COMPARATIVE CRIMINAL PROCEDURE

FOR LLM IST YEAR , FIRST SEMESTER.

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SYLLABUS :

PAPER – I : COMPARATIVE CRIMINAL PROCEDURE

1. Organisation of Courts and Prosecuting Agencies

1.1. Hierarchy of criminal courts and their jurisdiction

1.1.1. Nyaya Panchayats in India

1.1.1.1. Panchayats in tribal areas

1.2. Organisation of prosecuting agencies for prosecuting criminals

1.2.1. Prosecutors and the police

1.3. Withdrawal of prosecution.

2. Pre-trial Procedures

2.1. Arrest and questioning of the accused

2.2. The rights of the accused

2.3. The evidentiary value of statements / articles seized / collected by the police

2.4. Right to counsel

3. Trial Procedures

3.1. The accusatory system of trial and the inquisitorial system

3.2. Role of the judge, the prosecutor and defence attorney in the trial

3.3. Admissibility and inadmissibility of evidence

3.3.1. Expert evidence

3.4. Appeal of the court in awarding appropriate punishment.

3.5. Plea bargaining

4. Correction and Aftercare services

4.1. Institutional correction of the offenders

4.2. General comparison - After - care services in India and France

4.3. The role of the court in correctional programmes in India.

5. Preventive Measures in India

5.1. Provisions in the Criminal Procedure Code

5.2. Special enactments

6. Public Interest Litigation

6.1. Directions for criminal prosecution.

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K.N.Chandrasekharan Pillai (ed.), R.V. Kelkar's Outlines of Criminal Procedure (2000), Eastern,Lucknow.

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American Series of Foreign Penal Codes Criminal Procedure Code of People's Republic of China.

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Criminal Procedure Code, 1973

The French Code of Criminal Procedure,

14th and 41st Reports of Indian Law Commission.

The Paper will be taught with reference, wherever necessary, to the procedures in India, England, US, France, Russia and China

Comparative Criminal Procedure	**After completion of the course the student will be able to:** 1. Explain hierarchy of criminal courts, jurisdiction and prosecuting agencies.	2
	2. Identify the rights of accused, counsel, and role of prosecutor in investigation.	1
	3. Execute various trial procedures like admissibility of evidence, appeals, plea bargaining.	4
	4. Compare various aftercare services in India and France.	5
	5. Classify preventive measures relating to Criminal Procedure Code and Public Interest Litigation.	3

- TYPES OF LAW :
- LAWS CAN BE DIVIDED INTO TWO TYPES .
- 1. SUBSTANTIVE LAWS:
- Substantive Law is a Statutory Law that defines and determines the rights and obligations of the citizens to be protected by law;
- defines the crime or wrong and also their remedies; (prescribes punishment) determines the facts that constitute a wrong. Eg – IPC 1860., Indian contract Act, Transfer of property Act, specific relief Act, etc.

- 2. PROCEDURAL LAWS :
- **procedural law**, also called **adjective law**, the law governing the machinery of the courts and the methods by which both the state and the individual (the latter including groups, whether incorporated or not) enforce their rights in the several courts.

- Procedural law prescribes the means of enforcing rights or providing redress of wrongs and comprises rules about jurisdiction, pleading and practice, evidence, appeal, execution of judgments, representation of counsel, costs, and other matters.
- Procedural law is commonly contrasted with substantive law, which constitutes the great body of law and defines and regulates legal rights and duties.

- Thus, whereas substantive law would describe how two people might enter into a contract, procedural law would explain how someone alleging a breach of contract might seek the courts' help in enforcing the agreement.
- Eg. **The Code of Civil Procedure, 1908; Code of Criminal Procedure, 1973;Indian Evidence Act, 1872; Limitation Act, 1963; The Court Fees Act 1870; The Suits Valuation Act, 1887** are examples of Procedural Law in India.

- CRIMINAL PROCEDURE :
- OBJECT :
- The law of criminal procedure is intended to provides a mechanism for the enforcement of criminal law. Without proper procedural law, the substantive criminal law which defines offence and provides punishments for them, would almost worthless.
- Because , in the absence of an enforcement machinery, the threat of punishment held out by substantive criminal law would remain empty in practice.
- Thus , the law of criminal procedure is meant to be complementary to criminal law and has been designed to ensure the process of its administration.

- In view of this objective , the law of criminal procedure creates the necessary machinery for the
- A) Detection of crime.
- B) Arrest of suspected Criminals.
- C) Collection of evidence.
- D) Determination of guilt or innocence of the accused person.
- E) Imposition of proper punishment on the guilty person.

- The law of criminal procedure also aims at providing

safeguard against possible harms and violation of human rights of innocent persons in its process of sifting (to separate) Criminals from Non –Criminals.

IMPORTANCE OF CRIMINAL PROCEDURE :

1. It is more constantly used and affects a greater number of people than any other law.

2. The nature of its subject matter is such that human values are involved in it to a greater degree than in other laws.

- 3. The law of criminal procedure is complementary to the substantive law , its failure would seriously affect the substantive criminal law which in turn would considerably effects the protection it gives to the society.
- COMPARITIVE CRIMINAL PROCEDURE:
- comparative criminal Law is a Part of Criminal Justice System which aims to compare law of different countries worldwide.
- This study helps us in determining the similarities and differences in structure, goals and punishment. However, the functions of a criminal justice system can be categorized into policing, adjudication and corrections methods.

- Advantage of Diversity for Comparative Criminology
- The greatest advantage—although often considered an impediment (difficult) —for research in comparative criminology is the great diversity that exists cross-nationally with regard to social, economic, and political indicators.
- Though their structure and organization may vary, basic social and cultural categories such as family, urban and rural life, and community are universals of human existence, so they may be used as fundamental classifications when comparing one cultural group with another.

- The Goals of Comparative Criminology
- Although comparative criminology attends mainly to understanding criminal and deviant behaviors it is manifested globally, these studies will inevitably yield useful insights about the control of antisocial activity.
- With respect to the scientific import of comparative work in criminology, a few important goals are noted here.
- **1. Extending theories beyond cultural and national boundaries**

  Comparative research provides an opportunity for criminological theories, which are typically generated within the context of particular nation-states, to be given a wider hearing

- 2. **Assessing the performance of national criminal justice systems**
  Another important goal for comparative work in criminology is the assessment of national criminal justice systems. If the various institutions of criminal justice (i.e., police, courts, and corrections) are to work as a system charged with the control of criminal behavior, there must be some way to assess their performance as an operational unit.

- 3. **Evaluating national criminal justice policy**
  Comparative criminology and criminal justice also promise to yield insights into the efficacy of various policy initiatives.
- For instance, are high levels of gun violence inevitable in the United States because it harbors a gun culture? Perhaps there are other countries that have a high level of gun ownership but a low rate of gun crime.
- Would the legalization of drugs lead to an epidemic of drug use, as is often argued?

- **4. Coordinating the fight against transnational crime** Another response often provided to the question of **Why do comparative criminology?** maintains that the globalization of crime, as expressed in the increasingly popular notion of transnational crime, points to the need for a coordinated or transnational criminal justice response.
- Here the benefits of comparative criminology extend beyond the merely provincial and become more fully universal. Central to the prosecution of coordinated efforts, is greater international understanding because the more one knows about another people, society, or culture, the greater the potential for understanding their actions and responses to problems and situations.
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- **Importance of Studies**
  This study helps us in knowing different forms and use of punishment across societies, including capital punishment. Comparative research studies the different ways in which execution is carried out across the world including hanging, shooting, beheading, injection, electrocution, and even stoning.

- The study of comparative analysis of criminal law can be helpful for many people in many way as even many people are more suspicious of what goes on when their fellow citizens end up being tried in courts abroad.
- For example, for legislator, it can be a source of possible approaches to a specific issue or even to the enterprise of criminal law reform and criminal law making in general.

- For the Judge, it can suggest different solutions to tricky problems of interpretation.
- **Solves International Problems:**
  Comparative criminal law adds an international perspective of understanding of law, including how different cultures and government systems influence how the criminal justice system is institutionalized and played out across the world. This holistic perspective is needed to solve international justice issues.

- **Learn from the Past:**
  Learning how criminal justice systems have changed and transformed over time is an important part of understanding why and how the current justice system operates, giving you an understanding of how to avoid past mistakes and an insight into how it is likely to develop in the future.

- Methods To Conduct Comparison
- This study can take a descriptive, historical, or political approach.
- The first stage for each comparatist must be the study of his own law.
- Person for the purpose to have holistic perspective about different countries laws must have a good and thorough understanding of their own domestic law.
- Comparative law, in its second stage requires the study of some foreign law. The mere reading of a statute or a treatise, or even worse, of a translation, may be thoroughly misleading. Even words of the same language may have different meanings in different legal systems.
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- **Conclusion**
  While comparative criminology is a growing area of study owing to the influence of globalization and concerns about transnational crime, the relative neglect of systematic comparative work in criminology throughout the 20th century means that the field is still in its infancy.
- Growth in this promising area of inquiry should be nurtured with a renaissance (transitional) in theory so that research is driven by theory and not by the mere existence of more data.

- THE EXTENT AND APPLICABILITY OF THE CRIMINAL PROCEDURE CODE, 1973.
- Our law of criminal procedure is mainly contained in the Code of criminal procedure ,1973. The code extends to whole of India except of the state of Jammu and Kashmir.

- CLASSIFICATION OF OFFENCES.
- For the purpose of code , all the offences have been classified into different categories.
- Firstly , all offences are divided into two categories
- 1. Cognizable offence. (accused person may be arrested without warrant)
- 2. Non- Cognizable offence. (accused person cannot be arressted without warrant.)

- A " Cognizable offence "means an offence for which a police officer may , in accordance with the First Schedule of the Code or under any other law, arrest without warrant.
- All the offences which are of serious nature are cognizable nature . Seriousness of the offence is to be determined in relation to the maximum punishment provided for that offence.
- In these cases , a police officer can arrest the accused person without any warrant or authority issued by a Magistrate and can investigate into such a case without any orders or direction from the Magistrate .
- In the case of a "Non-Cognizable offence", a police officer cannot arrest without a warrant and he cannot investigate into such offence without the authority given by a judicial Magistrate.

- Secondly , offences are classified into ‘bailable’ and
- ‘Non-bailable’ offences.
- according to section 2(a) bailable offence means and offence which is shown as bailable in the First schedule, or which is made bailable by any other law, and Non-bailable offence means any other offence.
- Generally we can say that a serious offence is Non-bailable and others are bailable.
- It may also be noted that according to the First Schedule , offences under laws other than the IPC which are punishable with imprisonment for 3 years or more , have been considered as “ Non bailable” offences

- , and others which are punishable with less than 3 years imprisonment are considered as “bailable” offences. Of course, this rule is subject to any rule to the contrary made in any such law.
- If a person accused of a bailable offence is arrested or detained without warrant, he has a right to be released on bail.
- This does not mean that if the offence is non- bailable , he shall never be released on bail; his release on the contrary , is left to the discretion of the court.
- Thirdly , the code clasifies all criminal cases into **summons** cases and **warrant** cases.

- A **warrant case** means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding 2 years; and **a summons case** means a case relating to an offence, not being a warrant case.
- **The** classification is useful to determine the type of TRIAL PROCEDURE TO BE ADOPTED in the case. The trial procedure prescribed for a warrant case is much more elaborate than that provided for a summons case.
- **FUNCTIONARIES UNDER THE CODE.**

The main functionaries exercising power and discharging duties under the code are,

- 1. Police
- 2. prosecutors
- 3. Defence Counsel
- 4. Magistrates, Judges
- 5. Prison Authorities and correctional services authorities

- The Criminal Law regime in India is regulated by the following statutes:
- The Indian Penal Code, 1860 (hereinafter referred to as "**IPC**")
- The Code of Criminal Procedure, 1973 (hereinafter referred to as "**CrPC**")
- The Indian Evidence Act, 1872 (hereinafter referred to as "**Evidence Act**")

- Important stages of criminal cases in India under Criminal Procedure Code, 1973
- 1. Pre trial Stage.
- 2. Trial Stage .
- 3. Post trial Stage.

- Pre-Trial Stage
- **1.Commission of an Offence**
- Criminal proceedings take place only when an offence is committed.

- **2.Information to the Police (chapter XII)**
- Information as to the Commission of a Cognizable Offence
- If the offence is a cognizable offence, then the Police have to act according to Section 154 of the CrPC.
- Section 154 (1) of the CrPC provides that information relating to the commission of a cognizable offence shall be reduced in writing by the officer-in-charge of the concerned Police Station and must be read over to the informant.
- The person, who provided such information, must sign on it. (FIR)
- Section 154 (2) provides that a copy of such FIR shall be given free of cost to the informant.

- Section 154 (3)
- In case the officer-in-charge of a Police Station refuses to record such information, the concerned person may then write the substance of such information and post it to the Superintendent of the Police.
- If the Superintendent of the Police is satisfied that such information discloses the commission of a cognizable offence, he shall either investigate the case himself or direct an officer in subordination to him, to investigate such a case.
- Note :
- 1. FIR sets the criminal law into motion .
- 2. Provision of zero FIR. (Provision against refusal to register FIR on the ground of lack of jurisdiction)
- 3. FIR is not a substantive piece of evidence but can be used to support or contradict the evidence by the informant.

- **Investigation by Police**
- Chapter XII of the CrPC provides for the investigation of an offence by the Police.
- Section 156 (1) of the CrPC empowers a police officer to investigate a cognizable case without the order of a Magistrate.
- Further, Section 156 (2) provides that the no proceedings handled by a police officer in such a case can be called into question on the ground that the officer was not empowered to investigate the case under this section.
- section 156 (3) ,A Magistrate may order the investigation of such a case under Section 190, CrPC.

- Sec. 157 Procedure for Investigation
- Section 157 of the CrPC provides for the procedure to be followed for investigation. It states that when the officer-in-charge of a Police Station is empowered under Section 156, he must send a report to the Magistrate empowered to take cognizance of such offence on a report by the Police and either proceed in person or depute any of his subordinate officers to investigate the facts and circumstances of the case.
- Police conduct investigation for
- For collection of evidence;
- Interrogation statement of accused;
- Statement of witnesses;
- Scientific analysis / opinion if required. During this time, at any stage decided by investigating agency, accused persons can be arrested.

- BAIL MEANING : Bail is the conditional release of a defendant with the promise to appear in court when required , on the execution of a bail bond.
- **Anticipatory Bail. Sec. 438.**

Anticipatory bail is a direction from the Court to release a person on bail even before the arrest. In *Balachand Jain* v. *State of MP*, the Court has described anticipatory bail as 'bail in anticipation of arrest'.

- In *Gurbaksh Singh Sibbia* v. *State of Punjab*, the Supreme Court observed that the court must be satisfied that the person invoking Section 438 (1) of the CrPC shall have reasons to believe that he will be arrested for non-bailable offence and his belief must be based on reasonable grounds.

- The Court must provide anticipatory bail after taking into consideration the following factors:
- The Gravity of the alleged offence.
- Antecedents of the person applying for anticipatory bail i.e. whether he has been previously convicted of a cognizable offence.
- If the accused person can flee from justice.
- Where the accusations are backed by the intention of causing injury or humiliation to the accused.

- The Court may also impose the following conditions to be fulfilled by the accused when seeking an order of anticipatory bail:
- He must be available for interrogation by the police officer, as and when required.
- He must not, directly or indirectly, induce, give threats, or promise to any person acquainted with the facts of the case to dissuade him from disclosing such facts to the Court or to any police officer.
- He must not leave India without the permission of the Court.

- **Arrest of the Accused**
- The Police officer may arrest the accused person without the warrant if the offence is of cognizable nature. However, the concerned police officer must obtain the approval of the Magistrate in the form of a warrant if the alleged offence is of non-cognizable nature.
- **Production of the Accused to the Magistrate**
- After the accused person is arrested, the concerned police officer must produce the accused before the Magistrate within 24 hours of the arrest as stated in Article 22(2) of the Indian Constitution.
- Hence, an arrested person has a fundamental right to be produced before the Magistrate within 24 hours of arrest.

- **Remand**
- If the accused person is arrested and the investigation cannot be completed within 24 hours, then such person is to be produced before a Magistrate for extension of Police or Magisterial Custody.
- Police custody : Maximum 15 days.
- Judicial Custody :
- **Closure Report**
- A closure report is filed when upon the investigation, it is discovered that no offence can be made out. Also, the accused person must be released under Section 169 of the CrPC in such cases.

- **Filing of Charge sheet**
- However, a Charge sheet must be filed according to Section 173 of the CrPC if, upon the investigation, it is discovered that an offence appears to have been committed. The Charge sheet must contain all the charges to be leveled against the accused person.
- **Cognizance by Magistrate**
- After a charge sheet is filed under Section 173 of the CrPC, a Magistrate is empowered to take cognizance of such offence under Section 190 of the CrPC.

- **Service of Summon/Warrant**
- The Court then serves to summon or warrant to the accused person to present himself before the Court. A Summon or Warrant is issued with the aim to compel the appearance of accused persons under Chapter VI of the CrPC.
- Section 61 of the CrPC provides that Summon issued by a Court shall be reduced to writing in duplicate signed by the presiding officer or any such officer prescribed by the High Court, and it must have the seal of the court.

