

CRIMINAL LAW HANDBOOK

REALIZE YOUR RIGHTS



ASSOCIATION FOR PROTECTION OF CIVIL RIGHTS

CRIMINAL LAW HANDBOOK

REALIZE YOUR RIGHTS



**Association for Protection
of Civil Rights**

Index

	<u>Pages no.</u>
1.Crime and Essential Elements of Crime	1
• Human Being	
• Mens rea	
• Actus reus	
• Injury	
2.India Statute regulating Criminal Law	2
• The Indian Penal Code, 1860	
• The Code of Criminal Procedure, 1973	
• The Indian Evidence Act, 1872	
3.Classification of Criminal Law	2
• Substantive Law	
• Procedural Law	
4.Offence and Types of Offence	2
• Cognizable Offences	
• Non-Cognizable Offences	
• Difference between Cognizable and Non-Cognizable offence	
5.Concept of First Information Report (FIR)	4
• Purpose of F.I.R	
• Zero F.I.R	
• Important points relating to the Filing of an FIR	
• Delay in Lodging F.I.R	

6.Law Relating to Bail **5**

- Bailable offences
- Bail in Bailable offence
- Non-bailable offences
- Bail in Non-bailable offences

7.Types of Bail **7**

- Regular Bail
- Interim Bail
- Anticipatory Bail
- Bar on grant of anticipatory bail
- Default bail
- Power of Sessions court and the High Court regarding bail

8.Arrest **8**

- Types of arrest
- Rights of an arrested person
- Right against self-incrimination
- Right To Know the Grounds of Arrest
- Right to be taken before a magistrate without delay
- Right to consult a legal practitioner
- Right to be examined by a medical practitioner-
- Right to a fair trial
- Right to a speedy trial
- Right to free legal aid

9.Special Rights for Women **11**

10.Special Rights for Children **12**

11. Supreme court guidelines regarding arrest

12

12. Trial and Procedure Involved in Criminal Cases in India

- Pre-trial stage
- Trial stage
- Post-trial stage

13. Pre-Trial Stage

15

- Commission of an offence (cognizable or non-cognizable)
- Information to police.
- Information of cognizable offence
- Information of non-cognizable offence
- Complaint to Magistrate
- Investigation by Police
- Anticipatory Bail
- Arrest of the Accused
- Production of accused to a magistrate
- Remand/Bail
- After the investigation is complete
- Closure Report
- Charge sheet/Final report
- Framing of Charge
- Conviction on plea of guilty
- If the accused pleads not guilty

14. Trial Stage

18

- Commencement of trial
- Trial in Warrant Cases

- Trial of Summon Cases
- Summary trial
- Prosecution evidence
- Statement of the accused
- Defence evidence
- Final Arguments
- Judgment and sentence by the Court
- Arguments on sentence
- Judgment of Court passing sentence

15. Post-Trial Stage

22

- Appeal (within a specified period of limitation)/Revision
 - Appeal in Court of Session
 - Appeal from Convictions
 - State Appeals
 - Appeal against Sentence
 - Appeal in Case of Acquittal
 - Appeal against Conviction by High Court in Certain Cases
 - Special Right of Appeal in Certain Cases
 - Revision Application
 - Note- Revision is not maintainable against
 - Call Records for Revision
 - Power to Order Inquiry
 - Power of Session Court of Revision
 - High Court's Power of Revision
 - Power of High Court to Withdraw or Transfer Revision Case
 - Judgment of the Appellate Court or Court having revisional jurisdiction
 - Judgment of the Appellate Court or Court having revisional jurisdiction
 - Execution of Sentence
-

CRIME AND ESSENTIAL ELEMENTS OF CRIME

Any act or omission prohibited by law and punishable by law is a crime. A crime or an offence is an act which is harmful not only to the person but also to the community, society, or state.

To establish criminal liability, crime can be broken down into elements which a prosecution must prove beyond a reasonable doubt. *There are basically four elements of a crime as follows:*

- **Human Being**- The first element of a crime is a human being. Any wrongful act to be called a crime must be done by a human being. There must be a human being under a legal obligation to act in a particular way, and it must also be capable of being punished.
- **Mens rea**- The second essential element of a crime is mens rea, guilty mind, or evil intent. Mens rea refers to the mental element that is necessary for a particular crime. Any wrongful act committed by a human being cannot be called a crime if committed without evil intent. There must be an evil intent while doing an act.
- **Actus reus**- The third element of the crime is actus reus. The criminal intent to be punishable must be obvious in some voluntary act or omission.
- **Injury**- The fourth requirement of a crime is an injury that should be caused to another person or to society at large. According to Section 44 of the Indian Penal Code, 1860 injury is defined as any harm illegally caused to any person in body, mind, reputation, or property by another person.

