Subject :

Cr.P.C. Probation of Offenders Act & JJ Act

Paper : 2.3

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CHAPTER - I

INTRODUCTORY:-

When India came under the rule of the British East India Company, Mohammedan Criminal Law was being administered by the Courts. Later on slowly and steadily the defects of the Mohammedan Criminal Law was out for everyone to see. Efforts were made to change and rectify these defects. The first few changes were more substantial in nature as compared to the procedural part. There was no uniform law of criminal procedure for the whole of India.

For the guidance of the Courts there were separate Acts which were applicable in erstwhile provinces and the presidency towns.The Acts which were applicable in the presidency towns were first consolidated by the Criminal Procedure Supreme Court Act, 1852.The Acts which were applicable in the provinces were consolidated by the Criminal Procedure Code, 1861. Criminal Procedure Supreme Courts Act, 1852 was replaced by the High Court Criminal Procedure Act, 1865.The Criminal Procedure Code which was applicable in the provinces was replaced by an Act of 1872. Later on an uniform law of procedure for the whole of India was consolidated by the Code of Criminal Procedure of 1882.

It was again replaced by the Code of Criminal Procedure, 1898. The Criminal Procedure Code, 1898 remained in force till the introduction of the Present Code of Criminal Procedure, 1973. During these long years of operation the Code of 1898 had been amended on many occasions by amending acts and the most notable of all those amendments were passed in the years 1923 and 1955. The Law Commission of India too has played a significant part in the formation of the modern Code of Criminal Procedure. The Law Commission of India suggested changes in the Code of Criminal Procedure through various reports namely through its 14th, 32nd, 33rd, 35th and 36th report upto the year 1968.

The commission was reconstituted and it submitted its 37th report. The Commission was again reconstituted in 1968 and finally through its 41st report detailed recommendations was made regarding changes in the criminal procedure.Based on these recommendations thereafter a draft Bill was introduced in the Rajya Sabha on 10th December, 1970. The Bill was then referred to a Joint Select Committee of both the Houses of Parliament. The

committee examined the bill and returned with its recommendations. Finally then the bill got passed by houses of parliament and emerged in its present form as the Code of Criminal Procedure, 1973. Itreceived the assent of the President on 25th January 1974 and came into force on 1st April 1974.

BASIC FEATURES OF THE CODE OF CRIMINAL PROCEDURE:-

- In the system of Criminal law administration in India there are two parts namely the:-
  - The **Substantive Law** — Which lays down the Definition offences, their category, their punishment etc.example of this substantive law is Indian Penal Code.
  - The **Procedural Law** — Which lays down the method through which the punishment is to be given, theprocess of making arrest etc. in India the procedural law related to the criminal administration is the Codeof Criminal Procedure, 1973.
- The object of C.R.P.C is to provide a **machinery for the punishment of offenders** against the substantiveCriminal law as contained in I.P.C and other acts
- The code of criminal procedure, 1973 consolidates and amends the law relating to criminal procedure.
- It is a complete code of procedure with respect to matters provided for in this code.
- But if no provision is made in this code with respect to any matter then the courts shall follow anyappropriate procedure in the interest of justice.
- The rule and the principle is that any procedure not expressly prohibited by the code made be followed.

Bailable Offence: Offences are divisible for the purpose of granting bail in two categories:

i) Bailable ii) Non bailable

Bailable offence means an offence: a) which is mentioned as bailable in the first schedule of the code;

b) which is made bailable by any other law for the time being in force.

Non-bailable offence means any other offences than the bailable offence. In case of bailable offence bail can be claimed as a matter of right. In the case of non-bailable offence it does not mean bail can never be granted it simply means that the accused cannot ask for the bail as a matter of right.

Cognizable offence : cognizable offence means an offence for which a police officer may in accordance with the First Schedule or under any law for the time being in force, arrest without warrant.

Non-Cognizable offence: In non-cognizable offence the police office has no authority to arrest without warrant.Cognizable case means a case for which a police officer may in accordance with the First Schedule or under any law for the time being in force, arrest without warrant. Non-cognizable case means a case a case for which the police office has no authority to arrest without warrant.

Q. What are the stages of a criminal case?

Ans.: There are three stages in a criminal case.

1. **Investigation**
2. **Inquiry**
3. **Trial**

Investigation : Investigation includes the following steps:

i) Proceeding to the spot

ii) Ascertainment to the facts and circumstances of the case

iii) Discovery and arrest of the suspected offender

iv) Collection of evidence relating to the commission of the offence

v) Formation of the opinion as to whether on the material collected there is a case to place before the magistrate for trial and if so taking necessary steps for filing a charge - sheet.

Inquiry : The second stage is either inquiry or trial. If the magistrate is of the opinion that the case is triable by him and he is competent to impose adequate sentence on the accused he may himself deal with the case or may either discharge or acquit or convict the accused.

Trial : The third or the final stage of a criminal case is trial. Trial can be regarded as the judicial proceeding which ends in conviction or acquittal. In other words inquiry precedes while trial follows. The word has no fix meaning and must be interpreted depending upon the scheme , purpose for which it is used.