- Section 70 of the CrPC describes the form of a warrant of arrest. Every warrant issued shall be in writing, signed by the presiding officer of such Court and must bear the seal of the Court. Such warrant shall remain in force until cancelled by the Court or until executed.
- **Bail Application**
- A Bail Application is filed before the Court under Form No. 45 of the Second Schedule to release the accused person from custody. The accused person can be granted bail only if he furnishes bond and sureties before the Court.
- The procedure to obtain bail is different in bailable and non-bailable offences.

- Bail in Bailable offences
- Section 436 of the CrPC provides for the procedure to obtain bail in bailable offences. Section 436 provides that in case of bailable offences, the accused person can be released on bail. However, such officer or Court may, if deem it reasonable to do so, instead of taking bail, discharge him by executing a bond without sureties for his appearance.
- Section 436 (2) further provides that if a person does not comply with any of the provisions of the bail bond regarding the time and place of his attendance, the Court is empowered to refuse to release him on bail.

- Further, Section 436A has been inserted in the CrPC in 2005 for the undertrial prisoners. It says that if a person has already completed half of the maximum sentence to be awarded for the alleged offence, then he must be released on personal bond with or without surety
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- Bail in Non-bailable offences
- Sec. 437 :
- Where it is alleged that the accused person has committed a non-bailable offence, he may be released on bail.
- The Court may refuse to grant the bail in the following cases:
- There are reasonable grounds to believe that he is guilty of an offence punishable with death or imprisonment for life.

- The alleged offence is cognizable and the accused person is previously convicted of an offence punishable with death, imprisonment for life, imprisonment for seven years or more, or has been convicted twice or thrice of a non-bailable and cognizable offence.
- However, the Court may release such an accused person on bail if it is just and proper to do so for any other reason. It has been further provided that identification by witnesses is no sufficient ground for refusal to grant bail if the accused person is otherwise entitled to be released on bail.

- Also, the Court may not refuse bail to a person below sixteen years of age, a woman, sick or infirm person.
- Section 437 (3) says that a person accused of an offence punishable with imprisonment which may extend to seven years or more in Chapter VI, (offences against the state) Chapter XVI, (offences affecting the human body) or Chapter XVII (offences against the property)of the IPC or abetment of, or conspiracy or attempt to commit such offence, the Court may impose any condition while releasing the person on bail.

- **Plea of Guilty/Not Guilty (summons cases only)**
- The Court, before commencing the trial, must ask the accused person whether he wishes to plead guilty or not guilty. The Court may convict the person on his plea of guilty under Section 253, CrPC. This provision has been inserted in the Criminal Law regime so the speedy delivery of justice can be made effective.
- **Commencement of Trial**
- The Trial of a case is said to be commenced when it is posted for the examination of witnesses.
- **Stages of Evidence of Prosecution**
- The prosecution is required to prove the guilt of the accused through the examination of witnesses and documentary evidence. It involves Examination in Chief, Cross-examination, and re-examination.'.

- After this, the Court records the statement of the accused person under Section 313 of the CrPC. The accused is given the opportunity of being heard and explain the facts and circumstances of the case.
- The defence is then, asked to present any evidence before the Court that may support the acquittal of the accused person.
- Usually, the burden of proof is on the prosecution, the defence is rarely asked to present evidence before the Court.

- **Final Arguments**
- After examining all the evidence and other relevant facts and circumstances, the court decides upon what questions are to be addressed during the final arguments of the case. The Public Prosecutor and the Defence Counsel both present their arguments to the Court on the disputed issues.
- **Judgment**
- After hearing final arguments from both sides, the Court has to deliver judgment addressing if the accused is convicted or acquitted, the quantum of punishment if convicted, grounds of conviction/acquittal, etc.
- The Judgment must be clear and precise. It should state the facts of the case, arguments presented by the Counsel from both sides, acquittal/conviction of the accused, and grounds for the same.

- **Appeal**
- After the judgment is delivered by the Court, the aggrieved party may file for an appeal. Before the appellate court, arguments of both sides are placed. The Appellate Court, then decides if the judgment rendered by the subordinate court had any merits or not. (sec 372 and sec. 377)
- **Revision**
- The aggrieved party may alternatively file a Revision petition to prevent a faulty judgment from being enforced. (to re -examine and re-look at and make corrections if there is some mistake) sec. 397 of crpc.
- **Execution**
- The last stage is the execution of the orders of the Court. The stage of execution is when all the remedies of appeal, revision, etc. are exhausted and the decision is final.

- Execution of sentence
- Execution of sentence is the final play which generally comes after the verdict. Under the CRPC, 1973 the provisions specifically dealing with execution are enshrined under Section 413 to 424.
- Death sentence (Section 413 – 416)
- Execution of order passed under Section 368
- According to Section 366 of the CrPC, 1973 the session court is not capable enough to execute a sentence of death without the confirmation of the High Court, and till the time High Court does not give the approval the accused shall remain in jail.
- Hence, following Section 413, upon receiving the orders from the High Court the session court shall execute the same via issuance of a warrant.

- Execution by High Court
- In compliance with Section 414, once the sentence of death has been issued by the High Court whether in appeal or in revision the same shall be forwarded to session court who shall execute the same through the issuance of a warrant.
- If the accused file an appeal under Article 134 of the Indian Constitution before the Supreme Court of India against the death sentence passed by the High Court or the accused sentenced makes an application before the High Court concerning the grant of certificate under Article 132, in these circumstances the High Court shall postpone the said execution until:

- The period which was allowed for the appeal has expired; or
- Such appeal has been disposed of by the Supreme Court.
- The High Court is of the opinion that the accused may file an SLP under Article 136 before the Supreme Court, it shall postpone the said execution for such period which is suitable for the accused to file a petition.

- Postponement due to pregnancy
- Following Section 416, if a woman who has been sentenced to death by the High Court was pregnant in such a case the High Court shall commute/ lower the death sentence to life imprisonment.
- Imprisonment (Section 417- 420)
- According to Section 417(1), the State Government shall prescribe the place where the accused who is sentenced for imprisonment be kept or confined.
- Further, in compliance with Section 417(2) if the accused who is liable to be imprisoned under the CRPC, 1973 but is confined in a civil jail shall be migrated to a criminal jail.

- Execution of sentence
- According to Section 418, the accused who has been sentenced to imprisonment, the court which has pronounced such sentence shall issue a warrant to the jail authority where the convicted shall be confined. There is no need for a warrant if the convicted is already in jail.
- In case the court has pronounced the sentence of imprisonment, but the accused was not present at the court, the court shall issue an arrest warrant.
- According to Section 419, the warrant issued by the court concerning the sentence of imprisonment shall be submitted before the officer in charge of the jail. Further, following Section 420, the warrant shall be submitted before the jailor, where the prisoner has to be confined.

- PRISON AUTHORITIES AND CORRECTIONAL SERVICES
- Section 167 Magistrates and judges are empowered by the code to order the detention of under-trial prisoners in jail during the pendency of the proceedings. The courts have the power under the Code to impose imprisonment sentences on convicted persons and to execute such sentences send them to prison authorities.
- However, the Code does not provide specific provisions for working, creation and control of such machinery. The Prisons Act 1894, The Probation of Offenders Act 1958 and The Prisoners Act 1900 deals with such matters.

- Levy of fine (Section 421- 424)
- Warrant for levy of fine
- When the court has sentenced the accused to a fine, the court may take appropriate actions to realize the fine in compliance with Section 421(1).
- Issue a warrant concerning levy of fine.
- Sale of any belonging to the offender.
- Issue a warrant to the district collector for the said purpose.
- Effect of warrant (Section 422)
- A warrant issued by the court as per Section 421(1)(a) shall be executed:
- Within the local jurisdiction of that court, or
- May extend outside its jurisdiction, if authorized the sale of any belonging to the offender.
- When the warrant was issued to the district magistrate, the execution shall be extendable up to the local jurisdiction of the property so found.

- ORGANISATION OF COURTS AND PROSECUTING AGENCIES
- Hierarchy of criminal courts and their jurisdiction :
- In India, the criminal justice system is organised as follows:
- **Supreme Court**: The Supreme Court of India was established under Article 124 of Part V and Chapter IV of the Indian Constitution as the country's highest court.
- **High Courts**: The second level of the hierarchy is the high courts. They are established under Article 214 of the constitution in each state. However, under Article 231(1) parliament can establish by law a common high court for two or more states or two or more states and a union territory
- The High court stands at the head of the judiciary in the state.

- **Subordinate Courts/Lower Courts**
- The following is a list of India's Lower Courts:
- **Metropolitan Courts**
- Sessions Court
- Chief Metropolitan Magistrate
- First Class Metropolitan Magistrate
- **District Courts**
- Sessions Court
- Chief Judicial Magistrate.
- Judicial Magistrate First Class.
- Executive Magistrate

- **Supreme Court of India**
- The Supreme Court of India is the Country's Highest Court. Part V, Chapter IV of the Constitution establishes it.
- The Supreme Court of India's composition and jurisdiction are outlined in Articles 124 to 147 of the Indian Constitution.
- The President of India appoints the Chief Justice and other judges (33) to the Supreme Court of India. Judges on the Supreme Court retire when they reach the age of 65.
- To be appointed as a Supreme Court Judge, a person must be an Indian citizen and have served as a Judge of a High Court or two or more such Courts in succession for at least five year, or as an Advocate of a High Court or two or more such Courts in succession for at least ten yearr, or be a distinguished jurist in the opinion of the President.

- Original, Appellate, and Advisory jurisdiction are all exercised by the Supreme Court.
- Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States, or between the Government of India and any State or States on one side and one or more States on the other, or between two or more States, if and to the extent that the dispute involves any question (whether of law or fact) that affects the existence or scope of a legal right.
- Furthermore, the Supreme Court has considerable original jurisdiction over the enforcement of Fundamental Rights under Article 32 of the Constitution.

- It has the authority to issue directives, orders, or writs to enforce them, including writs of habeas corpus, mandamus, prohibition, quo-warranto, and certiorari.
- The Supreme Court has the authority to order that any civil or criminal case be transferred from one State High Court to another State High Court or from one Court subordinate to another State High Court.
- If the Supreme Court determines that cases involving the same or substantially the same legal questions are pending before it and one or more High Courts, or two or more High Courts, and that such questions are substantial questions of general importance, the Supreme Court may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself.

- A certificate granted by the High Court concerned under Article 132(1), 133(1), or 134 of the Constitution in respect of any judgement, decree, or final order of a High Court in both civil and criminal cases involving substantial questions of law as to the interpretation of the Constitution can be used to invoke the Supreme Court's appellate jurisdiction.
- In criminal cases, an appeal to the Supreme Court is available if the High Court:
- Has reversed an order of acquittal of an accused person and sentenced him to death or life imprisonment or for a period of not less than 10 years, or

- Has withdrawn for trial before itself any case from any Court subordinate to its authority and has convicted the accused and sentenced him to death or
- life imprisonment or for a period of not less than 10 years, or has withdrawn for trial before itself any case from any Court subordinate to its authority.
- Parliament has the authority to provide the Supreme Court further powers to entertain and hear appeals against any judgement, final order, or sentence issued by a High Court in a criminal matter.

- **Appellate Jurisdiction of Supreme Court in Criminal matters**
- The Constitution lays the foundation of the entire legal framework in India. It is the root from which all the laws in the country derive their authority and force. The concept of appeals or appellate jurisdiction of Courts arises from the constitution and are of great significance in the Indian judicial system.
- Under appellate jurisdiction, the Court has the power to review, amend and overrule the decisions of a lower Court. This is especially significant in criminal matters to avoid grave injustices like wrongful convictions or the guilty getting away without a punishment.

- **Article 132** states that any judgement, decree or order of the High Court can be appealed against in the Supreme Court if the High Court certifies under **Article 134A** that the case involves a substantial question of law related to the interpretation of the Constitution. A party may appeal to the Supreme Court if they feel that such an aforementioned question has been wrongly decided.
- **Article 134** of the Constitution provides for the appellate jurisdiction of the Supreme Court in regard to criminal matters wherein any final order or sentence in a criminal proceeding in the High court may be appealed against under the following circumstances:

- 1. If it has on appeal reversed an order of acquittal of an accused person and sentenced him to death or;
- 2. Has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused or sentenced him to death or;
- 3. Certifies that the case is one that is fit to be appealed against in the Supreme Court.
- **Appeal against a death sentence:**
- The limitation period for an appeal to be filed against a conviction resulting in death sentence passed by a session's court or a High Court while exercising its original jurisdiction is 30 days.

- **Appeal against a death sentence:**
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- **Review Jurisdiction of Supreme Court of India**
- Similarly, no application in a criminal proceeding is entertained except on the ground of error apparent on the face of record.
- The application for review must be certified by an Advocate on Record on a certificate stating that the application is a first for revival and is based on the grounds that are admissible under the rules mentioned.

- **Grounds for considering Review Petition**
- It is to be noted that a review application shall be by a petition, within 30 days from the date of the judgment or order which is to be reviewed and it should clearly state the grounds for review.
- A petitioner can file for review of a verdict on the following grounds:
- Discovery of new and important pieces of evidences or information which are the result of due diligence, was not within the knowledge of the petitioner or could not be produced by him;
- Error apparent on the face of the record;
- Any other sufficient reason that is corresponding to the other two grounds.

- In the **Sabrimala case**, the Supreme Court had been conferred review jurisdiction under article 137 of the constitution as the early verdict directed by the Court lacked legal reasoning.
- The Supreme Court, while allowing the writ petition filed by Indian Young Lawyers Association along with the review petition, struck down Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, which was the legal basis for barring entry of women between the ages of 10 and 50 years into Sabarimala temple.

- In the **Nirbhaya case** the Supreme Court had rejected the review petition filed by three of the accused in the case challenging the convictions and death sentence. However, the three-bench judge comprising of- Chief Justice Diapak Mishra, Justice R. Banumati and Justice Ashok Bhushan stated that the petition did not have grounds for admittance under article 137 of the constitution (read with consonance in **Order XLVII, Rule 1 of the Supreme Court Rules, 2013**)

- **Conclusion**
- The jurisdiction to review is a discretionary power of the Supreme Court. The power to review, of the Supreme Court is a protective measure to make sure justice is delivered and there is no fallibility by the judiciary to any aggrieved individual or party.
- However, a review petition may be dismissed or admitted depends upon the fact relating to the case. It may be dismissed if there is no error apparent on face of record.
- Thus, the success of a review petition is very limited. This power of the Supreme Court is an essential feature of the Indian Judiciary and plays a very significant role in administering justice in our country.

High Courts

- The High Court is the highest court in a state's judicial system. A Chief Justice and as many other Judges as the President may appoint from time to time make up each High Court.
- The President, in consultation with the Chief Justice of India and the Governor of the State, appoints the Chief Justice of a High Court.
- The procedure for appointing judges is the same as before, with the exception that the Chief Justice of the High Court in question is also consulted.

- They serve until they reach the age of 62 and are removed in the same way as Supreme Court judges are. (Impeachment)
- To be considered for a position as a judge, one must be an Indian citizen and have served in a judicial capacity in India for 10 years, or have practiced as an advocate in a High Court or two or more such Courts in succession for a similar duration. (10 years)
- Each High Court has the authority to issue directives, orders, or writs to anybody within its jurisdiction, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari for the enforcement of Fundamental Rights and for any other reason.

- **Grounds for Appeal in High Court**
- The evolution of Indian Legal system owes much to interpretations given by various High Courts at various points of time. The makers of Constitution gave as much as importance to the High Courts as much as it gave the Supreme Court.
- In fact, the writ jurisdiction of High Courts under Article 226 is much wider than Article 32.
- Other than its original jurisdiction in civil and criminal matters, the High Court has the power to hear appeals from the courts subordinate to it. It has criminal as well as civil appellate jurisdiction.

- **Appellate Jurisdiction under the Code of Criminal Procedure, 1973**
- As per **section 374(2) of the Code of Criminal Procedure, 1973** (*hereinafter as* Code) if a person is convicted for an imprisonment of seven years or more in a trial conducted by any Court, he may appeal to High Court against such order.
- Also, persons who have been convicted by Sessions Court or Additional Sessions Court in a trial may also appeal to the High Court.
- **But** as per **Section 375** of the Code, if such person has pleaded guilty in furtherance of which he was convicted no appeal will lie except as to the extent or legality of such sentence.

- Also, no appeal shall lie to the High Court, if the sentenced imposed doesn't exceed three months of imprisonment or fine not exceeding two hundred rupees or of both such imprisonment and fine. Such a sentence is appealable if any other sentence is combined with it.
- Also, the State may prefer appeal against the acquittal, or the inadequacy of sentence passed by the Sessions Court in the High Court. In cases where the investigation is carried out by Central Government agencies, Central Government may prefer an appeal.
- The appeal has to be presented by Public Prosecutor and it will be entertained only if the leave is granted by the High Court. But if the case was instituted upon any complaint made by the complainant, the complainant may prefer an appeal to the High Court if it grants special leave.

- Special leave shall not be granted to the Complainant if the application is made after the expiry of sixty days from the order of acquittal.

- The period can be extended to six months if the complainant is a public servant. If the application for leave is disallowed, then the appeal does not lie against an order of acquittal

- The Appellate Courts are empowered to dismiss appeals summarily, but it shall not be done unless the appellant or his counsel has been provided with a reasonable opportunity to be heard. If the appeal is allowed and:

- If it is preferred against an order of acquittal, the Appellate Court may reverse the order and order further inquiry. It may also commit the accused into a court of competent jurisdiction for re-trial or may pass a sentence on him according to the law.
- If the appeal is filed against an order of conviction, the Appellate Court may reverse the order and acquit or discharge the accused. It may also commit him to a re-trial by a court of competent jurisdiction.
- The Appellate Court is empowered to alter the finding but may still maintain the sentence. It can also alter the nature and extent of the sentence but shall not enhance the sentence.