The punishment for any crime is decided by following the procedures of the criminal trial. The criminal trials in India are well-established statutory, administrative, and judicial frameworks.

The Criminal Law regime in India is regulated by the following statutes:

- **The Indian Penal Code, 1860**- The IPC provides for the classification of different offences. It also provides the punishment to be awarded to a person convicted of any offence.
- **The Code of Criminal Procedure, 1973**- The Criminal Procedure Code provides for the mechanism and manner in which criminal trials should be conducted in India. The procedure includes the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards, procedures to be adopted by Police and Courts, bail, the process of a criminal trial, a method of conviction etc. The foremost and essential objective of the code is to ensure a fair trial.
- **The Indian Evidence Act, 1872**- The Evidence Act provides what evidence is admissible, the manner of production of the evidence in a trial, and the evidentiary value which can be attached to such evidence

CLASSIFICATION OF CRIMINAL LAW

- **Substantive Law**: - Substantive law refers to how facts of each case are handled and how to penalize or ascertain damages in each case. (India Penal Code, 1860)
- **Procedural Law**: - Procedural law refers to the different processes through which a case proceeds. (The code of Criminal Procedure 1973, The Indian Evidence Act 1872)

OFFENCE AND TYPES OF OFFENCES

According to Section 2(n), CrPC "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a

complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871).

Cognizable Offences: - It is defined under section 2 (c) of CrPC. It means an offence for which, a police officer may in accordance with the first schedule or under any other law for the time being in force, can arrest the convict without a warrant and can start an investigation without the permission of the court. Cognizable offences are generally heinous or serious, such as murder, rape, kidnapping, theft, dowry death, etc.

Non-Cognizable Offences:- It is defined under section 2(l) of CrPC. It means an offence for which, a police officer has no authority to arrest without a warrant. A non-cognizable offence is an offence listed under the first schedule of the Indian Penal Code. The crimes of forgery, cheating, defamation, public nuisance, etc., fall in the category of non-cognizable crimes.

Difference between Cognizable and Non-Cognizable offence

Cognizable	Non-Cognizable
It is the offence in which a police officer can arrest the convict without a warrant.	It is an offence in which a police officer cannot arrest a person without a warrant.
The police can start a preliminary investigation without the court's permission or without registering the FIR.	The police officer cannot start the investigation without the court's permission.
The victim can file an FIR or make a complaint to the magistrate.	The victim can only make a complaint to the magistrate.
The police officer is bound to register the FIR even without the permission of the Magistrate.	The police officer is not bound to register the FIR or cannot register the FIR without prior permission of the magistrate.
It is a non-bailable offence.	It is a bailable offence.

CONCEPT OF FIRST INFORMATION REPORT (FIR)

It is information of the commission of a cognizable offence given to police by the victim or any other person having knowledge that a cognizable offence has been committed. Based on a first information report, the police commence their investigation. Section 154 of the Code of Criminal Procedure defines what amounts to the first information.

Purpose of F.I.R-

- To set the criminal law in motion
- To inform the magistrate about the offence reported at the police station.
- To safeguard the accused against subsequent variation.

Zero F.I.R-

Zero F.I.R is an F.I.R that can be filed in any police station regardless of the place of incident or jurisdiction. The police officer is legally bound to record every piece of information relating to the commission of a cognizable offence alleged to be committed within his jurisdiction. However, any lack of territorial jurisdiction shall not prevent the PO (Police Officer) from recording such information and forwarding the same to the police station having jurisdiction.

Important points relating to the Filing of an FIR:

- Section 154 of the Criminal Procedure Code, 1973 lays down the procedure for lodging an FIR.
- If the information is given orally to an officer in charge of a police station, it must be reduced in writing by the concerned police officer. It should be then read over to the informant, and then signed by him. The information thus received must be recorded in a book authorised by the state government regarding the same.
- The informant will be given a copy of the recorded information, free of cost.
- If the officer in charge refuses to record the information, the person may send such information, and the aggrieved person may send, the substance of such information to the Superintendent of Police and the Superintendent of Police if

satisfied about the commission of the cognizable offence, shall either investigate the case himself or direct an investigation to be made by the subordinate police officer. Such a police officer shall exercise all the powers of an officer in charge of the police station in the concerning offence.

- One has the option to file a private complaint before the court having jurisdiction under section 156 (3) of the Criminal Procedure Code praying for registration of FIR and investigation.