COMPLAINT

Meaning : The scope of the expression Complaint is very wide. It includes even an oral allegations. According to section 2(d) Complaint means any allegations made orally or in writing to a magistrate with a view to his taking action under the Code, that some person whether known or unknown has committed an offence. Complaint however doesnot include a Police Report. **A mere statement without inducing him to takean action is not sufficient to and is not a complaint. The Code does not prescribe any particularform in which a complaint should be made. It may be made in writing or orally.** Facts are to be stated to make out an offence.

Ingredients : An accusation to be termed as Complaint must satisfy the following requirements :

- There should be allegation that some person has committed an offence.
- It must be made to a magistrate.
- It must be made with a view that the magistrate may take action on it.
- It must not be a police report.

Who can make a Complaint ?

Any person acquainted with the facts and circumstances of the case may make a Complaint. But there is an exception to this rule there are provisions of the Code eg. Sections 132, 195-199 which requires the Complaint must be made by some particular person.

First Information Report (FIR) : The term First information Report is not defined in the Code. It can be said that the information given to the police officer first in point of time relating to a cognizable offence. The object of insisting upon the prompt lodging of the report in respect of the commission of the offence is to obtain the early information, delay may result in the fabrication of the facts of the case. The term Frist

Information Report is not mentioned in the Code but Section 154 of the Code requires a report recorded under this section is known as First Information report. The following are the essential elements of FIR :

- The information must be given to a police officer.
- Such information must relate to a cognizable offence.
- It must have the earliest report relating to the commission of the crime on the basis of whichinvestigation starts.
- It must be in writing or if oral must be reduced in writing and must be signed by the informant.

- The information reduced in writing must be read out to the informant and a copy should be given tothe informant free of cost.

Evidentiary Value of FIR: First Information Report is an extremely valuable piece of evidence as it is the firstversion of an alleged offence. First information report is made soon after the commission of the crime so thememory of the informant is fresh and there is a less chance of fabrication of the facts. Though FirstInformation report is an important document it cannot be said as a primary piece of evidence. Its valuedepends on the facts and circumstances of the case. It also cannot be used for the purpose of corroboratingor contradicting witnesses other than the informant.

DIFFERENCE BETWEEN FIRST INFORMATION REPORT AND COMPLAINT:-

The following are the differences between FIR and Complaint :

- Complaint is an allegation made to the Magistrate whereas First Information is given to a police officer.
- Complaint may relate to a cognizable and non-cognizable offence but the First information reportrelate to cognizable offence.
- A magistrate take cognizance on a complaint made to him, whereas a police officer starts investigationon first information report
- A complaint does not include a police report. First Information Report may be given to any bodyincluding a police officer.

SUMMONS CASE: Section 2(w): -

Summons case means a case relating to an offence and not being awarrant case. A summons case is a case relating to offences which are punishable for imprisonment forterm of two years maximum.

WARRANT CASE:-

According to section 2 (X) any warrant case means a case relating to an offencepunishable with death, imprisonment for life, or imprisonment for a term exceeding two years.

DISCHAGE and ACQUITAL:-

These two expressions are used in different senses. An order of dischargetakes place when no prima facie case is made out against the accused. It does not mean the accused isinnocent but means there is no sufficient evidence to proceed further with the case. An order of acquittalestablishes the innocence of the accused after the trial. It is recoded after the framing of the charge andrecording the evidence and judgment.

DIFFERENT CRIMINAL COURTS AND THEIR POWERS

Section 6 of the Code specifies the following are the criminal courts :

Classes of Criminal Courts:-

Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely :—

1. Courts of Session ;

2. Judicial Magistrate of the first class and, in any Metropolitan area, Metropolitan Magistrate

3. Judicial Magistrate of the second class ; and

4. Executive Magistrates.

Sentences which High Courts and Sessions Judges may pass :

1. A High Court may pass any sentence authorised by law.

2. A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

3. An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

Sentences which Magistrates may pass.

- The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentenceof death or of imprisonment for life or of imprisonment for a term exceeding seven years.
- The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term notexceeding three years, or of fine not exceeding five thousand rupees, or of both.
- The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term notexceeding one year, or of fine not exceeding one thousand rupees, or of both.
- The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief JudicialMagistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the firstclass.

CHAPTER- II

PROVISIONS FOR INVESTIGATION

Persons who may Arrest ?

Arrest made by —

- **By Police Officer**

- **By Magistrate**
- **By Private Person**

Section 41. When police may arrest without warrant :-

Under the following circumstances the police officer may arrest without warrant :

1. Any police officer may without an order from a Magistrate and without a warrant, arrest any person,

1. who commits, in the presence of a police officer, a cognizable offence;

2. against whom a reasonable complaint has been made, or credible information has been received, or areasonable 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:-

2.a. the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

2.b. the police officer is satisfied that such arrest is necessary,-

2.b.i. to prevent such person from committing any further offence; or

2.b.ii. for proper investigation of the offence; or

2.b.iii. to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

2.b.iv. 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

2.b.v. 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.

2.b.vi. 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; or

3. who has been proclaimed as an offender either under this Code or by order of the State Government; or

4. in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

5. who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

6. who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

7. who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable asan offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehendedor detained in custody in India; or

8. who, being a released convict, commits a breach of any rule made under Sub-Section (5) of section 356; or

9. for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without awarrant by the officer who issued the requisition.