- If the appeal is for enhancement of sentence, it may reduce or enhance or maintain the sentence. It may acquit or discharge the accused. It is also empowered to commit him to a re-trial.
- If the appeal is against any other order, it may reverse or alter or amend such order to render it just or proper.

Subordinate Criminal Courts

- Apart from the Supreme Court, High Court, and courts created under any statute, the following courts must be present in every state, according to section 6 of the Criminal Procedure Code:
- Sessions Court.
- Chief Judicial Magistrate / Chief Metropolitan Magistrate
- Judicial Magistrates of the First Class (Metropolitan Magistrates in the metropolitan area)
- Executive Magistrates

- **Sessions Court**
- The Sessions Court is established according to Section 9 of the CrPC.
- The Sessions Court is established by the State Government for each sessions division and must be presided over by a judge selected by the High Court. Additional and Assistant Sessions Judges are appointed by the High Court.
- The Court of Sessions is normally held at the location or locations specified by the High Court.
- However, if the Court of Session believes that it will have to accommodate the convenience of the parties and witnesses in a specific case, it may hold its sittings at any other location with the approval of the prosecution and the accused.

- The assistant sessions judges are accountable to the sessions judge under section 10 of the CrPC.
- The procedure in trials before a Court of Sessions is governed by Sections 225 to 237 of the Code of Criminal Procedure.

  The court of sessions can try any offence under INDIAN PENAL CODE. Provided that any offence under section 376 and sec376 A to 376 of IPC 1860 shall be tried as far as practicable by a court presided over by a woman.
- THE Supreme court in Sudhir vs state of Madhya pradesh held that where a criminal act involves two different offences one of which is triable by the court of sessions while the other by a magistrate , then in such a case both the offences may be tried together by the court of sessions.

- Sentences a sessions judge may pass – sec 28
- 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.
- An assistant sessions judge may pass any sentence authorised by law except a sentence of death or a sentence of imprisonment for life or sentence exceeding ten years.
- It depends on the Judicial discretion of the presiding judge whether to award maximum prescribed sentence

- To the accused or a lesser on taking into consideration the mitigating factors. Or circumstances if any.
- Sec 31--- SENTENCES IN CASES OF CONVICTION OF SEVERAL OFFENCES AT ONE TRIAL :
- (1) when a person is convicted at one trial of two or more offences the court may , subject to the provisions of sec 71 of the IPC 1860 sentence him for such offences , to the several punishments prescribed thereof which such court is competent to inflict ;
- such punishment when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct. , unless the court directs that such punishments shall concurrently.

- (2) In the case of consecutive sentences, it shall not be necessary for the court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence , to send the offender for trial before Higher court .
- Provided that –
- (a) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years.
- (b) The aggregate punishment shall not exceed twice the amount of punishment which the court is competent to inflict for single offence.

- (3) For the purpose of appeal by a convicted person, the aggregate of consecutive sentences passed against him under this section shall be deemed to be a single sentence.
- Comment :
- 1 . The passing of separate sentence is discretionary and not mandatory under this section.
- Ordinarily , the sentences should be consecutive as a normal rule, and they may be made to run concurrently only when there is a valid reason.

- Sec 11 : Courts of Judicial Magistrate–
- (1) In every district (not being a Metropolitan area) there shall be established as many courts of Judicial Magistrate of the first class , and at such places , as the state government may after consultation with the High Court , by notification specify.
- (2) The presiding officer of that court shall be appointed by the High Court.
- Sec 12 : CHIEF JUDICIAL MAGISTRATE AND ADDITIONAL CHIEF JUDICIAL MAGISTRATE :
- (1) In every district (not being a metropolitan area) the High Court shall appoint a Judicial Magistrate of the first class as the Chief Judicial Magistrate.

- (2) The High Court may appoint any Judicial Magistrate of First Class to be an additional chief Judicial Magistrate and such Magistrate shall have all or any of the powers of a chief judicial Magistrate under this code .
- Sec 14 :
- (1) Subject to the control of the High court, the chief Judicial magistrate may, from time to time , define the local limits of the areas within which the Magistrates appointed under section 11 may exercise all or any of the power with which it may be invested under this code.
- (2) except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

- sec 15 : Subordination of judicial Magistrate :
- (1) Every chief Judicial Magistrate shall be subordinate to the sessions judge ; and every other judicial Magistrate shall subject to the general control of the sessions judge, be subordinate to the chief Judicial Magistrate.
- (2) The chief Judicial Magistrate may, from time to time, make rules or give special orders, , consistent with this code, as to the distribution of business among the Judicial Magistrate Subordinate to him.
- Sec 16 ; Courts of Metropolitan Magistrate—
- (1) In every metropolitan area, there shall be established as many courts of Metropolitan Magistrate, and at such places, as the state Government may, after consultation with the

- High Court by notification may specify.
- (2) THE presiding officer of such courts shall be appointed by the High court.
- (3) The Jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the Metropolitan area.
- Sec 17 ; Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate :
- (1) The High court shall, in relation to every Metropolitan area within its local jurisdiction , appoint a Metropolitan Magistrate to the chief Metropolitan Magistrate for such Metropolitan area.
- (2) The High Court may appoint any Metropolitan Magistrate to be an additional chief Metropolitan Magistrate , and such Magistrate shall have all or any of the powers of a chief Metropolitan Magistrate under this code.

- Sec 19 : Subordination of Metropolitan Magistrate :
- (1) The chief Metropolitan Magistrate and every additional chief Metropolitan Magistrate shall be subordinate to the sessions Judge and every other Metropolitan Magistrate shall, subject to the general control of the sessions Judge , be subordinate to the chief Metropolitan Magistrate.
- sec 20 Executive Magistrate:--
- (1) In every district and in every metropolitan area , the state Government may appoint as may persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

- sec 29 Sentences which Magistrate may pass :
- (1) The court of a chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.
- (2) The court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years or of fine not exceeding ten thousand rupees or of both
- (3) The court of a Magistrate of the second class may pass a sentence of imprisonment not exceeding 1 year and fine not exceeding five thousand rupees.
- (4) The court of a chief Metropolitan Magistrate shall have the powers of the court of chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

- Sec 30 Sentence of imprisonment in default of fine :
- (1) The court of Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law.
- Provided that the term –
- (a) is not in excess of the powers of the Magistrate under section 29.
- (b) shall not , where imprisonment has been awarded as part of the substantive sentence, exceed one –fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

- ORGANISATION OF PROSECUTING AGENCIES FOR PROSECUTING CRIMINALS :
- Introduction
- It is the duty of the state to prosecute cases in the courts of law. After due investigation, charge-sheets are filed in the courts concerned as per the provisions of the Code. The cases are prosecuted by the public prosecutors appointed by the state governments
- Public prosecutors perform a crucial role in society. They are the ' **gate keepers**' of criminal justice, insofar as without their initiative there cannot be the prosecution and repression of crimes.

- Prosecutors hold a commanding position and **play an essential role** in the Criminal Justice System. The Code of Criminal Procedure, 1973 provided the basic framework of the hierarchy of criminal courts as well as Public Prosecutors.
- This law also governs the enforcement of the substantive criminal law i.e. Indian Penal Code.
- They are the representatives of the public in the court of law. They need to honour the administration of justice by prosecuting only those who need to be prosecuted.

- In the case of ***Jaipal Singh Naresh V State of Uttar Pradesh*** , Allahabad High Court held that the Prosecutor is not under a duty to represent police but has a duty to represent Crown. He should perform his duty without favour or fear.
- What are the duties of Prosecutors?
- General Duties of Prosecutors are as follows:
- Examination of Independent Witnesses
- Duty to be Fair
- Synchronization with the police
- Duties of Prosecutors in Human Rights Context
- Examination of Investigating Officer is to Avoid Acquittal

- In criminal law, prosecution has an important role to play. Our system of administration of criminal justice contemplates fair and effective prosecution of offences.

- Under the present scheme of the Code of Criminal Procedure, the prosecution machinery has been completely separated from investigating agency and the prosecuting Officers are supposed to be independent from police.

- Under section 24 of the Code, the public prosecutors of High Courts are appointed by the Central Government or the State Government, as the case may be, on the recommendations of the High Court.

- The public prosecutors and additional public prosecutors are appointed in Sessions Courts on the recommendations of the Sessions Judge.
- Section 24 also provides for appointment of such public prosecutors by the Central Government for the purpose of conducting any case or class of cases.

- In some States, Directorates of Prosecution have been set up. However, there is a common complaint that required number of prosecuting officers have not been appointed and the prosecutions are not being conducted efficiently and in the manner expected.

- It has to be borne in mind that the quality of criminal justice is closely linked with the caliber of the prosecution system and many of the acquittals in courts can be ascribed not only to poor investigations but also to poor quality of prosecutions.

- There is a strong opinion in favor of the autonomy of the public prosecutors and creation of a separate prosecution agency under the control of a Directorate of Prosecution to exercise administrative supervision over the work of a network of public prosecutors at various levels.

- There is a general complaint that the public prosecutors in lower courts do not prepare cases carefully and that the quality of prosecutions is poor.

- Therefore, there should be careful selection and appointment of prosecutors who can closely co-ordinate with the investigation.
- No doubt, they have to closely co-ordinate with the police system since prosecutions are conducted on behalf of the police.
- There should not be communication gap between the police and the prosecutors during the investigation stage.

- The police, however, are of the view that investigation and prosecution form a continuous link process in the administration of justice and, therefore, both should be closely coordinated in order to ensure successful prosecution of criminal cases.

- They also stress that total detachment of prosecution department from the police will not only create conflicts between the two but also result in each throwing the responsibility on the other with the result that there will not be any effective control over the maintenance of law and order or prosecution of criminals.

- The police are firmly of the view that the prosecutors have to constantly advise the police in investigation of grave offences and collection of evidence to sustain the prosecution with success.

- It is a matter of common knowledge, that a public prosecutor has a dual role to play, namely, as a prosecutor to conduct the trial and as a legal adviser to the police department in-charge of investigation.
- For some reason or the other, in the present administration, the latter part is not given due weight and a virtual communication gap exists.
- The Law Commission in its 14th Report considered this issue. It is noted that a man of integrity should be chosen to be in charge of prosecution and the purpose of a criminal trial being to determine the guilt or innocence of the accused, the duty of a public prosecutor is not to represent any particular party but to act in an objective manner..

- The Commission also noted that very often there arise complicated cases which require legal assistance even during the stage of investigation.
- But the public prosecutor has however, neither the power to interfere in the investigation nor can he call for the police papers and scrutinize them or otherwise examine the available evidence before a report is actually filed.
- This is anomalous because though he is responsible for the conduct of the prosecution in court, he has no opportunity of controlling or shaping the material on which the case is to be founded and presented before, the court.

- The Law Commission, after making an in-depth study about the prosecuting systems obtaining in other countries and also the system in our country, made several suggestions.
- One firm suggestion was that "the prosecuting agency should be completely separated from the police department. In every district a separate prosecution department may be constituted and placed in charge of an official, who may be called the Director of Public Prosecutions.
- The entire prosecution in the district should be under his control. In order to ensure that he is not regarded as the part of the police department, he should be an independent official."

- The Commission, however, concluded that as the head of the entire prosecuting machinery of the district, he should arrange for the prosecution of all cognizable cases through additional public prosecutors and distribute the work among them and should advise the police department and other government departments at the district level on the legal aspects of the case at any stage of criminal proceedings including the stage of investigation.
- The Commission also suggested "that the Director of Public Prosecutions should be a full time government servant and should not be allowed the right of private practice.“ The Commission has also given some guidelines for structuring such prosecuting agency at the district level.

What is the difference between a Public Prosecutor and a Private Prosecutor?

Public Prosecutor	Private Pleader
1. The function of every Public Prosecutor is **to assist the state** to ensure peace in the society and that justice is served. They do not have an interest in any party's remedy as such.	1. The function of every Private Prosecutor is to **get the remedy for his party**. He will use his knowledge to get the conviction for his party if they demand so even if there are slightest of chances.
1. A public prosecutor is required to function in a way prescribed by law and has to ensure that the procedure is being followed by the police and he has to take account of all the relevant information.	1. Private Prosecutor has to take action as per the demands of his party. He has to apply mind to get the best for his party even if it is not expressly provided in the law.
1. He is appointed by state and he represents the state and hence he is expected to be impartial.	1. He is appointed by a private party or a private organization and hence he cannot be expected to be impartial.
1. Appointed in cases of serious offences.	1. Appointed regardless of the seriousness of the offences.

- Sections 24, 25, 25-A of Code of Criminal Procedure, 1973 state about the Appointment of Public Prosecutors.
- The Directorate of Prosecution
- **Section 25-A** of CrPC was inserted by The Code of Criminal Procedure Amendment Act, 2005. In the year 1958, the Law Commission of India had recommended for a separate department of prosecution.
- Therefore appointment of the Director of Public Prosecution to control all the Prosecutors was done. It states that all State Governments will have the authority to establish a **Directorate of Prosecution** including one Director of Prosecution and multiple Deputy Directors of Prosecution if it is required.

- **The requirement** for the Director or Deputy Director of Prosecution is a **practice of at least 10 years as an advocate** and this appointment will be made in concurrence of the Chief Justice of the High Court.
- What is the duty of the Director of Prosecution?
- He acts as a **legal advisor** for the Director General and Inspector General of **Police**,
- He **supervises and monitors** the execution of prosecution in courts.
- He **advises** all the police officers in all possible legal matters,
- He improves specific cases or important aspects to take notice of during investigation or trial.

- Public Prosecutor
- **Section 24 of the Code of Criminal Procedure, 1973** states about the appointment of Public Prosecutors and additional prosecutors.
- The **District Magistrate** shall shortlist candidates by creating a **panel of names of candidates** and the State Government shall appoint from these panels only.
- District Magistrate does not have absolute powers while creating the panel. He has to consult the Sessions Judge and then finalize the panel of candidates. This is done to ensure that judiciary also plays its part in selecting and shortlisting candidates.

- The mode and method of appointment of Public Prosecutors and the Additional Public Prosecutors of the State Government are similar.

- **Section 24 (6)** of Cr. P .C states that there should be a **regular cadre of prosecuting officers** in the State. The State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor from the candidates shortlisted in that cadre prepared.
- If the government fail to choose a worthy candidate from the cadre, then there will be an appointment by the panel decided by the District Magistrate and Sessions Judge.

- Special Public Prosecutor
- **Section 24 (8)** states about Special Public Prosecutor**.** By the name and the addition of the term 'Special' indicates that the appointment of this personnel is done in **special circumstances**.
- Special Public Prosecutors are appointed in the cases that take place in CBI Courts. It is clear that as he is required in special circumstances, the qualifications of a Special Public Prosecutor should be more than any other Public Prosecutor.
- He should be **more competent and more experienced**. Therefore this provision requires the Central Government or the State Government to appoint a person who has practiced as an advocate for a period of at least **ten years**.

- Two Aspects of Section 24 (8)
- Appointment of SPP should be made in **special circumstances**.
- Person to be appointed **should be a more experienced advocate**.

Assistant Public Prosecutor

- **Section 25** of CrPC states about the appointment of Assistant Public Prosecutor in cases that take place in courts of the Magistrate. This section requires the Central Government to appoint an Assistant Public Prosecutor in every district.
- In case any Assistant Public Prosecutor is not available, the District Magistrate can appoint any person to be the Assistant Public Prosecutor.

- As this appointment is made in the levels of courts of Magistrate, there are no such criteria for being appointed as an Assistant Public Prosecutor as he is not appointed on a permanent basis and is called upon for a particular case.
- Appointment of Assistant Public Prosecutor is the duty of the subordinate departments of State Government Service Commissions formed in every state regulates several examinations for the selection of candidates for the position of Assistant Public Prosecutor.
- Eligibility for this examination is a law degree along with some notable experience as an advocate registered at the bar.
- Assistant Public Prosecutor is barred from doing any private practice as they are full-time government employees. They mainly operate in the courts of Magistrate and give legal advice to the Police officers.

- Directorate of Prosecution as specified in Section 25A of CrPC, 1973 regulate all the Public Prosecutors, Additional Public Prosecutors and Assistant Public Prosecutors.

Conclusion

- Prosecutors have a very imminent role in India who ensure that justice is served and hence prevent the rise of crimes that take place in society.
- The role of Prosecutor is all throughout a trial whether it is pre-trial, during the trial or post-trial phases. They are the representatives of the public in the court of law and they need to honour the administration of justice.
- Prosecuting agencies along with the Criminal Justice system of our country should be encouraged and strengthened in order to maintain law, order and peace in the society.

- Sec 24 : Public Prosecutors :
- (1) For every High court, the Central Government or the state Government shall, after consultation with High Court , appoint a public prosecutor and may also appoint one or more Additional Public prosecutors, for Conducting in such Court, any prosecution , appeal or other proceeding on behalf of the Central Government or state Government, as the case may be.
- (2) The Central Government may appoint one or more Public prosecutors for the purpose of conducting any case or class of cases in any district, or local area.
- (3) For every district , the state Government shall appoint a public Prosecutor and may also appoint one or more additional Public prosecutor for the district.

