

The Code of Criminal Procedure, 1973.

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INTRODUCTION

- While the Indian Penal Code, 1860 represents the **substantive part** of criminal law, the Code of Criminal Procedure, 1973 portrays the **procedural aspects** of criminal justice administration.
- **“Substantive Law without processual remedy is a barren land; and**
- **Procedural Law bereft of substantive right is cultivation without crop.”**

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- The Code of Criminal Procedure, 1973 derives its legitimacy and authority primarily from the constitutional trident of Art-20, 21 and 22;
- it is hailed as **Secular and Uniform** in its application irrespective of race, religion, caste, color and domicile within the territory of India,
- except the State of Jammu & Kashmir (exempted in view of Art-370).

OBJECT AND PURPOSE

- The Statement of Objects and reasons of this Code envisages –
- i) Fair trial in accordance with the accepted principles of natural justice,
- ii) To avoid delay in investigation, trial and sentencing, and
- iii) the procedure should not be complicated and ensure fair deal to the poorer sections of the community.
- The old canon of “procedure established by law” is replaced by “the Due Process” as a standard for pre-trial, trial and post-trial proceedings.
- The spirit of human rights philosophy permeates through out the new code, in pursuance of the Human Rights Charters of U.N.O.
- It is a comprehensive legislation designed to protect the interests of
- i) accused, victims and witnesses,
- ii) women and children,
- The Code strikes a balance between the individual right to liberty and the State’s obligation to maintain the law and order.

Structural aspects of the Cr.P.C.

- The erstwhile Code of Criminal Procedure, 1898 was repealed by the existing Code of Criminal Procedure, 1973. There are many amendments affected to the new code from 1978 to 2013.
- The Code came into existence **w.e.f. 1st. April, 1973** and contains **484 sections divided into 37 chapters, and two schedules.**

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- Sec-1. enunciates
- The Code is not operative in States of J&K.
- Not applicable to the States of Nagaland and tribal areas of Assam, except
 - Ch.VIII (Security for keeping peace and good behaviour – Ss-106 to 124)
 - Ch.X Maintenance of Public order and tranquility (Sec-129 to 148)
 - Ch. XI Preventive action of police (Ss-149 to 153)
 - The Code applies to all offences under IPC and other Special legislations, unless expressly excluded by the legislation.

Adversarial and Inquisitorial systems

- The **adversarial system** (or **adversary system**) is a legal system used in the common law countries where two advocates represent their parties' positions before an impartial person or group of people, usually a jury or judge, who attempt to determine the truth of the case
- The **inquisitorial system** is generally described as a system that aims to get to the truth of the matter through extensive investigation and examination of all evidence by the judge himself.

FUNCTIONARIES

- Criminal Justice System conceived under Indian law consists of –
 - i) **The Police**
 - ii) **The Prosecutors**
 - iii) **Defense Counsels**
 - iv) **Magistrates and Judges.**
 - v) **Prison authorities and correctional services.**

Classification of offences

- 1. **Cognizable** S.2(c) and **Non-Cognizable** (S-2(l) - based on the right to process the arrest
- 2. **Bailable** and **Non-bailable** (S-2(a) - based on the right to release.
- 3. **Summons Cases** (S-2.(w) and **Warrant Cases** (S-2 (x) - based on the quantum of punishment.

INVESTIGATION, INQUIRY & TRIAL

- S-2(h) – **Investigation** includes **all the proceedings** under the court **for the collection of evidence-** conducted by **Police officers or by any person (other than a magistrate)** authorised by a magistrate in this behalf.
- Steps:-
 - i) proceeding to the spot
 - ii) ascertainment of facts and circumstances of the case
 - iii) discovery and arrest of the suspected offender
 - iv) examination of witnesses and collection of evidence
 - v) Search and seizure
 - vi) forming an opinion to file charge-sheet.

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- S-2(g) – **Inquiry** means every inquiry **other than a trial conducted** under the Code **by Magistrate or Court**. –
Kinds of Inquiries –
- i) Judicial and Non-judicial (Administrative Inquiry)
- ii) Preliminary inquiry
- iii) Local Inquiry
- **Inquiry may involve examination of witnesses and inspection of locale.**

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- **TRIAL** – not defined in the code.
- Judicial interpretation of Trial – **A trial is a judicial proceeding which ends either in conviction or acquittal.** (AIR-1940 Cal,97)
- **When inquiry stops, trial may begin.** Trial comprehends whole of proceedings including sentence.
- **INQUEST – s-174 – conducted by police.** Ascertainment of the cause of the death in cases of suicide, unnatural death, death caused in commission of crime etc.
- Police cannot administer oath.
 - **S-176 conducted by Magistrate.** – Ascertainment of the cause of the death occurring in police custody and other case cited above. Magistrate may administer oath.