2. Subject to the provisions of section 42, no person concerned in a non-cognizable offence oragainst 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.

Section 42 allows a police officer to arrest a person for a non-cognizable offence, if he refuses to give his name and residence.

As per **Section 42(1)**, when any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.However, as per sub clause (2), the person must be released when the true name and residence of such person

have been ascertained. He may be required to execute a bond, with or without sureties, to appear before a Magistrate if necessary.

Arrest by Private person

Even private persons are empowered to arrest a person for protection of peace in certain situations. This is important because police cannot be present at every nook and corner and it is up to private citizens to protect the society from disruptive elements or criminals. As per **Section 43(1)**, any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

Arrest by Magistrate

As per **Section 44(1)**, when any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and maythereupon, subject to the provisions herein contained as to bail, commit the offender to custody. Further, (2)Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest how made

Section 46 describes the way in which an arrest is actually made. As per **Section 46(1)**, unless the personbeing arrested consents to the submission to custody by words or actions, the arrester shall actually touch or confine the body of the person to be arrested.

Since arrest is a restraint on the liberty of the person, it is necessary for the person being arrested to either submit to custody or the arrester must touch and confine his body.

Section 46(2) If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. **Section 46(3)**, there is no right to cause the death of the person who is not accused of an offence punishable with death or with imprisonment for life, while arresting that person. Further, as per **Section 49**, an arrested person must not be subjected to more restraint than is necessary to prevent him from escaping.

Section 46(4) that forbids the arrest of women after sunset and before sunrise, except in exceptional circumstances, in which case the arrest can be done by a woman police officer

after making a written report and obtaining a prior permission from the concerned Judicial Magistrate of First Class.

SEARCH AND SEIZURE:-

91. Summons to produce document or other thing.

Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

Section 93(1) in The Code Of Criminal Procedure, 1973

Where any Court has reason to believe that a person to whom a summons or order under **Section 91** or arequisition under sub- section (1) of section 92 has been, or might be, addressed, will not or would not producethe document or thing as required by such summons or requisition, *or*where such document or thing is not known to the Court to be the possession of any person, or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

PROCESS TO COMPEL A PERSON TO APPEAR:-

There are various ways of process to compel a person to appear in court —

(1) Summons;

(2) Warrant;

(3) Warrant in lieu of summons;

(4) Proclamation of an absconder;

(5) Attachment of his property; and

(6) Bond, with or without sureties, to appear before a court on a certain date.

(1) *Summons:*

It is a document issued from the office of a court of justice calling upon the person to whom it is directed to attend before a judge or officer of the court. Section 61 of the Code requires that every summons issued by a court shall be in writing in duplicate signed and sealed by the presiding officer of such court.

It states in clear terms the title of the court, the place at which and the day or time of the day when the attendance of the person summoned is required. The summons shall be served by a police officer or an officer of the court issuing it or other public servant. [Section 62]

The summons has to be served personally on the person, summoned by delivering a duplicate copy of the summons, who signs receipt therefore on the back of the other (duplicate). (Section 62)

Service on a Corporation:-

Service of a summons on an incorporated company may be affected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in India. (Section 63).

Where the person summoned not found:-

Where the person summoned cannot be found, the summons may be served by leaving one of the duplicatesfor him with some adult member of his family residing with him, and the person with whom the summons is so left shall sign a receipt therefore on the back of the other duplicate. (Section 64). A servant is not a member of the family within the meaning of Section 64.

If service in the manner mentioned above in Sections 62, 63 and 64 cannot be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the Court after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper. This is called substituted service. (Section 65).

Service on Government Servant:-

If a Government servant has to be summoned, the summons shall be sent by the court in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served personally on the person summoned and shall return a duplicate copy to the court under his signature with the endorsement of receipt effected thereon. (Section 66).

Service of summons outside local limits:-

Where a summons is to be served outside the local limits of jurisdiction of the court issuing it, service has to be effected by sending it in duplicate to the Magistrate within whose jurisdiction the person summoned resides.

Service of summons on witness by post:-

Notwithstanding anything contained in the preceding sections of this chapter, a Court issuing a summons to a witness may in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries onbusiness or personally works for gain. When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served. (Section 69).

(2) Warrant of Arrest:-

The second method of securing attendance of a person is by means of a warrant of arrest. The warrant is an order addressed to a certain person directing him to arrest the accused and to produce him before the court.

It is executed by a Magistrate on good and legal ground only. Section 70 of the Code gives the essentials of awarrant of arrest. It lays down that every warrant of arrest issued by a court shall be in writing, signed by the presiding officer of such court, and shall bear the seal of the court.

From a reading of the above it is clear that in order to be valid a warrant must fulfil the following requisites:

i) It must be in writing ;

ii) It must be signed by the presiding officer ;

iii) It must bear the name and designation of the police officer or other person who is to execute it ;

iv) It must give full particulars of the person to be arrested so as to identify him clearly ;

v) It must specify the olfences charged ; and

vi) It must be scaled.

