

CRIMINAL LAW

LAW FOR ACTIVISTS SERIES

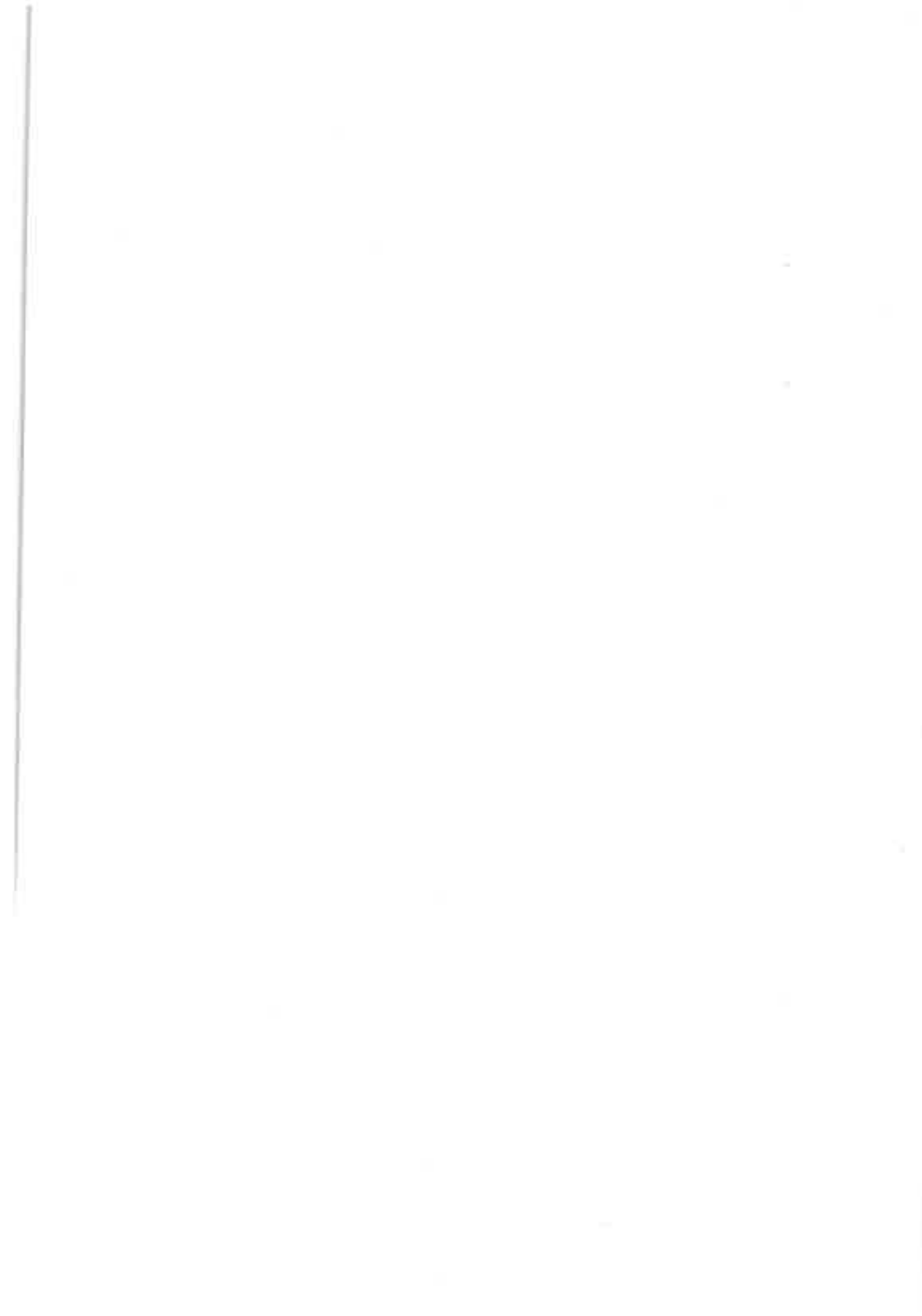
VOLUME I

HOLD IT OFFICER!!
WE ACTIVISTS TOO KNOW
THE LAW.

YOU CAN'T ARREST ME!



HRNLN



Preface

During the para legal trainings which we have been conducting for activists over the years, three things became obvious. First, the desire to know the practical aspects of law is tremendous amongst activists. Second, in their every day struggles, law plays an important role. Third, that law as explained by mainstream lawyers and given in textbooks is so alien, that a simplified version is very necessary.

There has been a growing realization that at least a basic knowledge of law is extremely important for activists. What do you do if a woman comes in the middle of the night, having been thrown out of the house by her husband? If a dalit is facing abuses because of his caste, what is the legal recourse? Where do you complain if the land of a tribal is being snatched away? Which legal body do you complain to if pollution is causing water to be contaminated? These are the questions which activists face every day. Apart from this, they are also victims of the legal system, or are required to support victims of the legal system. False arrests, defamation cases, and torture in police custody have become routine. How do you deal with these situations?

The other aspect which has been in the forefront over the last few decades is the use of public interest litigation. What are the issues on which PILs can be filed? What kind of research do you need for filing a PIL? What are the precautions to be taken?

Activists have also been trying to use machineries such as the Human Rights Commissions and Womens Commissions. How do you access these bodies? What are their powers and procedures? Most of these avenues can be effectively used by activists without necessarily approaching lawyers.

It is in this context that we felt it necessary to come out with a series of booklets which would make the law easier for activists. Obviously such books cannot be a substitute for actual legal advice, but they can be primers for activists to at least familiarize themselves with legal rights, structures and procedures. Over the next two years we intend to bring out at least twenty such booklets which will deal with diverse issues such as criminal law, child rights, environmental law, women's rights, public interest litigation, human rights commission, etc. We hope to translate these books into various regional languages and we would be very happy if any individual or organization is willing to take up this task.

The first book in the series is on criminal law. It is the collective work of Rebecca Gonsalvez, Ryan Menezes and Vijay Hiremath - three lawyers actively involved in legal aid work with the India Centre for Human Rights and Law. The book begins with information on the structures of the police force and the courts, and then proceeds to explain the rights of accused, witnesses and victims. Especially since this is the first book in the series, we will be extremely happy with your feedback which will help with our work on the future books.

Mumbai
January 1, 2005

Mihir Desai
Director

CRIMINAL LAW

Law for Activists Series Volume 1

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Note:

This book is designed to equip the reader with a basic knowledge of criminal law, which would enable her/him to deal with practical problems encountered while dealing with the criminal justice system. However, it does not have all the answers. Please note that there is no substitute for good legal advice and representation. If you have a complex legal problem, or are uncertain about how to handle a certain legal situation, kindly seek advice from a lawyer.

Criminal Law

Law for Activists Series

Volume 1

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Our sincere and heartfelt thanks to Ganpat Lad for his valuable assistance with the layout and processing of the book, and for bearing with our innumerable corrections.

Introduction

All of us invariably come into contact with the Criminal Justice System at some point of time in our lives. We do so as accused in criminal cases, or as victims of crimes, or as relatives or friends of those accused of crime or the victims of crime.

As lawyers working within the Criminal Justice System, we noticed that there was a high degree of ignorance about the working of the system. The problems that arise from this ignorance are of two types problems of the victims and problems of the accused.

As far as the victims are concerned, many complain that the police are not receptive and sensitive enough to their needs when they approach the police station with complaints. This is particularly so when the accused are persons with connections and have political clout to the extent that they are able to manipulate the law enforcing agencies. Thus for example when indigenous persons complain of atrocities, they are harassed and often criminal cases and chapter proceedings are initiated against them. Women who complain of crimes like rape and molestation, are given an added dose of humiliation in the form of embarrassing questions and suspicion. Cases where the police change facts to suit the accused are not unknown. All this has made many too scared to pursue action against those who have wronged them. The others just do not know what to do and go around in circles from the local corporator to the home minister, never realizing that adequate remedy is available to them before courts of law, or realizing the same too late.

Accused have their share of problems. They are never informed of their right to bail and to legal counsel. They are handcuffed, in violation of directions by the Supreme Court of India. Juveniles are kept in prisons in violation of juvenile justice laws. Undertrial prisoners are not produced on trial dates. Further they are kept in jail for long periods of time thus delaying their trials. Courts, presuming that the accused persons are guilty, do not grant bail. False cases are filed against innocent persons. The increasing trends of custodial torture and death are worrying.

Neither the victims nor the accused seem to get justice.

Another group of persons who we find need guidance with regard to issues of criminal law are human rights activists. Often dealing with the system either in helping victims and the oppressed obtain justice, or at other times as accused in false cases, foisted on them by an oppressive regime that feels insecure with the work they do, they are unsure of how to move forward.

In 2003, it was with the aim of making people aware of their rights, their liabilities and issues vis-à-vis the Criminal Justice System that we started conducting two-day training programs in Criminal Law. We hoped that by these training programs we would be able to equip people to deal effectively with the criminal justice system. Many participants ask us for written material and hand-outs to take home, or to recommend books that they could read.

Our effort to present criminal law in a simplified manner to the common citizen in India has culminated in this book. We hope you will find it useful.

Mumbai

Date: 1st January 2005

Rebecca Gonsalvez
Ryan Menezes
Vijay Hiremath

Frequently used terms

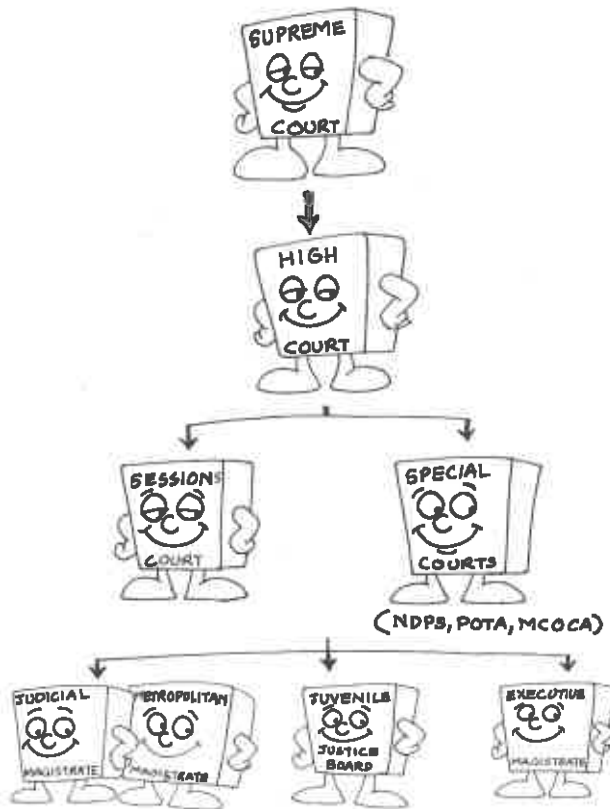
A.I.R. - All India Reporter
C.I.D. - Crime Investigation Department
C.J.M. - Chief Judicial Magistrate
Cr.L.J. - Criminal Law Journal
C.M.M. - Chief Metropolitan Magistrate
Cr.P.C. - Code of Criminal Procedure
F.I.R. - First Information Report
I.E.A. - Indian Evidence Act
I.P.C. - Indian Penal Code
J.C./J.C.R. - Judicial custody/Judicial custody remand
J.J.B. - Juvenile Justice Board
J.M.F.C. - Judicial Magistrate First Class
J.M.S.C. - Judicial Magistrate Second Class
M.C./M.C.R. - Magisterial custody/Magisterial custody remand
M.C.O.C.A. - Maharashtra Control of Organised Crime Act
M.M. - Metropolitan Magistrate
N.C. - Non-cognizable offence
N.D.P.S. - Narcotic Drugs and Psychotropic Substances Act
N.H.R.C. - National Human Rights Commission
P.C./P.C.R. - Police custody/Police custody remand
P.O.T.A. - Prevention of Terrorism Act
P.R. bond - Personal recognizance bond
S.C. - Supreme Court
U/s or u/s - Under section

Courts



Courts

Structure and Classes of criminal courts



Jurisdiction of Courts

- Every court has jurisdiction over a particular area in a city/district.
- A court can inquire into and try an offence if it is committed within the jurisdiction of the court.



Sessions Court

- There is a Sessions Court in every sessions division.
Example: Mumbai Sessions Court, Thane Sessions Court
- A state may consist of one or more sessions divisions.
- A sessions division may consist of one or more districts.
- Every metropolitan area is a separate sessions division and district.



Special Courts

- These courts are constituted under Special Acts such as the Narcotic Drugs and Psychotropic Substances Act (NDPS), Prevention of Terrorism Act (POTA) and the Maharashtra Control of Organised Crime Act (MCOCA).
- They have jurisdiction over the area for which they have been constituted.

Judicial Magistrate

- In every district, there are courts of the Judicial Magistrate First Class (J.M.F.C.) and Judicial Magistrate Second Class (J.M.S.C.).
- In some districts, the courts of the Judicial Magistrate Second Class have been abolished.

Example: In Pune, there are courts of the J.M.F.C. However, courts of the J.M.S.C. have been abolished.

- In every district, there is a Chief Judicial Magistrate (C.J.M.) who is an administrative head.



Metropolitan Magistrate

- In a metropolitan area, there are Metropolitan Magistrate (M.M.) courts. Example: There are Metropolitan Magistrates courts in Bombay.
- In a metropolitan area, there is a Chief Metropolitan Magistrate (C.M.M.) who is an administrative head.



Juvenile Justice Board

- There should be a Juvenile Justice Board in every metropolitan area/district/group of districts.
- The Board should consist of one Magistrate (Metropolitan Magistrate/Judicial Magistrate First Class) and 2 social workers one of whom should be a woman - the Magistrate shall be the principal Magistrate.



- The Magistrate should have special knowledge/training in child psychology/child welfare.
- The social workers should have been actively involved in health, education and welfare activities pertaining to children for 7 years or more.
- The Board has the powers of a Metropolitan Magistrate/Judicial Magistrate First Class.



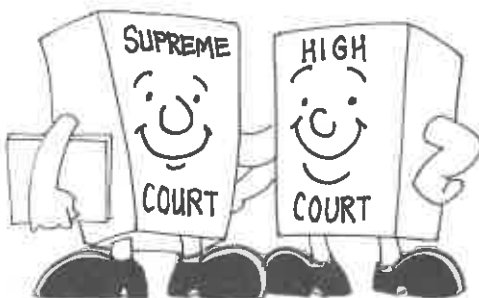
Executive Magistrate

- In every district and metropolitan area there are Executive Magistrates.
- In Bombay, the senior police officers such as the D.C.P. or A.C.P.¹ are appointed as Executive Magistrates.
- Their powers include the trial of chapter cases.²

Sentencing Powers of Courts

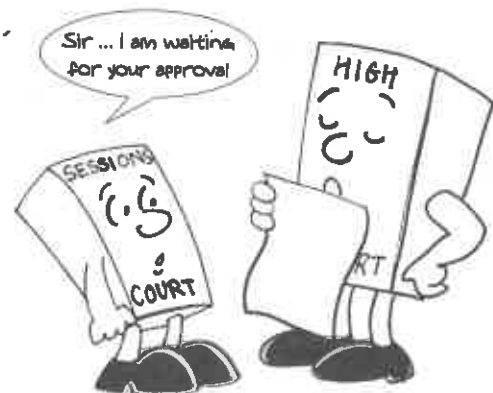
Supreme Court

The Supreme Court can pass any sentence authorized by law.



High Court

A High Court can pass any sentence authorized by law.



Sessions Judge/ Additional Sessions Judge

A Sessions Judge/Additional Sessions Judge can pass any sentence authorised by law.

Any death sentence passed by a Sessions Judge or Additional Sessions Judge has to be confirmed by the High Court.

1. D.C.P. - Deputy Commissioner of Police, A.C.P. - Assistant Commissioner of Police. For hierarchy of police see page 9.

2. See Chapter Cases on page 44.

Assistant Sessions Judge

An Assistant Sessions Judge can pass any sentence of imprisonment upto 10 years.
An Assistant Sessions Judge cannot pass a sentence of death, life imprisonment or imprisonment for more than 10 years.

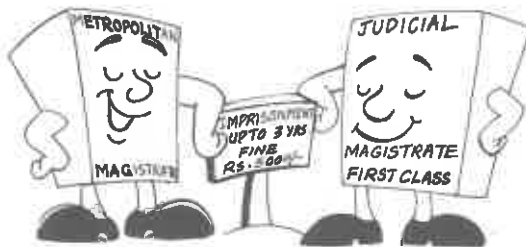
Special Courts

The sentencing powers of Special Courts depends on the Acts under which they are constituted.
Example: The NDPS court can pass a sentence of death.



Chief Metropolitan Magistrate or Chief Judicial Magistrate

A CMM or CJM can pass a sentence of imprisonment upto seven years.



Metropolitan Magistrate or Judicial Magistrate First Class

A MM or JMFC can pass a sentence of imprisonment upto 3 years and a fine upto Rs. 5,000/-.

Judicial Magistrate Second Class

A JMSC can pass a sentence of imprisonment upto 1 year and a fine upto Rs. 1,000/-.

Juvenile Justice Board³

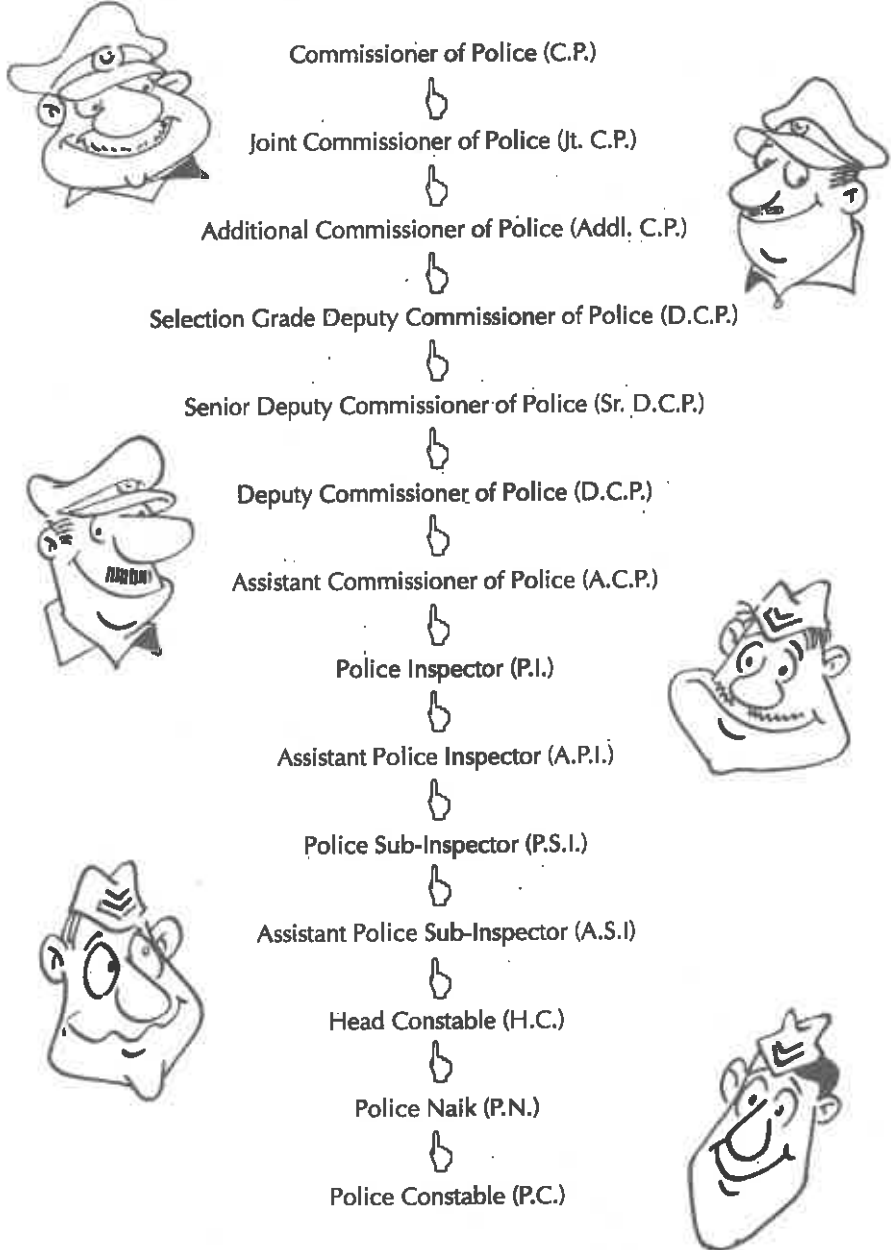
3. See Juveniles on page 81.

Police



Police

Hierarchy of the police in Mumbai¹ and other metropolitan cities



1. Source: Mumbai Police Website www.mumbaipolice.com

Powers and duties of the police



General

Every person must help the police in:

- Arresting/preventing the escape of any person whom the police or a Magistrate is authorised to arrest.
- Preventing/suppressing a breach of peace.
- Preventing any injury to public property.

Preventive powers of the police

Prevention of cognizable offences

- Every police officer should prevent the commission of any cognizable offence to the best of his ability.
- If the police officer receives information of a plan to commit a cognizable offence, he can pass the information on to his superior or to any other police officer.



- If the commission of the offence cannot otherwise be prevented, he can arrest without warrant the person planning to commit it.

[Section 151 of the Cr.P.C.]

- The person so arrested cannot be detained in custody for more than 24 hours unless his further detention is lawfully authorized.

[Section 151 of the Cr.P.C.]

Prevention of injury to public property [Section 152 of the Cr.P.C.]

- Every police officer should prevent any injury to public property.



Information to the police

- Cognizable offence²
- Non-Cognizable offence³



Investigation

- The police must forward a copy of the F.I.R. at the earliest to the Magistrate having jurisdiction.
- If the officer in charge of the police station feels that investigation is required, he can proceed to the spot himself, investigate the case, and arrest the offender, or depute one of his subordinates to do so.
- If the officer in charge of the police station feels that there is no ground for investigating, he need not investigate the case. In such a case, he has to file a report,

and record in it his reasons for not investigating the case. He must also notify the informant of the same. This report must then be sent to the Magistrate having jurisdiction. [Section 157 of the Cr.P.C.]

Power to arrest

Arrest without warrant [Section 41 of the Cr.P.C.]

A police officer may arrest without a warrant:

- A person suspected to have committed a cognizable offence.
- A person who has tools for house breaking in his possession without a lawful excuse.