Delay in Lodging F.I.R

It has to be remembered that the law has not fixed any time for lodging of F.I.R; hence a delayed F.I.R is not illegal. Of course, a prompt and immediate lodging of F.I.R is ideal as that would give the prosecution some advantage.

It cannot be overlooked that even a promptly lodged F.I.R is not an unreserved guarantee for the genuineness of the version incorporated therein. In any case, where there is a delay in making the F.I.R, the court is to look at the cause for it and if such cause is not attributable to any effort to concoct a version, no consequence shall be attached to the mere delay in lodging of F.I.R.

LAW RELATING TO BAIL

It connotes the process of procuring the release of an accused charged with certain offences by ensuring his future attendance in the court for trial and compelling him to remain within the jurisdiction of the court. It has not been defined under the Criminal Procedure Code, 1973. Only the term 'Bailable Offence' and 'Non-Bailable Offence' has been defined under [Section 2\(a\) of Cr. PC.](#)

Bailable offences - According to Section 2(a) of CrPC bailable offence means an offence that is classified as bailable in the First Schedule of the Code, or which is

classified as bailable under any other law.

Bail in Bailable offence- Section 436 of the Code of Criminal Procedure deals with provisions of bail in bailable offences. Under this section, bail is the right of a person, who has been accused of commission of the offence, which is bailable in nature. This provision casts a mandatory duty on police officials as well as on the Court to release the accused on bail if the offence alleged against such person is bailable in nature. An accused can claim bail as a matter of right if he is accused of committing a bailable offence. The police officer or any other authority has no right to reject the bail if the accused is ready to furnish a bail bond.

Non-bailable offences-A non-bailable offence is defined as any offence which is not a bailable offence. A person accused of a non-bailable offence cannot claim bail as a right.

Bail in Non-bailable offences: Under section 437 of the Code of Criminal Procedure when a person is accused of or suspected of, the commission of any non-bailable offence, is arrested or detained without warrant or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but such person shall not be so released,

- if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.
- if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence
- He may be released if under the age of sixteen years or is a woman or

is sick or infirm

- He may be released if he is satisfied that it is just and proper so to do for any other special reason.

TYPES OF BAIL

Depending upon the stage of the criminal matter, there are commonly three types of bail in India:

- **Regular Bail**: is generally granted to a person who has been arrested or is in police custody. A bail application can be filed for regular bail under Sections 437 and 439 of CrPC.
- **Interim Bail**: it is granted for a short period of time and the accused is bound to surrender before the Court on the expiry of the bail period.
- **Anticipatory Bail**: Section 438 of Cr. PC. deals with anticipatory bail. The anticipatory bail is nothing but bail in the event of arrest, when any person has an apprehension or reason to believe that he may be arrested for an accusation of having committed a non-bailable offence then he may apply to the High Court or Court of Sessions for a direction that in the event of arrest he shall be released on bail. Therefore, the said powers are exclusively vested with the Court of Sessions and High Courts. For considering the application for anticipatory bail the prerequisite condition is that the offence must be non-bailable. There must be sufficient reason to believe that the applicant may be arrested for said accusation.

Bar on grant of anticipatory bail: Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act bars anticipatory bail for the offences committed under the said Act. However, if the prima facie case is not made out

under the provision of the Atrocities Act, then there is no bar to granting anticipatory bail.

Default bail under section 167 of The Code of Criminal Procedure, 1973:

The accused is entitled to an indefeasible right of default bail if the accused is prepared to furnish bail in case the charge sheet has not been filed in court. This right accrues after 90 days of custody in cases punishable with death, life imprisonment, and imprisonment not less than 10 years and after 60 days of custody for any other offence.

Power of Sessions court and the High Court regarding bail: Section 439 gives Special powers to the High Court or Court of Session regarding bail. It may direct that any person accused of an offence and in custody be released on bail. It may impose any condition that it considers necessary for the purposes mentioned in that sub-section.

ARREST

The term Arrest has been defined neither in the CrPC (The Code of Criminal Procedure, 1973) nor in the IPC (Indian Penal Code, 1860). The definition has not been provided even in any enactments dealing with Criminal Offences. The only indication of what an arrest constitute can be made out of [Section 46 of CrPC which deals with 'How an arrest is made'](#).

Arrest is mainly of two types-

- Arrest made in pursuance of a warrant issued by the magistrate.
- Arrest made without any warrant but within the established legal provisions.

RIGHTS OF AN ARRESTED PERSON:

- **Right against self-incrimination-** Article 20(3) of the Constitution of India guarantees every person has been given a right against self-incrimination, it states that any person who has been accused of any offence, shall not be

compelled to be a witness against himself.