Continuance of the warrant of arrest:-

Every warrant shall remain in force until it is cancelled by the court which issued it or until it is executed. A warrant of arrest does not become invalid on the expiry of the date fixed for return of the warrant.

Warrants are of two kinds: bailable and non-bailable. Section 71 deals with bailable warrant and lays down that a warrant may contain a direction of the court that if the person to be arrested executes a bond with sufficient sureties for his attendance before the court at a specified time, the serving officer shall take such security and release him from custody.

Such a bailable warrant shall also state the number of sureties, the amount of the bond and the time at which the arrested person is to attend the court.

A warrant of arrest shall ordinarily be directed to one or more police officers, but the court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to, any other person or persons and such person or persons shall execute the same. (Section72).

The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, offender or person accused of a non-bailable offence, or a proclaimed offender evading arrest. (Section 73).

The police officer or any other person executing a warrant has to notify the substance thereof to the person to be arrested, and if so required, to show him the warrant. (Section 75).

The police officer or other person executing a warrant shall (subject to the provisions of Section 71 to security) without unnecessary delay bring the person arrested before the court before which he is required by law toproduce such person : provided that such delay shall not in any case exceed 24 hours exclusive of the timenecessary for the journey from the place of arrest to the Magistrate's court. (Section 76)

A warrant of arrest may be executed at any place in India. (Section 77)

(3) Warrant in lieu of summons:-

A court may issue a warrant in lieu of or in addition to a summons for the appearance of any person in the following three cases:

i) Where the court believes that the person summoned has absconded or will not obey the summons;

ii) Where although the summons is proved to have been served in time, the person summoned without reasonable cause fails to appear; and

iii) On breach of a bond for appearance.

A Magistrate ought not to issue a warrant either in lieu of or in addition to summons in a summons case unless he has previously recorded the reason for his so doing. (Sections, 87,m 89)

(4) And (5) Proclamation for person absconding and attachment:-

The fourth and fifth processes of compelling the appearance of a person before a court are by a proclamation and attachment. If a court has reasons to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published: (i) by publicly reading in some conspicuous place of the town or village in which such person ordinarily resides, (ii) by affixing it to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and (iii) by affixing a copy thereof to some conspicuous part of the court-house. The court may also, if it thinks fit, direct a copy of the proclamation to be published in daily newspaper circulating in the place in which such person ordinarily resides. (Section 82)

Before the issue of a proclamation the Magistrate should be satisfied that the accused was absconding or concealing himself for the purpose of avoiding the service of a warrant. The proclamation also should direct appearance of the person concerned within thirty days, and if the date fixed for the appearance is less than thirty days, it is illegal.

The court issuing a proclamation may for reasons to be recorded in writing at any time order the attachment ofany property, movable or immovable, or both, belonging to the proclaimed person. There may even be a simultaneous order of attachment along with the order of proclamation.

If the court is satisfied that the person in relation to whom the proclamation is issued — (a) is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local jurisdiction of the court. Since the object of attachment is to enforce the appearance of the absconder, the attachment usually accompanies the proclamation. (Section 83).

Modes of attachment:-

If the property ordered to be attached is a debt or other movable property, the attachment may be made — **(i)** by seizure, or **(ii)** by the appointment of a receiver; or **(iii)** by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf; or **(iv)** by all or any two of such methods, as the court thinks fit.

If the property ordered to be attached is immovable, the attachment shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situated.

If the immovable property is not the land paying revenue to the State Government, the attachment shall be: **(i)** by taking possession; or **(ii)** by the appointment of a receiver; or **(iii)** by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to anyone on his behalf, or by all or any two of such methods, as the court thinks fit.

If the property to be attached consists of livestock or is of a perishable nature, the court may order its immediate sale. (Section 83).

Objections to attachment by third person:-

Any person other than the proclaimed person may prefer a claim or make an objection to the attachment of property within six months from the date of attachment on the ground that the claimant or objector has an interest in the attached property and that such interest is not liable to attachment.

Every such claim or objection shall be inquired into by the court in which it is preferred and may be allowed or disallowed. If the claim or objection is disallowed in whole or in part, the claimant or objector may within a period of one year institute a suit to establish his right in

respect of the property in dispute, but subject to the result of such suit, if any, the order of the court disallowing the claim shall be conclusive. (Section 84)

If the proclaimed person appears within the time specified in the proclamation, the court shall make an orderreleasing the property from attachment. If, however, he does not appear within such specified time, the property under attachment shall be at the disposal of the State Government and shall not be sold before six months from the date of the attachment and until the disposal of any claim or objection made by a person other than the proclaimed offender.

But if the property is subject to speedy and natural decay or if the court considers that the sale would be for the benefit of the owner, the court may cause it to be sold whenever it thinks fit. (Section 85).

Restoration of attached property:-

If the proclaimed person appears within two years from the date of the attachment and satisfies the court that e did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he had nonotice of the proclamation, the property or net proceeds of the sale after deducting the cost of the attachment shall be delivered to him. (Section 85).

6. Bond of appearance:-

The sixth method of securing attendance of a person in court is to require him to execute a bond, with or without sureties, for his appearance in court. When a person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant is present in such court, he may require such person to execute a bond, with or without sureties for his appearance in such court. When the person so bound by any bond to appear before a court does not appear, the presiding officer may issue a warrant directing that such person be arrested and produced before him.