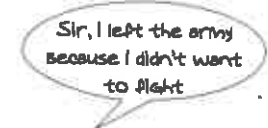


2,3. See Kinds of Offences on page 26. Also see Complainants on page 55.



- A proclaimed offender.
- A person suspected of having stolen property in his possession.

➤ A person who obstructs a police officer in the execution of his duty, or who attempts to escape or has escaped from lawful custody.



- Any person suspected of being a deserter of the armed forces of the Union of India.



- Any person suspected of having committed an offence outside India, which would be an offence if committed in India, and for which it is lawful to arrest and detain him in India.
- Any released convict who has been ordered to notify any change of residence, commits a breach of any rule made in this respect by the state government.
- Any person for whose arrest a requisition has been received.



Arrest on refusal to give name and address [Section 42 of the Cr.P.C.]



➤ A person who has committed/is accused of committing a non-cognizable offence in the presence of a police officer, and refuses to give the officer his name & address, or gives him a false name and address, may be arrested in order to find out the same.

➤ Once his true name and address has been ascertained, he will be released on his executing a bond to appear before a Magistrate.

➤ If his true name and address are not ascertained within 24 hours from the time of arrest, the person must be produced before the nearest Magistrate.

How an arrest is made [Section 46 of the Cr.P.C.]

➤ The arrestee may submit to the custody of the police.

➤ If the arrestee does not submit to the custody of the police, the police may touch or confine his body.

➤ If he forcibly resists/attempt to evade arrest, the police may use all means necessary to arrest him.

➤ However, the police do not have the right to cause the death of a person not accused of an offence punishable with death/life imprisonment.

➤ The arrestee cannot be subjected to more restraint than is necessary to prevent his escape.

He cannot be handcuffed or tied with rope, except with the order of a court.

➤ If the arresting officer believes that the person to be arrested is within any place, the person in charge of the place shall allow the police to enter and search the place. If he does not, the police can enter and search the place by force. [Section 47 of the Cr.P.C.]

➤ If the place is occupied by a woman who does not appear in public [*pardanashin* woman], the police must give notice to her to remove herself from the place, and give her every opportunity to do so. Then, they can forcibly enter the place.

[Section 47 of the Cr.P.C.]

➤ If a police officer who has lawfully entered any place to arrest any person, is then detained inside, he can break open the door or window in order to free himself.

[Section 47 of the Cr.P.C.]



- A police officer can pursue into any place in India any person whom he is authorized to arrest without warrant.
- If a person escapes from custody, the person in whose custody he was can immediately pursue him and arrest him in any place in India.
- The officers in charge of police stations must report all arrests without warrant by their police stations to the District Magistrate or, if he directs, to the Sub-Divisional Magistrate. They must also report whether the arrestees have been released on bail.

Responsibilities of the police at the time of arrest/Rights of arrestees⁴

Interrogation of witnesses⁵

Search by police officer for thing [Section 165 of the Cr.P.C.]

- If the officer in charge of the police station/the investigating officer believes that anything necessary for the purposes of the investigation can be found in any place within the limits of his police station, and that such thing cannot be obtained without unnecessary delay, he can conduct a search for the same.
- The officer must first record in writing why he thinks so. He must also specify the thing to be searched for.
- He can then search for that thing in any place within the limits of his police station.
- He should conduct the search in person, if possible and practical.
- If he cannot conduct the search in person, he may, after recording in writing his reasons for doing so, order in writing that any officer subordinate to him make the search. This order must also specify the place to be searched and the thing to be searched for.
- The officer making the search must make a *panchanama*⁶ of the same.
- A copy of the *panchanama* made must be sent to the Magistrate having jurisdiction.



- The owner of the place searched can apply to the Magistrate for a copy of the *panchanama*, which will be furnished to him free of cost.
- If a subordinate officer conducts the investigation, he must report the result of the investigation to the officer in charge of the police station.



4. See Accused on page 29.

5. See Witnesses on page 68.

6. *Panchnama* - a record/memo of what has been seen or done. In this case, a record of the fact that the search was made, and of what, if anything, was found. The witnesses to the *panchanama* are called *panchas*.

Police case diaries [Section 172 of the Cr.P.C.]

➤ The investigating officer must make entries of all the steps taken by him in the investigation of the offence. He must enter the time at which he received the information, the time at which he started and closed his investigation, the places visited by him, the time at which he visited them, the time when the accused was arrested, the time when the accused confessed, the time when the recovery of the weapon/property was made, etc.



- When a person is arrested in connection with the offence, the investigating officer must produce the case diaries before the Magistrate at the time of seeking remand.
- The court may also call for the case diaries at the time of the inquiry/trial.
- The accused has no right to call for the diaries/see them, unless they are used by the investigating officer to refresh his memory, or if they are used to contradict the officer.

Filing of the chargesheet against the accused [Section 173 of the Cr.P.C.]



- Once the investigation is complete, the investigating officer will file the chargesheet against the accused in court.
- The chargesheet contains:
 - a. Names of the accused person/s and the informant.
 - b. List of the witnesses.
 - c. The offence committed.
 - d. Whether the accused has been arrested.
 - e. Whether the accused was released on bail.
 - f. Whether the accused is in custody.
 - g. The documents that the prosecution is relying on to prove its case.

Example: *Panchanamas*, witness statements, any documents seized from the informant/complainant/any other person in connection with the case.

- A copy of the chargesheet must be furnished to the accused free of charge.

Further investigation and filing of supplementary chargesheet Section 173(8) of the Cr.P.C.

- Even after filing the chargesheet, the police can continue to investigate into the offence.
- After further investigation, the police can file a supplementary chargesheet against the accused.
- The contents of the supplementary chargesheet are the same as any other chargesheet. A copy of the supplementary chargesheet must be furnished to the accused free of charge.



Investigation and Inquiry into Accidental/ Unnatural/Suspicious deaths/ Deaths in custody [Sections 174-176 of the Cr.P.C.]

- When a police officer receives information of an accidental/unnatural/suspicious death, he will register a case of accidental death into the accidental death register or A.D.R. The case will be given an accidental death number.

Example: A.D.R. No. 23 of 2004.

- Accidental/unnatural/suspicious deaths include:

- a. Suicide
- b. Death by machinery/accident/a person/an animal
- c. Death under suspicious circumstances

- The police officer should then immediately inform the nearest Executive Magistrate empowered to hold inquests about the same.
- The police officer should then go to the spot where the body of the deceased person is, make an investigation, and a *panchanama* of the apparent cause of death, the wounds on the body of the deceased, how the wounds appear to have been caused, etc.
- This *panchanama* must be signed by the *panchas* and the investigating officer, and then forwarded to the District Magistrate/Sub-Divisional Magistrate.
- The dead body must then be sent for post-mortem in order to ascertain the cause of death in the following cases:

- a. Where there is any doubt about the cause of death. Eg: murder.
 - b. Suicide by a woman within 7 years of marriage.
 - c. Death of woman within 7 years of marriage raising a suspicion that some other person has committed an offence in relation to her/any relative of the woman has made a request for the post-mortem.
 - d. Where the police officer is of the opinion that it is necessary to do so.
- [Section 174 of the Cr.P.C.]



Interrogation of witnesses by the police [Section 175 of the Cr.P.C.]



➤ The police officer can summon by order, in writing, any persons who appear to be acquainted with the facts and circumstances of the case.

➤ Such persons should answer the questions put to them truthfully.

Inquest/inquiry by the Magistrate [Section 176 of the Cr.P.C.]

➤ In the following 3 cases:

- Death of a person in the custody of the police
- Suicide by a woman within 7 years of marriage
- Death of a woman within 7 years of marriage, raising a suspicion that some other person has committed an offence in relation to her.

➤ The nearest Magistrate empowered to hold inquests can hold an inquiry into the cause of death.

➤ In the following 3 cases:

- Suicide
- Death by machinery/accident/ a person/an animal
- Death under suspicious circumstances

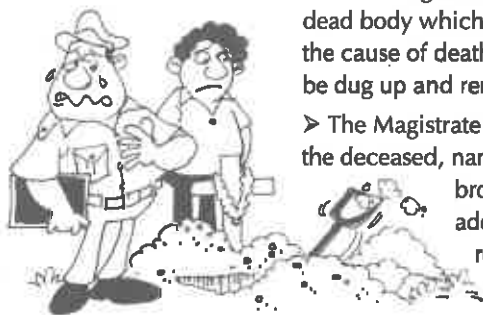
➤ The Magistrate empowered to, can hold an inquiry into the cause of death instead of or in addition to, the investigation by the police officer.



➤ If the Magistrate thinks that it is necessary to examine a dead body which has-already been interred to ascertain the cause of death, the Magistrate can cause the body to be dug up and removed from the place of burial.

➤ The Magistrate should if possible inform the relatives of the deceased, namely his parents, spouse, children, brothers and sisters, whose names and addresses are known, and allow them to remain present at the inquiry.

➤ At the inquiry, the Magistrate should record the evidence taken by him.



N.H.R.C.⁷ Guidelines on Custodial Deaths/Rapes

1. The District Magistrates and Superintendent of Police should report all incidents of custodial death/rape to the N.H.R.C. within 24 hours of their occurrence, or of them coming to know about the same.

2. All post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and the cassettes should be sent to the N.H.R.C. along with the post-mortem report.

3. The post-mortem should be done according to the Model Autopsy form prescribed by the N.H.R.C.

4. In order to determine the 'time since death', and the 'time of death', the rectal temperature should be taken at the first examination of the body while conducting the inquest. Also, for determining 'rigor mortis', the police officer should bend the limbs and see whether there is any stiffness in them. The rectal temperature and the observations about stiffness should be mentioned in the inquest report.



N.H.R.C. Guidelines on Encounter Deaths

1. When the police officer receives information about an encounter death, he should enter that information in an appropriate register.



2. The facts and circumstances leading to the death should be investigated into immediately, to ascertain what, if any offence was committed, and by whom.

3. The cases should be made over to some independent investigation agency, such as the State C.I.D. for investigation.

4. The question of granting compensation to the dependents of the deceased can be considered in cases ending in conviction, if the police officers are prosecuted on the basis of the results of the investigation.

Duties of the police⁴

Prevention of crime

- Surveillance on criminals.
- Monitoring of records.
- Beat patrolling, patrolling in mobile police vans.

Surprise! Wanted to see what you are upto these days.



- Conducting raids. Example: raids on industries suspected of employing children, raids on brothels suspected of housing child prostitutes.
- Manning check posts.
- Participative policing through Mohalla Committees - system of neighbourhood watch.



- Surprise checks.⁵
- Combing/searching operations.

No madam, they just come here to play, not work.



Maintenance of public order

- Maintenance of law and order.
- Specialised crime - There are special cells to deal with specialised crimes such as economic offences involving huge sums of money [Economic Offences Wing E.O.W.], drugs [Anti-Narcotics Cell A.N.C.], illegal immigrants [Immigration Branch], etc.
- Specialised units - The police has special units to deal with juveniles, women. Example : Juvenile Aid Police Unit [J.A.P.U.], Special Cell for Women.
- Traffic management [Traffic police].

4. Source: Mumbai Police Website www.mumbai.police.com

5. Also called *Naka Bandis*. Example: When the police receive information that a suspected/wanted person will be passing through a particular place, or that an offence will be committed in that place, they check the identity of persons in that place, and question them with regard to their presence there.

Other duties

- Inquiring about missing persons.
- Registration of foreign nationals.
- Escorting the treasury, prisoners, juvenile offenders, run-away girls.
- Verification of character, antecedents and records for issuance of passports, arms licences and other licences, for government employment, domestic servants wherever required, etc.



Use of force to disperse mobs

What is an unlawful assembly? [Section 141 of the I.P.C.]

- An assembly of 5 or more persons.
- Whose object is:
 - a. To overawe the government/parliament/state legislature/any public servant who is lawfully exercising his power by criminal force/the show of criminal force, or
 - b. To resist the execution of any law/legal process, or
 - c. To commit mischief/criminal trespass/any other offence, or
 - d. To take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way/use of water/other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right, by means of criminal force/show of criminal force, or
 - e. To compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do, by means of criminal force/show of criminal force.
- An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.



Dispersal of an unlawful assembly/mob

➤ An Executive Magistrate/officer in charge of a police station/any police officer not below the rank of Sub-Inspector can order an unlawful assembly/mob to disperse.



➤ If the assembly does not disperse, the Magistrate/police officer can disperse the assembly by force. For this purpose, the Magistrate/police officer can ask for the help of any male person who is not a police officer/member of the armed forces. If necessary, the persons forming a part of the assembly can be arrested.

➤ If that does not work, the Magistrate can cause the assembly to be dispersed by the armed forces. The armed forces shall use as little force, and cause as little injury to person and property. If necessary, the persons forming a part of the assembly can be arrested.

Principles to be observed when troops/armed police are used to hold back a mob/to disperse a mob.

1. Troops or armed police should not be brought into close contact with a hostile mob that greatly outnumbers them. This is to prevent the risk of hand to hand combat, as apart from the danger of them being rushed and deprived of arms, it makes it impossible for them to exercise adequate fire control and the effect of firing at close range can be severe.
2. Only unarmed police or barricades should be used to form a barrier to hold back a mob. Troops and armed police should not be used for this purpose.
3. Direct interaction of hostile mobs with troops/armed police, without barriers is not advisable.

4. Troops and armed police should be employed only as a reserve, and used only when force becomes absolutely necessary.

5. To ensure that the aforementioned principles laid out in the police manual are complied with, the Magistrate requiring an unlawful assembly to disperse [Under Chapter 10 of the Cr.P.C.], must work in close consultation with the officer commanding such troops/armed police.



Use of firearms

1. When armed police are sent for maintenance of order:

- a. They should be in strict military formation.
- b. Each unit should be commanded by a responsible officer.
- c. They should be posted in such a manner that the officer would be able to exercise direct control over each individual.

2. Where armed police are called in to perform the function of unarmed police they should carry batons or *lathis*¹⁰ and pile arms at a suitable place with a guard to watch over them.



10. *Lathi* - long stick used by the police

I warn you all, just go home
or I'll be forced to fire.



3. Where crowds are to be dispersed with arms, .410 muskets should be used. .303 rifles can be used against a mob armed with firearms.

4. Firing should be a last and extreme resort.

5. When dispersing an unlawful assembly, before any competent authority is compelled to order firing, he should give the rioters the fullest warning of his intentions and that real ammunition, not blanks will be used in the first round.

6. When such a step is taken, aim should be kept low and directed against the most threatening part of the crowd.

7. Care should be taken not to fire upon persons separate from the mob, or in any manner that may cause innocents to be injured.

8. There should be absolutely no firing in the air as this leads to greater loss of life.

9. Firing should cease the instant it is no longer necessary.

10. Superior officers should anticipate contingencies and instruct their men in advance on how to use their authority to prevent certain dangerous practices that may be adopted.

11. The injured should be taken to hospital at the earliest.

12. The commissioner/superintendent of police must send a report to the government of the appropriate state whenever a firing takes place which should inter alia include:

- Information of cases instituted in connection with the firing along with the section and act under which the same are instituted.
- Whether such cases have gone to any court.
- Whether complaints and cross complaints have been registered and whether those have gone to court.
- Whether any pronouncements are made by any court in cases registered.

Hey stop crying, I shot
you in the leg.
You will be fine.



Calling in troops

- When troops are requisitioned by a civil officer for suppressing disturbances:
- a. Such officer cannot interfere in the functioning of such force.
 - b. The military officer in charge and responsible for the success of operation is to alone judge the manner in which the troops can achieve the object stated by the civil officer and direct the troops as necessary.
 - c. The commanding officer of the troops should be informed at the earliest about the objects and wishes of the civil authorities.
 - d. Where military assistance is called for, police should not fire unless specifically ordered to do so, or in self-defence.
 - e. It is the military who are responsible for ensuring that minimum force is used.



Magisterial inquiry

- A Magisterial inquiry should be held whenever firing is resorted to regardless of whether or not there is loss of life or injury, except where firing is in self defence.

Kinds of Offences



Kinds of Offences

Cognizable & Non-Cognizable offences

- Cognizable - a police officer can arrest without a warrant
 - a police officer can investigate without the order of a Magistrate
 - Example : theft, housebreaking



What warrant?
Come to the police station,
I'll show you!!



- Non-Cognizable - a police officer cannot arrest without a warrant
 - a police officer cannot investigate without the order of a Magistrate.
 - Example: criminal intimidation

You are released on bail,
but don't create any
trouble again!



Bailable & Non-Bailable offences

- Bailable - the arrested accused is entitled to bail as a matter of right
 - Example: causing simple hurt, kidnapping

Your bail application
is rejected. No bail!



- Non-Bailable - the arrested accused is not entitled to bail as a matter of right
 - the accused can apply to the court for bail. The court has the power to grant or refuse bail.
 - Example: murder, rape, robbery, theft

Compoundable & Non-compoundable offences [Section 320 of the Cr.P.C.]

Sorry, sister.
I'll return your money.



- **Compoundable** - the injured party/complainant and the accused can enter into a settlement
- compounding has the effect of an acquittal
- Example: theft, where the value of the property stolen is Rs. 250/- or less

No compromise!



- **Non-Compoundable** - no settlement can be entered into between the injured party/complainant and the accused
- Example: rape, murder

Summons-Triable & Warrant-Triable offences¹

I always have problems
balancing my accounts.
No wonder, the cheques
keep on bouncing...



- **Summons-Triable** - offences punishable with less than two years of imprisonment
- Example: mischief causing damage to the amount of fifty rupees, cheque bouncing under section 138 of the Negotiable Instruments Act.

I sentence you
to imprisonment
for 3 years.



- **Warrant-Triable** - offences punishable with more than two years of imprisonment
- Example: theft

1. See Complainants on page 59 for the trial procedure for summons triable and warrant triable offences.

Accused



Accused

Who is an accused ?

An accused is a person suspected, arrested or charged with the commission of a crime.

D.K. Basu guidelines on arrest¹

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.



2. The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.



¹ As laid down by the Supreme Court in D.K. Basu Versus State of West Bengal 1997 Cr.L.J. 743



4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.



7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his body, must be recorded at that time.

The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services, of the concerned State or Union Territory. The Director, Health Services, should prepare such a panel for all Tehsils and Districts as well.



9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the *illaqa* Magistrate for his record:

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer making the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.



Information to the accused/arrestee

- The accused must be informed of the grounds of his arrest.
- The accused must be told in connection with what offence he has been arrested.
- If the accused is arrested in connection with a bailable offence, the police must inform him of his right to bail.
- If the accused is arrested in connection with a non-bailable offence, the police should inform him of his right to apply for bail.
- The police must inform the relative/next friend of the accused about the time and place of arrest as well as the venue of custody.



Search of an arrested person



- The accused person may be searched by the police.
- All articles, other than necessary wearing apparel will be seized from him.
- A receipt showing the articles seized from the accused should be prepared by the police, and given to the accused.
- If the arrestee is a woman, the search must be done by another female with strict regard to decency.

Medical examination of the accused/arrestee

➤ A medical examination of the accused should be conducted immediately after arrest.

➤ A medical examination of the accused must be conducted every 48 hours while the accused is in police custody. The object of the medical examination is to prevent torture in custody. The medical examination will show whether the arrestee has been tortured.

➤ The accused, on production, must inform the judge, if he has faced any torture or abuse in custody, and request a medical examination. The accused can also, if in police custody request to be transferred to judicial custody.

➤ The object of the medical examination is also to prove the commission of any offence by the accused. Eg: rape.

➤ When the arrestee is a female, the medical examination must be done by or under the supervision of a female doctor.

➤ If the accused is under 18 years of age, the age is incorrectly recorded, and there is no documentary proof of the age of the accused, he may ask for a medical examination to determine his approximate age. This is called an age verification test/ossification test.

➤ An application should be made for medical treatment in case of ill-health.



This is a list of my ailments, I need immediate treatment.



Custody & interrogation of the accused

➤ Police Custody/Judicial Custody

Police Custody



- The accused is in the custody of a particular police station.
- The accused is detained in the police station/police lockup.
- Popularly referred to as P.C./P.C.R.

Judicial Custody



- The accused is in custody of the Magistrate/judge/court.
- The accused is detained in the jail.
- Popularly referred to as J.C./M.C. or J.C.R./M.C.R.

- The accused must be produced before a Magistrate within 24 hours of his arrest.
- The accused can be remanded to police custody only for the first 15 days from the date of production before the Magistrate.
- After the expiry of the first fifteen days he must be remanded to judicial custody.
- A Magistrate can remand an accused to judicial custody for a maximum of 15 days at a time.
- The accused may be interrogated while in police custody/judicial custody.
- Every accused has a right not to be tortured.
- The police cannot torture an arrestee in order to forcibly extort a confession.
- If a confession is extracted by force or fraud, the accused must retract the same before the judge, by informing him of the same/filing a signed statement to that effect.



- An accused has the right to have his lawyer present during the interrogation, though not throughout the interrogation.
- The police cannot handcuff the accused or tie him with rope/fetters/any other form of restraints, without the order of a court to that effect.

Bail

What is bail ?

Bail is the security

- sought by a court
- from a person accused of an offence
- for his release from custody



No bail, only jail!



Bailable and non-bailable offences

Bailable offences - The accused is entitled to bail as a matter of right. [U/s 436 of the Cr.P.C.].

- The bail can be furnished in the police station.

The police themselves can and should release the accused on bail after arresting him.

Example: In Bombay the police can grant bail upto Rs.950/- in bailable offences.

If the police do not grant him bail he can apply to the court for bail.

Non-bailable offences

- The accused is not entitled to bail as a matter of right.
- He can apply to the court for his release on bail immediately after arrest. [U/s 437 of the Cr.P.C. to the Magistrates Court, and u/s 439 to the Sessions Court and High Court]. The court has the power to grant or refuse bail.

Kinds of bail

- P.R. bond - Personal Recognizance bond.

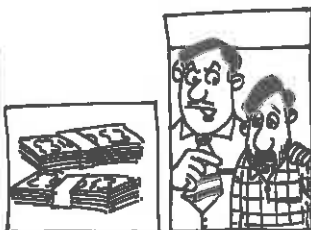
The accused is released on his own personal bond/undertaking to remain present in the court on the dates fixed for his attendance.



I will!



He will!