• **Right To Know the Grounds of Arrest-**

- As per Section 50(1) of Cr.PC., every person who is being arrested by any police officer, without any warrant, is entitled to know the full particulars of the offence for which he is being arrested, and that the police officer is duty bound to tell the accused such particulars and cannot deny it.
- As per Section 55 of Cr.PC., when any person is being arrested by any police officer, who is deputed by a senior police officer, then such subordinate officer shall before making such arrest, notify the person to be arrested the substance of the written order given by the senior police officer specifying the offence or other cause for which the arrest is to be made. If this provision is not complied with, then the arrest would be rendered illegal.
- If any person is being arrested under a warrant, then as per Section 75 of Cr.PC, any person who is executing such warrant must notify the person to be arrested, the particulars of such warrant, or even show such warrant if needed. If the substance of the warrant is not notified, the arrest would be unlawful.
- According to section 50(2) of CrPC; where the police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

• **Right to be taken before a magistrate without delay-**

- In both the situation whether the arrest is made without a warrant or made under the warrant by a police officer or by any person, the person making the arrest must bring the arrested person before a judicial magistrate or if the judicial magistrate is not available then

bring the arrested person before any executive magistrate having such jurisdiction without unnecessary delay. It is also provided that the arrested person should not be confined in any place other than a police station before he is taken to the magistrate.

- Section 56 of Cr. PC. states that "Person arrested to be taken before Magistrate or officer in charge of the police station- A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station".
- Section 76 of Cr. PC. states that "Person arrested to be brought before Court without delay- The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person".
- Further, it has been mentioned in the proviso of Section 76 that such delay shall not exceed 24 hours in any case. While calculating the time period of 24 hours, the time necessary for the journey is to be excluded.
- **Right to consult a legal practitioner-** Article 22(1) of the constitution provides that no person who is arrested shall be denied the right to consult a legal practitioner of his choice.
- **Right to be examined by a medical practitioner-** Section 54 of CrPC empowers the court to get the arrested person medically examined.
- **Right to a fair trial-** The Constitution under Article 14 guarantees the right to equality before the law. The Code of Criminal Procedure also provides that for a trial to be fair, it must be an open court trial. This provision is designed to ensure that convictions are not obtained in secret. In some exceptional cases, the trial

may be held on camera.

- **Right to a speedy trial-** In the case of *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar*, the Court held that; the right to a speedy trial is a fundamental right under Article 21 of the Constitution of India. Speedy trial is the essence of every criminal justice system therefore even though it is not specifically mentioned anywhere, it becomes a part of Article 21 which guarantees fairness in legal procedures affecting personal liberty.
 - The Hon'ble supreme court in *Sheela Barse and Ors. v. Union of India & others* observed that the right to a speedy trial is a fundamental right and any breach of such right may lead to the quashing of the prosecution itself.
- **Right to free legal aid-** In the case of *Hussainara Khatoon vs. State of Bihar*, it was held that if any accused is not able to afford legal services, then he has a right to free legal aid at the cost of the state.

Special Rights for Women

- A woman can be searched, only by another woman with strict regard to decency. (Section 51 of Cr. P.C.)
- If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein. (Sec. 47 Cr. PC.)
- Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person

under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides. (Sec. 160 Cr. P.C.)

- Nothing is an offence which is done by a child under seven years of age. (Sec. 82 IPC).

Special Rights for Children

- Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. (Sec.83 IPC).
- The Juvenile Justice (Care and Protection of Children) Act, 2015 enabled to consolidate and amend the law relating to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through institutions and bodies established.

The Juvenile Justice (Care and Protection of Children) Act, 2015 applies to all matters concerning children in need of care and protection and children in conflict with the law.

GUIDELINES LAID DOWN BY THE HON'BLE SUPREME COURT IN D.K. BASU CASE TO BE FOLLOWED WHILE MAKING AN ARREST

The Hon'ble Supreme Court, in *D.K. Basu v. State of West Bengal*, has laid down specific guidelines required to be followed while making arrests.

The principles laid down by the Hon'ble Supreme Court are given here:

- 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 the interrogation of the arrestee must be recorded in a register.

- That the police officer carrying out the arrest 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.
- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or lock-up shall be entitled to have one friend or relative or other person known to him or having an interest in his welfare 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.
- In case the friend or relative of the arrestee lives outside the district or town, the time, place of arrest and venue of custody of an arrestee must be notified by the police 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.
- 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 detained.
- 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 friend or relative 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.
- The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, present on his/her body if any 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.
- The arrestee should be subjected to a 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 Service of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

- Copies of all the documents including the memo of arrest referred to above, should be sent to the Magistrate for his record.
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

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 causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

TRIAL AND PROCEDURES INVOLVED IN CRIMINAL CASES IN INDIA

The word 'Trial' is not defined under CrPC. However, commonly it is defined as the process of adjudication of guilt of a person or his innocence.

