 years imprisonment into a life sentence when the offence originated from trivial controversy.**101 The revision court may also direct for making further investigation into the matter. When revision application is made by different convicted parties to different courts, the High Court shall decide having regard to the circumstances of the case, which two of the courts should finally dispose off the matter. When record of any trial held by Metropolitan Magistrate is called for, the Magistrate may submit with record a statement setting further the grounds of his decision or order and any facts which he considers material to the issue, and the court shall consider such statement before overruling or setting aside the decision. High Court can not convert a finding of acquittal into one of conviction in revisional jurisdiction nor can such jurisdiction be invoked merely because the lower court has not appreciated the evidence properly. The extent to which delay is condoned is worth notice, As against the usual limitation period of 90 days the Madras High Court condoned the delay of 1347 days holding that plausible explanation was sufficient for purpose of condonation and each days delay can not be expected to be explained.**102

**100 QAZI M. HANIF V/s. MUMTAZ BEGUM, 1990 CR. LJ 171(BOM.)

**101 GEORGE THOMAS V/s. STATE OF KERALA 1995 CR LJ, 3645(SC)

**102 S. ACHARYA V/s. SATHYABHAMA, 1995 CR.LJ 1211(MAD).

XX**TRANSFER OF CASES**

The power to transfer the case from one court to another can be exercised by various courts as follows :-

COURT**POWERS**

Supreme Court	The Supreme Court may for ends of justice direct that a case or appeal be transferred from one High Court to another High Court, or from Criminal Court subordinate to one High Court to Criminal Court subordinate to other High Court. The Supreme Court will act only on application by Advocate General of India or the party interested.**103
High Court	whenever it appears to the High Court on the report of lower court or on application of party interested or on its own initiative that a fair and impartial trial or inquiry can not be had in Criminal Court or some question of law of unusual difficulty will arise or transfer will tend to general convenience of parties or witnesses or it is expedient for ends of justice, the court may order that a matter maybe transferred from one court to other court under its jurisdiction.**104
Sessions Court	A Session Judge may on the report of the lower court or on the application of party interested or on its own initiative order transfer of any particular case from one criminal court to another in his sessions division. He records reasons in writing for this purpose.**105

**103 SECTION 405 CRPC.

**104 SECTION 406, CODE OF CRIMINAL PROCEDURE.

**105 SECTION 467, CODE OR CRIMINAL PROCEDURE.

If there are several accused transfer of case without notice to him or providing him opportunity is not sustainable.**106

XXI

BAILS AND BONDS

Bail means the monetary amount for or a condition of pretrial release from custody normally set by the judge at initial appearance. The purpose of bail is to ensure return of accused at subsequent proceedings. IF accused is unable to arrange for bail he or she is detained in custody.**107 Article 21 of the constitution lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law. The word "law" under Art.21 means merely enacted law and does not include principles of Natural Justice the validity of provisions and procedures under preventive detention laws was challenged but Supreme Court refused to interfere,**108 as Article 21 and Art.19 are not inter canceled.

The Supreme Court has later held that Article 14, 19 and 21 were not mutually exclusive. The Supreme Court held that attempt of the court should be to expand the reach and ambit of fundamental rights rather than attenuate their meaning and content.**109

The accused has no statutory right to be released on bail despite the default of the prosecution to file chargesheet within the maximum time allowed by law.**110

**106 NAIB SINGH V/s. STATE OF HARYANA AIR 1996 SC 2759

**107 BLACK'S LAW DICTIONARY, 6TH EDITION PAGE 146.

**108 A. K. GOPALAN V/s. STATE OF MADRAS, AIR 1950 SC 27.

**109 MANEKA GANDHI V/S. UNION OF INDIA AIR 1978 SC 597.

**110 DR.BIPIN PANCHAL V/s. STATE OF GUJARAT AIR 1996, SC 2897.

The accused arrested in connection with non-bailable offence has the right to be released on bail under the following circumstances:

- (a) If the offence is punishable with imprisonment for a term of 10 years or more and the investigation by police is not completed within 90 days.
- (b) If offence is punishable with imprisonment of less than 10 years and investigation is not completed within 60 days. The period will be counted from first production of accused before the court.**111

In bailable cases the grant of bail is as matter of right and it can be given either by Police officer in charge of police station or the court.

A person apprehending arrest may also apply for anticipatory bail. When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the court of session for a direction under this section, and the court may, if it thinks fit direct that in the event of his arrest, he shall be released on bail.

The conditions usually imposed by the courts include :

- (a) Condition that the person shall make himself available for interrogation by police officer as and when required.
- (b) Condition that a person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case to dissuade him from disclosing such facts.
- (c) Condition that person shall not leave India without prior permission from court.
- (d) Any other condition as may be imposed.

**111 C. SATYANARAYAN V/S STATE, 1986 SCC 141

Anticipatory bail may be granted for a duration which may extend to date on which bail application is disposed of or even a few days thereafter to enable a person to move higher court.**112

Before any person is released on bail or released on his own bond, a bond for such sum of money as police officer or court thinks sufficient is executed by him. Condition imposed for release on bail is mentioned in the bond. The bond binds the person to appear before the court. The court may direct for one or more sureties also to execute bond.