- Cash bail - The accused is required to deposit a cash amount specified by the court.

- Surety bail - The accused is required to produce a person who will guarantee his attendance in court on the dates fixed for his attendance.

Where to apply for bail ?

Bailable offence - An application for bail may be made to the court before which the accused is produced.

Non-bailable offence - The Magistrate cannot grant bail:

- If the offence is punishable with death/life imprisonment. Eg: murder.
- If the offence is a cognizable one, and the accused has been previously convicted of an offence punishable with death/life imprisonment/imprisonment of 7 years or more. Eg: robbery/dacoity.
- If the offence is a cognizable one, and the accused has been convicted twice or more of a non-bailable and cognizable offence. Eg: theft and house-breaking.



- The Magistrate can release such a person if the accused is a woman/sick/infirm.
- The Magistrate can also release a person who has been previously convicted as abovementioned if the court feels that it is just and proper to do so for any special reason.
- The application for bail in all cases where the Magistrate cannot grant bail has to be made to the Sessions Court/High Court.

Progress of a bail application

- If a bail application is made in the Magistrate court, and rejected, an application for bail can be filed in the Sessions Court.
- If the Sessions Court rejects the bail application, an application for bail can be filed in the High Court.
- If the High Court rejects the bail application, an application for bail can be filed in the Supreme Court.
- There is no restriction on the number of bail applications that can be made before bail is granted.
- However, each successive bail application must show a change in circumstances.



Magistrate Court ➡ Sessions Court ➡ High Court ➡ Supreme Court

Right to bail if chargesheet not filed within the stipulated period

U/s 167(2)(a) of the Cr.P.C., the accused is entitled to bail as a matter of right:

- If the charge sheet is not filed within 60 days of the date that the accused is first produced before the Magistrate/judge, if the offence is punishable with imprisonment of less than 10 years.
- If the charge sheet is not filed within 90 days of the date that the accused is first produced before the Magistrate/judge, if the offence is punishable with death, life imprisonment or imprisonment of more than 10 years.

Reduction of bail

- If the bail amount is set too high, the accused can apply for reduction of bail.
- The application for reduction of bail can be made to the court which passed the bail order.
- If rejected, the accused can approach the Sessions Court/High Court for reduction of bail u/s 440 of the Cr.P.C.



Release on bail during the pendency of the trial

A. U/s 437 (6) of the Cr.P.C., if the trial:

- of any person accused of a non-bailable offence
- is not concluded within 60 days from the date first fixed for the taking of evidence in the case.
- if the accused is in custody for the whole of the said period
- the Magistrate can release him on bail
- the Magistrate can also decide not to release the accused on bail for reasons recorded in writing.

B. Bail to be granted during the pendency of the trial in the following cases:

Maximum punishment for offence	Trial pending for	Time spent in custody	Order
3 years or less	1 year or more	6 months or more	Accused be released on bail or personal bond
5 years or less	2 years or more	6 months or more	Accused be released on bail or personal bond
7 years or less	2 years or more	1 year or more	Accused be released on bail or personal bond

This is as per the judgment of the Supreme Court In Common Cause, a Registered Society Versus Union of India AIR 1996 SC 1619

Interim bail

- Interim bail as the name itself suggests means release on bail temporarily, for a fixed period of time, and for a particular reason.
- After the expiry of the period of interim bail, the accused is required to surrender.
- He is then once more taken into custody.



Anticipatory bail

- As the name itself suggests, anticipatory bail means bail in anticipation of arrest in connection with a non-bailable offence.
- The application for anticipatory bail may be made to the Sessions Court or the High Court u/s 438 of the Cr.P.C.
- The court, while granting bail may impose conditions on the person. Eg: A condition that the person shall not leave the city/state/country without the prior permission of the court.
- If the person is then arrested, and is prepared to furnish bail, he will be released.



Factors considered by the court while granting bail

- Residence in the locality.
- Possibility of the accused absconding.
- Whether the accused poses a threat to society.
- Previous convictions of the accused.
- Whether there are other cases pending against the accused.
- Age of the accused.
- Family/children/dependents - whether the accused is the sole earning member of the family.
- Evidence collected against the accused. Eg: recovery of stolen articles/murder weapon.
- Period of time spent in custody.
- Whether the investigation is complete, and whether the chargesheet has been filed.
- Whether the co-accused has been released on bail.



Keep the following ready for production for/on grant of bail

- Proof of identity. Eg: Election Commission identity card, PAN card, etc.
- Proof of residence. Eg: ration card, electricity bill, telephone bill, rent receipts, agreement for sale of residence, etc.
- Proof of employment. Eg: salary slips, bank passbook, etc.
- Proof of solvency. Eg: bank passbook, salary slips, fixed deposit certificates, etc.
- One/two sureties who have the abovementioned documents. The sureties do not have to be from the city/district where the case is pending.
- A sufficient amount of cash.

All the necessary documents and sufficient cash are in there. You will need them just in case I am ever arrested!



Women arrestees

- The police must make all attempts to keep a woman police constable present when they arrest a woman. If they are unable to, they must record in writing their reasons for not doing so.
- A woman arrestee can be searched only by another female with strict regard to decency.
- The medical examination of a woman arrestee can be conducted only by or under the supervision of a female doctor.
- A woman arrestee should be detained in a women's lockup.

Legal Aid

- An accused person is entitled to legal aid at the remand stage, and at the trial stage.
- The Magistrate is duty bound to inform the accused of his right to free legal aid.
- A trial and conviction can be set aside as invalid on the ground that the accused was not provided with legal aid.



Don't worry about the money! The lawyer will fight your case totally free... if he ever comes for your case!

Other rights of persons in custody

- Prisoners have the right to write and receive letters.
- They have the right to publish books.



- They can receive books, newspapers and other publications.
- They can be interviewed by journalists.
- They have the right to meet with their family and friends.
- They have the right to decent food, soap, clothing, bedding etc.



- Undertrial prisoners cannot be forced to do labour while in prison.
- They have to be paid reasonable wages for their labour while in prison.

I am not used to working
at such low wages.



- Transfer to prisons in far away places is not permitted.
- Solitary confinement, punitive cells, hard labour, change in diet, transfers without the permission of the judge are not permissible.
- Destitute children of prisoners must be taken care of by the state.
- Children of women prisoners under 4 years of age who cannot otherwise be taken care of, can be admitted into the prison with their mother.

Compensation to an arrestee for being groundlessly arrested

- The Magistrate may order that an arrestee who has been groundlessly arrested be compensated for the same by the person who caused the police officer to arrest him [u/s 358 of the Cr.P.C.]
- The amount of compensation awarded cannot exceed Rs. 100/-.
- The compensation is paid for the loss of time and expenses.



Compensation to a person acquitted or discharged

- If a Magistrate acquits/discharges an accused, and is of the opinion that there was no reasonable ground for making the accusation against him:
- The Magistrate may ask the complainant to show cause as to why the acquitted/discharged accused should not be compensated.
- The Magistrate may consider the cause shown if any, and if satisfied that there was no reasonable ground for making the accusation, order that compensation may be paid by the complainant to the acquitted/discharged accused u/s 250 of the Cr.P.C.
- The amount of compensation cannot exceed the amount of fine imposable by the Magistrate.



Civil suit for compensation

- The acquitted/discharged accused can also file a civil suit for compensation.
- The amount awarded by the Magistrate u/s 250 of the Cr.P.C. shall be considered by the civil court at the time of awarding compensation to such person.

Chapter Cases



Chapter Cases

[Chapter VIII of the Cr.P.C.]

Security for keeping the peace and good behaviour on convictions [Section 106 of the Cr.P.C.]

➤ If a Sessions Court or a Judicial Magistrate First Class or Metropolitan Magistrate convicts a person of the commission of or the abetment of:

a. Offences against the public tranquility. Example: unlawful assembly, rioting, affray.



b. An offence which includes assault, or using criminal force or committing mischief.

c. Criminal intimidation.

d. Any other offence intended or likely to cause a breach of peace.



➤ The court may ask the person to execute a bond for keeping the peace for a period of upto 3 years with or without sureties.

➤ The court may do so at the time of sentencing.

Security for keeping the peace in other cases [Section 107 of the Cr.P.C.]

➤ An Executive Magistrate on receiving information that any person is likely to commit a breach of the peace or public tranquillity:

➤ Can ask him to show cause why he should not be ordered to execute a bond for keeping the peace for a period of upto 1 year with or without sureties.



Security for good behaviour from persons distributing seditious/obscene materials [Section 108 of the Cr.P.C.]



➤ An Executive Magistrate who receives information that a person within his local jurisdiction distributes or attempts to distribute seditious or obscene material:

➤ Can ask him to show cause why he should not be ordered to execute a bond for his good behaviour for a period of upto 1 year with or without sureties.

Security for good behaviour from suspected persons [Section 109 of the Cr.P.C.]

➤ An Executive Magistrate on receiving information that there is a person within his local jurisdiction trying to conceal his presence in order to commit a cognizable offence:

➤ Can ask him to show cause why he should not be ordered to execute a bond for his good behaviour for a period of upto 1 year with or without sureties.



➤ An Executive Magistrate on receiving information that there is habitual offender within his local jurisdiction can ask him to show cause why he should not be ordered to execute a bond for his good behaviour for a period of upto 3 years with sureties.



Show-cause notice

- The show cause notice of the Executive Magistrate should be in writing.
- It should contain in detail the information that the Executive Magistrate has received, the amount of the bond to be executed, the duration of the bond, and the number, character and class of sureties.



Attendance in court

- If the person is present in court, the show-cause notice may be read over to him, or the substance of it may be explained to him.
- If the person is not present in court:
 - a. The Magistrate may issue a summons directing him to attend, or
 - b. The Magistrate may issue a warrant for his arrest.
 - c. If in custody, the Magistrate may issue a warrant to the person in whose custody he is to bring him before the court.
 - d. The summons or warrant should be accompanied by a copy of the show-cause notice.
 - e. The copy of the show-cause notice of the Magistrate should be served upon the person to whom it is issued.
- The Magistrate may dispense with the attendance of the person who is asked to show cause why the bond should not be executed by him, and permit him to appear by an advocate.

Inquiry

- The inquiry commences whenever the person appears or is brought before the Magistrate.
- The Magistrate shall inquire into the truth of the information received.
- The inquiry by the Magistrate has to be completed within a period of 6 months. If the inquiry is not over within 6 months, it shall stand terminated, unless the Magistrate orders continuation of the proceedings, for any special reason.
- The inquiry is made in the manner prescribed for conducting trials and recording evidence in summons cases.



Defence in chapter cases

- If a person has been asked to furnish a bond because of quarrels with an individual, the defence can always be taken that quarrels between two individuals are not a threat to the society at large.



You brothers can sort out your problem at home. This is no place for family quarrels!

- Family matters cannot be the subject matter of a chapter case.

- If a person has been asked to furnish a bond for maintaining good behaviour he can take the defence that he has always maintained good behaviour. To corroborate that fact, he can call local leaders, corporators, social workers, etc., as witnesses to depose about his good behaviour.
- A proper hearing should take place, and the person should be given a chance to cross-examine the witnesses against him and to examine defence witnesses if necessary/possible.



Order to give security/discharge

➤ If ordered to execute a bond, the amount of the bond should be fixed with regard to the circumstances of the case, and should not be excessive.

➤ If it is not proved that it is necessary for the person in respect of whom the inquiry is made to execute a bond, the Magistrate shall make an entry on the record to that effect, and discharge the person.



When the period of the bond shall commence

The period of the bond shall commence:

➤ When the person is undergoing a sentence, on the expiry of the sentence.

➤ In any other case, on the date of the order, unless the Magistrate fixes a later date for special reasons.

Appeals [Section 373 of the Cr.P.C.]

Any person who has been ordered to give security for keeping the peace/good behaviour may appeal against such order to the Sessions Court.



Important rulings



Indravadan Killawala and others Versus State of Maharashtra 1989 CR.L.J 1253 (Bom)

➤ In this case, the Bombay High Court held that the provisions of sections 107 and 110 show that the powers vested in an Executive Magistrate under these sections have to be exercised only in cases of a serious nature, not in cases involving trivial quarrels, and certainly not to be used as a vehicle of private vendetta.

Jayant D. Shah and others Versus State of Maharashtra 1986(1) Crimes (Bom) 405

➤ Held by the Bombay High Court that trivial incidents cannot form the basis of proceedings for furnishing security or bond for good behaviour under sections 107 to 110. It is only in matters likely to result in grave consequences, and where there is real threat to breach of peace, that an Executive Magistrate has to invoke his powers under sections 107 to 110 of the Code of Criminal Procedure. The provisions of sections 107 to 110 cannot be used or exercised for satisfying the private vendetta of a querulous person.

Madhu Limaye Versus S.D.M., Monghyr AIR 1971 S.C. 2486

➤ In this case, the Supreme Court held that a Magistrate cannot adjourn the case, and in the interval send the person to jail if he fails to furnish a bond.

Christalin Costa and others Versus State of Goa and others 1992 Cr.L.J. 3608

➤ Held by the Bombay High Court that the initiation of proceedings u/s 107 is not warranted in quarrels between two private individuals. Quarrels between individuals do not normally create any problem of public order and at the most it may lead to a problem of law and order to be dealt with by the appropriate penal law. Also held, where the inquiry was lapsing due to the expiry of 6 months, and the accused approached the Magistrate to pass the orders for closing the inquiry, the Magistrate was bound to pass such order.



Stages of a Case

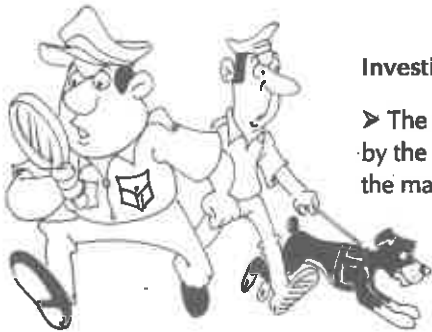


Stages of a Case

- Registration of an offence/complaint
- Investigation
- Arrest of the accused
- Remand PC/JC
- Bail
- Discharge of accused by police
- Filing of the chargesheet
- Committal of the case to the Sessions Court
- Discharge of accused by court
- Framing of charge
- Accused pleads guilty
- Accused pleads not guilty
- Summons/warrant to prosecution witnesses
- Examination of prosecution witnesses
- Statement of the accused
- Examination of defence witnesses
- Final arguments
- Judgement/Sentencing

Registration of an offence/complaint

- Registration of the F.I.R.¹
- Registration of a N.C.²
- Filing of a private complaint in the court.



Investigation

- The police/Magistrate/any other person authorised by the court makes inquiries, and investigates into the matter.



Arrest of the accused

- A person is arrested in connection with the offence.

1. F.I.R. - First Information Report.

2. N.C. - Complaint of a non-cognizable offence.

- The accused is produced before the Magistrate.
- The accused may be remanded to police custody.
- The accused may be remanded to judicial custody.
- The accused is interrogated by the police.



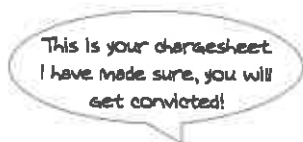
Bail

- The accused may be granted bail.
- If the accused can furnish the bail amount, he will be released from custody.
- If bail is denied, or the accused is unable to furnish the bail amount, he will continue to remain in custody.



Discharge of accused by police

- The accused may be discharged by the police themselves, if they do not find any evidence against him.
- In such a case the accused is free to go, and if in custody, he is released.



Filing of the chargesheet

- If the police find enough evidence against the accused, they will file a chargesheet against him in court.
- If the accused is on bail, a summons is issued to him, informing him that the chargesheet has been filed against him, and asking him to attend the court.
- The chargesheet includes all the documents relied on by the police.
- The chargesheet also contains a list of witnesses whom the prosecution intends to call.
- A copy of the chargesheet alongwith all the documents that form a part of it must be furnished to the accused.



Committal of the case to the Sessions Court

- If the case is triable by the Sessions Court, the Magistrate will commit the case to the Sessions Court for trial.
- The case papers will be sent to the Sessions Court.
- The case will be tried by the Sessions Court.



Discharge of accused by court

- If the court finds on the basis of the material in the chargesheet, that there is no ground for proceeding against the accused, the court can discharge the accused.
- In such a case the accused is free to go, and if in custody, he is released.
- A discharge application may be made u/s 239 of the Cr.P.C. in the Magistrate Court, and u/s 227 of the Cr.P.C. in the Sessions Court.

- However, if during the trial any material appears on the record against the accused, the court may order the discharged accused to be re-arrested and tried.

The trial

Framing of charge

- If the judge finds that there is enough evidence against the accused, he will frame the charge against him.
- The accusation is explained to the accused in a language that he understands.
- He is asked whether he pleads guilty or not guilty.
- The judge records the plea in writing.



Accused pleads guilty

- The judge may convict him, and sentence him, or
- The judge may proceed with the trial.



Summons/warrant to prosecution witnesses

- Summons are issued to the prosecution witnesses to attend the court and give evidence in the case.
- If the witness does not attend the court on receiving the summons, the judge can issue a warrant against him.



Examination of prosecution witnesses

- Examination-in-chief - The witness will be questioned by the prosecutor.
 - Cross-examination - The witness will be questioned by the advocate for the accused.
 - Re-examination - The witness may be questioned by the prosecutor, and cross-examined by the advocate for the accused.
- Recall of witness - Recall, as the name itself suggests means that the witness is once more called to the court to give evidence in the case. A witness, who has already been examined, may be recalled by the court, for any reason in the interest of justice.

Statement of the accused

- The statement of the accused is recorded to enable him to explain what the prosecution witnesses have said against him in court.
- This statement is not taken on oath.

Examination of defence witnesses

- The accused may examine himself and any other witnesses in his defence.
- Examination-in-chief - The witness will be questioned by the defence advocate.
- Cross-examination - The witness will be questioned by the prosecutor.
- Re-examination - The witness may be questioned by the defence advocate, and cross-examined by the prosecutor.



Final arguments

- Arguments from both the prosecution and the defence are heard.



Judgement/Sentencing

- The judge records his finding in the form of a judgement.
- If the judge finds the accused to be innocent he passes an order of acquittal.
- If the judge finds the accused to be guilty, he hears the accused on the point of sentence, and sentences the accused.



Complainants



Complainants

Registering an offence

- A victim of any criminal offence has the right to complain regarding the offence.
- The complaint can be made:
 - a. At the police station
 - b. In court



At the police station

Non-cognizable offence [Section 155 of the Cr.P.C.]



- The police will register a non-cognizable offence and enter a brief statement of facts into the register of non-cognizable offences.
- To investigate the offence, the police require the permission of a magistrate.
- If the police do not take steps to get permission for investigation, the complainant can apply to the court for such permission.
- Examples of non-cognizable offences: criminal intimidation, forgery, mischief.

Cognizable offence [Section 154 of the Cr.P.C.]

- If the offence is a cognizable one, the police will register a cognizable offence in their register of cognizable offences.
- Since it is the "first piece of information" that pertains to the commission of a cognizable offence, it is called a First Information Report or F.I.R.
- The police can then investigate the complaint on their own without the permission of a Magistrate.
- Examples of cognizable offences: murder, rape, theft, house-breaking.



Essentials of a F.I.R.

- A complaint regarding a cognizable offence may be given orally or in writing.
- When a complaint is given orally it has to be reduced into writing in the form prescribed for that purpose.
- The FIR is required to be a brief statement of facts.



Sir, this man is a struggling poet, and he always speaks in rhymes. The FIR would sound rather poetic.

- It must be signed by the complainant.
- The complainant is entitled to a copy of the F.I.R. free of charge, immediately after the registration of the F.I.R.

The F.I.R. should be specific about

- What exactly happened - The facts which make out the offence.
- Sequence of events.
- Name and description of the offender (if possible).
- Date and time of offence.
- Place of offence.
- Description of property stolen (if any) - Attach receipts/bills for the same.
- Description of weapons used (if any).
- Description of injuries sustained (if any) - attach medical certificate (if any).



Speak clearly!! can't understand you.

I know the facts, first hand.



Who can file the F.I.R.?

- F.I.R. as the name suggests is the first information regarding an offence.
- Any person who has first-hand knowledge of facts can file a F.I.R.
- A F.I.R. can also be filed by a person who has just heard/read about the commission of the offence, but does not have first-hand information of facts.

When

- A F.I.R. should be registered at the earliest possible opportunity.
- Delayed F.I.R. - any delay in lodging the F.I.R. must be properly explained
- Effect of unexplained delay - it casts doubt on the complaint.

Sahib, I am sick and had to come walking all the way.



But Sir, this police station is closer than the one in my area.



Where

- Register the F.I.R. at the police station within whose jurisdiction the scene of the offence lies.
- If you are not sure of which police station exercises jurisdiction, register the F.I.R. at the nearest police station. They must take down your complaint, and forward it to the police station exercising jurisdiction.
- The police have a duty to register a F.I.R. whenever they receive any information of the commission of a cognizable offence.
- The police cannot refuse to register the F. I. R. on the ground that the offence was not committed within their jurisdiction, or that the information is not true.

Procedure at the Police Station

- Go to the police station and meet the officer-in-charge.
- Narrate step-by-step in an orderly sequence to the officer, every information about the offence.
- The officer should reduce the information given orally into writing.
- The information should be read over to you.
- The information given should be signed by you.
- The information given should be entered in a book to be kept by the officer.
- As stated earlier, a FIR may be given orally or in writing.
- If given in writing, it should be in the format of a formal letter, addressed to the senior police inspector of the concerned police station.
- Carry a xerox/carbon copy of the letter and take an acknowledgment of receipt on it from the police station after you have handed over the original.
- If it is given orally, ensure that it is reduced to writing immediately.
- A copy of the F.I.R. must be given to you free of charge.

No, no chance that please!! I'll begin again. It was a cold night...



Procedure to be followed if police do not register F.I.R.

➤ Go to the D.C.P. (Deputy Commissioner of Police) or D.S.P. (Deputy Superintendent of Police). If the D.C.P./D.S.P. is satisfied that such information discloses the commission of a cognizable offence, he shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

➤ If no action is taken at this level, approach the authorities higher up in the police hierarchy, first the A.C.P. (Assistant Commissioner of Police) of the area and then the C.P. (Commissioner of Police) or the S.P. (Superintendent of Police) as the case may be..