COGNIZANCE

- S-190. Any Magistrate of First Class or specially authorised second class magistrate may take Cognizance of any offence –
 - i) on receipt of a complaint
 - li) on a police report, or
 - Iii) information received from any person other than a police officer.
- S-197 – Prosecution of Judges and public servants.

DISCHARGE, CONVICTION, ACQUITTAL

- **Discharge** – to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial.
- **Conviction** – on proof of guilt – on plea of guilt
- **Acquittal** – when the accused is proved to be innocent.

MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY.

- Ch. X refers to the powers of Executive Magistrates and the procedure thereof.
- Ch.X – Ss-129 to 148. deal with
- i) unlawful assemblies
- Ii) Public nuisance
- Iii) urgent cases of nuisances or apprehended danger.
- Iv) disputes as to immovable property.

ARREST

- **Arrest is antithetic to the concept of liberty.** But arrest of a person who breached the law or about to breach the law is **lawfully authorised.**
- Arrest means ‘**apprehension of a person by legal authority resulting in deprivation of his liberty.**’
- CUSTODY – DETENTION
- In a detention, law enforcement officers will temporarily stop a person in a public place without transporting the person to another location, for the purpose of (1) requiring the person to justify his presence and activity in the location and (2) to identify himself.
- *Custody – “The care, possession, and control of a thing or person. The retention, inspection, guarding, maintenance, or security of a thing within the immediate care and control of the person to whom it is committed.”*

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- Ss-41 to 60-A of Ch.V of Cr.P.C. deal with the arrest of persons.

WHO MAY ARREST?

- i) **Police Officer** (S-41)(S-42 – on refusal to disclose name and residence)
- ii) **Private person** (S-43)
- iii) **Magistrate** (S-44)

ARREST BY POLICE

- S-41-When police may arrest without warrant.
- who commits a cognizable offence in the presence of a police officer,
- Against whom a reasonable complaint is made or on credible information, or on a reasonable suspicion of commission of a cognizable offence (punishable up to 7 yrs) subject to the following conditions: -
 - i) the police officer has reason to believe that such person has committed the said offence,
 - li) that such arrest is necessary
 - a) to prevent such person to commit any further offence
 - b) for proper investigation of the offence
 - c) to prevent such person from tampering /causing disappearance of such evidence,
 - d) to prevent such person from making any inducement, threat or promise to any person so as to dissuade him from disclosing the facts to the court or police officers
 - e) that the presence of such a person before court can be ensured only by such arrest. (consequent to Amendment Act of 2009 effective from 1-11-2010)

Reasons to be recorded for doing so or not making arrest.

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- Iii) the person is a proclaimed offender
- Iv) the person is in possession of stolen property
- V) the person obstructed a police officer in execution of his duty, or who escaped from lawful custody
- Vi) a deserted person from any of the armed forces of the union,
- Vii) the person who committed an offence outside India, and who is subject to extradition, and liable to be detained in custody in India,
- Viii) a released convict committing a breach of rule under S-356(5)
- Ix) for whose arrest any requisition, written or oral, is received from another police officer.
- S-41(2) says that subject to Sec-42, no person concerned in a non-cognizable offence or on reasonable suspicion of such involvement, shall be arrested **except under a warrant or order of a magistrate.**(2009)

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By Amendment Act of 2010 (eff.from 2-11-2010)

Sec-41A: Notice of appearance before police officer to be issued to the person against whom a complaint is made or suspected of involvement in the commission of offence.

- Such addressee shall comply with the notice and its contents, and **if he complies with the notice, arrest may not be made.**
- **If such person refused to comply with the notice,** subject to the notice of the court, he **shall be arrested** by the police for the offence mentioned in the notice.