- (4) The district Magistrate shall, in consultation with the sessions judge, prepare a panel of names of persons, who are , in his opinion fit to be appointed as public prosecutors or Additional public prosecutors for the district.
- (5) No person shall be appointed by the state Government as the public prosecutor or Additional Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub section (4) .
- (6) Notwithstanding anything contained in subsection (5) , where in a state there exists a regular cadre of prosecuting officers, , the state Government shall appoint a Public prosecutor or and an Additional public prosecutor only from among the persons constituting such cadre.

- (7) A person shall be eligible to be appointed as a public prosecutor or an Additional Public prosecutor under subsection (1) or subsection (2) or sub section (3) or sub section (6) , only if he has been in practice as an Advocate for not less than seven years.
- (8) The Central Government or the state Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a special public prosecutor .
- Provided that the court may permit the victim to engage an advocate of his choice to assist the prosecution under this subsection.

- (9) For the purpose of sub section (7) and (8) , the period during which a person has been in practice as a pleader, or has rendered service as a public prosecutor or as an Additional public prosecutor , by whatever name called , shall be deemed to be the period during which such person has been in practice as and advocate.
- COMMENT
- The main object of a of a criminal trial being investigation of the offence and determination of the guilt or innocence of the accused, the public prosecutor as representative of the state, and not of the police, is expected to discharge his duties fairly and fearlessly .

- PROSECUTORS AND POLICE
- **Why Indian justice system needs prosecutors to work with police during probe**
- A prosecutor is forced to proceed even if they believe the evidence collected by the police isn't sufficient. This hampers their ability to take the case to its logical end.
- In September 2021, a division bench of the Kerala High Court was hearing an appeal against the conviction of a man who had allegedly murdered a taxi driver and robbed him of his vehicle.
- The court found that the prosecution had failed to establish even the existence of the vehicle

- . In another case, the prosecutor failed to prove that the girl child who had been raped for a year by a temple priest was a minor, which made the court acquit the man of charges under the Protection of Children from Sexual Offences Act, 2012 while sentencing him to life imprisonment under Section 376(1) of the Indian Penal Code.
- Alarmed by the inability of the prosecutors to prove foundational evidence in criminal trials, the Kerala High Court registered a *suo moto* case to monitor the measures taken by the state government in appointing able and competent prosecutors in trial courts across Kerala.
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- This is not the first instance of prosecutorial incompetence to come under a court's scanner. In a bid to avoid such lapses, the Supreme Court had in 2014 directed home department of every state government to conduct training programmes for prosecutors.
- Most states do follow this guideline, but acquittals due to prosecution's failure of submitting relevant evidence continue to be a recurring theme in trial and appellate court judgments.
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- To address this issue, employing measures to appoint competent prosecutors and training them alone may not be enough. A prosecutor's ability to take a case to its logical end is severely compromised as they play virtually no role at the pre-trial stage. Consequently, even a competent prosecutor is often not informed enough to conduct an effective prosecution.
-

Prosecutors must play a prominent role at pre-trial stage

- Pre-trial stage refers to the period before an accused is formally charged with an offence. This involves collecting evidence, recording witness statements and deciding whether the accused should be charged at the end of the investigation.

- The police conduct the entire investigation and present it in the form of a charge sheet before the magistrate. This charge sheet also includes the police's decision on whether the accused should be prosecuted.

- The decision on sending the case for trial, however, rests with the magistrate. In this specified pre-trial procedure, the law contemplates no role for the prosecutor. Although a prosecutor does appear for the State in court at the pre-trial stage, in practice, they merely reiterate the police's stance and do not independently examine the case.

- Since the decision to prosecute rests solely with the police, a prosecutor has to proceed with the prosecution even if they believe the evidence collected by the police is not sufficient.

- This leads to a wastage of judicial time and resources as the court is often forced to try cases with insufficient investigation or fatal procedural lapses.
- To avoid this, prosecutors must at least play an advisory role during the investigation and guide the police in collecting relevant and important evidence.
- It is the prosecutor who has to conduct the prosecution and therefore they must have a say in gathering the material that will eventually be used in court.

- For example, a prosecutor may give timely advice on collecting sufficient evidence in a POCSO case to prove if the child is minor during the investigation itself so that this foundational aspect does not become a hindrance later on in the trial.
- **Better coordination between investigators and prosecutors**
- Communication between the police and prosecutors is vital in ensuring efficient prosecution. Lack of coordination during investigation has been cited as a reason for procedural lapses and failure to collect relevant evidence

- . This, in turn, directly affects the quality of prosecution. To add to that, prosecutors in India are categorized on the basis of the court in which they conduct prosecution.
- A prosecutor is attached to a court and not to a case. This poses a significant challenge to achieving effective communication between police and prosecutors.
- For example, once an accused is arrested for murder, they are presented before the magistrate to determine the issue of custody. The magistrate continues to monitor the case until the investigation is over.

- At this stage, the prosecution is represented by the assistant public prosecutor who practices in magisterial courts.
- Once the investigation is over and the magistrate forms an opinion that there is sufficient evidence to proceed with, the case is sent to the sessions court for trial.
- At this stage, the trial is conducted by the additional public prosecutor who practices in the sessions court. If an appeal is filed, the prosecution is conducted by a prosecutor appointed to represent the State in the high court.

- Hence, when the investigation is underway, the prosecution is represented by a counsel who does not eventually conduct the trial in court.
- On the other hand, the prosecutor who does conduct the trial and has to prove the case against the accused by tendering sufficient evidence, plays no role when such evidence is collected during the investigation.
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The way forward

- The debate concerning prosecutors has largely revolved around separating the institution of the police and prosecutors.

- This jurisprudence was developed to ensure that the police does not have an undue influence on prosecution of cases and that the two institutions are not pigeon holed so as to adversely affect the course of justice.
- The time has now come to push the conversation forward towards a collaborative functioning and ensure that the criminal justice system not only has a competent but also a more involved prosecutor.

- Withdrawal From Prosecution Under Section 321 CrPc.
- In the criminal justice system, an offence done by a person is never against any particular individual or victim but against the whole society (state).
- Therefore, the state itself is a party in Criminal matters. The prosecution of criminal cases is conducted by the Public Prosecutor on behalf of the State.
- In Indian Criminal Justice System there is various law that provides a procedural aspect of a criminal trial, the CrPC is one and most important of them.

Once a prosecution is launched, its relentless course cannot be halted except on sound considerations germane (relevant)to public justice.

The above line contains within itself the principle on basis of which a Public prosecutor proceeds to apply for withdrawal from prosecution.

- This principle lies entrenched in the section 321 of Criminal Procedure Code of 1973.
- Since the State is responsible for prosecuting the offender in criminal justice system, the Public Prosecutor who acts as a representative of the government in the court and as an officer of the court assumes prime importance in justice delivery.
- Under s. 321, the Public prosecutor is empowered to withdraw from prosecution after consent of the court at any stage before the judgment is pronounced.

- Understanding Section 321
- Section 321 of Criminal Procedure Code, 1973 deals with the aspect of withdrawal from prosecution by the Public Prosecutor.
- Section 321 of the Cr.P.C., 1973 reads as follows:
- 321. Withdrawal from prosecution.-
- The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,.

- If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

- If it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:
  Provided that where such offence-
- (i) was against any law relating to a matter to which the executive power of the Union extends, or
  (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

- (iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or
  (iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and
- the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.
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- The Legislative Intent behind the section
- Any crime is said to be committed not against just the individual but the entire society.
- Since the entire society is injured by the act of the accused and since the entire society cannot practically sue the accused person, the State arrogates the power and responsibility to initiate prosecution against the offender.
- It is not the case that the private individual cannot initiate a prosecution or that he or she cannot be represented by counsel of his or her choice, but such counsel will be supervised by the public prosecutor.
- Thus, generally the Public Prosecutor or the Assistant Public prosecutor is the authority responsible to conduct the case against the accused in the court of law.

- There may be some occasions in which the Public prosecutor does not find enough evidence to further the prosecution case against the accused or that he or she realizes that furthering the prosecution case will lead to negating the prosecution evidence or that furthering the prosecution may not be in the interest of public justice, peace or tranquility.
- The legislature provided the leeway (liberty)to the public prosecutor and thus the state government to end such cases furthering which the larger public interest may be compromised.
- Thus, the section 321 provides discretion to the Public Prosecutor to withdraw from prosecution, with the consent of the court, in such cases wherein he or she thinks such withdrawal will lead to larger public interest being served.

- Discharge and Acquittal when ordered?
- According to clause (a) of s. 321, if the application for withdrawal from prosecution is made before charges are framed and the court consents to such application, then the accused is discharged in respect of the offences he or she was charged with.

  According to clause (b) of s. 321, if the application for withdrawal from prosecution is made after the charges have been farmed and the court consents to the application, then the accused is acquitted in respect of the offences he or she was charged with.

- Who Can Withdraw?
- According to the section 321, only the public prosecutor or the assistant public prosecutor who is in charge of a particular case can apply for withdrawal from prosecution in the respective case.
- Also, a public prosecutor cannot apply for withdrawal from prosecution in case of private complainant.
- Although, the section provides no grounds on which withdrawal from prosecution can be filed by the Public Prosecutor, the essential inherent condition read into the section by the Supreme Court is that withdrawal should be in the interest of administration of justice

- . It is the responsibility of the respective court, in which the withdrawal application has been filed, to scrutinize the reasons behind the withdrawal and check that withdrawal is not sought on reasons extraneous or against the interest of justice.
- Furthermore, it is the duty of the court to see that the Public prosecutor actually applies his or her free mind and not just act as mere mechanical agent of the State government.
- The courts in various cases have burdened the public prosecutors with enormous responsibility to apply their own free mind and even go against the opinion of the State government if need be.

- However, the reality is convoluted (difficult to follow). The section envisages free application of mind of the concerned public prosecutor without intervention from any government except when explicitly required in law.
- On the other hand, the Supreme Court itself conceded to the point in **Sheonandan Paswan v State of Bihar** that the Public Prosecutor is appointed by the State Government and enjoys office on pleasure of government, thus, being more of an agent of the government than an independent officer of the court.
- This observation of the Supreme Court is very close to reality indeed.

- The courts have interpreted the entire situation as follows:
- The State government can give instructions or opinions to the Public Prosecutor in regards to withdrawal of a case on ground of policy, public justice, vexatious prosecution, etc.,
- But the Public Prosecutor has to apply his free mind on to the recommendation of State government and then may decide on reasons to either withdraw from prosecution or continue.
- If he decides to withdraw, then he must give reasons to the court and prove that he applied his free mind on to the pertinent case.
- On the other hand, if he decides to continue with the prosecution then he is not left with any other option but to resign from his post.

- Thus, the aspect of free application of mind by the public prosecutor on withdrawal from criminal prosecution is contentious and bristled with practical problems.
- The literal connotation that public prosecutor or the assistant public prosecutor is responsible for bringing out the application for withdrawal from the prosecution seems to be quite distant from the reality wherein the State government have indeed acquired a central role in determining the fate of the withdrawal from prosecution process.

- The answer to question, **who can withdraw?** is certainly the Public Prosecutor or the Assistant Public Prosecutor in-charge of the case, but, in actual reality this power is often used by the State government due to the relationship of Agent and Principal between the Public Prosecutor and the State.
- Discretion of Public Prosecutor
- The public prosecutor is, under the section, endowed with unfettered discretion in deciding what cases to be applied for withdrawal. Nonetheless, such discretion is not unreviewable and, as provided in the section itself, is subject to courts supervisory function.

- In the case of **M.N. Sankarayarayanan Nair v P.V. Balakrishnan**, the Supreme Court tried to outline the guideline in regard to which the public prosecutor can exercise his or her discretion.
- The court observed that the discretion is guided by the implicit requirement that the withdrawal should be in the interest of administration of justice.
- Such may include that prosecution is unable to collect enough evidence to sustain charges on accused, or that withdrawal is necessary for controlling law and order situation, or for maintenance of public peace and tranquility etc.

- The Supreme Court in **Rajender Kumar Jain v State**, observed that in cases when going ahead with prosecution causes or threatens to cause violence, mass agitations, communal violence, student unrests etc.,
- It is okay and in the interests of public for the public prosecutor to withdraw from prosecution in such particular cases.
- The court further observed that when deciding between going forward with prosecution and withdrawing from prosecution in cases which threaten the peace of public, the state government is right in withdrawing from the prosecution.

- What exactly constitutes public interest?
- The condition that public prosecutor can seek withdrawal from prosecution on basis of securing greater public interest has proven to be vague and the executive has numerous times misused this vagueness around this condition for securing its self-serving political interests.
- Although an exhaustive definition for public interest is difficult to prepare, the courts have determined the decision of executive on the scale of public interest in light of the facts and circumstances of cases.

- For instance, in **State of U.P. v III Additional District & Sessions Judge** , the state government sought to withdraw from prosecution against an infamous lower caste woman dacoit, Phoolan Devi, who committed various crimes like murder, dacoity, etc., against some higher caste people just to treat them a lesson so that they do not commit atrocities against lower caste people.
- The Public prosecutor in charge sought to withdraw giving reason that the accused was forced into such crimes due to the various atrocities committed upon her by the higher caste people.

- However, the court reasoned that there is no service to the public interest in withdrawing from prosecution in particular case and rather such withdrawal might lead to caste based wars wherein every person would think himself or herself to take revenge of any atrocities committed by another without taking recourse to lawful authorities creating chaos and utter savageness.

- **Role of State government in cases when larger public interest is involved**

  Although, as has been established in various Supreme Court cases that it is the public prosecutor who is solely responsible for deciding whether to file and for filing applications for withdrawal from prosecution, the Supreme Court in Rajender Kumar Jain v State held that in cases where large and sensitive issues of public policy and interest are at stake, the public prosecutor ought to take advice from the State government because the public prosecutor does not have the requisite source of information and resource to determine the matter effectively.

- **Conclusion**

  Withdrawal from prosecution is an important aspect of the criminal procedure in India. The Public Prosecutor or the Assistant Public Prosecutor who are considered as officers of the court and also as the agents or representatives of the state government play a key role in determining withdrawal from the prosecution.

PRE TRIAL PROCEDURE

ARREST AND QUESTIONING OF THE ACCUSED

- Arrest involves restriction of liberty of a person arrested and therefore, infringes the basic human rights of liberty. Nevertheless the Constitution of India as well as International human rights law recognizes the power of the State to arrest any person as a part of its primary role of maintaining law and order.

- An arrest is a procedure in a criminal justice system, sometimes it is also done after a court warrant for the arrest.

- Police and various other officers have powers of arrest.

- The term arrest is 'an apprehension of a person by legal authority resulting in deprivation of his liberty'.
- Supreme Court has defined the term arrest, in **State of Punjab v. Ajaib Singh (1953)**, as it appears in Article 22 of the Constitution of India- 'indicating physical restraint of a person under the authority of the law in respect of an alleged accusation or default or violation of the law.'

MEANING OF ARREST

- An **arrest** is the act of apprehending and taking a person into custody (legal protection or control), usually because the person has been suspected of or observed Of committing a crime.

- Types of Arrest
- 1. An arrest made in pursuance of a warrant issued by a Magistrate.
- 2. An arrest made without a warrant but with a legal provision permitting the detention.

- **Authorities to Arrest**
- 1. Arrests may be initiated by an officer of the Police Department,
- the Magistrate or
- 2. A private person or an ordinary citizen under some legal provision permitting such an arrest.

- The Criminal Procedure Code forbids the detention of the members of the Armed Forces for any action executed by them in the discharge of their official duties except after obtaining the consent of the Indian Government.

- According to Section 43, a private individual may conduct an arrest of another person specifically when the arrested individual commits a non-bailable offence and cognizable offences in the presence of the arresting individual.
- Section 44 states that a Magistrate, regardless of being Executive or Judicial, may conduct an arrest on a person without a warrant.
- Arrest by a Police Officer can be performed without a warrant only when the said person conducts a cognizable offence.
- Cognizable offences include criminal activities that are of more serious nature as compared to non-cognizable offences. Cognizable offences include criminal activities such as murder, kidnapping, theft etc.

- **Arrest without Warrant**
- Section 41 enumerates the different categories of cases in which an officer of the Police Department may arrest an individual without an order from a Magistrate and a warrant.
- These include the following.
- A person who has been concerned with and in any cognizable offence or against whom a reasonable complaint has been filed, or credible information has been received, or a reasonable suspicion surrounds the person, of his having been so concerned.
- A person who has an item in his possession without any lawful excuse, the burden of proving which excuse shall lie on such a person, any implement of housebreaking.

- A person who has been proclaimed as an offender either under the Code or by order of the State Government.
- A person who is in possession of anything that may reasonably be suspected to be stolen property and a person who may be reasonably be suspected of having committed an offence with a reference of such a thing.
- A person who obstructs the functioning of a police officer while in the execution of his duty, or who have escaped, or attempts to escape, from lawful custody.
- An individual who is reasonably suspected of being a deserter from any of the Armed Forces of the Union.

- A person who has been involved in, or against whom a reasonable complaint has been made, or
- credible information has been obtained, or
- a reasonable suspicion exists,
- of his having been involved in, any act committed at any country or a place out of India which, if done in India, would have been considered and punishable as an offence, and for which he is, under any law concerned to extradition, or otherwise, liable to be apprehended or detained in custody in India.

- A person who was a released convict and commits a breach of any rule, relating to the notification of the residence or change of or absence from the place of residence.
- A person for whose arrest any requisition,
- regardless of being written or oral,
- has been received from another officer, provided that the order specifies the individual to be arrested and the crime or other causes for which the detainment is to be done,
- and it appears therefrom that the individual might lawfully be arrested without a warrant by the officer who issued the requisition.