➤ At each level, when submitting the letter to the police/DCP/DSP/ACP/CP or SP, take an acknowledgement of receipt on a xerox/carbon copy of the letter

and attach the xerox copy of this receipt to all future communication with the same authority or a senior authority. If they do not accept the letter, send it by registered post acknowledgement due [R.P.A.D.].

➤ If all levels of the police hierarchy take no action, then write to the magistrate within whose jurisdiction the police station lies. Attach copies of receipts/A.D. slips of all communications with the police, and describe the lack of action or negligent action, which made it necessary to approach the magistrate.



Approaching the courts

Jurisdiction

➤ All complaints to a magistrate are to be made to the magistrate within whose local jurisdiction the offence was committed.

➤ If the offence was committed within the jurisdiction of more than one magistrate, it may be tried by any such magistrate in whose jurisdiction the offence or a part of the offence was committed.



Initiating proceedings



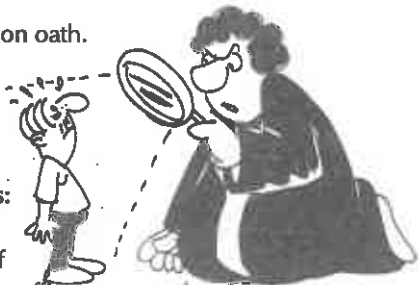
Proceedings before a magistrate may be initiated:

- On receiving a complaint of facts, which constitute an offence.
- On receiving a police report of facts which constitute an offence.
- On receiving information from any person that an offence has been committed.
- On his own knowledge that an offence has been committed.

Examination of complainant

On receiving a complaint and taking note of the offence made out from the complaint, the Magistrate shall:

- Examine the complainant and any witnesses on oath.
- The substance of such examination shall be reduced to writing.
- It shall be signed by the complainant and the witnesses.
- The Magistrate can then do one of two things:
 - a. The Magistrate can postpone the issue of process, and either inquire into the case himself or direct an investigation to be made by a police officer or any other person as he thinks fit.
 - b. Issue process (summons/warrant) against the accused.



Procedure: Once the process is issued, and the accused appears or is brought before the Magistrate, the case will proceed as a warrant case or summons case depending on the kind of offence.

Trial of a summons-case [Chapter XX of the Cr.P.C.]

- The accused appears or is brought before the Magistrate.



- The particulars of the offence are stated to him, and he is asked whether he pleads guilty or not. The plea is recorded. It is not necessary to frame a formal charge.
- If he pleads guilty, the Magistrate shall record the plea, and may convict him.
- If he pleads not guilty, or the Magistrate does not convict him, the Magistrate shall hear the prosecution and take all the evidence produced in support of the prosecution. He shall also hear the accused, and take all the evidence produced by him in his defence.

➤ If the Magistrate finds the accused not guilty, he shall acquit him. If he finds the accused guilty, he shall sentence him.

➤ Stoppage of proceedings - The Magistrate may stop the proceedings at any stage of the case. Where the stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, the Magistrate shall acquit the accused. In any other case, the Magistrate shall discharge the accused.

➤ Non-appearance/death of complainant - If the complainant does not appear on the date fixed for hearing, or if the complainant dies, the Magistrate may acquit the accused.

➤ Dispensing with personal attendance of complainant - the Magistrate may dispense with the personal attendance of the complainant where the complainant is represented by his advocate, or where the Magistrate feels that the personal attendance of the complainant is not necessary.



➤ Withdrawal of complaint - the Magistrate may permit the complainant to withdraw his complaint against all or any of the accused, and acquit the accused. This can be done at any stage of the case before the final order is passed.



Trial of a warrant-case [Chapter XIX of the Cr.P.C.] - In a private complaint

➤ The accused appears or is brought before the Magistrate.

➤ The Magistrate shall proceed to hear the prosecution and take all evidence produced in support of the prosecution.

➤ If, on taking this evidence, or at any previous stage, the Magistrate considers that no case is made out against the accused, the Magistrate shall discharge him.

➤ If, on taking this evidence, or at any previous stage, the Magistrate considers that there is ground for presuming that the accused has committed an offence, the Magistrate shall frame the charge against the accused.

➤ The charge is read and explained to the accused, and he is asked whether he pleads guilty or not.

➤ If he pleads guilty, the Magistrate shall record the plea, and may convict him.

➤ If the accused pleads not guilty or the Magistrate does not convict him, he shall be required to state if he wishes to cross-examine any of the prosecution witnesses whose evidence has been taken.



- The witnesses named by him shall be recalled and cross-examined/re-examined.¹
- The evidence of any remaining witnesses for the prosecution shall be taken.
- The accused can then enter upon his defence, for which he may examine witnesses including himself, and file any written statement.
- If the Magistrate finds the accused not guilty, he will acquit him. If he finds him guilty, he will hear the accused on the question of sentence and sentence him.
- Non-appearance of the complainant - if on the date fixed for the hearing of the case, the complainant is absent, and the offence is one which is compoundable or non-cognizable, the Magistrate may discharge the accused at any time before the charge is framed. .



Compelling appearance of persons before a Court

Accused persons often try to avoid/delay proceedings before criminal courts by remaining absent. What can one do to ensure or obtain their presence in court for hearings? How does the court call witnesses?

The Cr. P. C. provides for three types of processes:

- (a) Summons
- (b) Warrant of arrest
- (c) Proclamation

Summons

➤ A summons is an order of a judge directing a person to remain present before him, on the date and at the time stated therein.

➤ Service of summons:

- a. The summons is issued in duplicate.
- b. A duplicate of the summons is to be served directly on the person and his signature is to be taken in receipt on the original.
- c. A summons is served by a police officer, or by an officer of the court issuing it or any other public servant.
- d. Corporation: A summons is served on a corporation through the secretary, local manager, or any principal officer of the corporation. It may be sent to such person by registered post acknowledgement due [R.P.A.D.]. The summons is deemed to be effected on such date on which the letter would reach in the ordinary course of post.
- e. If a person is not to be found, the summons may be served on an adult male member of his family, and the signature of such adult male person is to be taken on the original in receipt. A servant is not a family member for the purpose of such service of summons.



¹ For details on examination of witnesses, see Witnesses on page 70.

➤ A copy may also be affixed on a prominently visible portion of the residence of the person.

➤ A court issuing summons to a witness may simultaneously direct a copy of the summons to be served by registered post.

➤ Summons to a government servant shall ordinarily be sent in duplicate to the head of the office in which such person is employed; who shall cause the summons to be served by handing over the duplicate to the concerned person, and taking his signature in receipt on the original, and shall return it to the court under his signature.



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



Warrant of arrest

➤ A warrant of arrest is an order requiring any person to be arrested and produced before a judge.

➤ Every warrant of arrest issued by a court shall be:

- In writing.
- Signed by the presiding officer of the court.
- Bear the seal of the court.

➤ Warrants may be of two kinds:

Bailable warrant - The person is arrested, but released immediately on his furnishing the bail amount specified in the warrant.

Non-bailable warrant - The person is arrested, and detained. He will then have to apply to the court for bail.





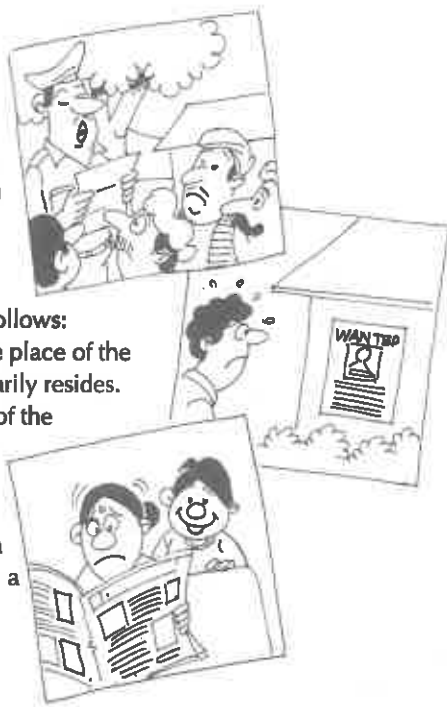
- A warrant of arrest may be directed to one or more police officers, or if its immediate execution is necessary and no police officer is immediately available, to any other person or persons, and such person or persons shall execute the warrant. When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them anywhere in India.
- Any person to whom a warrant is directed, shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.
- A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Proclamation for person absconding

➤ If, even after a warrant is issued, the person cannot be found, the court may publish a written proclamation proclaiming the person as an offender and requiring him to appear at a specified time and place within 30 days of the date of publication of the proclamation.

➤ The proclamation shall be published as follows:

- a. Publicly read in some prominently visible place of the town or village in which such person ordinarily resides.
- b. Affixed to some prominently visible part of the house of the person.
- c. A copy thereof shall be affixed to some prominently visible part of the court-house.
- d. The court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which the person resides.



Attachment of property of person absconding

➤ If the person does not appear before the court within the time stipulated by the proclamation, the court may order attachment of his property.

➤ The court may order the attachment of his property, movable or immovable or both. Provided: where at the time of issue of the proclamation the Court is satisfied that the person in relation to whom the proclamation is to be issued:



- a. Is about to dispose of the whole or any part of his property, or
- b. Is about to remove the whole or any part of his property from the local jurisdiction of the court
- c. It may order the attachment of his property simultaneously with the issue of the proclamation.

Compelling production of documents

Summons

- When a document or other thing is required to be produced for the purposes of an investigation, inquiry, or other proceeding:
- A judge may issue a summons or an officer-in-charge of a police station may issue an order for the production of any document or other thing which is necessary, to the person in whose possession or power the document or thing is believed to be, to attend and produce it at a particular date and time. Such person may produce the document in person or cause it to be produced.
- If such document, or thing is in the custody of a postal or telegraph authority, the court may cause a search to be made for the same and may require the document or thing to be delivered to such person as the court directs.



Search warrants

- If a court that has reason to believe that a person to whom a summons to produce a document or other thing has been addressed, may not produce the document or other thing, it may issue a search warrant.
- The owner or possessor of the premises shall on demand of the officer or other



person executing the search warrant, and on production of the search warrant, allow him to enter the premises, and afford all reasonable facilities for a search therein.

- The search shall be made in the presence of independent witnesses, and a list of all the things seized during the search and of the places where each is found shall be prepared by such officer or other person executing the search warrant and signed by such witnesses.

Prosecution of cases

Public Prosecutor/Special Public Prosecutor

➤ In the Magistrates courts:

1. Police cases:

- a. Cases filed by the police.
- b. Prosecuted by Public Prosecutors.

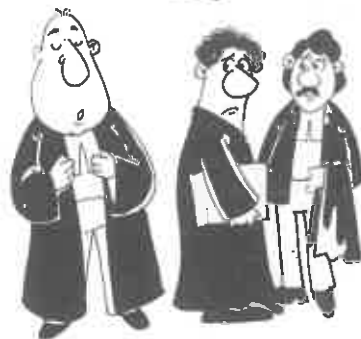
2. Private complaints:

- a. Cases filed by private persons against any other person.
- b. Prosecuted by the advocates for the complainants.

➤ All sessions cases are prosecuted by the public prosecutor in the Sessions Court.

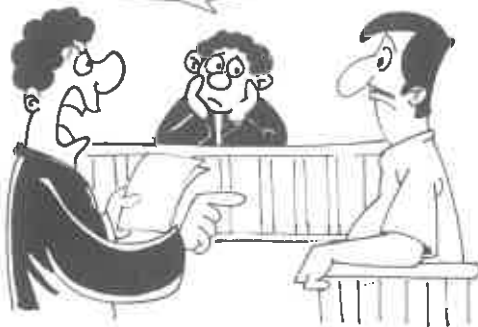
➤ Special Public Prosecutor - The government may appoint a Special Public Prosecutor for a particular case or class of cases. Eg: The Best Bakery case.

Here comes the special class one, they give us a real complex



Right to appoint a 'Watching' Advocate [Section 301 of the Cr.P.C.]

Sheh! I can do nothing but watch.



➤ The complainant/victim in a police case may appoint his own lawyer, who may apply to the court to assist the prosecution. Such a lawyer is known as a 'watching' advocate.

➤ At the stage of remand, the complainant/victim may oppose the grant of bail to the accused by filing an intervention application in the court, either personally or through his lawyer.

➤ The Public Prosecutor, Assistant Public Prosecutor or Special Public Prosecutor in charge of the case shall conduct the prosecution.

➤ The 'watching' advocate does not have the right to examine prosecution witnesses, or cross-examine defence witnesses. As the term itself suggests, he can only assist the prosecutor, and can act only under his directions.

➤ The 'watching' advocate may submit written arguments at the end of the trial with the permission of the court.



➤ When a court imposes a sentence of fine, the court may, when passing judgement, order the whole or any part of the fine recovered to be paid to the complainant/victim in payment of compensation for loss/injury caused by the offence.

➤ When the court does not impose a sentence of fine, the court can order the accused to pay an amount as compensation to the complainant/victim. There is no limit on the amount of compensation payable to the complainant under this clause.

➤ An order for compensation may also be made by the appeal court or by the Sessions Court or High Court in revision.

➤ The complainant can also file a separate civil suit for compensation. The amount of compensation awarded by the court shall be considered by the civil court at the time of awarding compensation to such person.



Witnesses



Who is a witness ?

Any person acquainted with the facts and circumstances of a case is a witness.



At the police station [Section 160 Cr.P.C.]

- Any witness may be called to the police station for interrogation.
- No woman, or boy under 15 years of age can be called to the police station for the purpose of interrogation. They can be interrogated only at their residence.
- The witness can be called to the police station by an order which must be in writing.
- The witness must be within the limits of that police station, or any adjoining one. If not, he cannot be called to the police station.
- The witness is entitled to be reimbursed the reasonable expenses incurred in attending any place other than his residence.



Hints

- Your statement may be taken down in the local language. Eg: Marathi in Bombay, Maharashtra.
- Once you have given a statement to the police, read it over, or if it is in a language you do not understand, ask the police officer taking down your statement to read it to you.
- Make sure that what has been recorded matches with the oral statement given by you. For this purpose, try to keep a person who knows the local language with you.



Consequences of non-attendance

- If the witness does not attend the police station as required by the police, he can be prosecuted for disobedience of the order of a public servant u/s 174 of the I.P.C.
- Punishment - simple imprisonment for 1 month or a fine of Rs. 500/-, or both.



Interrogation at the police station

- The witness will be examined orally by the investigating officer.
- No oath/affirmation is required to be administered.
- The witness is bound to answer truthfully all the questions put to him. Except: Questions, the answers to which may expose him to a criminal charge/penalty/forfeiture.

- This oral examination may be reduced to writing.
- It is not required to be signed by the person making it.
- The police cannot prevent a person from making any statement which he wants to make of his own free will.
- However, they cannot cause the witness to make a statement by any inducement, threat or promise.

Use of the statements of witnesses

- The statement of the witness so recorded, if found to be material, will be included in the chargesheet filed against an accused person after completion of the investigation by the police.



Summons/Warrant

Sorry sahis, I couldn't attend court. My monkey never leaves me alone.



- The witness may then be called to the court to testify when the trial begins.
- The court will issue a summons to the witness.
- If the witness does not attend the court, the judge may issue a warrant for his arrest in order to compel his attendance in court.
- If the court considers the production of a document or thing necessary for any trial, it may issue a summons to the person in whose possession it is, requiring him to attend and produce it in court. If the summons is issued merely for the production of a document or thing, and not for the personal attendance of the person, it is sufficient if the person causes the document or thing to be produced, instead of personally producing the same.

Deposing in court

- The oath will be administered to the witness.
- Examination-in-chief - The witness will first be examined in-chief by the prosecutor.
- Cross-examination - The witness will then be cross-examined by the advocate appearing for the accused.
- Re-examination - The witness may then be re-examined by the party calling him.

Sorry sir, I am suffering from temporary insanity. I really don't know what I am saying.



So much examination and cross examination... I am dizzy. never in my life have I gone through so many examinations.



- A witness must answer truly all the questions put to him.
- The witness is not excused from answering any question on the ground that the answer to the question will incriminate him, or expose him to a penalty or forfeiture of any kind.

- A witness can be prosecuted for giving false evidence.
- The witness may turn hostile. This happens when the witness does not support the case of the person calling him, and contradicts the facts recorded in his statement.
- Inconsistencies between the statement given to the police and the deposition of the witness in court would render the evidence of the witness doubtful.
- The statements of the witnesses by themselves cannot be relied upon by the judge. They cannot be exhibited in evidence. The statements can only be used for the purpose of contradicting the witness.
- The witness can apply for a certified copy of his deposition recorded by the court. He will have to pay a certain nominal charge for the same in the court office.

Hints

- Remember clearly the version of facts in the statement given by you to the police. Your deposition in court must be consistent with your statement.
- Be brief in your answers. Answer the prosecutor's questions to the point.



Costs, etc.

- The witness may be paid the reasonable expenses of attending the court to testify. [Section 312 of the Cr.P.C.]
- He must be paid proper diet money when he attends the court, even if the matter is adjourned and his evidence is not recorded. [Swaran Singh Versus State of Punjab 2000 Cr.L.J. 2780 (S.C.)]

- If a witness is present in court, he must be examined. The matter can only be adjourned for special reasons. [Section 309 Cr.P.C.]
- The deposition of the witness forms a part of the evidence in the case.

Court may call any person as a witness

- Under section 311 of the Cr.P.C., any person may be summoned as a witness by the court, even if his statement has not been taken by the police/not been included in the chargesheet filed by the police.
- The evidence of the witness must be essential for the just decision of the case.
- The court may call such a person as a witness at any stage of the trial.



Examination of witnesses on commission

- If the examination of a witness is necessary for the ends of justice and his attendance cannot be procured without delay, expense or inconvenience, the court may dispense with the attendance of the witness, and issue a commission for the examination of the witness u/s 284 of the Cr.P.C.
- When the witness to be examined on commission, is a witness for the prosecution, the court may direct the prosecution to pay such amount to the accused as it considers reasonable to meet the expenses of the accused, including his pleader's fees.



- The commission will summon the witness before him, or proceed to the place where the witness is, and record his evidence in the same manner as the trial court does.
- Any party to the proceeding may appear in person or by pleader, and may examine, cross-examine and re-examine the witness.
- Pending the examination of the witness on commission, the proceedings in the trial court may be adjourned for the amount of time necessary for the execution and return of the commission.
- The deposition of the witness shall form a part of the record and proceedings in the case.
- The court may also issue a commission in order to examine as a witness any person confined or detained in a prison.

Approver

➤ Under section 306 of the Cr.P.C., a Magistrate inquiring into or trying an offence may tender a pardon to a person accused of an offence at any stage of the inquiry or trial, on the condition that the accused shall make a full and true disclosure of all the facts and circumstances of the offence within his knowledge.

➤ The Magistrate shall:

- Examine that person as a witness.
- Record his reasons for tendering the pardon.
- Record whether the tender was or was not accepted by the person who made it.
- Furnish the accused with a copy of such record free of cost on his making an application for the same.
- Commit the case to the Sessions Court for trial.

➤ Such a person is called an approver (mafi ka sakshidaar in Hindi). He then becomes a witness for the prosecution.

➤ This is done with the object of obtaining the evidence of a person supposed to have been concerned in the offence.

➤ This section applies to:

- An offence triable by a Sessions Court.
- An offence punishable with imprisonment of 7 years or more..
- The approver shall be detained in custody until the termination of the trial unless he is already on bail.
- Under section 307 of the Cr.P.C., pardon may also be tendered after the case has been committed to the Sessions Court, and before the judgement is passed.

Hope I never see those
guys again in my life.



Consequences for violation of conditions on which tender of pardon is granted



➤ Under section 308 of the Cr.P.C., if the Public Prosecutor certifies that in his opinion the Approver has not complied with the conditions on which the tender of pardon was made, either by wilfully concealing anything material, or by giving false evidence, such person may be tried for:

- The offence in respect of which the pardon was tendered.
- Any other offence of which he appears to have been guilty in connection with the same matter.
- The offence of giving false evidence, only with the sanction of the High Court.

Appeals, Revisions & Limitations



Appeals

- An appeal can be filed either against an order of conviction or acquittal.
- It is filed to decide whether the order of a lower court is correct or not.



Appeals from convictions [Section 374 of the Cr.P.C.]



- A person convicted on a trial held by the High Court, can appeal to the Supreme Court.



Sessions Judge
Additional Sessions Judge
Any other court which passes a sentence of more than 7 years

- A person convicted on a trial held by a Sessions Judge, Additional Sessions Judge or any other court in which a sentence of imprisonment of more than 7 years has been passed can appeal to the High Court.
- A person convicted on a trial held by a Judicial Magistrate or an Assistant Sessions Judge, can appeal to the Sessions Court.



No appeal where the accused pleads guilty [Section 375 of the Cr.P.C.]

- There can be no appeal in cases where the accused has pleaded guilty and has been convicted.
- In such cases, the person can appeal only with regard to the extent or legality of the sentence.

I am really very sorry.
Can you reduce the
sentence please..



No appeal in petty cases [Section 376 of the Cr.P.C.]

There can be no appeal by a convicted person in the following cases:

- Where the High Court passes a sentence of not more than 6 months imprisonment or fine upto Rs.1000/-, or both.
- Where the Sessions court or a Metropolitan Magistrate passes a sentence of not more than 3 months imprisonment or fine upto Rs. 200/-, or both.



You thief! Stealing
chicken! Jail is the place for
you, unless you drop the
chicken at my house.

You cannot appeal in
such a petty case.

- Where the Judicial Magistrate First Class passes a sentence only of fine upto Rs.100/-.
- Where in cases tried summarily the fine imposed is not more than Rs. 200/-.



Appeal against inadequacy of sentence [Section 377 of the Cr.P.C.]

- The State Government can direct the Public Prosecutor to file an appeal in the High Court in a case of conviction, on the ground of inadequacy of sentence.
- The accused must be given a reasonable opportunity to show cause against enhancement of sentence, and can even plead for his acquittal or reduction of sentence.



Appeal in case of Acquittal [Section 378 of the Cr.P.C.]

- An appeal against an order of acquittal can only be filed in the High Court.
- It can be filed by the Public Prosecutor or by the Complainant.

Appeal by Public Prosecutor

- The State Government can direct the Public Prosecutor to file an appeal in the High Court from an order of acquittal.
- The appeal can only be filed with the leave of the High Court. Therefore, first, an application for leave to appeal must be filed.