When a person commits a crime, he/she ought to be punished for that. In India, the Indian Penal Code, 1860 is the statute that lists down the offences and punishment for such offences. The Code of Criminal Procedure, 1973 is a thorough and comprehensive code laying down the procedure to be adopted by different criminal courts in India.

The criminal trials in India can be broadly categorized into three stages namely.

- Pre-trial stage
- Trial stage
- Post-trial stage

Each stage requires some detailed steps to be fulfilled.

PRE-TRIAL STAGE

The pre-trial stage commences with the commission of the offence and its reporting.

- **Commission of an offence (cognizable or non-cognizable)**
 - **Information to police.**
- **Information of cognizable offence-** Under Section 154 of the Code of Criminal Procedure, an FIR or First Information Report is registered. FIR puts the case into motion.
- **Information of non-cognizable offence-** In the case of non-cognizable offence N.C.R (non-cognizable report) is registered by police under section 155 of Cr.PC but the police cannot start the investigation or arrest the accused without the order of a Magistrate having the power to try such a case.

A person can even make a complaint directly to the Magistrate in writing of the commission of an offence by any person, whether known or unknown, under CrPC.

- **Complaint to Magistrate**

Section 2 (d) of the Code of Criminal Procedure defines the term 'complaint as any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. On receipt of a complaint, a Magistrate has several courses open to him/her.

s/he may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200, Code of criminal procedure Thereafter if in his/her opinion there is no sufficient ground for proceeding s/he may dismiss the complaint under Section 203, CrPC. If in his/her opinion there is sufficient ground for proceeding s/he may issue process under *Section 204*, Cr PC.

However, if s/he thinks fit, he may postpone the issue of process and either inquire into the case him/herself or direct an investigation to be made by a police officer or such other person as he thinks fit for the purpose of deciding whether there is sufficient

ground for proceeding (*Section 202, Cr PC*). s/he may then issue the process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding.

- **Investigation by Police**

Police conduct an investigation for

- For the collection of evidence;
- Interrogating statement of the accused;
- Statement of witnesses;
- Scientific analysis/opinion if required. During this time, at any stage decided by investigating agency, accused persons can be arrested.

In case of cognizable offence, police can start an investigation after the registration of the FIR, no prior approval of the magistrate is necessary. But in case of non-cognizable offence, prior approval of the magistrate is necessary to start the investigation.

- **Anticipatory Bail-**

Upon registration of FIR for a cognizable offence, the accused may make an application for anticipatory bail in session court or high court. If anticipatory bail is granted, then the accused cannot be arrested. If anticipatory bail is rejected, then the accused can be arrested without a warrant.

- **Arrest of the Accused**

In case of a cognizable offence, police can arrest the accused without a warrant. However, in case of non-cognizable offence, prior approval of the magistrate is necessary.

- **Production of accused to a magistrate**

Within 24 hours of arrest, the accused shall be produced before a magistrate having jurisdiction to try such cases.

- **Remand/Bail**

Whenever an accused is arrested for any offence and police cannot complete the investigation within 24 hours then such person is produced before a magistrate for

seeking an extension of police or magisterial custody.

The judge can concede police custody to the accused which will not be over 15 days. In any case, on the off chance that the officer doesn't appear to be persuaded, at that point, the blamed is taken to authoritative care. In any case, the judge under area 167 (2) (a) may approve the confinement of the denounced individual, in any case in the authority of police past the time of fifteen days; if he is fulfilled that satisfactory grounds exist in doing as such. In any case, no officer will approve care for more than-

- 90 days, where the investigation is of an offence culpable with death, detainment for a long time or detainment for a term of at least ten years.
- 60 days, where the investigation is of some other offence.

On the expiry of the above-mentioned days, the accused can be granted bail U/s 436, 437 and 439 of CrPC.

- **After the investigation is completed**

The police subsequent to finishing the investigation need to record the last report under area 173 of the CrPC. This is the finish of the investigation and the proof gathered by the Investigation Agency. On the off chance that the proof gathered against the accused is inadequate, at that point the police may record a report under area 169 of the Cr.PC. The last report will be of 2 sorts.

- **Closure Report-** A closure report is documented when the police have no evidence to demonstrate that the supposed offence has been committed by an accused.

After the closure report is recorded the court has the following options.