- **Section 42: Arrest for refusal to give name and residence**
- If any individual who is accused of committing a non-cognizable offence does not provide his name, residence or instead provides a name and residence which the police officer feels to be false, he may be taken into custody.
- However, such a person cannot be held or detained beyond 24 hours if his actual name and address cannot be ascertained or fails to execute a bond or furnish sufficient sureties.
- In such an event, he shall be forwarded to the nearest Magistrate having jurisdiction.

- **Section 43: Arrest by a private person**
- A private individual may conduct an arrest or cause to be arrested by any individual who in his presence commits a cognizable or a non-bailable offence or who is a proclaimed offender. This right of arrest arises under the Common Law which applies to India Ramaswamy Aiyar (1921) 44 Mad. 913.
- **Section 44: Arrest by Magistrate**
- As stated in Section 44 clause (1) of the Criminal Procedure Code, the Magistrate has been given the power to arrest an individual who has committed an offence in his presence and also commit him to custody.

- Under Clause 2 of the Code, the Magistrate has the power to arrest a person for which he is competent and has also been authorised to issue a warrant.
- However, Section 45 of the Code protects the members of the Armed Forces from an arrest where they execute an action in the discharge of their official duties. They could be arrested only after obtaining the consent of the Central Government.

- **Section 46: Making an Arrest**
- Section 46 of the Criminal Procedure Code enlightens the mode in which and how arrests are to be made, i.e., with or without a warrant. While making an arrest, the police officer or authority of power should touch or confine the body of the person to be arrested only after submission to custody by words or action has taken place.
- When an officer of the police department arrests an individual with a warrant of arrest obtained from the Magistrate, the person who is being detained shall not be handcuffed unless the officer has received orders from the Magistrate in this regard.

- Memo of Arrest Prepared by police officer arresting the accused .
- 1.Name of the person being arrested.
  2. Name of the officer arresting.
- 3. Date and Time of arrest.
  4. Charge of arrest .
  5. Place where such arrest is made
  6. Counter signed by 3 witnesses – One relative, One eminent local and the person being arrested.

- Prohibition of Handcuffing
- 1. sunil Batra vs Delhi administration.
- 2. Prem shankar shukla vs Delhi administration.

The individual making an arrest may use all means required to complete the arrest if the individual to be arrested resists or attempts to evade the situation.

For the purpose of arresting without a warrant, a police officer may pursue such an individual into any place in India as stated under Section 48.

Section 49 of the Code says that the arrested person shall not be subject to any unnecessary restraint or physical inconvenience unless it is required to do so to prevent his escape.

- **Rights of Arrested Individuals**
- An arrest of an individual is made to ensure his presence at a trial scheduled in connection with the offences to which the person is directly or indirectly involved or to prevent the commission of a criminal offence.
- It is the principle to treat an individual with the presumption that he is innocent until proven guilty.
- Therefore, persons who are being arrested have individual rights that are mention under the Criminal Procedure Code, and they are as follows.

- **Section 50: Right to be informed**
- It is the fundamental right of a person to be informed of the actions that are to be made against him.
- A police officer has to inform the individual and also inform the person if the offence falls under the bailable or non-bailable category.
- Usually, bailable offences are those offences where bail may be granted, and it is the right of an individual to be granted bail. On the other hand, non-bailable offences are situations when bails cannot be issued and to do so is in the sole discretion of the court.

- **Section 75: Right to see an arrest warrant**
- In situations of non-cognizable cases, an arrest is to be made with an arrest warrant, and the individual who is to be arrested has every right to see the warrant as stated in Section 75 of the Criminal Procedure Code.
- The warrant must check specific requirements such as that the warrant must be in writing, signed by a presiding officer, sealed by the court, name and address of the accused and the offence under which the arrest is being made.
- A warrant is termed illegal if any of these requirements fall short.

- Other Rights :
- GUIDELINES LAID DOWN BY THE HON'BLE SUPREME COURT IN D.K. BASU CASE
- The Hon'ble Supreme Court, in D.K.Basu Vs 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 hereunder:
- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations.
- The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register

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

- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names land particulars of the police officials in whose custody the arrestee is.

- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time.
- The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- (10) 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.

- **Guidelines on Arrest of Women & Judicial Officers**
- Chapter V of Criminal Procedure Code,1973 deals with "Arrest of persons". To know about guidelines to be followed before arrest, it is essential to refer the ruling Joginder Kumar vs State of Utter Pradesh.
- To know more as to guidelines during arrest, it is necessary to refer the decison D.K.Basu vs State of West Bengal.
- Further, to know about guidelines after arrest, it is essential to refer the ruling
- Sunil Batra vs Delhi Administration,
- Prem Shankar Shukla vs Delhi Administration.
- Arnesh kumar v/s state of Bihar.

- **Joginder Kumar Guidelines:** Related to arrest of a person
- SC held that
  - Arrests should not be done in every case, disclosing a cognizable offence.
- An arrest cannot be made merely because it is lawful for a Police officer to do so.
- An arrest cannot be made on a routine manner on a mere allegation of an offence
- Arrest should be made only when the complaint would be found genuine after some investigation & research

- Arnesh Kumar' Guidelines For Arrest Applicable To Offences Punishable With Less Than 7 Yrs Imprisonment:
- ***Arnesh Kumar vs State of Bihar (2014)*** is a landmark judgement of the Indian Supreme Court stating arrests should be an exception, in cases where the punishment is less than seven years of imprisonment.
- The guidelines asked the police to determine whether an arrest was necessary under the provisions of Section 41 of the Criminal Procedure Code (CrPC).

- Police officers have a responsibility to guarantee that the principles established by the Supreme Court in its numerous decisions are followed by the investigating officers.
- A notice under sec 41A is to be given to the accused to present themselves before the investigation officer and cooperate with the investigation. If the accused does not cooperate with the investigation , then only he can be arrested.
- Legal proceedings can be initiated against the police officials if the procedure for arrest under Section 41A CrPC and Arnesh Kumar Guidelines are violated .

- **Article 22:**
- It deals with the protection against arrest and detention in certain cases.
- This article is applicable to both citizens and non-citizens.
- This provision extends certain procedural safeguards for individuals in case of an arrest.
- The idea behind this right is to prevent arbitrary arrests and detention.
- The article provides the following safeguards:

- Article 22(1) – Any person who is in custody has to be informed as to why he has been arrested. Further, he cannot be denied the right to consult an advocate.

- Article 22(2) – The arrested individual should be produced before a judicial magistrate within 24 hours of his arrest.

- Article 22(3) – Nothing in clauses (1) and (2) shall apply
- (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention

- **The following guidelines should be followed on Arrest of Women:**

  According to National Human Rights Commission guidelines on arrest, As far as practicable, women police officers should be associated where women are arrested. That too, arrest of women between sunset or sunrise should be avoided.

  According to S. 51(2) when it is necessary to cause a female to be searched, the search shall be by another female with strict regard to decency. Body searches of females should only be carried out by women and with strict regard to decency.

- The Hon'ble Supreme Court in Sheela Barse vs St. of Maharastra, it was held that It is the duty of the police officer making arrest to see that arrested females are segregated from men and kept in female lock-up in the police station.
- In case there is no separate lock–up, women should be kept in a separate room.
- According to Proviso, Section 160(1) Code of Criminal Procedure, 1973, Women should not be called to the police station or to any place other than their place of residence for questioning in as much as it says that no male person under the age of fifteen or woman shall be required to attend at any place other than the place in which such male person or woman resides.

- Women should be guarded by female constables/police officers. They must be questioned in the presence of policewomen.
- All necessary pre-natal and post-natal care should be provided to females who are arrested. Restraints should only be used on pregnant women as a last resort. Their safety or the safety of their foetus should never be put at risk. Women must never be restrained during labour.
- Medical examination of women should be carried only under the supervision of female medical practitioners.

- Guidelines for arrest of Judicial officers :
- The Following guidelines are laid down by the Hon'ble Supreme Court in its judgment in Delhi Judicial Service Association, Tis Hazari Court, Delhi vs State of Gujarat and others.

- *In this ruling, the Apex Court held that in view of' the paramount necessity of preserving the independence of judiciary and at the same time ensuring that infractions of law are' properly investigated the following guidelines are to be followed :*

- (a) If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

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- (b) If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.

- (c) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

  (d) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District & Sessions Judge of the concerned District, if available.

- e) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisors and Judicial Officers, including the District & Sessions Judge.

  (f) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical test be conducted except in the presence of the Legal Advisor of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

- (g) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be over- powered and handcuffed.

- In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court.
- But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and
- If it be established that the physical arrest and hand-cuffing of the Judicial Officer was unjustified, the Police Officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily deter mined by the High Court.

- It was further held that these guidelines are not exhaustive but are the minimum safeguards to be observed in case of arrest of a Judicial Officer.
- These should be implemented by the State Governments as well as by the High Courts. No judicial officer should visit a Police Station on his own except in connection with his official and judicial duties and functions, and this also with prior intimation to the District and Sessions Judge.

- THE EVIDENTIARY VALUE OF STATEMENTS / ARTICLES SEIZED /COLLECTED BY THE POLICE.
- A statement is a written document made and signed by a witness, telling police what they know about a crime.
- Evidentiary is something constituting evidence or having the quality of evidence and something that relates to the evidence in a particular case.

- sec. 162 : Evidentiary value of statement, recorded by the police in the course of investigation under section 161 Cr.P.C.:
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- Every statement recorded by police officer during investigation is neither given on oath nor is tested by cross-examination.
- According to the law of evidence the facts stated therein are not considered as substantive evidence.
- But if the person making the statement is called as a witness at the time of trial, his former statements, according to the normal rules of evidence, could be used for corroborating his testimony in court or for showing how his former statement was inconsistent with his deposition in court with a view to discredit him.

- Section 162 of the Cr.P.C. prohibits the use of the statements made to the police during the course of the investigation for the purpose of corroboration.
- It is based on the assumption that the police cannot be trusted for recording the statements correctly and that the statements cannot be relied upon by the prosecution for the corroboration of their witnesses as the statements recorded might be of self serving nature.
- There is not a total ban on the use of the statements made to police officers.

- The defence is not deprived of an opportunity to discover what a particular witness said at the earliest opportunity. In **Khatri vs. State of Bihar (1983)** the Court has observed that the object of the section 162 Cr.P.C is to protect the accused both against overzealous police officers and untruthful witnesses.
- In the case of **State of U.P. V. M.K.Anthony 1985**, it has been ruled by the Supreme Court that S.162 does not provide that evidence of a witness in the court becomes inadmissible if it is established that the statement of the witness recorded during investigation was signed by him at the instance of the police officer.

- The bar created by S.162 Cr.P.C. in respect of the use of any statement recorded by the police during the course of investigation is applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.
- If any such statement is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of s.162 would not be attracted.

- Section 162 of Cr.P.C is enacted for the protection of the accused. The bar created by S.162 has no application in a civil proceeding or in a proceeding under Art.32 or 226 of the constitution. It has also no application under s.452 of the code for disposal of property.

- It is immaterial whether the statement recorded under S.161 Cr.P.C. amounted to a confession or admission.
- The statements falling under s.32(1) and s.27 of the Evidence Act are exceptions to this rule. A dying declaration recorded by a police officer during the course of investigation becomes relevant under s.32 of the Evidence Act in view of the exemption provided by s.162(2).

- **Any part of such statement which has been reduced to writing may in certain limited circumstances be used to contradict the witness who made it. The limitations are:** Only the statement of a prosecution witness can be used;
- Only if it has been reduced to writing;
- Any part of the statement recorded can be used; such part must be duly proved;
- It must be a contradiction of the evidence of the witness in Courts;
- It can be used only after the attention of the witness has been drawn to it or to those parts of it which it is intended to use for the purpose of contradiction.

- The restrictions on the use of previous statements of witnesses imposed by Section 162 of the Code are confined in their scope to the use by the parties to the proceedings of such statement.
- However, the Court while examining a person as a Court witness under Section 311 of the Code or asking any question of any witness under Section 165 of the Evidence Act, may make use of the previous statement of such a witness and the restrictions put by Section 162 of the Code on the use of previous statements are not applicable in such a case.

- Evidentiary value of statements made during the period of investigation but not during the course of investigation:
- The restrictions imposed on the use of statements before police officer applicable only to such statements as are made to the police officer during the course of investigation.
- The words in the course of imply that the statement must be made as a step in a pending investigation.
- Any other statement, though made during the time investigations were going on, is not hit by the prohibitory rule of Section 162 of the Code of Criminal Procedure.
- Therefore, such a statement can be used for corroborating or contradicting purposes according to the normal rules of evidence contained in Sections 157 and 145 of the Evidence Act.

- In **Baleshwar Rai v. State of Bihar (1962)**, it has been held that it was admissible as an admission as to the motive of the accused under Section 21 of the Evidence Act, when an anonymous letter was written by the accused to the police officer complaining about the act of a Chowkidar, who was ultimately murdered by the accused.

- Evidentiary value of Confession:
- Confession is not defined in the Act. Confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.
- A confession may occur in many forms. When it is made to the court itself then it will be called judicial confession and when it is made to anybody outside the court, in that case it will be called extra-judicial confession.
- It may even consist of conversation to oneself, which may be produced in evidence if overheard by another.

- In **Sahoo v. State of U.P. (1966)** the accused who was charged with the murder of his daughter-in-law with whom he was always quarrelling was seen on the day of the murder going out of the home, saying words to the effect:
- **I have finished her and with her the daily quarrels.** The statement was held to be a confession relevant in evidence, for it is not necessary for the relevancy of a confession that it should be communicated to some other person.

- Section 164 of Cr.P.C. empowers any Metropolitan or Judicial Magistrate whether or not he has jurisdiction in the case to record any confession or statement of a person made in the course of investigation by the police, or (when the investigation has been concluded) at any time afterwards but before the commencement of the inquiry or trial.
- It applies only to the statements recorded in the investigation under Chapter 12 and is limited to the period before the inquiry or trial.

- The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound 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.

  A confession to the police officer is the confession made by the accused while in the custody of a police officer and never relevant and can never be proved under Section 25 and 26 of IEA.

- Now as for the judicial confession and confession made by the accused to some magistrate to whom he has been sent by the police for the purpose during the investigation, they are admissible only when they are made voluntarily.
- If the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority and sufficient in opinion of the court to give the accused person grounds,

- which would appear to him reasonable for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him, it will not be relevant and it cannot be proved against the person making the statement as per section 24 of the Act.
- A confessional statement made by the accused before a magistrate is a good evidence and accused be convicted on the basis of it but a confession made to a police officer is not an admissible evidence in the Court of law.

- Evidentiary value of dying declaration:
- **Sham Shankar Kankaria vs. State of Maharashtra (2006)** is a case where the basis of conviction of the accused is the dying declaration.
- The Apex court in this case held that The situation in which a person is on death bed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement.
- It is for this reason the requirements of oath and cross-examination are dispensed with.

- Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.
- Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination.
- Such a power is essential for eliciting the truth as an obligation of oath could be.

- This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness.
- The court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or a product of imagination.
- The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration

- . It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- The dying declaration must be made by the deceased only. In the case of **Suchand Pal vs. Phani Pal** (2004) the SC held that the declaration made by the deceased cannot be called dying declaration because it was not voluntary and answers were not given by her, it was her husband who was answering.

- Evidentiary value of articles seized:
- The police also conduct search and seizures. The search and seizures should not be unreasonable.
- They may be conducted by police with or without a warrant. In case a search is conducted on a warrant issued by a Magistrate it must invariably, contain the following details: The information as to the statement of facts showing probable cause that a crime has been committed.
- A specification of a place or places to be searched.
- A reasonable time limit within which it may be conducted.

- The police can also conduct a search without warrant when it is incidental to be a lawful arrest or where the object of search is a mobile vehicle which can quickly be removed out of police jurisdiction or when the accused has consented to it.
- The burden of proving the consent, however lies upon the prosecution.
- The legal provisions relating to search and seizures are so framed so as to maintain a balance between the security of persons on the one hand and the protection to police in discharging its duty properly on the other.

- Thus during the course of investigation the police is empowered to make search, order production of documents, seize any suspicious property, call witnesses, require them to attend court and arrest persons suspected or having committed crime, without warrant.
- After the investigation a police report is prepared upon which proceedings are instituted before a Magistrate. The law requires that every investigation should be completed without undue delay.

- As soon as any property is seized, the Investigating Officer should hand over the property along with a copy of the seizure memo to the Officer-in-charge of the Malkhana who will make an entry in the Malkhana Sub-Module or Seized Property Register.
- Record of seized property shall be maintained in the Malkhana Sub-Module of CRIMES or in the prescribed form in all the CBI Branches.

- Whenever inspection of documents kept in the Malkhana is permitted by a Court, the Law Officer-in-charge of Malkhana or the SP of the Branch should make an Officer responsible for supervising such inspection.
- Such designated Officer shall be responsible for ensuring safety of all the documents.
- All properties seized during investigation under the provisions of the Cr.P.C. should invariably be forwarded to the Court in order to obtain orders under Section 457 Cr.P.C. for their custody during the pendency of the case.

- No case property relevant to the trial should be retained by CBI after the trial of the case has commenced unless it has been so by the Court of competent jurisdiction.
- A complete file of photocopies of seizure memos should be maintained for the purpose of checking the Seized Property Register.
- Properties relating to cases recommended for suitable action may be disposed of after giving information to the Department concerned as mentioned in the chapter pertaining to the Preliminary Enquiry.