Appeal by Complainant

- If the case is instituted on a private complaint, the complainant can file an appeal against the order of acquittal.
- The complainant must first file an application for leave to appeal.
- If the application for leave to appeal by the complainant is refused, no appeal can then be filed by the state.

Revision



- A revision application can be filed against any final order.
- It is filed to decide whether the order of a lower court is correct or not.
- It cannot be filed against an order rejecting a bail application, which is an interim order.
- The revision application may be filed either in the Sessions Court [u/s 397 of the Cr.P.C.] or in the High Court [u/s 401 of the Cr.P.C.]. If the revision application is rejected by the Sessions Court, another revision application cannot then be filed in the High Court.
- It must be filed within 90 days from the date of the order challenged.



Sessions Court / High Court



Within 90 days

Magistrate Court

High Court



Within 90 days

Sessions Court

Limitation

The period of limitation means the period specified for taking cognizance of an offence. In simple language, this means the period of time within which a person can file a complaint regarding an offence. It is also the period of time within which an appeal or revision application can be filed.



Period of limitation

The period of limitation is as follows:

- 6 months, if the offence is punishable only with fine.
- 1 year, if the offence is punishable with imprisonment for a term of upto 1 year.
- 3 years, if the offence is punishable with imprisonment for a term of 1 year to 3 years.
- For an offence punishable with more than three years, there is no limitation.

Sir, its been a year, but we now realise that she is the one who stole our Tommy's pup. Don't they look identical?



AAArgh!! Someone has stolen my new salwar!!



Commencement of the period of limitation

The period of limitation in relation to an offence shall commence:

- On the date of the offence; or
- If the commission of the offence was not known to the person aggrieved by the offence or to any police officer:
 - a. on the first day on which the person aggrieved by the offence comes to know about the offence, or
 - b. on the first day on which any police officer comes to know about the offence, whichever is earlier.

- If the offender is not known:
 - a. on the first day on which the person aggrieved by the offence comes to know the identity of the offender, or
 - b. on the first day on which the police officer comes to know the identity of the offender, whichever is earlier.

Shobha is wearing my salwar!!!



Juveniles





Juveniles in conflict with the law

Juvenile is a person who has not completed 18 years of age. Juvenile in conflict with the law¹ is a juvenile alleged to have committed an offence.

A juvenile in conflict with the law can only be tried by the Juvenile Justice Board.

Juvenile Justice Board [Section 4 of the J.J. Act]²

- There should be a Juvenile Justice Board in every metropolitan area/district/group of districts.
- The Board should consist of one Magistrate (Metropolitan Magistrate/Judicial Magistrate First Class) and 2 social workers one of whom should be a woman. The Magistrate will be the principal Magistrate.
- The Magistrate should have special knowledge/training in child psychology/child welfare.
- The social workers should have been actively involved in health, education and welfare activities pertaining to children for 7 years or more.
- The Board has the powers of a Metropolitan Magistrate/Judicial Magistrate First Class.
- The proceedings of the Board should be in a home-like and child-friendly atmosphere.³ Example: In Mumbai, the Principal Magistrate and the lawyers do not wear uniform, that is gowns, blazers, bands etc. There is no witness box or accused box. The Board sits within the premises of the observation home.⁴ The juveniles are not detained in a lock-up before they are produced before the Board, but are made to sit outside the room where the proceedings are held.



1. Hereafter referred to as 'juvenile'.

2. The Juvenile Justice (Care and Protection of Children) Act 2000.

3. Maharashtra Juvenile Justice (Care and Protection of Children) Rules 2002.

4. Place where juveniles in conflict with the law are lodged. Not a police lockup or a jail.

Arrest of a juvenile in conflict with the law

➤ As soon as a juvenile in conflict with the law is arrested, the police should place him under the charge of the special juvenile police unit or the designated police officer.

Special juvenile police unit⁵

- There should be a special juvenile police unit in every district/city.
- Every member of the unit should be specially instructed and trained.
- In every police station there should be a 'juvenile/child welfare officer' who will handle the juvenile in coordination with the police. The officer shall be one with aptitude, appropriate training and orientation.
- The child welfare officer will be a member of the special juvenile police unit.



Female juveniles⁶

- No female child should be taken into custody by the police between sunset and sunrise, unless the circumstances warrant it.
- The Board should ensure that the female child is kept under the care of a woman or female relative in a place of safety or in an observation home.
- A female juvenile should be searched only by female staff.

Information to Juvenile Justice Board, probation officer, parent/guardian of juvenile about arrest

- As soon as a juvenile is arrested, the special juvenile police unit/designated police officer should immediately report the matter to the Board.
- The special juvenile police unit should inform the probation officer of the arrest of the juvenile, so as to enable him to obtain information about the antecedents and family background of the juvenile, and any other information likely to assist the Board in making the inquiry.
- The special juvenile police unit should also inform the parent/guardian of the juvenile, and direct him to remain present before the Board.
- The juvenile should be given all possible assistance to enable him to call any person of his choice over the phone or otherwise.⁷



5. Section 63 of the Juvenile Justice (Care and Protection of Children) Act 2000.

6, 7. Maharashtra Juvenile Justice (Care and Protection of Children) Rules 2002.

Inquiry by the police⁸

- A juvenile should not be detained for more than 24 hours for inquiry in the police station.
- A juvenile should not be kept in a police lock up or a jail.
- As far as possible, the persons conducting the inquiry, should only wear civil clothes and not be in uniform unless specific circumstances require the said officer to wear a police uniform in the interest of the child.

However, they shall at all times have on their person, an identification that should be produced on demand.

- A juvenile can be interrogated by the police only in the observation home. Any such interrogation must be done in the presence of the probation officer.



Production of the juvenile before the Juvenile Justice Board⁹

- The juvenile should be produced before the Juvenile Justice Board by the concerned police officer within 24 hours of the arrest.
- A juvenile should not be handcuffed, or tied with ropes or chains.
- A juvenile should be received, assessed and interviewed in a child friendly manner and home-like environment by the specially trained probation officers or designated or authorized social workers or police officers.
- The concerned police officer shall produce the copy of the F.I.R. and other relevant documents before the Board at the earliest. If the original documents are not available, the attested copies should be submitted at the initial stage of the proceedings.
- In case a voluntary organisation takes a juvenile to the Board, the voluntary organisation shall inform the concerned police station about the same. The voluntary organisation should prepare a report listing the circumstances in which the juvenile was arrested and the offence in connection with which he was arrested. The juvenile must be produced alongwith the report.



- The police or the recognized voluntary organisation shall be responsible for the safety and basic amenities to the juveniles apprehended or kept under their charge during the period that they are with them.
- When a juvenile is produced before an individual member of the Board, the order given by the member shall be ratified in the next meeting of the Board.

Report of the probation officer and professionals

➤ The Board shall order the probation officer to inquire into the character and social antecedents of the juvenile.¹⁰ The probation officer will then furnish a report to the Board.

➤ For this purpose, the probation officer can take the opinion of professionals or experts. The Board may also call for the reports of professionals/experts.¹¹

➤ The Board should not pass any order without first calling for the report of the probation officer.¹²

➤ The report of the probation officer about the juvenile will be confidential.¹³



What happens when a juvenile is produced before any court other than the Juvenile Justice Board ? [Section 7 of the J.J.Act]

➤ If a juvenile is produced before the Magistrate Court/Sessions Court, and raises a plea that he is a juvenile, or that he was a juvenile at the time of his arrest:

➤ The judge must conduct an inquiry into the age of the person.

➤ If documentary evidence of age such as a birth certificate or school leaving certificate is produced by the person, the judge can decide whether he is a juvenile or not on the basis of the documents.

➤ Where no documentary evidence is produced by the person, the judge must order the age verification test/ossification test of the person in order to determine his age.

➤ If the judge decides that the person is a juvenile, he must order his immediate transfer to the observation home, and the immediate transfer of his case to the Juvenile Justice Board.



Bail of a juvenile [Section 12 of the J.J. Act]

➤ For a juvenile, bail is the rule rather than the exception.

➤ A juvenile can be released on bail irrespective of whether he has been arrested in connection with a bailable/non-bailable offence.

➤ A juvenile may be released on bail with or without surety.

10, 11, 12. Maharashtra Juvenile Justice (Care and Protection of Children) Rules 2002.

13. Section 51 of the Juvenile Justice (Care and Protection of Children) Act 2000.



➤ A juvenile can be refused bail only on the following grounds and not otherwise:

- a. If his release would bring him into association with a criminal, or
- b. Expose him to moral, physical or psychological danger, or
- c. Defeat the ends of justice.

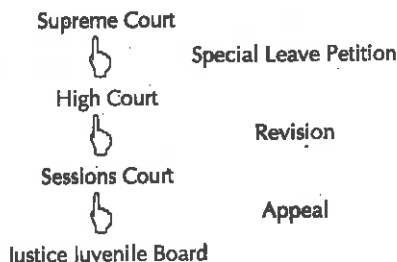
➤ If the juvenile is not released on bail, he must be kept in the observation

home/place of safety. A juvenile can never be kept in a jail or a police lock-up.

➤ If bail is refused by the Juvenile Justice Board, the juvenile can approach the Sessions Court for bail by filing an appeal.

➤ If bail is refused by the Sessions Court, the juvenile can approach the High Court for bail by filing a revision application.

➤ If bail is refused by the High Court, the juvenile can approach the Supreme Court for bail by filing a special leave petition.



Juvenile and adult accused must be tried separately [Section 18 of the J.J. Act]

➤ A juvenile can be tried for an offence only by the Juvenile Justice Board.

➤ A juvenile cannot be tried for an offence along with a person who is not a juvenile.

➤ Example: Two persons are arrested for murder,

A - a juvenile and B - an adult accused.

They will be tried separately for the offence of murder. A will be tried by the Juvenile Justice Board. B will be tried by the Sessions Court.



Inquiry by the Juvenile Justice Board [Sections 14 and 54 of the J.J. Act]

- The inquiry must be completed within 4 months, unless the Board extends the period depending on the case.
- In special cases, the Board must record reasons for the extension.
- The Board must follow the procedure prescribed for the trial of summons cases.¹⁴

Orders which the Board can pass [Sections 15 & 16 of the J.J. Act]

- A juvenile cannot be sentenced to death/imprisonment.
- The board can:
- Allow the juvenile to go home after advice or admonition.



- Direct the juvenile to participate in group counselling and similar activities.
- Order the juvenile to perform community service.



- Order the juvenile or his parents to pay a fine if he is over 14 years of age, and earns money.

14. See Complainants on page 59 for the trial procedure for summons cases.

➤ Direct the juvenile to be released on probation of good conduct and placed under the care of his parent/guardian/other fit person on his parent/guardian/other fit person executing a bond for his good behaviour and well-being for a period of upto 3 years.



➤ Direct the juvenile to be released on probation of good conduct and placed under the care of his parent/guardian/other fit person on his parents executing a bond for his good behaviour and well-being for a period of upto 3 years.

➤ Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for a period of upto 3 years.

➤ Order that the juvenile be sent to a special home:¹⁵

a. If the juvenile is 17 to 18 years - for 2 years or more

b. Any other case-- until he ceases to be a juvenile

➤ A juvenile can be sent to a 'place of safety'¹⁶ for any period not exceeding the maximum period of imprisonment to which he could have been sentenced, where:

a. The juvenile is 16 years of age or more

b. The offence is serious in nature, or

c. The conduct of the juvenile is such that it would not be in his interest or in the interest of any other juvenile in a special home, to send him to a special home.



d. The juvenile will be kept in protective custody at the place of safety.

15. Place where a juvenile may be lodged after conviction

16. Place where a juvenile may be lodged temporarily during the inquiry or after conviction.

Confidentiality/privacy [Section 51 of the J.J. Act]

- The report of the probation officer about the juvenile shall be confidential.
- A newspaper, magazine or any other form of media cannot print the name, address, name of the school, or any other information about the juvenile that would disclose his identity. The pictures of the juvenile cannot be printed.
- The Juvenile Justice Board can allow the printing of such information, if it is of the opinion that such disclosure is in the interest of the juvenile.
- Punishment: If the information is printed without permission, fine of upto Rs. 1000/-.



Removal of disqualification attaching to conviction [Section 19 of the J.J. Act]

- If a juvenile is convicted of any offence by the Board, he will not suffer any disqualification attaching to the conviction.
- The Board must order that the records of the conviction be removed.

No chapter proceedings¹⁷ against juvenile [Section 17 of the J.J. Act]

- Chapter proceedings cannot be instituted against a juvenile.

Appeals [Section 52 of the J.J. Act]

- Any person aggrieved by any order of the Juvenile Justice Board can appeal to the Sessions Court.
- No appeal can be filed if the juvenile has been acquitted.
- No appeal can be filed from any order of the Sessions Court to the High Court.



Revisions [Section 53 of the J.J. Act]¹⁸

- If the appeal is rejected by the Sessions Court, the person can file a revision application against the order in the High Court.



17. See Chapter Cases on page 42.

18. See Chapter on Appeals, Revisions and Limitations on page 78.

Offences against Women



Offences against Women

The following are the main offences concerning women which will be covered in this chapter.

- Outraging the modesty of a woman
- Insulting the modesty of a woman
- Rape
- Kidnapping or abducting a woman
- Offences under the Dowry Prohibition Act 1961
- Criminal breach of trust
- Domestic violence
- Dowry death
- Abetment of suicide of a married woman
- Bigamy



Outraging the modesty of a woman [Section 354 of the I.P.C.]

What does the offence of outraging the modesty of a woman include ?

A person commits the offence of outraging the modesty of a woman when he:

- Assaults a woman, or
- Uses criminal force on her
- Intending to outrage her modesty, or
- Knowing that by doing so he is likely to outrage her modesty.

Examples:

Without her consent:

- Embracing a woman.
- Stripping/removing the clothes of a woman.
- Kissing a woman.
- Touching/playing with the private parts/breasts of a woman.



Punishment .

- Imprisonment upto 2 years/fine/ or both.

The offence of outraging the modesty of a woman is:

- Cognizable
- Bailable
- Compoundable - by the woman whose modesty was outraged with the permission of the court.

Triable by:

- Metropolitan Magistrate/Judicial Magistrate First Class/Judicial Magistrate Second Class

Who can file a F.I.R.?

- Anyone can file a F.I.R. in the police station.

What has to be proved in the court?

Two things have to be proved:

A. Action - That the accused:

- Assaulted the woman, or
- Used criminal force on the woman.

B. Intention/knowledge - That the act was done:
➤ With the intention of outraging the woman's modesty, or

➤ With the knowledge that by doing so he was likely to outrage her modesty.



Insulting the modesty of a woman [Section 509 of the I.P.C.]

What does the offence of insulting the modesty of a woman include ?

A person commits the offence of insulting the modesty of a woman when he:

- Utters any words, or
 - Makes any sounds or gestures, or
 - Exhibits any object
 - With the intention that the same be seen/heard by a woman
- OR

- Intrudes upon the privacy of a woman.

With the intention of insulting the modesty of the woman.

Examples:

- Writing letters making indecent overtures.
- Making obscene gestures.
- Exhibiting pornographic material.
- Singing vulgar/suggestive songs.
- Exposing one's nude body.
- Entering the private apartment of a woman and making obscene gestures. Example: dropping his pants.



Punishment

- Simple imprisonment upto 1 year/fine/or both.

The offence of insulting the modesty of a woman is:

- Cognizable
- Bailable
- Compoundable - with the permission of the court by the woman whose modesty was insulted.

Triable by:

- Metropolitan Magistrate/Judicial Magistrate First Class/Judicial Magistrate Second Class

Who can file a F.I.R.?

- Anyone can file a F.I.R. in the police station.

What has to be proved in Court?

Two things have to be proved:

A. Action - That the accused:

- Uttered any words, or
- Made any sounds or gestures, or
- Exhibited any object
- With the intention that the same be seen/heard by the woman

OR

- Intruded upon the privacy of the woman.

B. Intention -

That the act was done with the intention of insulting the modesty of the woman.



Rape

What is rape ?[Section 375 of the I.P.C.]

Rape is:

Sexual intercourse/penetration with a woman

a. Against her will.

b. Without her consent.

c. With her consent:

➤ When her consent is given out of fear of death/hurt to herself or to someone else in whom she is interested.

➤ When her consent is given because she believes the man to be her husband/the man to whom she is lawfully married, but he is not actually her husband.

➤ When her consent is given due to unsoundness of mind/intoxication/consumption of a stupefying or unwholesome substance (Example: drug), administered by the man either personally or through another, all of which causes an inability to understand what she is consenting to.

d. Sexual intercourse/penetration with a child under 16 years of age -

Here consent is immaterial.

e. Sexual intercourse/penetration with one's wife when the wife is under 15 years of age.

If the wife is over 15 years of age, it does not amount to rape.

f. Penetration is sufficient to constitute the offence of rape.



Gang Rape

➤ Rape of a woman by one or more persons in a gang/group.

➤ It is not necessary that each and every person in the gang should rape the woman. It is sufficient if the woman is raped by one person in the gang.

Punishment for rape [Section 376 of the I.P.C.]

Simple rape

a. Minimum sentence - Imprisonment for 7 years + fine

b. Maximum sentence - Life imprisonment/imprisonment for 10 years + fine

c. A sentence of less than 7 years + fine can be imposed for special and adequate reasons.

In the following cases:

a. Rape by a police officer within his police station or any other police station, or of any woman in his custody or the custody of any officer subordinate to him.

b. Rape by a public servant of any woman in his custody or the custody of any public servant subordinate to him (taking advantage of his official position).

c. Rape by any person on the management or staff of a jail, remand home, or any other institution/place of custody for women or children, hospital (taking advantage of his official position).

d. Rape of a pregnant woman.

e. Rape of a girl under 12 years of age

f. Gang rape

➤ Minimum sentence - Rigorous imprisonment

(R.I.) for 10 years + fine

➤ Maximum sentence - Life imprisonment + fine

➤ A sentence of less than 10 years + fine can be imposed for special and adequate reasons.

Rape is:

➤ Cognizable

➤ Non-bailable

➤ Non-compoundable

Triable by:

➤ Sessions Court

Who can file a F.I.R.?

➤ Anyone can file a F.I.R. in the police station.

Rape of one's wife

➤ Criminal law in India does not recognize marital rape as an offence. If a husband rapes his wife, and the wife is more than 15 years of age it does not amount to rape.

➤ However, if the wife is under 15 years of age it amounts to rape.

➤ Limitation [Section 198 Cr.P.C.] - If the wife is under 15 years of age, the F.I.R./ complaint must be registered within 1 year from the date of commission of the offence.

➤ Rape by husband where the wife is 12 - 15 years of age - punishable with imprisonment upto 2 years + fine.

➤ Rape by husband where the wife is below 12 years of age - punishable with a minimum of R.I.¹ for 10 years + fine and a maximum of life imprisonment + fine. A sentence of less than 10 years + fine can be imposed for special and adequate reasons.

➤ Rape by husband where:²

a. The husband and wife are separated by a decree of separation/custom/usage, and are living separately

b. Intercourse during the separation

c. Without the consent of the wife

d. Punishable with imprisonment upto 2 years + fine.

e. The offence is non-cognizable, bailable and non-compoundable.

f. Triable by the Sessions Court.

Sexual intercourse not amounting to rape

[Sections 376 B, 376C and 376D of the I.P.C.]

➤ If a police officer/public servant/person on the management or staff of a jail/remand home/any other institution/place of custody for women or children/hospital



1. Rigorous Imprisonment

2. Section 376 A of the I.P.C.

- Takes advantage of his official position and induces/seduces
- A woman in his custody
- To have sexual intercourse with him
- Punishable with: imprisonment upto 5 years + fine
- The offence is cognizable, bailable and non-compoundable. However, the accused cannot be arrested without a warrant or without the order of a Magistrate.
- Triable by the Sessions Court.

What precautions should a victim take?

- A victim of rape must get herself medically examined at the earliest. She should not have a bath until the medical examination is completed. The medical examination can be done at a government hospital or a private hospital.
- Register a F.I.R. at the nearest police station without delay.
- Submit a copy of the medical report showing rape to the police while registering the F.I.R., or as soon as possible.
- The victim can go to the police station with her lawyer/friend/a social worker.
- Hand over the articles - clothes, especially blood-stained clothes, shoes, hair, etc. worn by the victim or left behind by the offender to the police.
- If the police take any articles into custody from the spot, they will make a panchanama of the same, which would include a list of the items seized.
- If no panchanama is made/the victim personally hands over certain items to the police, she should make a list of the items, in the form of a letter addressed to the police station mentioning the case number. Make a photocopy of the letter. While handing the items over, hand over the letter, and ask the police to stamp the photocopy as received.
- Preserve the condition of the place where the offence has taken place till the police prepare the spot panchanama.



When a complaint of rape is registered/the alleged rapist is arrested - What should the police do ?

- Visit the spot.
- Seize the articles worn by the victim/left by the offender.
- Interrogate the witnesses and take down their statements.
- See that the medical examination of the victim, as well as the alleged rapist is done at the earliest.
- If the offender is a stranger, conduct the test identification parade (T.I. parade) of the offender at the earliest.



When the alleged rapist is arrested What can the victim do ?

➤ In cases where the offender is a stranger, the test identification parade (T.I. parade) of the offender must be conducted at the earliest. If the police do not conduct the T.I. Parade/medical examination of the accused, the victim can file an application in court asking for a direction to the police to conduct the same.

➤ At the stage of remand, and throughout the trial, the victim of rape can oppose the grant of bail to the accused by filing an intervention application in the court, either personally or through her advocate.



In Court

➤ In camera trial² - The trial in a rape case should be held in camera. Generally a criminal court is an open court to which the public have access. An in camera trial means a trial to which entry is restricted. The public is excluded from the court, and will not be able to enter it. Only the victim, the prosecutor, the watching advocate if any, the accused, the defense counsel and the witnesses will be allowed in the court.

➤ Transfer of the case to a woman judge - If the case is being heard by a male judge, and if the victim does not feel comfortable talking about the incident before him, or the victim feels that the case should be transferred for any other reason in the interest of justice, she can make an application for the transfer of her case to a woman judge. The application for transfer may be made to the Sessions Court [u/s 408 of the Cr.P.C.], or to the High Court [u/s 407 of the Cr.P.C.], or to the Supreme Court [u/s 406 of the Cr.P.C.].