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Sec-41B. Procedure of arrest and duties of arresting officer-

- To disclose the identity visibly and accurately
- Preparing memorandum of arrest, attested by a member of the family of arrestee and countersigned by the person arrested, and
- Inform the arrestee, unless attested as stated above, of the right to be informed of the arrest to a family member or a friend named

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S-41C – Control room at District/State

- The State Govt. to establish a control room at District level and State level
- To display on the Notice Board outside the control room, the particulars of persons arrested and the officers who arrested them
- The control room at Police HQrs at State level to maintain a data base of the persons arrested, nature of offences charged with etc.

S-41D – Right of arrested person to meet an advocate of his choice during interrogation, though not throughout the interrogation.

Arrest on refusal to disclose name & residence

- Sec-42 empowers a police officer to arrest a person (committing an offence before police or accused of non-cognizable offence) who refused to disclose his name and residence, or gives false name and residence.
- After ascertaining the name and residence, he shall be released on a bond, with or without sureties, to appear before a magistrate.
- If true name and residence could not be obtained within 24 hrs or on his failure to execute a bond, he shall be forwarded to the nearest magistrate.

Arrest by private person

- Sec-43 provides that any private person may arrest or cause to be arrested any person who commits a cognizable and non-bailable offence in his presence, or any proclaimed offender and without delay shall make over or cause to be made over to a police officer for custody.
- If such arrestee comes within S-41, the police officer may re-arrest him.
- If there is reason to believe that he has committed a non-cognizable offence, but refused to give his name and residence, he shall be dealt with under S-42. If there is no reason to believe that he committed an offence, he shall be released at once.

Arrest by Magistrate.

- Sec-44 provides that when any offence is committed in the presence of a **magistrate** – Executive or Judicial – within his jurisdiction, he may himself arrest or order any person to arrest the offender, and thereupon commit him to the custody.
- **Any magistrate – Executive or Judicial** – may arrest or direct the arrest at any time, within his jurisdiction, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Rights of Arrested Person

- 1. Right to be informed of the grounds of arrest without delay. (S-50,55,75 and Art-22(1))
- 2. Police to inform the arrest to a family member or friend, and also to make an entry in the register in P.S. with regard to arrest (S-50A)
- 3. Right to be informed of the right to bail.(S.50(2))
- 4. Right to be produced before magistrate without unnecessary delay. (S.56, 76)(A-22(2))
- 5. Right to consult a legal practitioner. (S-303 and Art-22(1))

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- 6. **Right of an arrested indigent person to Free Legal Aid.** (Art-39.A) (Khatri vs. State of Bihar-1981)
- 7. **Right to be examined by a Medical Practitioner.** (S-54)
- 8. **Need for transparency in the accused-police relations spelt out in JOGINDER SINGH vs. STATE OF U.P.** (1994)
- 9. The instructions issued by the Supreme Court in D.K.BASU vs. STATE OF W.B (1997) to be observed.
- 10. **The Right to Compensation for victims of unlawful arrest and detention is recognised in NEELABATI BEHRA vs. STATE OF ORISSA** (1993)
- **The aforesaid instructions are applicable to authorities like Directorate of Revenue Intelligence, Directorate of Enforcement, CBI, CISF (Central Industrial Security Force), CID, etc. which have the power to arrest and detain persons for interrogation.**

SEARCH AND SEIZURE

- Ch.VII – Process to compel the production of things.
- A – Summons to produce (Ss-91 & 92)
- B – Search Warrants (Ss-93 to 98)
- C – General provisions relating to searches.
(Ss-99 – 101)
- D – Miscellaneous (seizure) (S-102 – 105)

search

- S-91 Summons by Court/written order by police to produce document or other thing
- i. in connection with the investigation, inquiry or trial – to be complied with by the possessor of such document/thing.
- S-92 – Procedure as to letters or telegrams. Postal and Telegraphic authorities to comply with the summons/written order.

search

- Search with Warrant;
- S-93 – In case of non-compliance of S-91 in respect of production of document / thing, court may issue search warrant – general or specific -specifying the place or part of it to be searched.
- S-94 – Search of place suspected to contain stolen property, forged documents etc.
- A District / Sub divisional magistrate / first class magistrate, on reasonable belief that any place is used for the deposit /sale of stolen property, objectionable articles etc., may by warrant authorise any police officer to cause search and seize such property.
- Ojectionable articles – counterfeit coins, stamps, currency notes, false seals etc.

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- S-95 – When it appears that any newspaper, book or any document contains matter punishable under the provisions of S-124A, 153.A, 153B, 292, 293 and 295A of IPC, the State Govt. may by notification declare that such documents to be forfeited to it.
- Police officer not below the rank of Sub Inspector can conduct the search for such material in any premises.