- **Conclusion:**
  The procedure as laid down in the Criminal Procedure Code that makes the statements made by a person to a police officer in the course of investigation inadmissible in the Court of Law is a commendable and applaudable step/procedural safeguard.
- If this safeguard was not installed in the Criminal Procedure Code ,then the Police in their overzealous nature would have tormented the accused inmates to extract confessions and admissions which they would without the coercion never admit to.

- So also the value given to other statements like confessions, dying declarations, F.I.R is an appreciable step. The legal provisions relating to search and seizures are so framed so as to maintain a balance between the security of persons on the one hand and the protection to police in discharging its duty properly on the other.

- Right to Counsel.
- In criminal law, the **right to counsel** means a defendant has a legal right to have the assistance of counsel (i.e., lawyers) and, if the defendant cannot afford a lawyer, requires that the government appoint one or pay the defendant's legal expenses. The right to counsel is generally regarded as a constituent of the right to a fair trial.
- **India**.
- Article 22 of the Constitution of India states that "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

- .In 2011, the Supreme Court of India ruled that a court could not decide a case without a lawyer present for the defendant, and mandated that a court must appoint a lawyer when the defendant cannot afford one.
- Public legal assistance is provided through the National Legal Services Authority and state-level legal services organizations. Courts appoint legal aid lawyers in both civil and criminal cases.
- **Australia**.
- In Australia, suspects and defendants have the right to have legal representation during investigation and trial. Australian law does not recognize a right to publicly-funded legal defense, but does recognize that in the absence of counsel the accused may not receive a fair trial as mandated by law.

- **China**
- According to Article 125 of the Constitution of the People's Republic of China and Article 11 of the Criminal Procedure Law of 1996, Chinese citizens have the right to legal counsel in court.
- The accused's right to counsel in China only comes into being once a case goes to trial. It does not exist at the investigative stage. A suspect under investigation only has the right to retain a lawyer to assist in securing bail, making procedural complaints, and seeking details from the police on the nature of the crime alleged, and not to start building a defense.

- **France**
- All criminal defendants in France enjoy right to counsel, and there is also a right to counsel in civil and administrative cases. State-funded legal aid for those facing criminal, civil, and administrative cases is available to those legally resident in France, and in some cases can be used for cases in another jurisdiction in Europe.
- **Germany**
- In Germany, it is mandatory that all defendants charged with a crime carrying a penalty of at least one year in prison have legal counsel, even if they themselves do not wish to have it, and the court will appoint a lawyer to represent a defendant who has not done so.

- **Russia**
- All criminal defendants and suspects in Russia have the right to legal assistance. A suspect has the right to a lawyer from the time they are declared a suspect in a criminal case.
- **United States**
- The Sixth Amendment to the United States Constitution provides:
- In all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defence.

- ROLE OF PROSECUTER AND JUDICIAL OFFICER IN INVESTIGATION. :
- Role Of Prosecutor:
- Public prosecutors are the representatives of the public in the court of law. They need to honour the administration of justice by prosecuting only those who need to be prosecuted.
- A Public Prosecutor is considered as the agent of the state to represent the interest of common people in the criminal justice system.
- The prosecution of the accused is the duty of the state but not individually the duty of the aggrieved party. They are appointed in almost all countries. The Public Prosecutor is appointed under Section 24 of Cr.P.C. They serve as the basic principle of Rule of Law i.e. audi alteram partem (no person shall be condemned unheard).

- Whenever any crime is committed against a group or individual, it is assumed that it has been committed against society.

It is the duty of the state to provide justice to any group of society or person who is affected by the crime. In India, it is necessary that the criminal justice system should function within the limits of the Indian Constitution.

- In investigating process:
- **The public prosecutors have the following role in investigating process:**He appears in the court and obtains arrest warrant against the accused;
- He obtains search warrants from the court for searching specific premises for collecting evidence;

- He obtains police custody remand for custodial interrogation of the accused (section 167);
- If an accused is not traceable, he initiates proceedings in the court for getting him declared a proclaimed offender (section 82) and, thereafter, for the consfiscation of his movable and immovable assets (section 83); and
- He records his advice in the police file regarding the viability/advisability of prosecution.

- Role Of Judicial Officers:
- Judicial officers, especially Magistrate, can make meaningful interventions during investigation, with a view to protect liberty and also to ensure an effective investigation.
- **In chronological order, the role of magistrate in investigation can be understood in terms of these five stages:**Stage: I Soon after the registration of FIR
- Stage: II In cases where the arrest is effected by the Investigating officer, on his production before the court and while deciding the question of the validity of arrest and need for further custody Judicial or Police.
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- Stage: III Magisterial interventions while deciding misc. applications for recording of statement(s) u/s 164 of the Cr.P.C, test identification parades, etc.
- Stage: IV Monitoring of investigation.
- Stage: V Further investigation, post-filing of police report u/s 173 of the Cr.P.C.

- Stage I
- Soon after the Registration of FIR:
- Criminal justice Administration is set into motion with the receipt of information with respect to the commission of a cognizable offence (Section 154 of the Cr.P.C).
- Section 157 Cr.P.C mandates the sending of a report to this effect to the area magistrate forthwith, to bring the matter to his scrutiny.
- This is a safeguard meant to prevent police excess, embellishments, false prosecutions and non-investigation at a crucial stage.

- A copy of the FIR is to be brought to the Magistrate empowered to take cognizance as soon as possible, and any delay can adversely affect the prosecution case at trial, if not explained adequately.
- In heinous cases, a copy of the FIR along with an endorsement is dispatched via a special messenger to the area magistrate or duty magistrate.
- As per sec 155 (2) of Cr.P.C. 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.

- Stage II
- Production of the Accused before the court for the first time:
- According to the latest amendments in the CrPC, in cases covered u/s 41(1)(b) of the CrPC,
- i.e where the case relates to offence punishable with imprisonment of 7 years or less, arrest can be made by the police only on satisfaction (recorded in writing) to the effect that, the arrest is imperative for:
- prevention of further offences;
- proper investigation of the offence;
- prevention of tampering or disappearance of evidence;
- prevention of any undue influence/threat to the complainant or witnesses;
- ensuring his presence in the court
- The recording of these reasons is a condition precedent for arrest.

- **Magisterial check on police powers of arrest:** The sufficiency of reasons for arrest recorded by the police officer is to be examined by magistrates and not to be accepted at the mere ipse dixit of the police.
- After examining the validity of the arrest, the next point of inquiry is: whether there are grounds to keep the accused in detention or whether he can be released on bail, or otherwise discharged.
- The Supreme Court recently in Arnesh Kumar vs. State of Bihar (2014) has ruled that decision to detain & remand is not a mechanical act and a remand order has to be a reasoned order and should reflect due application of mind. Mere mechanical reproduction of above elements in remand application is also to be deprecated. (Disapproval).

- **Safeguards relating to arrest:**
  The magistrate is also under an obligation to peruse the Arrest Memo/Medical examination report of the accused to rule out cases of police torture as well as the victim to preserve crucial medical evidence.
- It is also incumbent on the Magistrate to ensure production of the accused before itself within 24 hours of arrest as per sec 57 of Cr.P.C. and communication of information to relatives/friends about his arrest as per Sec 50 of Cr.P.C.

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- In the case of **Youth Bar association of India vs. Union of India and others** (2016) the Apex Court held that the Magistrate is to also ensure that the copy of the FIR is uploaded on the Internet, forthwith, except of course, in cases where the matter is sensitive in nature, or issues of privacy are involved.
- **Fair trial to accused:- Co-relative duties of Magistrate:** It is well settled today that the accused has fundamental right to know the grounds of his arrest, right to legal aid in case he is indigent, right to consult his lawyer and such other rights guaranteed by Constitution and equivalent safeguards incorporated in CrPC.

- Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest and no one shall be detained in custody beyond the said period without the authority of a magistrate.
- The magistrate can pass order of remand to authorise the detention of the accused in such custody as such magistrate thinks fit, for a term not exceeding 15 days in the whole.

- The fundamental rights will remain mere promise if Magistrates do not ensure compliance of the same.

- Hence, magistrates have been given the fundamental duty under amended section 50A of the Criminal Procedure to satisfy that the police has informed the arrested person of his rights and made an entry of the fact in book to be maintained in the police station.

- There have been frequent complaints about the police's noncompliance of the above mentioned requirements.
- The magistrates are empowered under section 97 to issue search warrant which is in the nature of a writ of habeas corpus for rescue of a wrongfully confined person by intervention of police directed by a magisterial order.
- If magistrate has reason to believe that any person is confined under circumstances that amounts to an offence, he may issue a search warrant and person if found shall be immediately taken before a magistrate.

- In **Sheela Barse vs State of Maharashtra** (1983), it was held by the Hon'ble Supreme Court that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of section 54.
- In this case, High court directed magistrates to ask the arrested person as to whether he has any complaint of torture or maltreatment in police custody.
- Further, in **Hussainara Khatoon and others vs. Home secretary, State of Bihar (1979)** it was held that it is the duty of the magistrate to inform the accused that he has a right to be released on bail on expiry of statutory period of 90 or 60 days as the case may be.
  Suffice is to say that magistrates are the best persons to oversee that the accused is not denied his rights.

- STAGE III Magisterial interventions while deciding applications for recording of statement u/s 164 of the Cr.P.C/Test Identification Parade, and the like:
- Recording of Statements of the witnesses is a vital part of the investigation. Statements recorded by the Police Officers during investigation are inadmissible in evidence, except in limited cases where it can either be used as a Dying Declaration or only insofar as it leads to a recovery. These statements, however, can be used for contradiction and cross examination of the prosecution witnesses, at the time of trial.

  Section 164 of Cr.P.C. allows recording of statement of witnesses & confessions by the magistrate. The statement of witnesses under this section is recorded on oath. Section 164 empowers magistrate to record even when he has no jurisdiction in the case.

- **Before recording any such confession, the magistrate is required to explain to the person making confession that:**
  He is not bound to make such a confession
- If he does so it may be used as evidence against him
- Confessions and dying declarations recorded by magistrate constitute valuable evidence as they may form the basis of conviction of the accused. Although there is no hard and fast rule as to proper manner of recording the same, the Magistrate must follow certain broad guidelines to ensure that the document inspires confidence of the court assessing it.

- STAGE IV Monitoring of Investigation:
- The argument that there is no provision in CrPC that allows the magistrate to monitor an investigation has been debunked by the Supreme Court conclusively in Sakiri Vasu vs. State of U.P. (2008) wherein such power has been read within Section 156(3) of the CrPC. It has been held that the power to direct investigation u/s 156(3) of the CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and the Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

- Therefore, in appropriate cases, the victim, complainant or a witness can approach the court seeking necessary directions to the police and supervision of investigation.
- Where the power to pass necessary directions may be used are:
- to protect witnesses,
- check disregard of vital evidence (which may get obliterated in course of time),
- non-examination of witnesses,
- deliberate shielding of some accused,
- or the investigating officer being interested in the case.

- In such cases, a magistrate ought to push the envelope (cover) and actively monitor the investigation, while avoiding investigating himself, or directing investigation by a specific agency, with respect to which there is a specific embargo on the powers of the magistrate.
- Monitoring of investigation by the magistrate is, therefore, of vital importance to protect the integrity of prosecution.

- Stage V Further investigation after filing of police report:
- Magisterial vigil does not terminate on the filing of the police report on the conclusion of the investigation and the court is not bound to accept the results of an investigation conducted by the police.
- After completion of investigation, the police files either be in the nature of charge sheet or final report. If the investigation ends with final report, different courses are open to the Magistrate.

  He may either accept the final report and close the proceeding or he may take the view that the said report is not based on complete investigation, in which case he may in exercise of power conferred by sec 156(3) of CrPC, direct the police concerned to make further investigation.

- The third course open to him is that he in not agreeing with the views of the investigating officer, may on the scrutiny of the case diary take cognizance of the offence.
- In the case the police concludes that no case is made out against the accused, the Magistrate has to issue a notice to the informed/victim and hear him out.
- After hearing the informant, the court can, notwithstanding the closure report, choose to proceed with the matter, as a case based on police report or even a prior complaint.

- Another option available is ordering further investigation. Section 173(8) of the CrPC expressly lays down such a course of action.
- However, the section does not enlist considerations that will govern the exercise of such power.
- Illustrative cases where further investigation may be ordered are :
- where the police acts in a partisan manner to shield the real culprits and the investigation has not been done in a proper and objective manner but is tainted,
- non-examination of crucial witnesses, clearing of doubts and to substantiate the prosecution case.

- To conduct fair, proper and an unquestionable investigation is the obligation of the investigation agency and the court in its supervisory capacity is required to ensure the same.

- It is apparent that ample powers are vested in the magistrate to check arbitrary arrests, police excesses & to facilitate a more incisive probe into the discovery of truth, at various stages of an investigation, and even after filing of the police report.

- TRIAL PROCEDURE
- Inquisitorial and Accusatory System of Trial in India, England and France
- The Criminal Justice System is the process by which offenders are arrested, followed by Stages of investigation to determine proof.
- After which charges are framed, a defense is raised, trials conducted and sentencing rendered if found guilty or acquitted if he is found innocent.

- Criminal offenses are usually investigated by researching the facts and or incidents, situations, scenarios, to prove the guilt of the individual.
- A thorough investigation is carried out systematically, keeping time to time details, analyzing and scrutinizing information to arrive at a conclusion to prosecute the individual committing the criminal offense.
- The charges framed against the individual are determined by the collected pieces of evidence, and defense is made to oppose or object the prosecution of the criminal offense.

- The trial is a judicial examination of the issues between the parties, whether they are of law or facts, presented in court before a jury or judge.
- In order to determine guilt in the criminal proceedings, pieces of evidence are examined by the judge. Judge takes into consideration the law of the land, the facts presented before him, or the law put in the case for the purpose of determining the outcome.

- Types of Criminal justice system:
- Across the world, there are many different types of the criminal justice system to keep and maintain order and peace within their area of jurisdiction creating a social code of conduct, the law. Punishments differ from being a punitive one or a rehabilitative nature.
- There are two main justice systems:
- Adversary system or Accusatory system
- Inquisitorial system
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- **According to Black's Law Dictionary,**
  Adversary system is the court system where a judge decides on a case argued by a prosecutor who is suing the plaintiff and the defense attorney who defends their plaintiff.
- **According to Black's Law Dictionary, the inquisitorial system is:**

This question paper contains 1 printed pages]

AK—16—2016

FACULTY OF LAW

LL.M. (First Semester) EXAMINATION

MARCH/APRIL, 2016

(CBCS 75 : 25)

COMPARATIVE CRIMINAL PROCEDURE

Paper III

(Saturday, 23-4-2016) **Time : 10.00 a.m. to 1.00 p.m.**

Time—Three Hours *Maximum Marks—75*

N.B. :— (*i*) Attempt any *Five* questions.

(*ii*) *All* questions carry equal marks.

1. Write a detail note on 'Plca Bargaining' with amendments.
2. Explain fully of the withdrawal from prosecution.
3. Define Arrest and its kind.
4. What is Doctrine of Locus-standi. Discuss the changes brought under Public Interest litigation.
5. Explain in detail the Hierachy of Criminal Courts and their powers.
6. What are the functions of Juvenile Justice Board under Juvenile Justice Care and Protection of children Act, 2000.
7. Explain the concept of Fair Trial with special reference to rights of accused.
8. Write short note on any *three* of the followings :
   - (*i*) Nyaya Panchayats System
   - (*ii*) Observation Homes
   - (*iii*) Statements u/s 313 of CR.P.C.
   - (*iv*) Child Welfare Committee
   - (*v*) Preventive measures.

This question paper contains **1** printed pages]

CA—17—2017

FACULTY OF LAW

LLM (First Year) (First Semester) EXAMINATION

MARCH/APRIL, 2017

COMPARATIVE CRIMINAL PROCEDURE

Paper III

(Monday, 24-4-2017) **Time : 10.00 a.m. to 1.00 p.m.**

Time— Three Hours *Maximum Marks*—80

N.B. :— (*i*) Question No. **1** is compulsory.

(*ii*) Attempt any three question out of remaining questions.

(*iii*) *All* questions carry equal marks.

1. Write short notes on any *two* :
   - (*a*) Naya Panchayat in India;
   - (*b*) Expert evidence;
   - (*c*) Homes under Juvenile justice Act
   - (*d*) Child welfare committee
2. Discuss the Hierarchy of criminal courts and their jurisdiction.
3. What is the evidentiary value of statement of accused recorded under sec. 313 of Cr.p.C. 1973.
4. Discuss the provisions as to preventive measures in India under Cr.P.C.1973.
5. Explain the concept of Plea Bargaining with case law.
6. Explain in detail the rights of the arrested person.
7. Write a detail notes on Arrest.
8. Explain fully the public interest litigation with recent case laws.

This question paper contains **1** printed page]

CA—19—2017

FACULTY OF LAW

LLM (First Year) (First Semester) EXAMINATION

MARCH/APRIL, 2017

(CBSC 75:25)

COMPARATIVE CRIMINAL PROCEDURE

(Monday, 24-4-2017) **Time : 10.00 a.m. to 1.00 p.m.**

Time— Three Hours *Maximum Marks*—75

N.B. :— (*i*) Attempt any *five* questions.

(*ii*) *All* question carry equal marks.