➤ Woman Prosecutor - The victim can speak to the Chief Public Prosecutor, and ask for a woman public prosecutor to be appointed to prosecute her case.

➤ If the victim feels threatened by the questions put to her by the defence lawyers, she can request the court to have the questions put to her by the judge.



'Watching' Advocate [Section 301 of the Cr.P.C.]

➤ A victim of rape can appoint her own lawyer, who can apply to the court to assist the prosecution. Such a lawyer is known as a 'watching' advocate.

- The Public Prosecutor or Assistant Public Prosecutor in charge of the case will conduct the prosecution. The 'watching' advocate does not have the right to examine prosecution witnesses, or cross-examine defence witnesses. As the term itself suggests, he can only 'watch'/assist the prosecutor, and can act only under his directions.
- The 'watching' advocate can submit written arguments at the end of the trial with the permission of the court.

Presumption as to absence of consent in certain cases [Section 114A of the I.E.A]

- In the following cases:
 1. Rape by a police officer/public servant/person on the management or staff of a jail/remand home/any other institution/place of custody for women or children/hospital.
 2. Rape of a pregnant woman.
 3. Gang rape.
- Where sexual intercourse is proved.
- The question is whether the sexual intercourse was with or without the consent of the woman.
- If the woman states in her evidence before the court that she did not consent the court will presume that she did not consent.



Victim's right to privacy

- In all rape trials, anonymity of the victim must be maintained, as far as possible.⁴
- The name of the victim or any other information which would disclose her identity cannot be printed or published.

Except:

- a. By order of the officer-in-charge of the police station or the investigating officer, for the purposes of the investigation.
- b. With the written authorization of the victim.
- c. If the victim is dead, or a minor, or of unsound mind, with the written authorization of the next-of-kin of the victim.

Unauthorised publication - Punishable with imprisonment upto 2 years + fine.⁵

- Where a rape trial is being held in camera, no matter in relation to the proceedings can be printed or published.

Except:

- a. With the previous permission of the court.⁶

Unauthorised publication - Punishable with imprisonment upto 2 years + fine.⁷

- This is a cognizable and bailable offence.

⁴ Held in Delhi Domestic Working Women's Forum Versus Union of India and Others 1995 (1) SCC 14

⁵ Section 228A of the I.P.C.

⁶ Section 327 of the Cr.P.C.

⁷ Section 228A of the I.P.C.

Compensation

- In *Bodhisattwa Gautam Vs. Subhra Chakraborty* [AIR 1996 SC 922] the Supreme Court ordered the accused to pay the rape victim interim compensation of Rs. 1000/- per month.
- A victim can file an application for compensation in the court. Compensation can be awarded by the court at the time of sentencing. The court can award any amount as compensation.⁸



Abduction of a woman [Section 366 of the I.P.C.]

What does the offence involve ?

- Kidnapping/abducting a woman
- With the intention/knowledge:
 - a. That she will be compelled to marry any person against her will, or
 - b. That she will be forced/seduced to have illicit intercourse.
- The woman must have been taken away from lawful guardianship.

Examples:

- Abducting a woman, and then selling her into prostitution.
- Abducting a woman in order to forcibly marry her.

Punishment

- Imprisonment upto 10 years + fine

The offence is:

- Cognizable
- Non-bailable
- Non-compoundable

Triable by:

- Sessions Court

Who can file a F.I.R.?

- Anyone can file a F.I.R. in the police station.



Offences under the Dowry Prohibition Act 1961

What is dowry? [Section 2 of the DPA]⁹

- Any property or valuable security.
- Which is given or agreed to be given.
- Directly or indirectly.
- By one party to a marriage to the other party to the marriage, or by the parents of either party to a marriage or by any other person, to either party to the marriage, or to any other person.
- At or before or anytime after the marriage.
- In connection with the marriage.

Dowry does not include [Section 3 of the D.P.A.]

- Streedhan - includes anything given to the bride at or around the time of the marriage.
- Presents given to the bride or bridegroom at the time of the marriage without any demand having been made for them.

8. Section 357 of the Cr.P.C.

9. Dowry Prohibition Act 1961

➤ Such presents have to be entered in a list maintained by the bride or bridegroom respectively.¹⁰

a. The list must be prepared at the time of the marriage or as soon as possible after the marriage.

b. It should be in writing.

c. It should contain:

1. A description of each present.

2. The approximate value of each present.

3. The name of the person who has given the present.

4. If the person giving the present is a relation, the relationship should be specified.



➤ It should be signed by the bride and the bridegroom. If they cannot sign, they can affix their thumb impressions on the lists after the lists have been read over to them. The person who reads out the lists should also sign them. The bride/bridegroom can also obtain on either or both the lists, the signatures of any of their relatives or of any person present at the time of the marriage.

Punishment [Sections 3 & 4 of the D.P.A.]

➤ Punishment for giving or taking, or abetting the giving or taking of dowry:

a. Minimum sentence - Imprisonment for 5 years + fine of Rs. 15,000/-, or the value of the dowry, whichever is more.

b. No maximum sentence is prescribed by the act.

c. A sentence of less than 5 years can be imposed for special and adequate reasons.

➤ Punishment for demanding dowry:

a. Imprisonment for 6 months to 2 years + fine upto Rs. 10,000/-.

b. A sentence of less than 6 months can be imposed for special and adequate reasons.

Note:

➤ Even though the sentencing power of a Metropolitan Magistrate/Judicial Magistrate First Class is limited to 3 years under the Cr.P.C., under the D.P.A. the Magistrate can sentence a person to imprisonment for 5 years or more under this act. [Section 7 of the D.P.A.]



10. As per the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules 1985

Agreement for the giving or taking of dowry to be void [Section 5 of the D.P.A.]

➤ Any agreement for the giving or taking of dowry is void.

It has no legal validity whatsoever.

The giving or taking of dowry is:

➤ Cognizable - for the purposes of investigation and matters other than arrest without warrant. As far as arrest is concerned, the accused can be arrested only with a warrant.

➤ Non-bailable

➤ Non-compoundable

Triable by:

➤ Metropolitan Magistrate/Judicial Magistrate First Class

Who can file a complaint under this Act? [Section 7 of the D.P.A.]



➤ A complaint can be filed in court by:

a. Any person aggrieved of an offence under this act.

b. The parent or relative of the person aggrieved.

c. Any social welfare institution or organisation recognized by the central or state government.

➤ The information about the offence can also be given to the police by any person. The police will then inquire into the truth of the

allegations made, and may file a report before the Magistrate. The Magistrate can then take cognizance of the offence on the basis of the police report of facts which make out the offence.

Burden of proof in certain cases [Section 8A of the D.P.A.]

➤ The burden of proof is on the accused in the cases of taking or abetting the taking of dowry, and the demanding of dowry. In these cases, the accused must prove that he had not committed the offence.



Dowry to be for the benefit of the wife/her heirs [Section 6 of the D.P.A.]



- If any dowry is received by any person other than the woman in connection with whose marriage it is given, the person to whom it was given will have to transfer it to the woman:
 - a. If the dowry was received before the marriage, within 3 months after the marriage.
 - b. If the dowry was received at the time of the marriage within 3 months after the date of its receipt.
 - c. If the dowry was received when the woman was a minor, within 3 months after she has attained 18 years of age.
- Pending such transfer, the property should be held in trust for the benefit of the woman.

➤ Punishment for non-transfer - Imprisonment for 6 months to 2 years + fine of Rs. 5000/- to Rs. 10,000/-.

➤ If the woman dies pending the transfer, her heirs can claim it from the person holding it.

➤ If the woman dies in suspicious circumstances within 7 years of marriage:

a. If she has children, the property should be transferred to her children, and held in trust for them pending the transfer.

b. If she does not have children, the property should be transferred to her parents.

➤ On conviction for non-transfer, the court can order the person to transfer the property to the woman/her heirs as the case may be, if it has not already been transferred within a certain time limit. If he still fails to transfer the property, an amount equal to the value of the property can be recovered from him.

Criminal breach of trust

The property of a married woman can consist of:

➤ Streedhan - Includes anything given to her at or around the time of her marriage.

➤ Property left to her by anyone in a will.

➤ Property gifted to her by her parents/siblings/in-laws.

➤ The woman is the absolute owner of all this property. Her husband and his family do not have any right over it.



Criminal breach of trust [Section 406 of the I.P.C.]

- If the woman has given her streedhan or other property to her husband/in-laws for safe-keeping, they are merely trustees. They are bound to return the same when demanded by her.
- If they misappropriate or dispose of the property, or convert it to their own use.
- They commit the offence of criminal breach of trust, and can be prosecuted for the same.

Punishment

- Imprisonment upto 3 years/fine/ imprisonment upto 3 years + fine.

Criminal breach of trust is:

- Cognizable
- Non-bailable
- Non-compoundable - Compoundable if the value of the property is Rs. 250/- or less, by the owner of the property with the permission of the court.

Triable by:

- Metropolitan Magistrate/Judicial Magistrate First Class

Who can file a F.I.R.?

- Anyone can file a F.I.R. in the police station.



What should the woman do ?

- The woman should file a complaint of criminal breach of trust against her husband/in-laws in the police station/the Magistrate court.¹¹
- The list of the presents prepared at the time of the marriage¹² will be useful here.
- The offence is a continuing one. Limitation will be counted afresh each time a demand for the property is made by the woman.¹³

Domestic violence

What is domestic violence ? [Section 498A of the I.P.C.]

A married woman is the victim of domestic violence if:

- She is subjected to cruelty.
 - a. Physical cruelty
 - b. Mental cruelty
 - c. Likely to cause her to commit suicide, or
 - d. Likely to cause grave injury to her whether physical or mental, or
 - e. With a view to forcing her or any of her relatives to meet any demand for property or valuable security, or because of failure by her or any of her relatives to meet any such demand.
- By her husband, or in-laws.



11. See Complainants on page 55 for details on filing a complaint.

12. See details on list in Dowry Prohibition section.

13. See Appeals, revisions and Limitation on page 78.

Examples of "cruelty"

- Beating, repeated physical abuse.
- Verbal abuse and humiliation.
- Constant denial of food.
- Constantly locking the woman out of the house, or in the house.
- Denying the woman access to her children.
- Repeatedly abusing the children in the presence of their mother.
- Constantly denying the paternity of the children with the intention of causing mental pain to the woman.
- Insisting on perverse sexual conduct.
- Accusations of adultery.
- Constant nagging.
- Constant demands for dowry.



Punishment

- Imprisonment upto 3 years + fine

Domestic Violence u/s 498A of the I.P.C. is:

- Cognizable
- Non-bailable
- Non-compoundable - Only the High Court can permit compounding of this offence under its inherent powers.¹⁴

Triable by:

- Metropolitan Magistrate/Judicial Magistrate First Class



Who can file a complaint u/s 498A ?

- The F.I.R. can be filed at the police station by the victim herself, or by any person related to her by blood, marriage or adoption.¹⁵
- A private complaint can be filed in court by the victim herself, or by any person related to her by blood, marriage or adoption.¹⁶
- The information about the offence can also be given to the police by any other person. The police will then inquire into the truth of the allegations made, and may file a report before the Magistrate.

14. Inherent powers of the High Court - Section 482 of the Cr.P.C.

15. Schedule 1 of the Cr.P.C.

16. Section 198 A of the Cr.P.C.

What has to be proved in a case of domestic violence ?

➤ That the abuser is the husband of the woman, or his relative.

➤ That the abuser is treating or has treated the woman with cruelty. To prove this, the woman can produce:

- a. A medical certificate from a doctor/hospital.
- b. Photographs of the physical injuries.
- c. Earlier complaints registered by her at the police station (whether N.C.s or F.I.R.s).
- d. Letters written by her to her relatives/friends about the cruelty.
- e. Evidence of her relatives/friends/any other person who knew about/was a witness to the cruelty.

Note:

If hurt is caused to the woman, a case of causing hurt or grievous hurt can also be registered u/s 324 or 326 of the I.P.C. respectively, depending on the gravity of the offence.

If the woman is kept locked in her house, a case of wrongful confinement can also be registered u/s 342 of the I.P.C. If the woman is prevented from going out of her house, the case of wrongful restraint can also be registered u/s 341 of the I.P.C. The case can be registered under these sections in addition to section 498A of the I.P.C.



Dowry death [Section 304B of the Cr.P.C.]

What is a dowry death ?

The death of a woman is a dowry death where:

- The death is caused by burns or bodily injury, or
- Under suspicious circumstances.
- Within 7 years of her marriage.
- It is shown that soon before her death she was subjected to cruelty or harassment by her husband or in-laws in connection with any demand for dowry.

➤ In a case of dowry death the husband/in-laws will be deemed to have caused her death.

Note:

➤ A case of dowry death is usually registered u/s 304B, 306 and 498A of the I.P.C.



Punishment

- Minimum sentence - Imprisonment upto 7 years.
- Maximum sentence - Life imprisonment.

Dowry death is

- Cognizable
- Non-bailable
- Non-compoundable

Triable by:

➤ Sessions Court

Who can file a F.I.R.?

➤ Anyone can file a F.I.R. in the police station.

What should the police do ?

➤ The police should immediately visit the spot where the incident had occurred and make a panchanama of the same.

➤ They should seize all articles that might indicate how the crime was committed.

Example: kerosene,

➤ If blood/blood stained articles are found at the spot, the same should be seized and sent for chemical analysis.

➤ Record the statements of any witnesses at the earliest.

➤ Make sure that the dying declaration of the victim is recorded, if possible.

➤ They must send the body for post-mortem at the earliest.¹⁷

Dying declaration [Section 32 of the Indian Evidence Act]



What is a dying declaration ?

➤ A dying declaration is a statement of relevant facts made by a person who is dead. It may be either oral or written. It usually contains information about the circumstances leading to the death of the person making it.

Recording of a dying declaration

➤ The dying declaration should be recorded by a Magistrate.

Where there is no Magistrate, the dying declaration can be recorded by a doctor.

The dying declaration should not be recorded by the police.

➤ The doctor must state that the person is conscious, and in a fit state of mind to make the declaration. The Magistrate should also question the person as to her state of mind, and record her reply.

➤ The dying declaration should be recorded in the language of the person making it.

➤ Only one dying declaration should be recorded.

➤ The person making the dying declaration should sign or affix her thumb impression on it.

➤ A conviction can be based solely on the dying declaration of the victim, if proved, and found to be true and voluntary.

What has to be proved in a case of dowry death ?

➤ That the death was the result of burns or bodily injury, or that the woman died in suspicious circumstances. This can be proven through the post-mortem report.

➤ That soon before her death the woman was subjected to cruelty or harassment by her husband or in-laws in connection with any demand for dowry.¹⁸

➤ That the woman died within 7 years of her marriage. To prove this a marriage certificate and photographs of the marriage can be produced.

¹⁷. Section 174 of the Cr.P.C. See Police on page 16.

¹⁸. For what is cruelty and proof of cruelty see section on domestic violence.



- When the question is whether a person has committed the dowry death of a woman.
- It is proved that soon before her death the woman was subjected to cruelty or harassment by that person in connection with any demand for dowry.
- The court will presume that the person caused the death of the woman.
- The person will then have to prove that he did not harass the woman or subject her to cruelty in connection with any demand for dowry soon before her death.

Abetment of suicide of a married woman [Section 306 of the I.P.C.]

What is abetment of suicide of a married woman ?

The commission of suicide by a married woman is said to have been abetted by her husband/in-laws when:

- She commits suicide.
- Her husband/in-laws abetted/assisted her commission of suicide, either by instigating her to commit suicide, or by helping her to do so, or by not doing anything to prevent her from doing so. This may be done by harassing the woman or subjecting her to cruelty to such an extent that she commits suicide.

Punishment

- Imprisonment upto 10 years + fine.

Abetment of suicide of a married woman is:

- Cognizable
- Non-bailable
- Non-compoundable

Triable by:

- Sessions Court

Who can file a F.I.R.?

- Anyone can file a F.I.R. in the police station.



Presumption as to abetment of suicide by a married woman [Section 113A of the I.E.A.]

- When the question is whether the commission of suicide by a woman was abetted by her husband or in-laws.
- It is proved that she committed suicide within 7 years of her marriage.
- It is proved that her husband or in-laws subjected her to cruelty.
- The court can presume, having regard to all the other circumstances of the case that the suicide was abetted by her husband or in-laws.

What has to be proved in a case of abetment of suicide of a married woman, where the woman committed suicide within 7 years of her marriage ?

- That the woman committed suicide.
- That she committed suicide within 7 years of marriage. Some proof of marriage should be submitted here, especially with regard to the date of the marriage.
- That the accused subjected her to cruelty.

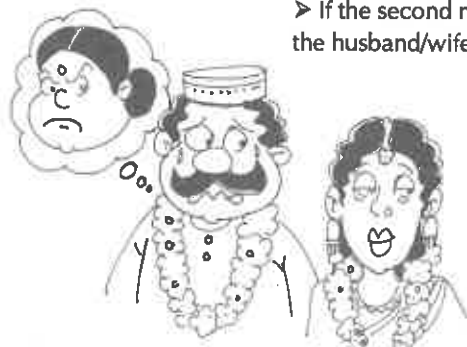
What has to be proved in a case of abetment of suicide of a married woman where the woman was married for more than 7 years?

- That the woman was married. Some proof of marriage should be submitted here.
- That the woman committed suicide.
- That she was subjected to cruelty/harassment.
- That the cruelty/harassment drove her to commit suicide.

Bigamy

What is bigamy ? [Section 494 of the I.P.C.]

- Marrying again during the lifetime of the husband/wife.
- However, if the former marriage has been declared void by a court of law and the person marries again, it does not amount to bigamy.
- If the second marriage is performed during the lifetime of the husband/wife, but:



- a. The first spouse has been continually absent for 7 years.
- b. The first spouse has not been heard of as being alive for 7 years.
- c. The person does not commit bigamy by marrying again.
- d. However, he must inform the person whom he is marrying about his subsisting marriage.

Essentials of bigamy

- There must be an already existing marriage, which is a valid marriage.
- The offender must have a husband or wife living.
- The offender must have married again during the lifetime of his/her wife/husband.



Consequences of bigamy

➤ The second marriage is void even if conducted as per the required religious rites, customs, registered, etc.

Punishment

➤ Imprisonment upto 7 years + fine.

Bigamy is:

- Non-cognizable
- Bailable
- Compoundable - by the husband or wife of the person so marrying with the permission of the court.

Triable by:

➤ Metropolitan Magistrate/Judicial Magistrate First Class

Who can file a complaint of bigamy ?

[Section 198 of the Cr.P.C.]

➤ The person aggrieved by the offence, that is either the husband or wife whose spouse has married again.

➤ If the complainant is:

- a. Under 18/an idiot/a lunatic/unable to complain because of sickness or infirmity/
a woman who cannot appear in public.
- b. Some other person may file a complaint on his/her behalf with the leave of the court

➤ If the complainant is under 18/a lunatic:

- a. The person seeking to make a complaint on his/her behalf is not the guardian appointed by the competent authority.
- b. The court is satisfied that there is already a guardian.
- c. The court shall issue notice to the guardian and give him reasonable opportunity of being heard.

➤ If the wife is the complainant:

- a. Her mother, father, brother, sister, son, daughter, or her mother's or father's brother or sister can file the complaint.
- b. Any other person related to her by blood, adoption or marriage can file the complaint with the leave of the court.

➤ If the husband is the complainant:

- a. Serving in the armed forces.
- b. It is certified by his commanding officer that he cannot obtain a leave of absence in order to make the complaint in person.
- c. He can authorize some other person to make the complaint on his behalf.



What has to be proved in a case of bigamy ?



- That the accused was already married, and had a husband or wife living.
- That the first marriage was a valid one. This can be proven through the marriage certificate, extracts from the Register of Marriages, photographs, wedding invitation cards, witnesses, etc.
- That the accused married again.
- That the second marriage was also a valid one. For this, just like the first marriage the essential ceremonies of the marriage must be proved.

Punishment for concealing fact of first marriage from second spouse [Section 495 of the I.P.C.]

- If the person commits bigamy, and hides from the second spouse, the fact of his first marriage - punishable with imprisonment upto 10 years + fine.
- It is not necessary for the concealment to have affected the consent to the second marriage. All that is necessary is that the fact of the first marriage should have been concealed from the second spouse.

- Non-cognizable
- Bailable
- Non-compoundable
- Triable by Metropolitan Magistrate/Judicial Magistrate First Class

- However, if the person marries again during the lifetime of his first spouse, who has been continually absent, and not been heard of as being alive for 7 years, and does not inform the person whom he is marrying about his subsisting marriage - not punishable under this section.

...and he lived unhappily ever after.



Sample Applications

Application for Bail

IN THE COURT OF THE LEARNED METROPOLITAN MAGISTRATE
AT _____ MUMBAI (Mention place. Eg: Girgaum, Mazgaon)
COURT NO. _____
C.R./C.C. No. _____

In the matter of

(Name of the Applicant/Accused)

...Applicant/Accused

Versus

State of Maharashtra

(At the instance of _____ Police Station)

...Respondent

APPLICATION FOR BAIL

1. I was arrested in connection with this offence on _____ (mention date of arrest) u/s _____ (mention sections under which arrested) of the _____ (mention Act under which arrested Eg: Indian Penal Code).
2. The facts alleged by the remand applications and F.I.R. are that _____ (mention allegations/facts of offence). This incident is alleged to have occurred on _____ (mention date of offence).
3. I submit that I am innocent, and have been falsely implicated in this case.
4. I have been in custody for _____ (mention period of custody).
5. I have not been previously convicted of any offence. This is the first time that I have been arrested in connection with any offence.
6. I live with _____ (mention family members/dependents). I alone support them. They are finding it very difficult to survive with me in custody.
7. I am a permanent resident of Mumbai. I reside with my family at _____ (mention address). I undertake not to abscond.
8. I undertake to comply with whatever conditions are set by this Hon'ble court. I undertake not to tamper with the evidence, threaten the witnesses, or obstruct the investigation in any way. I undertake to attend the court and the police station as and when required by this Hon'ble court.

9. In these circumstances it is prayed that Your Lordship may be pleased to:
- release me on my personal recognizance, or
 - on bail of cash or surety of a nominal amount within my means, and
 - pass any such orders as Your Lordship may deem fit and proper in the interest of justice.