PROCEDURE FOR INVESTIGATION:-

"Investigation" includes all the proceedings under "the Code of Criminal Procedure, 1973" for the collection ofevidence conducted by a Police officer or by any person (other than a Magistrate) who is authorized by a Magistrate. [Section 2(h) of the Criminal Procedure Code]

According to section 154 First Information Report:

There is no definition of the term first information report in the Code. First Information Report may be defined as:

1. It is an information given to a police officer;

2. Information must relate to a cognizable offence;

3. It is on the basis of this information that investigation into the offence commences.

The Report recorded under section 154 of the Code deals with First Information Report. T is on the basis of which a cognizable offence commences.

OBJECT: The object of recording the First information Report is to obtain early information about the allegedoffence from the informant and to obtain information about the commission of the offence of a cognizable offence.

In **State of Haryana v. Ch. Bhajan Lal (1992)**

When any information disclosing a cognizable offence is laid before the officer-in-charge of a police station he has no option but to register a case.

155. Information as to non-cognizable cases and investigation of such cases.

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non- cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned

160. Police officer's power to require attendance of witnesses.

(1) 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 ofthe 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 maleperson or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub- section (1) at any place other than his residence.

Section 161 Code of Criminal Procedure, 1973 (for short 'Cr. P. C.') titled "Examination of witnesses by police" provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C. can be used at any trial are indicated in Section 162 Cr. P. C.

The word "confession" appears for the first time in Section 24 of the Indian Evidence Act. This section comes under the heading of Admission so it is clear that the confessions are merely one species of admission. A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence.

Cr. P. C. 164: Recording of confessions and statements

1. Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case,record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

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.

2. The Magistrate shall, before recording any such confession, explain to the person making it that he is notbound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

3. If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

4. Any such confession shall be recorded in the manner provided in section 281 for recording the examinationof an accused person and shall be signed by the person making the confession; and the Magistrateshall make a memorandum at the foot of such record to the following effect.

5. Any statement (other than a confession) made under Sub-Section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

CHAPTER III

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

According to Section 204 —

If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be

a.a summons-case, he shall issue his summons for the attendance of the accused, or

b. a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

- No summons or warrant shall be issued against the accused under Sub-Section (1) until a list of theprosecution witnesses has been filed.
- In a proceeding instituted upon a complaint made in writing, every summons or warrant issued underSub-Section (1) shall be accompanied by a copy of such complaint.
- When by any law for the time being in force any process-fees or other fees are payable, no process shallbe issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistratemay dismiss the complaint.
- According to Section 205 : Whenever a Magistrate issues a summons, he may, if he sees reason so todo, dispense with the personal attendance of the accused and permit him to appear by his pleader.

  But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

  According to Section 206 Special summons in cases of petty offence

  "Petty Offence" means any offence punishable only with fine not exceeding one thousand rupees, but does notinclude any offence so punishable under the Motor Vehicles Act, 1931, or under any other law which providesfor convicting the accused person in his absence on a plea of guilty. If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260 or section 261, the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and —
- Section 209 Commitment of case to Court of Session when offence is triable exclusively by it When ina case instituted on a police report or otherwise, the accused appears or is brought before the Magistrateand it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

- Commit, after complying with the provisions of section 207 or section 208, as the case may be, the caseto the Court of Session, and subject to the provisions of this Code relating to bail, remand the accusedto custody until such commitment has been made;
- Subject to the provisions of this Code relating to bail, remand the accused to custody during, and untilthe conclusion of, the trial;
- Send to that Court the record of the case and the documents and articles, if any, which are to beproduced in evidence;
- Notify the Public Prosecutor of the commitment of the case to the Court of Session.

CHAPTER – IV

FRAMING OF CHARGE TRIALS AND EXECUTION PROCEEDINGS

CHARGE: Section 211 specifies the contents of a Charge as follows —

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law that creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law that creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall bementioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the court may add it at any time before sentence is passed.

A trial is a proceeding by which a person is proved either guilty or innocent and accordingly a sentence is passed for the purpose. The Code of Criminal Procedure provides for trial at four forums:

a) Court of Session

b) Trial of Warrant Cases

c) Trial of Summons Cases

d) Summary Trial

Sections 225 to 237 talk of trial before a session's court.

Section 225 states that for every trial the prosecution will be conducted by the Public Prosecutor, appointed under section 24 of the code.

Section 226 states that the prosecution shall start the case by describing the facts, the charge against the accused and the evidence he is going to use for the case, to prove the accused guilty.

Section 228 deals with framing of charges. When the person is not discharged under section 227, charges would be framed against him next. In the section 229 the accused can plead guilty that is, he can accept that he has committed the offence. The judge can then provide for a sentence according to his discretion. However, such a plea should be made by the accused himself and not by his advocate. If the accused does not plead guilty the trial goes on and the dates of the prosecution evidence are set. And under section 231 such evidence has to be provided by the prosecution. After that if there are no substantial evidences provided the

person can be acquitted. And if such an acquittal doesn't take place the accused is allowed to defend him by virtue of section 233. Under section 234 the arguments have to be submitted and u/s 235 a judgement of acquittal or conviction has to be given.