- Accept the report and close the case.
- Direct the examining agency to research the issue further, on the off chance that s/he thinks there is still some hole in the investigation.
- Issue notice as he is the main individual who can challenge the closure report.

- May dismiss the closure report and take cognizance under area 190 of Cr.PC and under segment 204 of Cr PC issue summons to the accused and direct his appearance to the judge.
- **Charge sheet/Final report-** A charge sheet contains the total investigation of the Police and the charges slapped against the accused. It incorporates all statements recorded under areas 161, and 164, a duplicate of the FIR, a list of witnesses, a list of seizures, and other documental proof.
- The court can reject the charge sheet, in which case the accused is discharged.
Or,
- The court can accept that a prima facie case is made out, frame the charges, and post the case for trial. Then the case goes to the next stage.

- **Framing of Charge**

After considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried.

- **Conviction on plea of guilty**

If the accused pleads guilty, the court shall record the plea and may, at discretion convicts the accused.

- **If the accused pleads not guilty**

The case is posted for trial and further proceedings.

TRIAL STAGE

- **Commencement of trial**

The trial of a case commences when the case is posted for examination of witnesses. As per section 26 of CrPC, the power of trial of a case is vested with the High Court, session's court, or any other court in which the offence in question is triable according to the first schedule of CrPC. For all the offences there are three types of trial in India 1) Warrant Case Trial 2) Summary trial and 3) Summons trial which can take place when the case

reaches for hearing before the court. It may be a case instituted on police report u/s 154 or a case initiated on a complainant filed u/s 200 of CrPC.

TRIAL IN WARRANT CASES

As defined in section 2(x) of the code warrant cases are the cases "*relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.*"

A trial in warrant cases is either tried by the magistrate's court or by the session's court on registration of FIR u/s 154 before the police or by a complaint before the magistrate court. If the magistrate is of the view that the case is a warrant case and can be tried by it then he proceeds with the trial of the case, however, if he thinks that the warrant case can be exclusively tried only by the session court then he commits the case to the session's court after complying with all the necessary elements provided in and as per section 207 of the code. The whole procedure is given under Sec 238 to 250 of CRPC.

TRIAL OF SUMMONS CASES

The summons cases are defined in section 2(w) of the code merely as the case relating to an offence which is not a warrant case. Summons case means a case in which the offence is of petty nature and if it is a non-cognizable offence and where the punishment is less than 2 years or 2 years then it comes under a summons case. The whole procedure is given under Sec 251 to 259 of CRPC.

SUMMARY TRIAL

A summary trial is provided in the code to speed up the disposal of cases as it's not unfamiliar to anyone that our court is burdened with cases.

Section 260 of the code provides for the specific offences which shall be tried summarily.

The offences which can be tried summarily as per section 260 of the code are as follows:

- *Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;*
- *theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed two hundred rupees;*
- *receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed two hundred rupees;*
- *assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860) where the value of such property does not exceed two hundred rupees;*
- *offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);*
- *insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under section 506 of the Indian Penal Code (45 of 1860);*
- *abetment of any of the foregoing offences.*
- *an attempt to commit any of the foregoing offences, when such attempt is an offence;*
- *any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871 (1 of 1871).*

The procedure of summary trial as provided in section 262 is the same as that of summons trial and no punishment higher than three months can be passed if an accused is tried summarily.

- **Prosecution evidence**

After the charges are framed, and the accused pleads guilty, then the court requires the

prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support its evidence with statements from its witnesses. This process is called "examination in chief". The magistrate has the power to issue summons to any person as a witness or order him to produce any document.

- **Statement of the accused**

Section 313 of the Criminal Procedure Code gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of the accused are not recorded under oath and cannot be used against him in the trial.

- **Defence evidence**

An opportunity is given to the accused in a case where he is not being acquitted to produce and defend his case. The defence can produce both oral and documentary evidence. In India, since the burden of proof is on the prosecution the defence, in general, is not required to give any defence evidence.

- **Final Arguments**

Public Prosecutor and the defence counsel present their arguments.

- **Judgment and sentence by the Court**

The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgment.

- **Arguments on sentence**

When the accused is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment.

However, when the sentence is pronounced in a summons case, the parties need not argue about the amount of punishment given. The sentence is at the sole discretion of the judge.

- **Judgment of Court passing sentence**

After the arguments on the sentence, the court finally decides what should be the punishment for the accused. While punishing a person, the courts consider various theories of punishment like the reformatory theory of punishment and the deterrent

theory of punishment. Court also considers the age, background and history of an accused and the judgment is pronounced accordingly.