Mumbai, dated this day of 2005

Applicant/Accused

Application for Reduction of Bail

IN THE COURT OF THE LEARNED METROPOLITAN MAGISTRATE
AT _____, MUMBAI (Mention place. Eg: Girgaum, Mazgaon)
COURT NO. _____
C.R./C.C. No. _____

In the matter of

(Name of the Applicant/Accused)

...Applicant/Accused

Versus

State of Maharashtra
(At the instance of _____ Police Station)

...Respondent

APPLICATION FOR REDUCTION OF BAIL

1. I was arrested in connection with this offence on _____ (mention date of arrest) u/s _____ (mention sections under which arrested) of the _____ (mention Act under which arrested Eg: Indian Penal Code).

2. I was granted bail of _____ (mention particulars of bail order) on _____ (mention date of bail order).

3. I am unable to furnish the same.

4. _____ (mention reasons for inability to furnish the bail amount Eg: poverty).

5. I undertake to comply with whatever conditions are set by this Hon'ble court. I undertake not to tamper with the evidence, threaten the witnesses, or obstruct the investigation in any way. I undertake to attend the court and the police station as and when required by this Hon'ble court.

6. In these circumstances it is prayed that Your Lordship may be pleased to:

- a. reduce the amount of bail granted to me, and
- b. release me on my personal recognizance, or
- c. on a reduced amount of bail of cash or surety of a nominal amount within my means, and
- d. pass any such orders as Your Lordship may deem fit and proper in the interest of justice.

Mumbai, dated this _____ day of _____ 2005

Applicant/Accused

Application for Cancellation of Warrant

IN THE COURT OF THE LEARNED METROPOLITAN MAGISTRATE
AT _____, MUMBAI (Mention place. Eg: Girgaum, Mazgaon)
COURT NO. _____
C.R./C.C. No. _____

In the matter of

...Applicant/Accused

(Name of the Applicant/Accused)

Versus

State of Maharashtra

...Respondent

(At the instance of _____ Police Station)

APPLICATION FOR CANCELLATION OF WARRANT

1. I did not attend the court on _____ (mention date on which you did not attend the court).
2. This Hon'ble court issued a _____ (mention whether warrant issued was bailable/non bailable) warrant against me on _____ (mention date on which court issued warrant against you).
3. I was unable to attend the court on _____ (mention date on which you did not attend) as _____ (mention reason for non-attendance in court)
4. I have remained present in court on all the dates fixed for my attendance.
5. I undertake to comply with whatever conditions are set by this Hon'ble court.
6. In these circumstances it is prayed that Your Lordship may be pleased to:
 - a. cancel the warrant issued against me on _____ (mention date on which warrant was issued), and
 - b. pass any such orders as Your Lordship may deem fit and proper in the interest of justice.

Mumbai, dated this _____ day of _____ 2005

Applicant/Accused

Application for Exemption

IN THE COURT OF THE LEARNED METROPOLITAN MAGISTRATE
AT _____, MUMBAI (Mention place. Eg: Girgaum, Mazgaon)
COURT NO. _____
C.R./C.C. No. _____

In the matter of

(Name of the Applicant/Accused) ...Applicant/Accused

Versus

State of Maharashtra ...Respondent
(At the instance of _____ Police Station)

APPLICATION FOR EXEMPTION

1. The Applicant is unable to attend the court today as _____
_____ (mention reason/s for non-attendance in court)
2. The Applicant has remained present in court on all the dates fixed for his attendance.
3. The Applicant undertakes to comply with whatever conditions are set by this Hon'ble court.
4. In these circumstances it is prayed that Your Lordship may be pleased to:
 - a. exempt the Applicant from attending the court today, and
 - b. pass any such orders as Your Lordship may deem fit and proper in the interest of justice.

Mumbai, dated this _____ day of _____ 2005

Advocate for the Applicant/Accused

Note: An application for exemption should be made through an Advocate, relative or friend of the accused.

The First Schedule
Classification of Offences under the Indian Penal Code

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
CHAPTER V - ABETMENT					
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	Same as for offence abetted.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Same for offence intended to be abetted.	Ditto	Ditto	Ditto
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Same as for offence committed.	Ditto	Ditto	Ditto
114	Abetment of any offence, if abettor is present when offence is committed.	Same as for offence committed.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
115	Abetment of an offence, punishable with death or imprisonment for life, if the offence be not committed in consequence of the abetment. If an act which causes harm to be done in consequence of the abetment.	Imprisonment for 7 years and fine. Imprisonment for 14 years and fine.	Ditto Ditto	Non-bailable Ditto	Ditto Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
116	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Imprisonment extending to a quarter part of the longest term provided for the offence, or fine, or both.	Ditto	According as offence abetted is bailable or non-bailable.	Ditto
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Imprisonment extending to half of the longest term provided for the offence, or fine or both.	Ditto	Ditto	Ditto
117	Abetting the commission of an offence by the public, or by more than ten persons.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
118	Concealing a design to commit an offence punishable with death or imprisonment for life, if the offence be committed. If the offence be not committed.	Imprisonment for 7 years and fine. Imprisonment for 3 years and fine.	Ditto Ditto	Non-bailable Bailable	Ditto Ditto
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Imprisonment extending to half of the longest term provided for the offence, or fine, or both.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	If the offence be punishable with death or imprisonment for life. If the offence be not committed.	Imprisonment for 10 years. Imprisonment extending to a quarter part of the longest term provided for the offence, or fine, or both.	Ditto	Non-bailable	Ditto
120	Concealing a design to commit an offence punishable with imprisonment, if offence be committed. If the offence be not committed.	Ditto Imprisonment extending to one-eighth part of the longest term provided for the offence, or fine, or both.	Ditto	According as offence abetted is bailable or non-bailable. Bailable	Ditto Ditto
CHAPTER V A- CRIMINAL CONSPIRACY					
120 B	Criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of 2 years or upwards.	Same as for abetment of the offence which is the object of the conspiracy.	According as the offence which is the object of conspiracy is cognizable or non-cognizable.	According as offence which is object of conspiracy is bailable or non-bailable.	Court by which abetment of the offence which is the object of conspiracy is triable.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	Any other criminal conspiracy.	Imprisonment for 6 months, or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class.
CHAPTER VI OFFENCES AGAINST THE STATE					
121	Waging or attempting to wage war, or abetting the waging of war, against the Government of India.	Death, or imprisonment for life and fine.	Cognizable	Non-bailable	Court of Session.
121A	Conspiring to commit certain offences against the State.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
122	Collecting arms, etc., with the intention of waging war against the Government of India.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
123	Concealing with intent to facilitate a design to wage war.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
124A	Sedition.	Imprisonment for life and fine, or imprisonment for 3 years and fine, or fine.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
CHAPTER VIII OFFENCES AGAINST THE PUBLIC TRANQUILITY					
143	Being member of an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable	Bailable	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto	Ditto	Ditto	Ditto
147	Rioting.	Imprisonment for 2 years, or fine or both.	Cognizable	Bailable	Any Magistrate.
148	Rioting armed with deadly weapon.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	The same as for the offence.	According as offence is cognizable or non-cognizable.	According as offence is bailable or non-bailable.	The court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	The same as for a member of such assembly and for any offence committed by any member of such assembly.	Cognizable	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Imprisonment for 6 months, or fine, or both.	Ditto	Bailable	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, etc.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed. If not committed.	Imprisonment for 1 year, or fine, or both. Imprisonment for 6 months, or fine, or both.	Ditto Ditto	Ditto Ditto	Any Magistrate. Magistrate of the first class.
153A	Promoting enmity between classes.	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class.
153B	Promoting enmity between classes in place of worship, etc. Imputations, assertions prejudicial to national integration. If committed in a place of public worship etc.	Imprisonment for 5 years and fine. Imprisonment for 3 years, or fine, or both. Imprisonment for 5 years and fine.	Ditto Ditto Ditto	Ditto Ditto Ditto	Ditto Ditto Ditto
157	Harbouring persons hired for an unlawful	Imprisonment for 6	Cognizable	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	assembly.	months, or fine, or both.			
158	Being hired to take part in an unlawful assembly or riot. Or to go armed.	Ditto Imprisonment for 2 years, or fine or both.	Ditto Ditto	Ditto Ditto	Ditto Ditto
160	Committing affray.	Imprisonment for one month, or fine of 100 rupees, or both.	Ditto	Ditto	Ditto
170.	Personating a public servant.	Imprisonment for 2 years, or fine, or both.	Cognizable	Non-bailable	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Imprisonment for 3 months, or fine of 200 rupees, or both.	Ditto	Bailable	Ditto
CHAPTER IXA - OFFENCE RELATING TO ELECTIONS					
171E	Bribery.	Imprisonment for 1 year, or fine or both, or if treating only, fine only.	Non-cognizable	Bailable	Magistrate of the first class.
171F	Undue influence at an election.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Magistrate of the first class.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	Personation at an election.	Imprisonment for 1 year, or fine, or both.	Cognizable	Ditto	Ditto
CHAPTER X - CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS					
177	Knowingly furnishing false information to a public servant.	Imprisonment for 6 months, or fine of 1000 rupees, or both.	Ditto	Ditto	Ditto
	If the information required respects the commission of an offence, etc.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
181	Knowingly stating to a public servant, on oath as true that which is false.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for 6 months, or fine of 1000 rupees, or both.	Ditto	Ditto	Any Magistrate.
186	Obstructing public servant in discharge of his public functions.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Non-cognizable.	Bailable	Any Magistrate.
CHAPTER XI FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE					
193	Giving or fabricating false evidence in a judicial proceeding.	Imprisonment for 7 years and fine.	Non-cognizable	Bailable	Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
194		Imprisonment for	Ditto	Non-bailable	Court of Session.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	intent to cause any person to be convicted of a capital offence. If innocent person be thereby convicted and executed.	life, or rigorous imprisonment for 10 years and fine. Death, or as above.	Ditto	Ditto	Ditto
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or with imprisonment for 7 years or upwards.	The same as for the offence.	Ditto	Ditto	Ditto
196	Using in a judicial proceeding evidence known to be false or fabricated.	The same as for giving or fabricating false evidence.	Ditto	According as offence of giving such evidence is bailable or non-bailable.	Court by which offence of giving or fabricating false evidence is triable.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto	Bailable	Court by which offence of giving false evidence is triable.
198	Using as a true certificate one known to be false in a material point.	Ditto	Ditto	Ditto	Ditto
199	False statement made in any declaration, which is by law receivable as evidence.	Ditto	Ditto	Ditto	Ditto
200	Using as true any such declaration known to be false.	Ditto	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence. If punishable with imprisonment for life or imprisonment for 10 years. If punishable with less than 10 years imprisonment.	Imprisonment for 7 years and fine. Imprisonment for 3 years and fine. Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	According as the offence in relation to which disappearance of evidence is caused is cognizable or non-cognizable. Non-cognizable Ditto	Ditto Ditto Ditto	Court of Session. Magistrate of the first class. Court by which the offence is triable.
203	Giving false information respecting an offence committed.	Imprisonment for 2 years or fine, or both.	Ditto	Ditto	Any Magistrate.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	Ditto	Ditto	Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
209	False claim in a Court of Justice.	Imprisonment for 2 years and fine.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
211	False charge of offence made with intent to injure.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
	If offence charged be punishable with imprisonment for 7 years or upwards.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
	If offence charged be capital or punishable with imprisonment for life.	Ditto	Ditto	Ditto	Court of Session.
228A	Disclosure of identity of the victim of certain offences, etc.	Imprisonment for 2 years and fine.	Cognizable	Ditto	Any Magistrate.
	Printing or publication of a proceeding without prior permission of court.	Ditto	Ditto	Ditto	Ditto
CHAPTER XIV - OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS					
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Cognizable	Bailable	Any Magistrate.
290	Committing a public nuisance.	Fine of 200 rupees.	Non-cognizable	Ditto	Ditto
291	Continuance of nuisance after injunction to discontinue.	Simple imprisonment for 6 months, or fine, or both.	Cognizable	Ditto	Ditto
292	Sale, etc., of obscene books, etc.	On first conviction, with imprisonment for 2 years, and with	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
		fine of 2,000 rupees, and in the event of second or subsequent conviction, with imprisonment for five years and with fine of 5,000 rupees.			
293	Sale etc., of obscene objects to young persons.	On first conviction with imprisonment for 3 years, and with fine of 2,000 rupees and in the event of second or subsequent conviction, with imprisonment for 7 years, and with fine of 5,000 rupees.	Ditto	Ditto	Ditto
294	Obscene songs.	Imprisonment for 3 months, or fine, or both.	Ditto	Ditto	Ditto
CHAPTER XV OFFENCES RELATING TO RELIGION					
295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	Imprisonment for 2 years, or fine, or both.	Cognizable	Non-bailable	Any Magistrate.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
295A	Maliciously insulting the religion or the religious beliefs of any class.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
296	Causing a disturbance to an assembly engaged in religious worship.	Imprisonment for 1 year, or fine, or both.	Cognizable	Bailable	Any Magistrate.
297	Trespassing in place of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto	Ditto	Ditto	Ditto
298	Uttering any word or making any sound in the hearing or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling.	Ditto	Non-cognizable	Ditto	Ditto
CHAPTER XVI- OFFENCES AFFECTING THE HUMAN BODY.					
302	Murder.	Death, or imprisonment for life, and fine.	Cognizable	Non-bailable	Court of Session.
303	Murder by a person under sentence of imprisonment for life.	Death	Ditto	Ditto	Ditto
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Imprisonment for 10 years or fine, or both.	Ditto	Ditto	Ditto
304A	Causing death by rash or negligent act.	Imprisonment for 2 years, or fine or both.	Cognizable	Bailable	Magistrate of the first class.
304B	Dowry death.	Imprisonment of not less than 7 years but which may extend to imprisonment for life.	Cognizable	Non-bailable	Court of Session.
305	Abetment of suicide committed by child or insane or delirious person or an idiot, or a person intoxicated.	Death, or imprisonment for life, or imprisonment for 10 years, and fine.	Ditto	Ditto	Ditto
306	Abetting the commission of suicide.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
307	Attempt to murder. If such act causes hurt to any person.	Ditto Imprisonment for life or imprisonment for 10 years and fine.	Ditto Ditto	Ditto Ditto	Ditto Ditto
	Attempt by life-convict to murder, if hurt is	Death or	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	caused.	imprisonment for 10 years, and fine.			
308	Attempt to commit culpable homicide.	Imprisonment for 3 years or fine, or both.	Ditto	Ditto	Ditto
	If such act causes hurt to any person.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Ditto
309	Attempt to commit suicide.	Simple imprisonment for 1 year, or fine, or both.	Ditto	Bailable	Any Magistrate.
312	Causing miscarriage.	Imprisonment for 3 years and fine or both.	Non-cognizable	Ditto	Magistrate of the first class.
	If the woman be quick with child.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
313	Causing miscarriage without woman's consent.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
314	Death caused by an act done with intent to cause miscarriage.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	If act done without woman's consent.	Imprisonment for life, or as above.	Ditto	Ditto	Ditto
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Imprisonment for 10 years, or fine, or both.	Ditto	Ditto	Ditto
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Imprisonment for 10 years, or fine.	Ditto	Ditto	Ditto
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	Imprisonment for 7 years, or fine, or both.	Ditto	Bailable	Magistrate of the first class.
318	Concealment of birth by secret disposal of dead body.	Imprisonment for 2 years, or fine or both.	Ditto	Ditto	Ditto
323	Voluntarily causing hurt.	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Non-cognizable	Ditto	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Imprisonment for 3 years, or fine, or both.	Cognizable	Ditto	Ditto
325	Voluntarily causing grievous hurt.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
326	Voluntarily causing grievous hurt by	Imprisonment for	Cognizable	Non-bailable	Magistrate of the

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	dangerous weapons or means.	life, or imprisonment for 10 years and fine.			first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto	Ditto	Ditto	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Imprisonment for 7 years and fine.	Ditto	Bailable	Magistrate of the first class.
331	Voluntarily causing grievous hurt to extort confession or information or to compel restoration of property, etc.	Imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.
332	Voluntarily causing hurt to deter public servant from his duty.	Imprisonment for 3 years or fine, or both.	Ditto	Bailable	Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 1 month, or fine of 500 rupees, or both.	Non-cognizable	Bailable	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 4 years, or fine of 2,000 rupees, or both.	Cognizable	Ditto	Magistrate of the first class.
336	Doing any act which endangers human life or the personal safety of others.	Imprisonment for 3 months, or fine of 250 rupees, or both.	Ditto	Ditto	Any Magistrate.
337	Causing grievous hurt by an act which endangers human life, etc.	Imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
338	Causing grievous hurt by an act which endangers human life, etc.	Imprisonment for 2 years, or fine of 1000 rupees, or both.	Ditto	Ditto	Ditto
341	Wrongfully restraining any person.	Simple imprisonment for 1 month, or fine of 500 rupees or both.	Ditto	Ditto	Ditto
342	Wrongfully confining any person.	Imprisonment for 1	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
		year, or fine of 1000 rupees, or both.			
343	Wrongfully confining for 3 or more days.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
344	Wrongfully confining for 10 or more days.	Imprisonment for 3 years and fine.	Cognizable	Bailable	Any Magistrate.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Imprisonment for 2 years in addition to imprisonment under any other section.	Ditto	Ditto	Magistrate of the first class.
346	Wrongful confinement in secret.	Ditto	Ditto	Ditto	Ditto
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, etc.	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	Ditto	Ditto	Ditto	Ditto
352	Assault or use of criminal force otherwise than on grave provocation.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Non-cognizable	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	Imprisonment for 2 years, or fine, or both.	Cognizable	Ditto	Ditto
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto	Ditto	Ditto
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Ditto	Non-cognizable	Ditto	Ditto
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	Imprisonment for 2 years, or fine, or both.	Cognizable	Bailable	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Imprisonment for 1 year or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
358	Assault or use of criminal force on grave and sudden provocation.	Simple imprisonment for one month, or fine of 200 rupees, or both.	Non-cognizable	Ditto	Ditto
363	Kidnapping.	Imprisonment for 7 years, and fine.	Cognizable	Ditto	Magistrate of the first class.
363A	Kidnapping or obtaining the custody of a minor in order that such minor may be employed or used for purposes of begging.	Imprisonment for 10 years and fine.	Ditto	Non-bailable	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	Maiming a minor in order that such minor may be employed or used for purposes of begging.	Imprisonment for life and fine.	Ditto	Ditto	Court of Session.
364	Kidnapping or abducting in order to murder.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
364A	Kidnapping for ransom, etc.	Death, or imprisonment for life, and fine.	Ditto	Ditto	Ditto
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable.	Magistrate of the first class.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
366A	Procuration of minor girl.	Ditto	Ditto	Ditto	Ditto
366B	Importation of girl from foreign country.	Ditto	Ditto	Ditto	Ditto
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto	Ditto	Ditto	Ditto
368	Concealing or keeping in confinement a kidnapped person.	Punishment for kidnapping or abduction.	Ditto	Ditto	Court by which the kidnapping or abduction is triable.
369	Kidnapping or abducting a child with intent to	Imprisonment for 7	Ditto	Ditto	Magistrate of the