In case there is previous conviction charged the accused does not admit that he was convicted earlier then afterthe conclusion of the trial the judge can take step he wants to. Section 237 lays provision for the procedure to be followed in cases instituted u/s 199(2) which deals with defamation. Such cases have to be tries in camera and the procedure laid in section 244-247 have to be followed.

Section 2 (x) defines "warrant-case" as a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

The chapter is divided into three parts :

a) Cases initiated on a police report

b) Cases instituted otherwise than on the police report

c) Conclusion of trial.

Section 238 states that in case a warrant case is instituted the provisions of section 207 have to be compliedwith. In case there is no prima facie case the person would be discharged u/s 239. And in case there is somesuspicion or possibilities that the accused might have committed an offence charges would be framed, which have to read and explained to the accused. u/s 241 the accused would be convicted by the judge on plea of guilty. And if no such plea is there from the accused the trial would continue and the evidence from the prosecution will have to be produced. u/s 243 the defence would be given chance produce its evidences.

Sections 244-247 provides for provisions in case the case is instituted by any other way than the police report. The section 244 provides that the Court shall give a hearing to the prosecution regarding the nature and character of the evidence that it wants to produce in support of the prosecution case. The SC has held that the Magistrate is required to take all the evidence that may be produced by the prosecution, and he cannot pass an order of discharge u/s 245 until all the witnesses produced by the prosecution are examined by him.

In case the person is not discharged the rest of the proceeding will take place according to the procedure laid u/s 246. The charges would be framed and read and explained to the accused, if he pleads guilty the conviction would place and if not then he would be tried and then list

of witnesses to be examined and cross examined would be dealt with. Section 247 provides for the evidence produced by the defence.

Sections 248-250 talk of the conclusion of the trial, instituted in both the cases, by police report or otherwise. Section 248 provides for the acquittal or conviction on the conclusion of the trial. The judge is supposed to provide for adequate sentence. Section 249 talks about the procedure in case the absence of the complainant.

If that is the case the magistrates, if deemed fit, can discharge the accused. In case the accusations are madeagainst the accused without reasonable ground will be provided compensation u/s 250. This provision u/s 250 applies to both summon and warrant cases.

PROCEDURE FOR SUMMARY TRIAL:-

Sections 248-250 talk of the conclusion of the trial, instituted in both the cases, by police report or otherwise. Section 248 provides for the acquittal or conviction on the conclusion of the trial. The judge is supposed to provide for adequate sentence. Section 249 talks about the procedure in case the absence of the complainant. If that is the case the magistrates, if deemed fit, can discharge the accused. In case the accusations are made against the accused without reasonable ground will be provided compensation u/s 250. This provision u/s 250 applies to both summon and warrant cases.

a. any Chief Judicial Magistrate;

b. any Metropolitan Magistrate;

c. any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences :—

i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

ii) 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;

iii) 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;

iv) 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;

v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

vi) 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);

vii) abetment of any of the foregoing offences;

viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;

ix) 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).

RELEVANT PROVISION & PROCEDURE FOR PLEA BARGAINING:-

- As Per **Section 265-A**, the plea bargaining shall be available to the accused who is charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding to seven years. Section 265 A (2) of the Code gives power to notify the offences to the Central Government. The Central Government issued Notification No. SO1042 (II) dated 11-7/2006 specifying the offences affecting the socioeconomic condition of the country.
- **Section 265-B** contemplates an application for plea bargaining to be filed by the accused which shall contain a brief details about the case relating to which such application is filed, including the offences to which the case relates and shall be accompanies by an affidavit sworn by the accused stating therein that he has voluntarily preferred the application, the plea bargaining the nature and extent of the punishment provided under the law for the offence, the plea bargaining in his case that he has not previously been convicted by a court in a case in which he had been charged with the same offence. The court will thereafter issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining. When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.
- **Section 265-C** prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition. In a case instituted on a police report, the court shall issue notice to the public prosecutor concerned, investigating officer of the case, and the victim of the case

and the accused to participate in the meeting to work out a satisfactory disposition of the case. In a complaint case, the Court shall issue notice to the accused and the victim of the case.

- **Section 265-D** deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same. If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding office of the Courts and all other persons who participated in the meeting. However, if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.
- **Section 265-E** prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out. After completion of proceedings under S. 265 D, by preparing a report signed by the presiding officer of the Court and parities in the meeting, the Court has to hear the parties on the quantum of the punishment or accused entitlement of release on probation of good conduct or after admonition. Court can either release the accused on probation under the provisions of S. 360 of the Code or under the Probation of Offenders Act, 1958 or under any other legal provisions in force, or punish the accused, passing the sentence. While punishing the accused, the Court, as its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, can pass a sentence of one fourth of the punishment provided for such offence. " Section 265-F deals with the pronouncement of judgment in terms of mutually satisfactory disposition.
- **Section 265-G** says that no appeal shall be against such judgment.
- **Section 265-H** deals with the powers of the court in plea bargaining. A court for the purposes of discharging its functions under Chapter XXI-A, shall have all the powers vested in respect of trial of offences and other matters relating to the disposal of a case in such Court under the Criminal Procedure Code.
- **Section 265-I** specifies that Section 428 is applicable to the sentence awarded on plea bargaining.