Search for persons

- S-97 – search for persons wrongfully confined – Any District/Sub Divisional/First Class Magistrate,
- on reasonable belief may issue a search warrant to search for the person wrongfully confined.
- S-98 – Upon complaint of abduction of any woman, female child below 18 yrs, the District/Sub-divisional/first class magistrate may issue an order for restoration of such women to her liberty.

Search contd,

- Search Without WarrantL
- S-103 – Any magistrate competent to issue a search warrant, may order the search in his presence of any place.
- When there is no time to obtain search warrant, and where immediate search is needed, the senior investigating officer can conduct search without warrant. (S-165)
- The search conducted under this provision is not a general one but a particular search subject to the following conditions : -

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- The place of search should be within the jurisdiction of the police officer.
- The police officer must record the reasons for his belief and the necessity for the search, and specify the thing under search, and that thing could not be secured by other means.
- The copies of the records made prior to the search to be sent to the nearest magistrate forthwith/and a copy of the same to the occupier of the house.
- The power to search without warrant may extend to other jurisdictions also.
- Similar powers of search could be extended in respect of weights and measures. (S-153)

General Provisions of search

- S-100 provides that -
- The occupier of place of search shall allow free ingress and egress.
- The Search officer, in case of non-cooperation of the occupier, may enter the premises by breaking open the door or window.
- The search of a woman shall be made by any woman.
- Search to be made in the presence of at least two independent and respectable inhabitants of the locality.
- The occupant of the place of search or his nominee shall be permitted to be present at the time of search.
- A copy of the inventory of things searched and things seized shall be prepared, signed by the witnesses, and a copy of it is to be given to the occupant.

Consequences of irregularities

- If the magistrate, not empowered to issue search warrant, erroneously and in good faith issues such a warrant, the search proceedings shall not be set aside. (S-460(a))
- In case of search of articles in the custody of postal and telegraphic authorities – if conducted by any magistrate other than District Magistrate or CJM, the search shall be void. (S-461(b))
- Search conducted by an officer, not authorized, without a warrant becomes illegal.
- Illegal acts of search by officer can be resisted by the occupant.
- Non compliance of the provisions of search may entail civil legal consequences.

Seizure

- S-102 : A police officer may seize any stolen or suspected to be stolen property.
- seizure to be reported to the Magistrate and also to the superior authority.
- If the property seized is of perishable nature, to be auctioned if the value of it is below Rs.500/-.

BAIL

- Ss-436 to 439 of Cr.P.C. deal with the Bails and bonds. (Ch.33)
- When release on bail is mandatory?
- Where the arrestee is not accused of a non-bailable offence. (S.436 (1))
- When the investigation is not completed within the prescribed time (90/60 days). (s-167)
- Where no reasonable ground exists for believing the accused guilty of non bailable offence. (S-437(4))
- Where trial before magistrate is not concluded within 60 days. (S-437(6))
- Where no reasonable grounds exists for believing the accused guilty after conclusion of trial but before judgment. (s-437(7))

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- When grant of bail is discretionary?
- When a person is accused or suspected of any non bailable offence arrested or detained without warrant, a magistrate court, other than Court of Sessions and High Court, may be released on bail.
- In case of serious offences – punishable with death or life imprisonment – not to be released on bail.(S-437). If such a person was previously convicted for offence punishable with death/life/ imprisonment with 7 years or more.

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- No bail in case of offence punishable with death or life imprisonment.
- Bail may be granted with conditions.
- S-439 – Power of High Court or Court of Sessions to grant bail.

Anticipatory Bail

- S-438: Grant of bail to person apprehending arrest.
- Applicant reasonably believes or apprehends arrest under a non bailable offence.
- May apply to High Court or Court of Session.
- With a request that he shall be released on bail in the event of such arrest.
- Conditions for grant of bail under Sec-438
- Nature and gravity of accusation.
- Antecedents of the applicant seeking for bail
- Possibility to flee from justice,
- In case of humiliation due to accusation.
- The section applies only to non-bailable offences, and the offences need not be necessarily cognizable.
- This is an extra-ordinary remedy to be exercised with great caution. Offences punishable with death or life imprisonment will not be considered.
- Reasons should be recorded for granting Anticipatory bail.