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	take property from the person of such child.	years and fine.			first class.
370	Buying or disposing of any person as slave.	Ditto	Non-cognizable	Bailable	Ditto
371	Habitual dealing in slaves.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto	Ditto	Ditto	Ditto
374	Unlawful compulsory labour.	Imprisonment for 1 year, or fine, or both.	Ditto	Bailable	Any Magistrate.
376	Rape.	Imprisonment for life or imprisonment for ten years and fine.	Ditto	Non-bailable	Court of Session.
	Intercourse by a man with his wife not being under twelve years of age.	Imprisonment for two years, or fine, or both.	Non-cognizable	Bailable	Ditto
376A	Intercourse by a man with his wife during separation.	Imprisonment for two years and fine.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
376B	Intercourse by public servant with woman in his custody.	Imprisonment for five years and fine.	Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate)	Ditto	Ditto
376C	Intercourse by superintendent of jail, remand home, etc.	Ditto	Ditto	Ditto	Ditto
376D	Intercourse by manager, etc., of a hospital with any woman in that hospital.	Ditto	Ditto	Ditto	Ditto
377	Unnatural offences.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
CHAPTER XVII - OFFENCES AGAINST PROPERTY					
379	Theft.	Imprisonment for 3 years, or fine or both.	Cognizable	Non-bailable	Any Magistrate.
380	Theft in a building, tent or vessel.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
381	Theft by clerk or servant of property in possession of master or employer.	Ditto	Ditto	Ditto	Ditto
382	Theft, after preparation having been made for causing death, or hurt, or restraint or fear of	Rigorous imprisonment for	Ditto	Ditto	Magistrate of the first class.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	death, or of hurt or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	10 years and fine.			
384	Extortion.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable	Ditto
386	Extortion by putting a person in fear of death or grievous hurt.	Imprisonment for 10 years and fine.	Ditto	Non-bailable	Magistrate of the first class.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
388	Extortion by threat of accusation of an offence punishable with death, imprisonment for life, or imprisonment for two years. If the offence threatened be an unnatural offence.	Imprisonment for 10 years and fine. Imprisonment for life.	Ditto	Bailable Ditto	Ditto Ditto
389	Putting a person in fear of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years in order to commit extortion.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	If the offence be an unnatural offence.	Imprisonment for life.	Ditto	Ditto	Ditto
392	Robbery. If committed on the highway between sunset and sunrise.	Rigorous imprisonment for 10 years and fine. Rigorous imprisonment for 14 years and fine.	Ditto	Non-bailable	Ditto
393	Attempt to commit robbery.	Rigorous imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
395	Dacoity.	Ditto	Ditto	Ditto	Court of Session.
396	Murder in Dacoity.	Death, Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Rigorous imprisonment for not less than 7 years.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
398	Attempt to commit robbery or dacoity when armed with deadly weapons.	Ditto	Ditto	Ditto	Ditto
399	Making preparation to commit dacoity.	Rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Imprisonment for life or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Rigorous imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	Ditto	Ditto	Court of Session.
403	Dishonest misappropriation of movable property, or converting it to one's own use.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
406	Criminal breach of trust.	Imprisonment for 3 years or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class.
407	Criminal breach of trust by a carrier, wharfinger, etc.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
411	Dishonestly receiving stolen property knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
413	Habitually dealing in stolen property.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
417	Cheating.	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Ditto
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
419	Cheating by personation.	Ditto	Cognizable	Ditto	Ditto
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Imprisonment for 7 years and fine.	Ditto	Non-bailable	Magistrate of the first class.
421	Fraudulent removal or concealment of property, etc, to prevent distribution among creditors.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
426	Mischief.	Imprisonment for 3 months, or fine, or both.	Ditto	Ditto	Ditto
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	Ditto	Cognizable	Ditto	Ditto
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value or any other animal of the value of 50 rupees or upwards.	Imprisonment for 5 years or fine, or both.	Ditto	Ditto	Magistrate of the first class.
435	Mischief by fire or explosive substance with intent to cause damage to an amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
436	Mischief by fire or explosive substance with intent to destroy house, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.
440	Mischief committed after preparation made for causing death, or hurt, etc.	Imprisonment for 5 years and fine.	Ditto	Bailable	Magistrate of the first class.
447	Criminal trespass.	Imprisonment for 3 months, or fine of 500 rupees or both.	Ditto	Ditto	Any Magistrate.
448	House-trespass.	Imprisonment for one year, or fine of 1000 rupees, or both.	Ditto	Ditto	Ditto
449	House-trespass in order to the commission of an offence punishable with death.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.
450	House-trespass in order to the commission of an offence punishable with imprisonment for life.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
451	House-trespass in order to the commission of an offence punishable with imprisonment. If the offence is theft.	Imprisonment for 2 years and fine. Imprisonment for 7 years and fine.	Ditto	Bailable	Any Magistrate.
			Ditto	Non-bailable	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
452	House-trespass, having made preparation for causing hurt, assault, etc.	Ditto	Ditto	Ditto	Ditto
453	Lurking house trespass or house-breaking.	Imprisonment for 2 years and fine	Ditto	Ditto	Ditto
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. If the offence be theft.	Imprisonment for 3 years and fine. Imprisonment for 10 years and fine.	Ditto Ditto	Ditto Ditto	Ditto Magistrate of the first class.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
456	Lurking house-trespass or house-breaking by night.	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. If the offence is theft.	Imprisonment for 5 years and fine. Imprisonment for 14 years and fine.	Ditto Ditto	Ditto Ditto	Magistrate of the first class. Ditto
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc.	Ditto	Ditto	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Imprisonment for life or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	Ditto	Ditto	Ditto	Ditto
CHAPTER XVIII - OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS					
465	Forgery.	Imprisonment for 2 years, or fine or both.	Non-cognizable	Bailable	Magistrate of the first class.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc. When the valuable security is a promissory note of the Central Government.	Imprisonment for life, or imprisonment for 10 years and fine. Ditto	Ditto Cognizable	Non-bailable Ditto	Ditto Ditto
468	Forgery for the purpose of cheating.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
471	Using as genuine a forged document which is known to be forged. When the forged document is a promissory note of the central government.	Punishment for forgery of such document. Ditto	Ditto Ditto	Bailable Ditto	Ditto Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
477A	Falsification of accounts.	Imprisonment for 7 years or fine, or both.	Non-cognizable	Non-bailable	Ditto
CHAPTER XX - OFFENCES RELATING TO MARRIAGE					
493	A man by deceit causing a woman not lawfully married to him and to cohabit with him in that belief.	Imprisonment for 10 years and fine.	Non-cognizable	Non-bailable	Magistrate of the first class.
494	Marrying again during the lifetime of a husband or wife.	Imprisonment for 7 years and fine.	Ditto	Bailable	Ditto
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
496	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
497	Adultery.	Imprisonment for 5 years, or fine, or both.	Ditto	Ditto	Ditto
498	Enticing or taking away or detaining with a criminal intent a married woman.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
CHAPTER XXA - OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND					
498A	Punishment for subjecting a married woman	Imprisonment for	Cognizable if	Non-bailable	Magistrate of the

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	to cruelty.	3 years and fine.	information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf.		first class.
CHAPTER XXI - DEFAMATION.					
500	Defamation against the President or the Vice-President or the Governor of a State or Administrator of a Union Territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor. Defamation in any other case.	Simple imprisonment for 2 years, or fine, or both. Ditto	Non-cognizable Ditto	Bailable Ditto	Court of Session. Magistrate of the first class.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
501(a)	Printing or engraving matter knowing it to be defamatory against the President or the Vice-President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Ditto	Ditto	Ditto	Court of Session.
501(b)	Printing or engraving matter knowing it to be defamatory, in any other case.	Ditto	Ditto	Ditto	Magistrate of the first class.
502(a)	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Ditto	Ditto	Ditto	Court of Session.
502(b)	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter in any other case.	Ditto	Ditto	Ditto	Magistrate of the first class.
CHAPTER XXII - CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE					
504	Insult intended to provoke breach of the peace.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
505	False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.	Imprisonment for 3 years, or fine, or both.	Ditto	Non-bailable	Ditto
	False statement, rumour, etc, with intent to create enmity, hatred or ill-will between different classes.	Ditto	Cognizable	Ditto	Ditto
	False statement rumour, etc., made in place of worship etc, with intent to create enmity, hatred or ill-will.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto
506	Criminal intimidation.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
	If threat be to cause death or grievous hurt, etc.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Simple imprisonment for 1 year, or fine, or both.	Cognizable	Ditto	Any Magistrate.
510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Non-cognizable	Ditto	Ditto

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
CHAPTER XXIII - ATTEMPTS TO COMMIT OFFENCES					
511	Attempting to commit offences punishable with imprisonment for life or imprisonment, and in such attempt doing any act towards the commission of the offence.	Imprisonment for life or imprisonment not exceeding half of the longest term provided for the offence, or fine, or both.	According as the offence is cognizable or non-cognizable.	According as the offence attempted by the offender is bailable or not.	The court by which the offence attempted is triable.

The Code of Criminal Procedure (Amendment) Act, 2008

[ACT No. 5 OF 2009]*

[7th January, 2009.]

An Act further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. Short title and commencement. — (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2008.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. Amendment of section 2. — In section 2 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), after clause (w), the following clause shall be inserted, namely:—

‘(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir;’.

3. Amendment of section 24. — In section 24 of the principal Act, in sub-section (8), the following proviso shall be inserted, namely:—

“Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.”

4. Amendment of section 26. — In section 26 of the principal Act, in clause (a), the following proviso shall be inserted, namely:—

“Provided that any offence under section 376 and sections 376A to 376D of

the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman.”.

5. Amendment of section 41. — In section 41 of the principal Act, —

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;”;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.”.

6. Insertion of new sections 41A, 41B, 41C and 41D. — After section 41 of the principal Act, the following new sections shall be inserted, namely:—

41 A. Notice of appearance before police officer. — “(1) The police

officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

41B. Procedure of arrest and duties of officer making arrest. — Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

41C. Control room at districts. — (1) The State Government shall establish a police control room—

(a) in every district; and

(b) at State level.

(2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.

(3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

41D. Right of arrested person to meet an advocate of his choice dur-

ing interrogation. — When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.”.

7. Amendment of section 46. — In section 46 of the principal Act. in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.”.

8. Substitution of new section for section 54. — For section 54 of the principal Act, the following section shall be substituted, namely:—

“54. Examination of arrested person by medical officer. — (7) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made: Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.”.

9. Insertion of new section 55A. — After section 55 of the principal Act, the following section shall be inserted, namely:—

“55A. Health and safety of arrested person. — It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.”.

10. Insertion of new section 60A. — After section 60 of the principal Act, the following section shall be inserted, namely:—

“60A. Arrest to be made strictly according to the Code. — No arrest shall be made except in accordance with the provisions of this Code or any

other law for the time being in force providing for arrest.”.

11. Amendment of section 157. — In section 157 of the principal Act, in sub-section (7), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.”.

12. Amendment of section 161. — In section 161 of the principal Act, in sub-section (3), the following provisos shall be inserted, namely:—

“Provided that statement made under this sub-section may also be recorded by audio-video electronic means.”.

13. Amendment of section 164. — In section 164 of the principal Act, in sub-section (7), for the proviso, the following provisos shall be substituted, namely:—

“Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence: Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.”.

14. Amendment of section 167. — In section 167 of the principal Act, in sub-section (2),—

(a) in the proviso,—

(i) for clause (b), the following clause shall be substituted, namely:—

“(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;”;

(ii) for Explanation II, the following Explanation shall be substituted, namely:—

“**Explanation II.** — If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authoris-

ing detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.”;

(b) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.”.

15. Amendment of section 172. — In section 172 of the principal Act, after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.”.

16. Amendment of section 173. — In section 173 of the principal Act,—

(a) after sub-section (7), the following sub-section shall be inserted, namely:—

“(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.”;

(b) in sub-section (2), after clause (g), the following clause shall be inserted, namely:—

“(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code.”.

17. Insertion of new section 195A. — After section 195 of the principal Act, the following section shall be inserted, namely:—

“195A. Procedure for witnesses in case of threatening, etc. — A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code.”.

18. Amendment of section 198. — In section 198 of the principal Act, in sub-section (6), for the words “fifteen years of age”, the words “eighteen years of age” shall be substituted.

19. Amendment of section 242. — In section 242 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the Magistrate shall supply in advance to the accused, the

statement of witnesses recorded during investigation by the police.”.

20. Amendment of section 275. — In section 275 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.”.

21. Amendment of section 309. — In section 309 of the principal Act, —
(a) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.”;

(b) in sub-section (2), after the third proviso and before Explanation 1, the following proviso shall be inserted, namely:—

“Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.”.

22. Amendment of section 313. — In section 313 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”.

23. Amendment of section 320. — In section 320 of the principal Act,—

(i) in sub-section (1), for the TABLE, the following TABLE shall be substituted, namely:—

***TABLE**

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Voluntarily causing hurt.	323	The person to whom the hurt is caused.
Voluntarily causing hurt on provocation.	334	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341	The person restrained or confined.
	342	
Wrongfully confining a person for three days or more	343	The person confined.
Wrongfully confining a person for ten days or more.	344	Ditto.
Wrongfully confining a person in secret.	346	Ditto.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Theft.	379	The owner of the property stolen.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust by a carrier, wharfinger, etc.	407	The owner of the property in respect of which the breach of trust has been committed.
Dishonestly receiving stolen property knowing it to be stolen.	411	The owner of the property stolen.

Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	414	Ditto.
Cheating.	417	The person cheated.
Cheating by personation.	419	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Mischief by killing or maiming animal.	428	The owner of the animal
Mischief by killing or maiming cattle, etc.	429	The owner of the cattle or animal.
Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.	430	The person to whom the loss or damage is caused.
Criminal trespass.	447	The person in possession of the property trespassed upon.
House-trespass.	448	Ditto.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.

Counterfeiting a trade or property mark used by another.	483	Ditto.
Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.	486	Ditto.
Criminal breach of contract of service.	491	The person with whom the offender has contracted.
Adultery.	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	The husband of the woman and the woman
Defamation, except such cases as are specified against section 500 of the Indian Penal Code (45 of 1860) in column 1 of the Table under sub-section (2).	500	The person defamed.
Printing or engraving matter,	501	Ditto.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	Ditto.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation.	506	The person intimidated.
Inducing person to believe himself an object of divine displeasure.	508	The person induced.”;

(ii) in sub-section (2), for the TABLE the following TABLE shall be substituted, namely:—

“TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Causing miscarriage.	312	The woman to whom miscarriage is caused.

Voluntarily causing grievous hurt.	325	The person to whom hurt is caused.
Causing hurt by doing an act so rashly and negligently as to safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft, by clerk or servant of property in possession of master.	381	The owner of the property stolen.
Criminal breach of trust	406	The owner of property in respect of which breach of trust has been committed.
Criminal breach of trust by a clerk or servant.	408	The owner of the property in respect of which the breach of trust has been committed.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	418	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Cheating and dishonestly inducing
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the Public Prosecutor.	500	The person defamed.

Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.”;
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(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section 34 or 149 of the Indian Penal Code may be compounded in like manner.”.

24. Amendment of section 327. — In section 327 of the principle Act,—

(a) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.”;

(b) in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.”.

25. Amendment of section 328. In section 328 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.”;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine

whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in subsection (1A) is a person with mental retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 330."

26. Amendment of section 329. — In section 329 of the principal Act, —

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind: Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.";

(b) for sub-section (2), the following sub-sections shall be substituted; namely:—

"(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or

Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330.”.

27. Substitution of new section for section 330. — For section 330 of the principal Act, the following section shall be substituted, namely:—

“330. Release of person of unsound mind pending investigation or trial. — (1) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government: Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987.

(3) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keep in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that—

(a) if on the basis of medical opinion or opinion of a specialist, the Magis-

trate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training.”.

28. Insertion of new section 357A. — After section 357 of the principal Act, the following section shall be inserted, namely:—

“357A. Victim compensation scheme. — (7) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”.

29. Amendment of section 372. — In section 372 of the principal Act, the following proviso shall be inserted, namely:—

"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

30. Amendment of section 416. — In section 416 of the principal Act, the words "order the execution of the sentence to be postponed, and may, if it thinks fit" shall be omitted.

31. Insertion of new section 437A. — After section 437 of the principal Act, the following section shall be inserted, namely:—

"437A. Bail to require accused to appear before next appellate Court.

— (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."

32. Amendment of Form 45. — In the Second Schedule to the principal Act, in Form No. 45, after the figures "437", the figures and letter "437A" shall be inserted.

[*] Received the assent of the President on 7th January, 2009, Act Published in Gaz. Of India 9-1-2009, Pt.II.S.1 Ext.P.1 (No.6).

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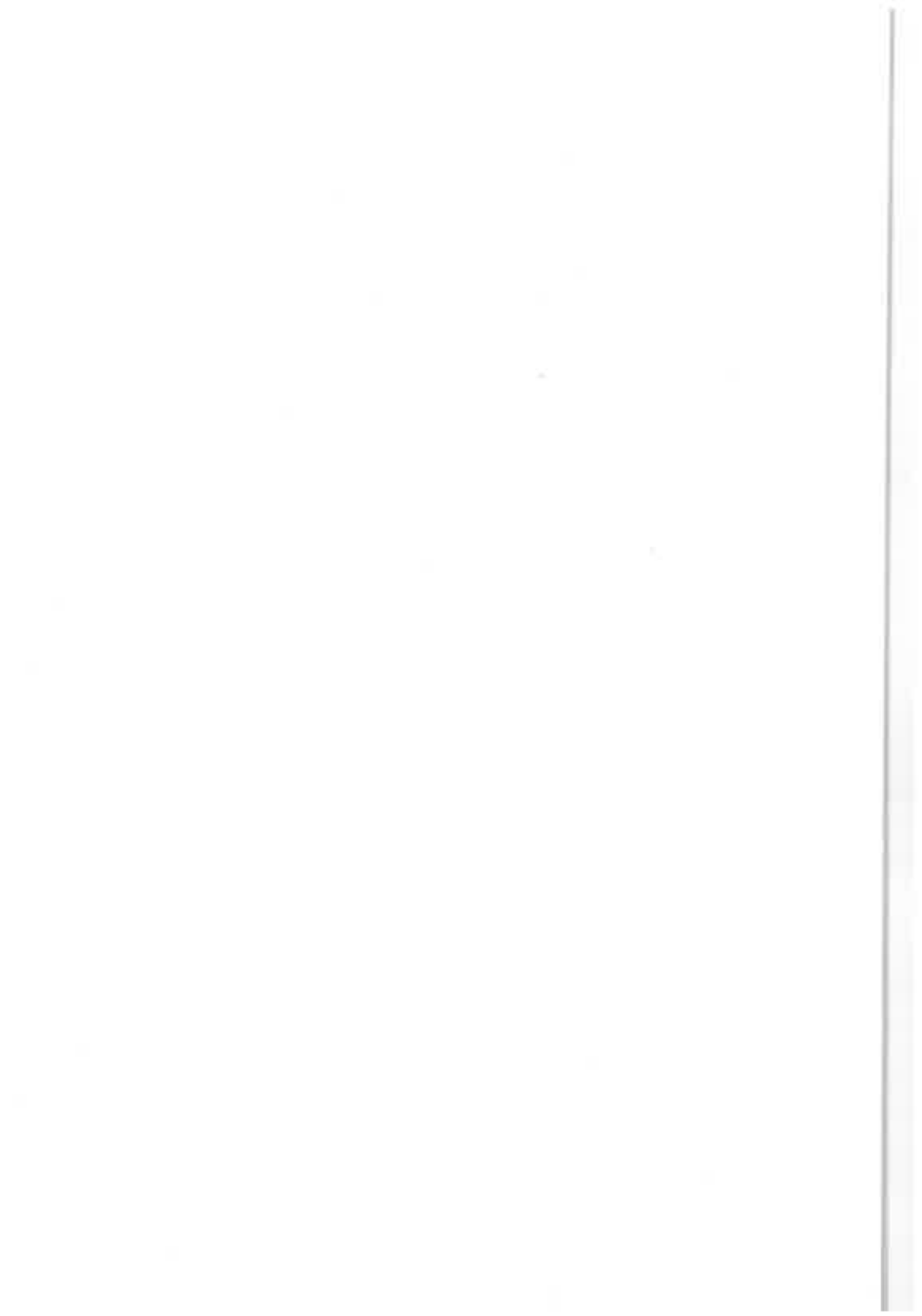
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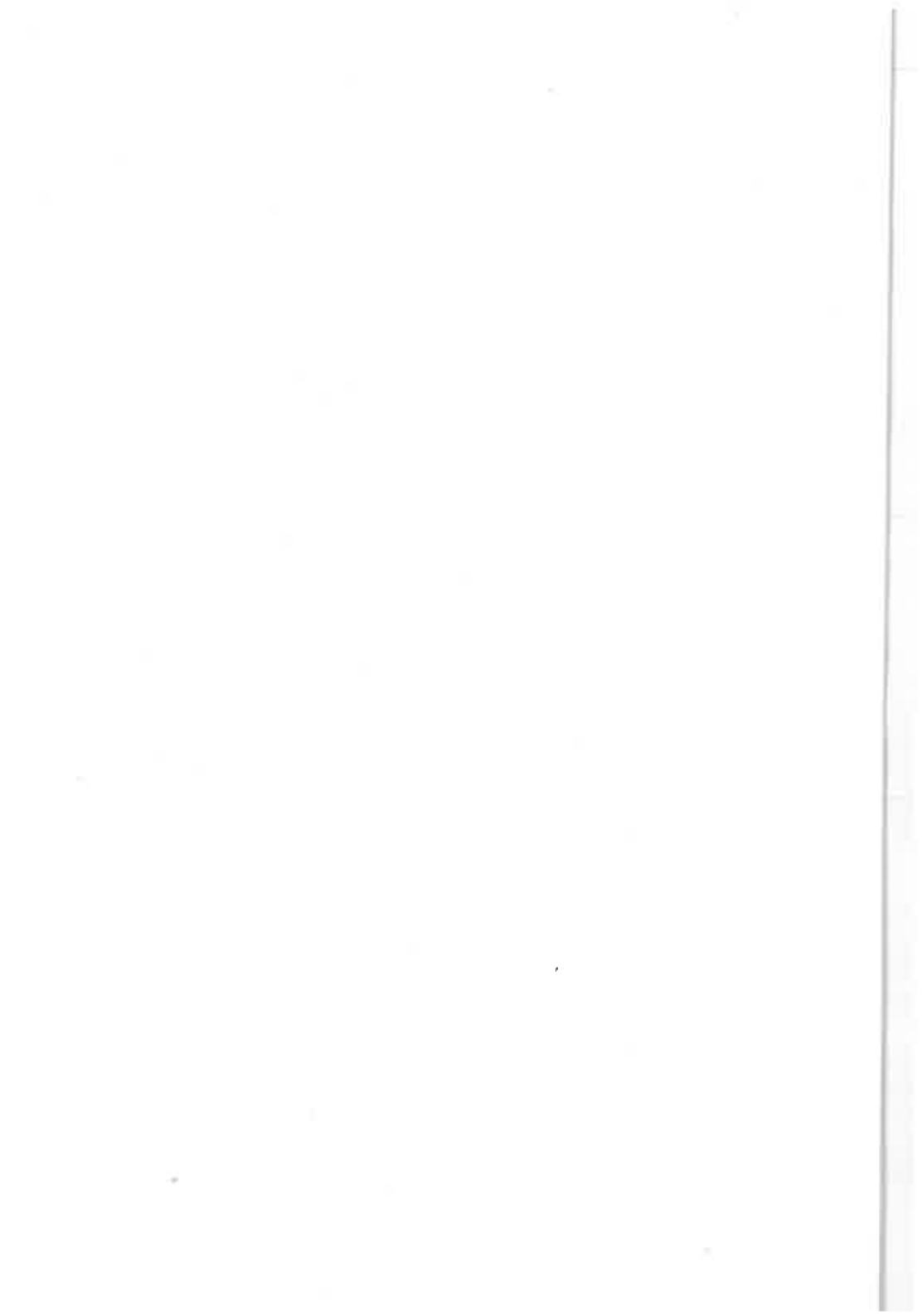
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The Criminal Justice Initiative (CJI) is dedicated to the use of law as a shield to protect human rights within the criminal justice system. The CJI provides legal aid to undertrial and convict prisoners in the jails, juveniles, refugees, and the victims of crime. It also conducts training on criminal law, investigates into cases of human rights violations such as police encounters and custodial torture and death, undertakes public interest litigation with a view to bring about a comprehensive change in the criminal justice system, addresses issues of prisoners rights, and initiates campaigns on various issues.

India Centre for Human Rights & Law (ICHRL) was set up in 1997 to defend the rights of the underprivileged, especially the rights of women, children, adivasis, dalits, and ethnic, religious and sexual minorities. ICHRL sees itself as a support organization established to provide legal assistance to social movements. In addition to pro bono legal services, ICHRL works to strengthen human rights mechanisms through trainings, investigations and campaigns, to protect civil rights and liberties and safeguard the rights of the poor and marginalised.

The Human Rights Law Network (HRLN) is a nationwide collective of lawyers and social activists dedicated to using the legal system to advance human rights, and ensuring access to justice for all. The network is situated in various cities in India, and works with women, prisoners, dalits, workers, children, farmers, indigenous people, refugees, HIV positive people, the homeless, disabled, religious minorities and sexual minorities among others.



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