POST-TRIAL STAGE

- **Appeal (within a specified period of limitation)/Revision**

An appeal can be defined as a complaint made to a higher court with the intent that the order, finding, or sentence passed by the lower court is illegal or erroneous.

An appeal can be filed by the party aggrieved by judgment on acquittal/conviction /sentence. On notice being issued to the opposite parties, arguments are placed before the Appellate court by the defence counsel and the public prosecutor.

Kinds of Appeal under Criminal Procedure Code-

1. Appeal in Court of Session – Section 373 CrPC

An appeal may lie to the Court of Session against the order under:

Section 117: Where a person has been ordered to give security for keeping the peace or for good behaviour.

Section 121: Where a person has been aggrieved by any order refusing to accept or reject a surety.

- ***Appeal from Convictions – Section 374 CrPC***
- While exercising extraordinary original criminal jurisdiction, if High Court passes an order of conviction, an appeal shall lie to Supreme Court.
- If the Court of Session or Additional Court of Session passes the order of conviction during the trial, an appeal shall lie to High Court.
- If the Court of Session or Additional Court of Session gives a punishment of more than seven years, the appeal shall lie to High Court.

- Where a person is convicted by Assistant Court of Session, Metropolitan Magistrate, Judicial Magistrate First class, and Judicial Magistrate second class, an appeal shall lie to the Court of Session.
- A person aggrieved under section 325, 360 of the Criminal Procedure Code can appeal to the Court of Session.

Exception to Section 374 CrPC

Section 375 and section 376 of the Criminal Procedure Code are exceptions to section 374 of the Criminal Procedure Code, elaborated as follows.

Section 375 CrPC – No Appeal in Certain Cases Where the Accused Pleads Guilty

If the accused pleads guilty at High Court and the court takes the plea on record and convicts the person, then no appeal shall lie.

Where the accused pleads guilty at a court other than High Court, an appeal for the sentence is allowed.

Appeal on sentence is allowed based on:

1. Extent.
2. Legality of the sentence.

Section 376 CrPC – No Appeal in Case of Petty Cases

No appeal shall lie in the case of petty cases. Petty cases differ from court to court. Following cases are considered petty:

- In case of High Court- Imprisonment up to 6 months, fine of Rs 1000 or both.
- In case of Court of Session- Imprisonment up to 3 months, fine of Rs 200 or

both.

- In case of Metropolitan Magistrate- Imprisonment up to 3 months, fine of Rs 200 or both.
- In the case of Judicial Magistrate I- Fine of Rs 100.
- In case of Magistrate empowered under section 260 of the Criminal Procedure Code- Fine up to Rs 200.

3. State Appeals under Sections 377 and 378 of CrPC

- Appeals by the State Government:
- For enhancement of sentence – Section 377
- Against the acquittal of accused – Section 378

Section 377 CrPC – Appeal against Sentence

The section empowers the State Government to file an appeal through a public prosecutor at the Court of Session or High Court on the grounds of insufficiency of the sentence:

- If an order of sentence is given by Magistrate, then the appeal shall lie to the Court of Session.
- If an order of sentence is given by any other court, then the appeal shall lie to High Court.

The central government will give the direction to the public prosecutor if the investigation is done by Delhi Special Police Establishment or any other central agency.

When such an appeal or order for enhancement of punishment is filed, such an order will not be passed until a reasonable opportunity of being heard is given to the accused.

Section 378 CrPC – Appeal in Case of Acquittal

In this section, District Magistrate is empowered to direct the public prosecutor to file an appeal to the Court of Session for the order of acquittal done by any Magistrate in a matter of cognizable and non-bailable offence.

The State is also empowered to direct the public prosecutor to file an appeal for the order of acquittal done by any court other than High Court for appeal or revision.

- If the investigation is done by Delhi Special Police Establishment or any central agency, the direction to file an appeal will be given by the Central Government.

It is to be noted that prior permission of the High Court will be taken before filing an appeal at the High Court.

- If an order of acquittal is given in a matter of case instituted on complaint, and High Court grants special permission to present the appeal, then such an appeal can be presented by the complainant.
- If the complainant is a government servant, then the application can be moved within six months from the order of acquittal.
- If the complainant is not a government servant, then the application can be moved within 60 days from the order of acquittal.
- If such appeal is rejected, no appeal from an order of acquittal shall lie.

4. Appeal against Conviction by High Court in Certain Cases – Section 379 CrPC

If the High Court reversed an order of acquittal of a person and convicted him and sentenced him to death, life imprisonment, or imprisonment for a period of ten years or more, the accused has the right to make an appeal to the Supreme Court.