1. Explain the preventive measures as laid down under Cr.P.C., 1973.
2. Discuss in detail the various types of criminal courts established under Cr. P.C.
3. Write Essay on Juvenile Justice Board.
4. What is meant by arrest and explain how arrest is made ?
5. Write a detail note on 'Plea Bargaining'.
6. Explain the origin and development of 'Public interest litigation'.
7. What are the various rights of arrested person.
8. Short notes (any *three*) :
   - (*a*) Statements u/s-313 Cr.P.C
   - (*b*) Withdrawal of prosecution
   - (*c*) Naya Panchayat System.
   - (*d*) Child Welfare Committee
   - (*e*) Expert evidence.

DA—17—2017

FACULTY OF LAW

LLM (First Year) (First Semester) EXAMINATION

JANUARY, 2018

(80 : 20 Pattern)

COMPARATIVE CRIMINAL PROCEDURE

Paper I

(Monday, 1-1-2018) **Time : 10.00 a.m. to 1.00 p.m.**

Time—Three Hours *Maximum Marks*—80

N.B. :— (*i*) Question No. **1** is compulsory.

(*ii*) Attempt any *three* questions from Q. Nos. **2** to **8**.

(*iii*) *All* questions carry equal marks.

1. Write short notes on (any *two*) :
   (*i*) Withdrawal of prosecution
   (*ii*) Nyaya panchayats
   (*iii*) Rights of accused
   (*iv*) Expert evidence.
2. Write a detailed note on "Public Interest Litigations".
3. Discuss in detail the concept of Plea-Bargaining as per Cr. P.C. 1973.
4. Explain fully the establishment, functions and powers of the Juvenile Justice Board, under the Juvenile Justice (Care and Protection of Children) Act, 2000.
5. What are the preventive measures as discussed in Cr. P.C. 1973 ?
6. State fully the evidentiary value of statements recorded by police.
7. How arrest is made u/s 41 after recent ammendment ? Discuss.
8. State fully the admissibility and inadmissibility in any criminal case.

LLM (First Year) (First Semester) EXAMINATION

NOVEMBER/DECEMBER, 2018

(CBCS 75 : 25)

COMPARATIVE CRIMINAL PROCEDURE—III

(Monday, 31-12-2018) **Time : 10.00 a.m. to 1.00 p.m.**

Time—Three Hours *Maximum Marks*—75

N.B. :— (*i*) Attempt any *five* questions.

(*ii*) *All* questions carry equal marks.

1. Discuss the hierarchy of criminal courts and their powers.
2. Write in detail the provisions of arrest under CrPC with reference to new amendments.
3. Describe fully with case laws the public interest litigation.
4. Give in detail the provisions relating to plea bargaining.
5. Narrate the provisions relating to fair trial under CrPC 1973.
6. Explain the provisions relating to Child Welfare Committee under Juvenile Justice (Care and Protection of Children) Act, 2000.
7. Explain in detail the rights of arrestee.
8. Write short notes on (any *three*) :
   (*a*) Statement under Sec. 313 CrPC
   (*b*) Nyay Panchayat
   (*c*) Preventive measures
   (*d*) Juvenile Justice Board
   (*e*) Withdrawal from prosecution.

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CD—17—2018

FACULTY OF LAW

LLM (First Year) (First Semester) EXAMINATION

NOVEMBER/DECEMBER, 2018

(80 : 20)

COMPARATIVE CRIMINAL PROCEDURE

Paper III

(Monday, 31-12-2018) **Time : 10.00 a.m. to 1.00 p.m.**

Time—Three Hours *Maximum Marks*—80

N.B. :— (*i*) Question No. **1** is compulsory.

(*ii*) Attempt any *three* out of remaining questions.

(*iii*) *All* questions carry equal marks.

1. Write short notes on (any *two*) :
   (*a*) Nyay Panchayat
   (*b*) Juvenile Justice Board
   (*c*) Preventive Measures
   (*d*) Withdrawal from Prosecution.
2. Explain in detail the rights of arrestee.
3. Narrate the provisions relating to fair trial under CrPC 1973.
4. Describe fully with case laws the public interest litigation.
5. Write in detail the provisions of arrest under CrPC with reference to new amendments.
6. Give in detail the provisions of plea bargaining.
7. Explain the provisions relating to Child Welfare Committee under Juvenile Justice (Care and Protection of Children) Act, 2000.
8. Discuss the hierarchy of criminal courts and their powers.

FACULTY OF LAW

LL.M. (First Year) (First Semester) EXAMINATION

JANUARY, 2018

(CBCS 75 : 25 Pattern)

COMPARATIVE CRIMINAL PROCEDURE

Paper III

(Monday, 1-1-2018) **Time : 10.00 a.m. to 1.00 p.m.**

Time—Three Hours *Maximum Marks*—75

N.B. :— (*i*) Attempt any *five* questions.

(*ii*) *All* questions carry equal marks.

1. Explain the concept of 'plea bargaining' in detail with landmark judgements.
2. What is meant by arrest ? Explain its various kinds.
3. Write a detailed note on public interest litigation with case laws.
4. What are the various kinds of criminal courts ? Explain its jurisdiction.
5. Discuss in detail the preventive measures given under Cr. P.C.
6. Describe the evidentiary value of 'expert evidence' and its importance in a criminal case.
7. Explain the rights of arrested persons.
8. Write short notes on any *three* :
   (*a*) Homes under Juvenile Justice Act, 2000
   (*b*) Statement u/s-313 Cr. P.C.
   (*c*) Child welfare committee
   (*d*) Withdrawal of prosecution
   (*e*) Nyaya panchayat system.

CX—17—2018

FACULTY OF LAW

LL.M. (First Year) (First Semester) EXAMINATION

MARCH/APRIL, 2018

COMPARATIVE CRIMINAL PROCEDURE—I

Paper III

(Wednesday, 25-4-2018) **Time : 10.00 a.m. to 1.00 p.m.**

Time—3 *Hours* *Maximum Marks*—80

N.B. :— (*i*) Question No. **1** is compulsory.

(*ii*) Attempt any *three* questions from Q. No. **2** to **8**.

(*iii*) *All* questions carry equal marks.

1. Write short notes (any *two*) :
   - (*a*) Right to accused
   - (*b*) FIR and its importance
   - (*c*) Withdrawal of prosecution
   - (*d*) Panchayats in Tribal Areas
2. What is meant by Arrest, its kinds and how it is made under CrPC, 1973.
3. Explain Plea Bargaining with reference to expitation theory.
4. "Public Interest Litigations" is the need of society. Comment.
5. What are the kinds of Homes under the Juvenile Justice (Care and Protection of Children) Act, 2000.
6. State the powers and functions of Juvenile Justice Board under J.J. Act, 2000.
7. Explain in detail the different kinds of courts and their powers as laid down under CrPC, 1973.
8. What is meant by Expert Evidence and how far its evidentary value.

This question paper contains 1 printed page]

CX—19—2018

FACULTY OF LAW

LL.M. (First Year) (First Semester) EXAMINATION

MARCH/APRIL, 2018

COMPARATIVE CRIMINAL PROCEDURE-III

(Wednesday, 25-4-2018) **Time : 10.00 a.m. to 1.00 p.m.**

Time—3 *Hours* *Maximum Marks*—75

N.B. :— (*i*) Attempt any *five* questions.

(*ii*) All questions carry equal marks.

1. Discuss in detail the power of police to arrest a person without warrant.
2. Write a detailed note on Plea Bargaining.
3. Discuss the 'Public intrest litigation'. Explain its importance.
4. Discuss in detail the evidentiary value of statement of accused *u/s* 313 cr.p.c.
5. What are the rights of an arrested person ?
6. Describe the aim, object and function of Juvenile Justice Board.
7. Write a detailed note on withdrawal of prosecution.
8. Write short notes on (any *three*) : 10

   (*a*) Joinder of charges

   (*b*) Observation home

   (*c*) Child welfare committee

   (*d*) Expert evidence

   (*e*) Admissibility and inadmissibility of evidence.

CH—17—2019

FACULTY OF LAW

LL.M. (First Year) (First Semester) EXAMINATION

MARCH/APRIL, 2019

(80 : 20 Pattern)

COMPARATIVE CRIMINAL PROCEDURE

Paper-III

(Friday, 26-4-2019) **Time : 10.00 a.m. to 1.00 p.m.**

Time—3 *Hours* *Maximum Marks*—80

N.B. :— (*i*) Q. No. **1** is compulsory.

(*ii*) Attempt any *three* questions out of remaining questions.

(*iii*) *All* questions carry equal marks.

1. Write short notes on (any *two*) :
   - (*a*) Expert evidence
   - (*b*) Preventive measures
   - (*c*) Nyaya Panchayat System
   - (*d*) Statements under Sec.313 of CrPC.
2. Discuss how far plea bargaining is successful is Administration of Criminal Justice.
3. Explain fully the provisions relating to withdrawal from prosecution under CrPC.
4. Write in detail the provisions relating to fair trial under CrPC, 1973.
5. Explain Constitution of various Criminal Courts and its jurisdiction.
6. Give in detail the provisions relating to arrest with special reference to arrest without warrant by policy.
7. Explain rule of locus standi and narrate how it is modified in case of public interest litigation.
8. Describe the role of Juvenile Justice Board with its functions under Juvenile Justice (Care and Protection of Children) Act, 2000.

CH—19—2019

FACULTY OF LAW

LL.M. (First Year) (First Semester) EXAMINATION

MARCH/APRIL, 2019

(CBCS 75 : 25 Pattern)

COMPARATIVE CRIMINAL PROCEDURE-III

(Friday, 26-4-2019) **Time : 10.00 a.m. to 1.00 p.m.**

Time—3 *Hours* *Maximum Marks*—75

N.B. :— (*i*) Attempt any *five* questions.

(*ii*) *All* questions carry equal marks.

1. Explain in detail the provisions relating to plea bargaining.
2. Explain fully the provisions relating to public interest litigation with case laws.
3. Describe experts opinion and give details about expert evidence.
4. Write a note on functions of the child welfare committee in relating to a child in need of care and protection.
5. In what cases police can arrest without warrant ?
6. "Right to fair trial is a fundamental right guaranteed under Art 21 to the constitution." Give details under CRPC in respect of fair trial.
7. Explain the evidentiary value of statement of accused under Sec.-313 CRPC.
8. Write short notes on (any *three*) :
   - (*a*) Withdrawal from prosecution
   - (*b*) Juvenile Justice Board
   - (*c*) Nyay Panchayat
   - (*d*) Rights of arrestee
   - (*e*) Preventive measures.

- # Public Interest Litigation
- In simple words, PIL means, litigation filed in a court of law, for the protection of Public Interest, such as pollution, Terrorism, Road safety, constructional hazards etc.
- Any matter where the interest of public at large is affected can be redressed by filing a Public Interest Litigation in a court of law.
- **Public interest litigation is not defined in any statute or in any act.** It has been interpreted by judges to consider the intent of public at large.

- Public interest litigation is the power given to the public by courts through judicial activism.
- However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.
- The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public spirited individual.
-

- Some of the matters which are entertained under PIL are:
  - Bonded Labour matters
  - Neglected Children.
  - Non-payment of minimum wages to workers and exploitation of casual workers
  - Atrocities on women

- Environmental pollution and disturbance of ecological balance
- Food adulteration
- Maintenance of heritage and culture
- Violation of basic human rights of the poor
- Content or conduct of government policy

- - Compel municipal authorities to perform a public duty.
-
  - Violation of religious rights or other basic fundamental rights

- Evolution of PIL in India: Some Landmark Judgements
- The seeds of the concept of public interest litigation were initially sown in India by **Justice Krishna Iyer**, in 1976 in **Mumbai Kamagar Sabha vs. Abdul Bhai.**

- The first reported case of PIL was **Hussainara Khatoon vs. State of Bihar** (1979) that focused on the inhuman conditions of prisons and under trial prisoners that led to the release of more than 40,000 under trial prisoners.

- **Right to speedy justice emerged as a basic fundamental right** which had been denied to these prisoners. The same set pattern was adopted in subsequent cases.

- A new era of the PIL movement was heralded by **Justice P.N. Bhagawati in the case of**
- **S.P. Gupta vs. Union of India.**

  In this case it was held that "any member of the public or social action group acting bonafide" can invoke the Writ Jurisdiction of the High Courts (under article 226) or the Supreme Court (under Article 32) seeking redressal against violation of legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court.

By this judgment PIL became a potent weapon for the enforcement of “public duties” where executive action or misdeed resulted in public injury.

And as a result any citizen of India or any consumer groups or social action groups can now approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of the public are at stake.

Justice Bhagwati did a lot to ensure that the concept of PIL was clearly enunciated.

He did not insist on the observance of procedural technicalities and even treated ordinary letters from public-minded individuals as writ petitions.

- The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties to convert the Apex Court of India into a Supreme Court for all Indians.
- Justice V. R. Krishna Iyer and P. N. Bhagwati recognised the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing.
- In the post-emergency period when the political situations had changed, investigative journalism also began to expose gory scenes of governmental lawlessness, repression, custodial violence, drawing attention of lawyers, judges, and social activists.

- PIL emerged as a result of an informal nexus of pro-active judges, media persons and social activists.
- This trend shows starke difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative judicial role.
- PIL is necessary rejection of laissez faire notions of traditional jurisprudence.

- **M.C Mehta vs. Union of India**: In a Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water.

- Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

- **Vishaka v. State of Rajasthan:** The judgement of the case recognized sexual harassment as a violation of the fundamental constitutional rights of **Article 14, Article 15 and Article 21.** The guidelines also directed for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- Factors Responsible for the Growth of PIL in India
- **The character of the Indian Constitution.** India has a written constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) provides a framework for regulating relations between the state and its citizens and between citizens inter-se.

- India has some of the most **progressive social legislations** to be found anywhere in the world whether it be relating to bonded labor, minimum wages, land ceiling, environmental protection, etc.

- This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.

- The **liberal interpretation of locus standi** where any person can apply to the court on behalf of those who are economically or physically unable to come before it has helped.
- Judges themselves have in some cases initiated suo moto action based on newspaper articles or letters received.
- SUNIL BATRA V/S DELHI ADMINISTRATION.
- Letter from a jail inmate alleging ill treatment inside the prison , was converted into to petition.

- Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable.
- For instance the "right to life" in Article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, bar fetters and hand cuffing in prisons, etc.

- **Judicial innovations to help the poor and marginalised:** For instance, in the **Bandhua Mukti Morcha,**
- the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer.
- Similarly in the **Asiad Workers judgment case**, Justice P.N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts.

- In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

- Who Can File a PIL and Against Whom?
- Any citizen can file a public case by filing a petition:

  - Under Art 32 of the Indian Constitution, in the Supreme Court.
  - Under Art 226 of the Indian Constitution, in the High Court.

- However, the court must be satisfied that the Writ petition fulfils some basic needs for PIL as the letter is addressed by the aggrieved person, public spirited individual and a social action group for the enforcement of legal or Constitutional rights to any person who are not able to approach the court for redress.

- A Public Interest Litigation can be filed **against a State/ Central Govt., Municipal Authorities, and not any private party.**
- The definition of State is the same as given under Article 12 of the Constitution and this includes the Governmental and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

- Significance of PIL
- The aim of PIL is to give to the common people access to the courts to obtain legal redress.
- PIL is an important **instrument of social change** and for maintaining the Rule of law and accelerating the balance between law and justice.
- The original purpose of PILs have been **to make justice accessible to the poor and the marginalised.**
- It is an important tool to make human rights reach those who have been denied rights.

- It **democratises the access of justice** to all.
- Any citizen or organisation who is capable can file petitions on behalf of those who cannot or do not have the means to do so.
- It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc.
- It is an important tool for implementing the concept of judicial review.
- Enhanced public participation in judicial review of administrative action is assured by the inception of PILs.

- Certain Weaknesses of PIL
- PIL actions may sometimes give rise to the **problem of competing rights.** For instance, when a court orders the closure of a polluting industry, the interests of the workmen and their families who are deprived of their livelihood may not be taken into account by the court.

- It could lead to overburdening of courts with **frivolous PILs by parties with vested interests** Besides, the frivolous PILs with vested interests must be discouraged to keep its workload manageable.
- The 38th Chief Justice of India, S. H. Kapadia, has stated that substantial "fines" would be imposed on litigants filing frivolous PILs. His statement was widely praised because the incidence of frivolous PILs for monetary interest were on the rise.

- PILs today has been appropriated for corporate, political and personal gains. Today the PIL is no more limited to problems of the poor and the oppressed.

Cases of **Judicial Overreach** by the Judiciary in the process of solving socio-economic or environmental problems can take place through the PILs.

PIL matters concerning the exploited and disadvantaged groups are pending for many years. **Inordinate delays in the disposal of PIL cases** may render many leading judgments merely of academic value.

- **Writ Jurisdiction under Articles 32 and 226 of the Constitution of India, 1950**
- Any provision in any Constitution for Fundamental Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions.
- Since the reality of such rights is tested only through the judiciary, the safeguards assume even more importance. In addition, enforcement also depends upon the degree of independence of the Judiciary and the availability of relevant instruments with the executive authority.
- Indian Constitution, like most of Western Constitutions, lays down certain provisions to ensure the enforcement of Fundamental Rights.

- **These are as under:**
  (a) The Fundamental Rights provided in the Indian Constitution are guaranteed against any executive and legislative actions. Any executive or legislative action, which infringes upon the Fundamental Rights of any person or any group of persons, can be declared as void by the Courts under Article 13 of the Constitution.

  (b) In addition, the Judiciary has the power to issue the prerogative writs. These are the extra-ordinary remedies provided to the citizens to get their rights enforced against any authority in the State.