The surety may apply to magistrate to discharge the bond either wholly or so far as it relates to him. The magistrate will thereupon issue a warrant of arrest directing that the person so released be brought before him. On appearance of such person, the bond shall be discharged as far as it relates to that applicant and accused may be called upon to find other sureties or he will be committed to custody.**113 The bond may be forfeited by the court and in such case person giving the bond may be required to make payment. If the surety becomes insolvent or dies or when bond is forfeited, court may order person from whom security is demanded to furnish fresh security and if it is not so furnished court may proceed to treat it as default in complying original order.**114

**112 K. L. VERMA V/S. STATE, 1998 SCC (CR) 1031.

**113 SECTION 441, CODE OF CRIMINAL PROCEDURE.

**114 SECTION 444, CODE OF CRIMINAL PROCEDURE.

XXII

IRREGULARITY IN PROCEEDINGS

The word "irregularity" in legal parlance means doing or not doing that, in the conduct of lawsuit, which comfortably with the practice of court ought or ought not to be done. It is violation or nonobservance of established rules and practices. It is want of adherence to some prescribed rule or mode of proceeding consisting either in omitting to do something that is necessary for due and orderly conduct of that matter or doing it in an unreasonable time or improper manner. It is every defect in mechanics of proceedings or mode of conducting an action.**115

The irregularities may be divided under the following heads :-

IRREGULARITIES..

- (a) Irregularities which vitiates the Proceedings
- (b) Irregularities which do not vitiate proceedings.

The Magistrate, if not duly empowered, does any of the following things, the proceedings are void **116:-

- (i) Attaches and sells property under section 83.
- (ii) Issues a search warrant for a document, parcel or other thing in custody of post or Telegraph Authority.
- (iii) Demands security to keep peace.
- (iv) Demands security for good behaviour
- (v) Discharges a person lawfully bound to be of good behaviour.
- (vi) Cancels a bond to keep peace
- (vii) Makes an order for maintenance
- (viii) Makes an order as to local nuisance (Section 133)
- (ix) Prohibits repetition of public nuisances
- (x) Makes an order for maintenance of public order

**115 BLACK'S LAW DICTIONARY, 6TH EDITION PAGE 829.

**116 SECTION 461, CODE OF PROCEDURE.

- (xi) Takes cognizance under section 190.
- (xii) Tries an offender
- (xiii) Tries an offender summarily.
- (xiv) Passes a sentence.
- (xv) Decides an appeal.
- (xvi) Calls for proceedings.
- (xvii) Revises an order passed.

On the other hand if a magistrate not empowered to do any or the following things, erroneously, in good faith, does it, the following proceeding do not become void :-

- (i) Issue of search warrant (Section 94)
- (ii) Orders, the police to investigate offence (Section 155 cr.p.c)
- (iii) Holds an inquest.
- (iv) Issues process for apprehension of a person.
- (v) Takes cognizance of an offence.
- (vi) Transfers a case under section 192(2)
- (vii) Tenders a pardon under Section 306.
- (viii) Recalls a case and tries it himself under section 410.
- (ix) Sells property under section 458 or 459.

Proceedings in wrong court are not set aside merely on that count. Omission to frame charge also is not fatal unless in the opinion of appellate court there is failure of justice. Error or irregularity in charge also does not vitiate proceedings. The provisions aforesaid gives protection to orders passed in good faith and in bonafide exercise of powers.

An officer of army (Bihar Military Police) was prosecuted at Patna for deserting Army in Shrinagar. The Supreme Court held that proceedings are not vitiated.**117

**117 NASIRUDDIN KHAN V/s. UNION OF INDIA AIR 1973 SC 186.

XXIII**LIMITATION**

It is a settled position under the Civil Law that unless the aggrieved party approaches for remedy within the time prescribed by law, the court will not entertain his matter. The maxim of limitation is "time once it begins to run it does not stop".**118 The Criminal Procedure Code in a cautious manner has laid down period of limitation for various offences. The section provides that no court can take cognizance except where otherwise provided **119

PERIOD**OFFENCE**

After 6 months

Of offence punishable with fine only.

After 1 year

Of offence punishable with imprisonment upto one year.

After 3 years.

If offence is punishable with imprisonment above 1 year but upto 3 years.

Hence the limitation does not apply in serious offences involving larger punishment. The provisions do not apply to the economic offences mentioned in the schedule to the section. Merely because process is issued by the magistrate it does not amount to condonation of delay when prosecution is barred by limitation.**120

**118 SECTION 3 LIMITATION ACT.

**119 SECTION 468, CODE OF CRIMINAL PROCEDURE.

**120 SHYAM SUNDER V/s. STATE OF ASSAM, 1988 CR. LJ 1560.

With increasing trend of offences by corporates, proceedings are challenged on point of limitation. The Supreme Court has held that offences under Section 159 (Filing of Annual Return) and Section 220 (Filing of balance sheet) of the companies Act are continuing offences and until and unless the company and the personnel in charge of company comply with mandate of provisions, they are liable to be prosecuted and fresh period of limitation starts on each day and section 468 does not apply.**121

In calculating the period of limitation the following are excluded :-

- (a) The period during which another prosecution was diligently prosecuted.
- (b) Period of stay order or injunction against the institution of prosecution.
- (c) Where notice of prosecution is to be given, period of notice.
- (d) Where previous sanction or consent is necessary period required for obtaining such consent or sanction.
- (e) Period during which offender was absent from India.
- (f) Period when offender is absconding or concealing himself.**122

If limitation becomes over on a day when court is closed, cognizance can be taken when court reopens. In continuing offence fresh period runs at every moment during which offence continues. The court can take cognizance after period of limitation if delay is properly explained and it feels it necessary to do so in interest of justice.

**121 B. KANORIE V/s. STATE OF MP AIR 1984 SC 1688

**122 SECTION 473, CODE OF CRIMINAL PROCEDURE.

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