- **Section 265-J** talks about the provisions of the chapter which shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code and nothing in such other provisions shall be construed to contain the meaning of any provision of chapter XXI-A.
- **Section 265-K** specifies that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose as mentioned in the chapter. When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear, the case in the manner provided by this Code.

Meaning of Bail

Bail is a security given for the due appearance of a person arrested or imprisoned to obtain his or her temporaryrelease from legal custody or imprisonment

Object and Purposes of Bail

The object of keeping an accused person in detention prior to, or during the trial is not punishment but —

(i) To prevent repetition of offence with which he is charged; and

(ii) To secure his attendance at the trial.

However, every criminal proceeding is based on a prima facie assumption of guilt and again there is a presumptionof innocence in favour of the accused of the accused. Bail serves the purpose of presumption of innocence. And at the same time, the conditions of bail like appearance in the court on fixed date and time serves the purpose of prima facie assumption of guilt against the accused. There are varieties of purposes behind granting a bail. This may be, for example, for appearance before a court, for presenting appeal; pending reference or revision; or for the purpose of giving evidence etc.

Anticipatory Bail (before arrest)

When a person is granted bail in apprehension of arrest, this is called anticipatory bail. This is an extra-ordinary measure and an exception to the general rule of bail. When any person has reason to believe that he may be arrested on an accusation of having committed a non-bail able offence, he may apply to the High Court Division or the Court of Session for a direction and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail. There is no section or provision which specifically authorizes the court to grant an anticipatory bail. However, application is made under sec. 498 of the CrPC for an anticipatory bail.

Bail Bond and Surety (Section 499)

Section 499 of the Code of Criminal Procedure, 1898 provides that provision bonds of accused and sureties which is following under,

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) If the case so requires, the bond shall also bind the person released on bail to appear when called uponat the [High Court Division], Court of Sessions or other to answer the charge.

CHAPTER - V

REVIEW PROCEDURES

Section 374 - Appeals from convictions

- Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction mayappeal to the Supreme Court.
- Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial heldby any other Court in which a sentence of imprisonment for more than seven years [has been passedagainst him or against any other person convicted at the same trial; may appeal to the High Court.
- Save as otherwise provided in Sub-Section (2), any person, —

a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

b) sentenced under section 325, or

c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session

Section 377 – Appeal by the State Government against sentence:-

1. Save as otherwise provided in Sub-Section (2), the State Government may in any case of conviction on a trial held by any Court other than a High Court, direct the Public prosecutor to present an appeal against the sentence on the ground of its inadequacy —

a) to the Court of session, if the sentence is passed by the Magistrate; and

b) to the High Court, if the sentence is passed by any other Court;

c) in Sub-Section (3), for the words "the High Court", the words "the Court of Session or, as the case may be, the High Court" shall be substituted.

2. If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

3. When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showingcause against such enhancement and while showing cause, the accused may plead for his acquittal orfor the reduction of the sentence.

Section 378 – Appeal in case of acquittal:-

1. Save as otherwise provided in Sub-Section (2) and subject to the provisions of Sub Sections (3) and (5),

a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other

than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

Section 379 – Appeal against conviction by High Court in certain cases:-

Where the High Court has, on appeal reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term often years or more, he may appeal to the Supreme Court.

Reference to High Court:

Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasonstherefore, and refer the same for the decision of the High Court.

- When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, andshall cause a copy of such order to be sent to the Court by which the reference was made, which shalldispose of the case conformably to the said order.
- The High Court may direct by whom the costs of such reference shall be paid.

REVISION:-

- In the case of any proceeding the record of which has been called for by itself or which otherwise comesto its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court ofAppeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judgescomposing the Court of revision are equally divided in opinion, the case shall be disposed of in the mannerprovided by section 392.
- No order under this section shall be made to the prejudice of the accused or other person unless he hashad an opportunity of being heard either personally or by pleader in his own defence.

➢ Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittalinto one of conviction.

- Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
- Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do.

CHAPTER – VI

MISCELLANEOUS

Section 125 in The Code Of Criminal Procedure, 1973:-

125. Order for maintenance of wives, children and parents.

1. If any person having sufficient means neglects or refuses to maintain —\

a) his wife, unable to maintain herself, or

b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where suchchild is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, uponproof of such neglect or refusal, order such person to make a monthly allowance for the maintenance ofhis wife or such child, father or mother, at such monthly rate not exceeding five

hundred rupees in thewhole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may fromtime to time direct: Provided that the Magistrate may order the father of a minor female child referredto in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied thatthe husband of such minor female child, if married, is not possessed of sufficient means.Explanation.-

For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); isdeemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband andhas not remarried.

2. Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the applicationfor maintenance.
3. If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may,for every breach of the order, issue a warrant for levying the amount due in the manner provided for levyingfines, and may sentence such person, for the whole or any part of each month' s allowances remainingunpaid after the execution of the warrant, to imprisonment for a term which may extend to one month oruntil payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount dueunder this section unless application be made to the Court to levy such amount within a period of one yearfrom the date on which it became due:

   Provided further that if such person offers to maintain his wife oncondition of her living with him, and she refuses to live with him, suchMagistrate may consider any grounds of refusal stated by her, and may make an order under this sectionnotwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husbandhas contracted marriage with another woman or keeps a mistress, it shall be considered to be just groundfor his wife' s refusal to live with him.
4. No Wife shall be entitled to receive an allowance from her husband under this section if she is living inadultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are livingseparately by mutual consent.
5. On proof that any wife in whose favour an order has been made under this section is living in adultery, orthat without sufficient reason she refuses to live with her husband, or that they are living separately bymutual consent, the Magistrate shall cancel the order.

Cr.P.C320: Section 320 of the Criminal Procedure Code:-
Compounding of offences

When an offence is compoundable under this section, the abetment of such offence or an attempt to commitsuch 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.

1. When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

2. When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence.

When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section. No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

No offence shall be compounded except as provided by this section.

CHAPTER - VII

PROBATION OF OFFENDERS ACT 1958

Section 3: Power of court to release certain offenders after admonition :-

When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition. Explanation.-For

the purposes ofthis section, previous conviction against a person shall include any previous order made against him under thissection or section 4.

Section 4 : Power of court to release certain offenders on probation of good conduct :-

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision:-

(1) Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law: Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.

Probation officers —

(1) A probation officer under this Act shall be-

(a) A person appointed to be a probation officer by the State Government or recognised as such by the State Government; or

(b) A person provided for this purpose by a society recognised in this behalf by the State Government; or

(c) In any exceptional case, any other person who, in the opinion of the court, is fit to act as a probation officer in the special circumstances of the case.

(2) A court which passes an order under section 4 or the District Magistrate of the district in which the offender for the time being resides may, at any time, appoint any probation officer in the place of the person named in the supervision order. Explanation.-For the purposes of this

section, a presidency-town shall be deemed to be a district and chief presidency magistrate shall be deemed to be the district magistrate of that district.

(3) A probation officer, in the exercise of his duties under this Act, shall be subject to the control of the district magistrate of the district in which the offender for the time being resides.

Duties of probation officers.-A probation officer shall, subject to such conditions and restrictions, as may be prescribed, —

(a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;

(b) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;

(c) advise and assist offenders in the payment of compensation or costs ordered by the Court;

(d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4; and

(e) perform such other duties as may be prescribed.

CHAPTER - VIII

JUVENILE JUSTICE (CARE AND PROTECTIONOF CHILDREN) ACT 2000

Section 4 : Juvenile Justice Board:-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may,1[within a period of one year from the date of commencement of the Juvenile Justice

(Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district], one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of

Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or trainingin child psychology or child welfare and no social worker shall be appointed as a member of the Boardunless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

(4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.

(5) The appointment of any member of the Board may be terminated after holding inquiry, by the Sate Government, if —

(i) he has been found guilty of misuse of power vested under this Act,

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence,

(iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

Section 5: Procedure, etc., in relation to Board:-

(1) The Board shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings: Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate shall prevail.

Section 6: Powers of Juvenile Justice Board:-

(1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

Section 8: Observation homes:-

(1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act.

(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such institution as an observation home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn.

(4) Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.

Section 29: Child Welfare Committee:-

(1) The State Government may, [within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by

notification in the Official Gazette, constitute for every district], one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

(2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if —

(i) he has been found guilty of misuse of power vested under this Act;

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

Section 37: Shelter homes :-

(1) The State Government may recognise reputed and capable voluntary organisations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required.

(2) The shelter homes referred in sub-section (1) shall function as drop-in-centres for the children in the need of urgent support who have been brought to such homes through such persons as are referred to in subsection (1) of section 32.

(3) As far as possible, the shelter homes shall have such facilities as may be prescribed by the rules.

SPECIAL HOMES:-

Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2000 talks about Special Homes. Section 9(1) empowers any State Government to establish and maintain

special homes in every District or a group of districts for the reception and rehabilitation of juvenile in conflict with law. The state government may either establish a special home itself or it may do so under an agreement with voluntary organisations. Under section 9(2) the State Governments have also been empowered to certify any institution, other than a special home established or maintained under section 9(1), that it is fit for the reception of a juvenile in conflict with law.

Section 9(3) empowers the state Government to make rules under this Act. These rules may provide for the management of special homes including the standards and various types of services to be provided by them. Services shall be provided which are necessary for re-socialization of a juvenile. These rules may also provide for the circumstances under which, and the manner in which the certification of a special home may be granted or withdrawn. The rules made under section 9(3) may also provide for the classification and separation of juvenile in conflict with law on the basis of age and nature of the offence committed by them and his mental and physical status.

CHILREN'S HOMES:-

Section 34(1) empowers the State Government to establish and maintain either by itself or in association with voluntary organisations children's homes in every district or a group of districts for the reception of child in need of care and protection during the pendency of any inquiry. After the inquiry is over a children's home will serve the need of care, treatment, education, training, development and rehabilitation. Section 34(2) gives power to the State Government to make rules which may provide for the management of children's homes. These rules may also provide for standards and nature of services to be provided by them. The rules will also provide for the circumstances under which and the manner in which the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

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