5. Special Right of Appeal in Certain Cases – Section 380 CrPC

Under this section, an accused has a right to appeal an unappealable sentence if his co-accused has been given an appealable sentence.

Revision Application:

The word revision is not defined in the Criminal Procedure Code, 1973 (CrPC). However, the provisions for revision under CrPC are given under sections 397 to section 405.

Note- Revision is not maintainable against

(a) orders which are appealable.

(b) Interlocutory order: The order which is temporary in nature and does not determine the substantial rights and liabilities of the parties.

Section 397 CrPC – Call Records for Revision: Under section 397 CrPC, the High Court and Court of Session have been empowered to call for and examine the records of any proceeding and satisfy oneself as to the:

- Correctness, legality, or propriety (correctness) of any finding, sentence or order recorded or passed.
- Regularity of any proceeding of an inferior court.

They have the power to direct the execution of any sentence or suspend or stay the lower court's order during the pendency of revision or during the examination of the record. The court may also direct to release the accused on bail by executing a bond if the accused is in custody.

Section 398 CrPC – Power to Order Inquiry

Section 398 of the Criminal Procedure Code provides for an order of inquiry that can be made after examination of the record as given under section 397 of CrPC or otherwise.

The revisional Court (Court of Session, High Court) shall order Chief Judicial Magistrate to

inquire himself or through a subordinate to make a further inquiry regarding:

- dismissal of a complaint under section 203, 204(4) of the Criminal Procedure Code.
- discharge of the accused. Here, no order of further inquiry should be passed without giving an opportunity to the accused to showcase why a further inquiry should not be directed.

Section 399 CrPC – Power of Session Court of Revision

The Court of Session has been empowered to exercise the same powers as given to the High Court under sections 401(1), (2), (3), (4), and (5) of the Criminal Procedure Code.

When the Court of Session transfers a case to an additional session judge, the same powers can be exercised as given to the Court of Session under section 400 of the Criminal Procedure Code.

Section 401 CrPC – High Court's Power of Revision

According to section 401(1) of the Criminal Procedure Code, High Court has all the powers which are conferred to the court of appeal under sections 386, 389, 390, and 391 of the Criminal Procedure Code.

High Court also has the power that the Court of Session has under section 307 of the Criminal Procedure Code, that is, the power to pardon.

- According to section 401(2) of the Criminal Procedure Code, the reasonable opportunity of being heard will be given to the person against whom the hearing of revision is filed.
- According to section 401(3) of the Criminal Procedure Code, the court exercising revisional power is not authorised to convert a finding of acquittal

into one of conviction.

- According to section 401(4) of the Criminal Procedure Code, where an order is appealable, no proceeding by way of revision shall be entertained.
- According to section 401(5) of the Criminal Procedure Code,

Where a person had a right to appeal, but by genuine mistake, an application of revision has been made to the High Court and the High Court is satisfied that such application was made under the erroneous belief (that no appeal lies). If High Court thinks it is in the interest of justice, the revision application shall be treated as a petition of appeal and dealt with accordingly.

Section 402 CrPC – Power of High Court to Withdraw or Transfer Revision Case

According to section 402(1) of the Criminal Procedure Code, when one or more persons are convicted in the same trial, and one person files an application for revision to the Court of Session and the other at the High Court, then the High Court in such circumstances should decide as to which of the two courts should deal with the matter, keeping in mind:

- general convenience of parties.
- severity/importance of questions involved.
- According to section 402(2) of the Criminal Procedure Code, when the High Court decides to hear the revision itself, the high court shall deal with the same as if the application was duly made to High Court itself.
- According to section 402(3) of the Criminal Procedure Code, when the High Court decides to transfer the application to the Court of Session, the judge shall deal with it as if the application was duly made to it.
- According to section 402(4) of the Criminal Procedure Code, when revision is transferred to the Court of Session, no further application shall lie to the High

Court or any other Court, whose application was dispersed by the Court of Session.

- **Judgment of the Appellate Court or Court having revisional jurisdiction**

The Court having such powers can either rebut the lower court judgement or confirm the judgment pronounced by the lower court.

- **Execution of Sentence**

Finally, if the accused is pronounced convicted by all relevant courts and appellate authorities, then he is sent to jail.



ASSOCIATION FOR PROTECTION OF CIVIL RIGHTS

📍 E-57/1, fourth floor, Scholar School Lane, Abul Fazal Enclave-1,
Jamia Nagar, Okhla, New Delhi-110025

☎ 011 - 41052797 ✉ /apcrindia@gmail.com

🌐 [/apcrindia.org](http://apcrindia.org) 🐦 @apcrofindia