- These writs are –
- Habeas corpus,
- Mandamus,
- Prohibition,
- Certiorari and
- Quo-warranto. Both, High Courts as well as the Supreme Court may issue the writs

- (c) The Fundamental Rights provided to the citizens by the Constitution cannot be suspended by the State, except during the period of emergency, as laid down in Article 359 of the Constitution.

- What are some essentials of drafting a PIL?
- The following are some of the essential steps that should be followed when drafting a PIL:
- **Collection of information**– The first step of drafting a PIL would be to collect all relevant information pertaining to the issue.
- **Collection of documents**– All documents regarding the case including photographs if any, must be collected.
- **Court in which it is to be filed**– The Petitioner must decide in which he/she/it wants to file the PIL, whether before the Hon'ble Supreme Court or the High Court of that State.

- **Form of the PIL–** A PIL can be in the form of a Petition or even a letter or postcard. In the event that the PIL is to be filed before the Hon'ble Supreme Court of India, the letter/postcard must be addressed to the Chief Justice of India.
- In the event that the PIL is to be filed before a High Court, the letter/postcard must be addressed to the Chief Justice of that particular High Court.
- **Public Litigation Guidelines–** When drafting a PIL, one must look at the Public Litigation Guidelines applicable for the particular court before which one intends to file the PIL. The same are usually available on the websites of the respective courts.

- **Details to clearly stated**– The following details must be clearly stated:
- Petitioner's name, postal address, email address, phone number, occupation, annual income and PAN number.
- Proof of identity of the Petitioner must be annexed.
- Facts of the case.
- Nature of the injury.
- Any personal interest that he/she/it may have.
- Details of any litigation involving the petitioner which could have a legal nexus with the issue involved in the PIL.
- The class of persons for whose benefit the PIL is being filed and how they are incapable of accessing the courts themselves.

- In the event that any representations have been made to any authorities regarding the issue, the details of the same.
- Any person/body/institution that may be affected by the PIL must be joined as a party.
- The Petitioner must also state that he/she/they are able to pay costs, if any, that may be imposed by the court.
- **Appearance in court-** The Petitioner may either appoint an advocate or choose to appear in person.

	Supreme Court	High Court
Number of copies of the PIL to be filed	5	2
Service of copy upon Respondent(s) / Opposite Party(ies)	To be served in advance	To be served only when the Hon'ble Court issues notice regarding the same.
Court Fees to be affixed on the Petition	Rs.50/- per Respondent / Opposite Party	Rs.50/- per Respondent / Opposite Party

- Conclusion
- Public Interest Litigation has produced astonishing results which were unthinkable three decades ago.
- Degraded bonded labourers, tortured under trials and women prisoners, humiliated inmates of protective women's home, blinded prisoners, exploited children, beggars, and many others have been given relief through judicial intervention.
- The greatest contribution of PIL has been to enhance the accountability of the governments towards the human rights of the poor.
- The PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community.

- However, the Judiciary should be cautious enough in the application of PILs to avoid Judicial Overreach that are violative of the principle of Separation of Power.

- Besides, the frivolous PILs with vested interests must be discouraged to keep its workload manageable.

- Some famous examples of PIL.

- Vishaka v. State of Rajasthan.
- Hussainara Khatoon v. State of Bihar
- M.C. Mehta vs. Union of India
- Parmanand Katara vs. Union of India
- Shreya singal vs union of India

PLEA BARGAINING

Concept of Plea Bargaining under the Indian laws

- The famous saying “Justice delayed is justice denied” holds utmost significance when the concept of Plea bargaining is discussed.
- The concept of plea bargaining was not there in criminal law since its inception. Considering this scenario (cases pending in the courts is shocking), Indian Legal scholars and Jurists incorporated this concept in Indian Criminal Law.
- As the term itself suggests that it is an agreement between accused and the prosecutor. Many countries have accepted this concept in their Criminal Justice System (CJS).

- Meaning of Plea Bargaining
- Plea bargaining is a pretrial negotiation between the accused and the prosecution where the accused agrees to plead guilty in exchange for certain concessions by the prosecution.
- It is a bargain where a defendant pleads guilty to a lesser charge and the prosecutors in return drop more serious charges.
- It is not available for all types of crime e.g. a person cannot claim plea bargaining after committing heinous crimes or for the crimes which are punishable with death or life imprisonment.

- Plea Bargaining in India
- Plea Bargaining is not an indigenous concept of Indian legal system.
- It is a part of the recent development of Indian Criminal Justice System (ICJS).
- It was inculcated in Indian Criminal Justice System after considering the burden of long-standing cases on the Judiciary.
- Criminal Procedure Code and Plea Bargaining
- Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code deals with the concept of Plea Bargaining.
- It was inserted into the Criminal Law (Amendment) Act, 2005.

- It allows plea bargaining for cases:
- 1) Where the maximum punishment is imprisonment for 7 years;
- 2) Where the offenses don't affect the socio-economic condition of the country;
- 3) When the offenses are not committed against a woman or a child below 14 are excluded.
- The 154th Report of the Law Commission was first to recommend the 'plea bargaining' in Indian Criminal Justice System. It defined Plea Bargaining as an alternative method which should be introduced to deal with huge arrears of criminal cases in Indian courts.

- The Malimath Committee recommended for the plea bargaining system in India.
- The committee said that it would facilitate the expedite disposal of criminal cases and reduce the burden of the courts.
- Moreover, the Malimath Committee pointed out the success of plea bargaining system in the USA to show the importance of Plea Bargaining.

- Accordingly, the draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament and finally it became an enforceable Indian law from enforceable from July 5, 2006.
-
- It sought to amend the Indian Penal Code 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC) and the Indian Evidence Act, 1892 to improve upon the existing Criminal Justice System in the country.
- The Criminal Law (Amendment) Bill, 2003 focused on following key issues of the criminal justice system:-
- (i) Witnesses turning hostile
- (ii) Plea-bargaining
- (iii) Compounding the offense under Section 498A, IPC (Husband or relative of husband of a woman subjecting her to cruelty) and

- iv) Evidence of scientific experts in cases relating to fake currency notes.
- Finally, it introduced Chapter XXIA Section 265A to 265L and brought the concept of plea bargaining in India. The following are provisions which it added:-
- **Section 265-A (Application of chapter)** the plea bargaining shall be available to the accused who is charged with any offense 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 the power to notify the offences to the Central Government.

- **Section 265-B (Application for Plea Bargaining)**
- A person accused of an offense may file the application of plea bargaining in trails which are pending.

- The application for plea bargaining is to be filed by the accused containing brief details about the case relating to which such application is filed.
- It includes the offences to which the case relates and shall be accompanied 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 the notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused of 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 (Guidelines for Mutually satisfactory disposition)**
- It lays down the procedure to be followed by the court in mutually satisfactory disposition.
- In a case instituted on a police report, the court shall issue the 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 a notice to the accused and the victim of the case.

- **Section 265-D (Report of the mutually satisfactory disposition to be submitted before the court.)**
- This provision talks about the preparation of the report of mutually satisfactory disposition and submission of the same. Two situations may arise here namely
- If in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the report of such disposition is to be prepared by the court. It shall be signed by the presiding officer of the Courts and all other persons who participated in the meeting.
- 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 (Disposal of the case)**
- 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 Section 265-D, by preparing a report signed by the presiding officer of the Court and parties 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 Section 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, at its discretion, can pass sentence of minimum punishment, if the law provides such minimum punishment for the offenses 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 offense. ”
- **Section 265-F (Judgment of the Court)** talks about the pronouncement of judgment in terms of mutually satisfactory disposition.
- **Section 265-G (Finality of Judgment)** says that no appeal shall be against such judgment but Special Leave Petition (Article 136) or writ petition (under Article 226 or 227) can be filed.

- **Section 265-H (Power of the Court in Plea Bargaining)** talks about the powers of the court in plea bargaining.
- These powers include powers in respect of bail, the trial of offenses and other matters relating to the disposal of a case in such court under Criminal Procedure Code.
- **Section 265-I (Period of detention undergone by the accused to be set off against the sentence of imprisonment)** says that Section 428 of CrPC is applicable for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this chapter.

- 265-J (Savings) 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 (Statement of the accused to be used)** specifies that the statements or facts stated by the accused in an application under section 265-B shall not be used for any other purpose except for the purpose as mentioned in the chapter.

- **Section 265-L (Non-application of the chapter)** makes it clear that this chapter will not be applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.
- Plea Bargaining and Judicial Pronouncements
- In ***Murlidhar Meghraj Loya vs State of Maharashtra*** (AIR 1976 SC 1929), (Food adultration case)
- The Hon'ble Supreme Court criticized the concept of Plea Bargaining and said that it intrudes upon the society's interests. (The appelants pleaded guilty under prevention of adultration of food Act , whether lesser punishment could be given)

- In ***Kasambhai vs State of Gujarat*** (1980 AIR 854) & ***Kachhia Patel Shantilal Koderlal vs State of Gujarat and Anr***, (Food adultration case)
- the Apex court said that the Plea Bargaining is against public policy.
- Moreover, it regretted the fact that the magistrate accepted the plea bargaining of accused.
- Furthermore, Hon'ble Court described this concept as a highly reprehensible practiceThe Court also held that practice of plea bargaining as illegal and unconstitutional and tends to encourage the corruption, collusion and pollute the pure fount of justice.

- ***Thippaswamy vs State of Karnataka***, [1983] 1 SCC 194,
- the Court said that inducing or leading an accused to plead guilty under a promise or assurance would be violative of Article 21 of the Constitution.
- The Court also stated that *"In such cases, the Court of appeal or revision should set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes defend himself against the charge and if he is found guilty, proper sentence can be passed against him".*

- Arguments against Plea Bargaining in India
- **Involvement of Police**
- The Involvement of the police in plea bargaining also attracts criticism. As India is infamous for the custodial torture by police. In such scenario, the concept of Plea Bargaining is more likely to aggravate the situation.
- **Corruption**
- The role of victims in plea bargaining process is also not appreciated. The role of victim in this process would attract corruption which is ultimately defeating the purpose which is sought to be achieved by such action.

- Arguments for Plea Bargaining in India
- **Fast disposal of cases**
- The plea bargaining is beneficial for both the prosecution and the defence because there is no risk of complete loss at trial.
- It helps the attorneys to defend their clients in an easy way because both the parties possess bargaining power.
- This is how the long-standing disputes can be resolved and the court would also not need to face encumbrance of case files.
- Moreover, Plea bargaining helps the courts in preserving scarce resources for the cases that need them most.

- Conclusion :
- Article 20(3) of Indian constitution prohibits self-incrimination.
- People accuse plea bargaining of violatory of the said article.
- But with the passage of time the considering the encumbrance on the courts, the Indian court has felt the need of Plea bargaining in Indian legal system.
- When a change is brought it is hard to accept it initially but society needs to grow so is our legal system. Everything has advantages and disadvantages and both have to be analyzed in order reach a sound conclusion.
- Rejecting something only on the basis of its disadvantages would not be justified in any case. The concept of plea bargaining is evolving in India and it is not appropriate to expect it to be perfect. It can only be improved by debate, discussions, and discourses.

FAIR TRIAL

- A **fair trial** is a trial which is "conducted fairly, justly, and with procedural regularity by an impartial judge".

The right to fair trial is **one of the fundamental guarantee of human rights and rule of law, aimed at ensuring administration of justice**. Fair trial includes fair and proper opportunities allowed by law to prove innocence.

- Article 21 of the Indian Constitution: No person shall be deprived of his life and personal liberty except according to procedure established by law.

- Various rights associated with a fair trial are explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights, the Sixth Amendment to the United States Constitution, and Article 6 of the European Convention of Human Rights, as well as numerous other constitutions and declarations throughout the world.

- Though the UDHR enshrines some fair trial rights, such as the presumption of innocence until the accused is proven guilty, in Articles 6, 7, 8 and 11, the key provision is Article 10 which states that:

- "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

- Some years after the UDHR was adopted, the right to a fair trial was defined in more detail in the International Covenant on Civil and Political Rights(ICCPR).
- The right to a fair trial is protected in Articles 14 and 16 of the ICCPR which is binding in international law on those states that are party to it.
- Article 14(1) establishes the basic right to a fair trial, article 14(2) provides for the presumption of innocence, and article 14(3) sets out a list of minimum fair trial rights in criminal proceedings.

- Article 14(5) establishes the right of a convicted person to have a higher court review the conviction or sentence, and article 14(7) prohibits double jeopardy Article 14(1) states that:
- "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

- Introduction
- The main aim of the Criminal Justice-System of India is to ensure fair and impartial trial of each and every accused who has been put behind bars in the Indian territory.
- Our country follows the adversary system for conducting the trial of an accused. Under this system, it is the prosecution who has to prove the guilt of the accused beyond a reasonable doubt.

- Principles of Fair Trial under the Adversary System
- The Indian Judiciary has explained the need and importance of the concept of Fair Trial in a number of cases and the Best Bakery Case is among them.
- In the landmark case of *Zahira Habibullah Sheikh and ors vs. State of Gujarat,* the Supreme Court has defined fair trial as a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. The SC said that a denial of a fair trial is as much injustice to the accused as is to the victim and the society.

- **Following are the principles of a fair trial-**
- Presumption of innocence
- Independent, impartial and competent judge
- Expeditious trial
- Hearing should be in open court
- Knowledge of accusation and adequate opportunity
- Trial in presence of accused
- Evidence to be taken in presence of accused
- Cross-examination of prosecution witnesses
- Prohibition of double jeopardy
- Legal aid

- Presumption of innocence
- This is the cardinal importance of the Indian Criminal Justice System. Under this principle each and every accused is presumed to be innocent unless proved guilty of a crime beyond reasonable doubts. The burden of proving the accused guilty is on the prosecution.
- The presumption of innocence is present at the beginning of all the criminal trials in an adversary system and the provisions of the criminal codes are so framed that the presumption of innocence is taken into consideration throughout the criminal trial.

- This principle is based on the underlying fact that there must not be a wrongful conviction of an innocent person as this will decrease and shake the confidence of the people in the Indian Judicial System.
- The presumption of innocence is based on the presumption by law. It has been held by the Supreme Court in the case of *State of U.P. v. Naresh and ors, Chandrappa and ors v. State of Karnataka, 2007* that the presumption of innocence is available to the accused under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless proved guilty by the competent court of law in a criminal trial.

- Independent, impartial and competent Judge
- The independence of judiciary means that the judiciary is not interfered by the government of India or any political party.
- The independence of the judiciary is ensured by separating the three organs of the government i.e. legislature, executive and the judiciary.
- Even the appointment of Session Judges is not exclusively with the state government but they are appointed with the consultation of High Court.
- This ensures that they are not under the control of any state government and therefore ensuring their independence.

- Impartiality refers to the conduct of the Judges who are supposed to conduct the trial and give the decision of acquittal or conviction without any biases towards the accused or the victim.
- Here bias refers to a predetermined opinion by a judge towards the accused.
- Section 479 of the Code of Criminal Procedure, 1973 prohibits the trial of a criminal case by a judge who is either party to the suit or is personally interested in the case.
- Competency of a judge refers to the territorial and pecuniary jurisdiction of a judge.

- The apex court in the case of *Shyam Singh v. State of Rajasthan* has held that the real test is whether there exists any circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case and not that a bias has actually affected the judgment.

- Expeditious Trial
- ***'Justice delayed is Justice denied'*** is popularly used in many of the courtroom dramas, which is actually a well-settled principle of criminal jurisprudence.
- Expeditious trial refers to the right of speedy trial of an accused.
- This principle was considered under the concept of a fair trial to avoid unnecessary harassment of the accused.
- The apex court in the landmark case of *Husianara Khatoon v. State of Bihar, 1979* held that speedy trial is an essential ingredient of Article 21 of the Constitution of India and it is the constitutional duty of the state to set up such procedure which would ensure speedy trial of the accused.

- Section 309(1) of Cr.PC has provided that all the trials and the proceedings shall be held as expeditiously as possible unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

- After the pep talk which was given by CJI Ranjan Gogoi to the Chief Justices of High Courts for speedy disposal of cases, numerous cases which were pending since more than 10 years have been disposed off.

- Hearing should be in open court
- The Right to open court is another principle of a fair trial. It is said openness of a court brings more fairness to the trial.
- The right to open court is not just of the accused but is also a right of the public.
- Sec-327(1) of Cr.PC provides for a trial in an open court. According to this section open court refers to a place to which the general public may have access. This section also gives the presiding judge discretion to deny the conduct of a criminal trial in an open court.

- Sec-327(2) provides the provision of conducting criminal trials related to rape cases in camera with the discretion to the presiding Magistrate of giving access to the court to a particular person who filed an application before the court.

- Similar provisions of conducting a trial in camera are also found in sec-53 of Indian Divorce Act, 1869, sec-14 of Indian Official Secrets Act, 1923, sec-22(1) of Hindu Marriage Act, 1955, etc.

- Knowledge of accusation and providing adequate opportunity to him
- A person may or may not have knowledge of the charges he has been accused of.
- Therefore according to sec-50 of Cr.PC, it is the duty of the police officer who is arresting the accused without any warrant to provide full particulars of the offences of which the accused is charged.
- In case of serious offences, the court is required to frame a formal charge in writing and then read and explain the charge to the accused.

- One of the vital principles of a fair trial is that one should be given an adequate opportunity to defend himself.
- It is possible only if the accused is aware of the charges framed against him.
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- Therefore sec-211 of the Cr.PC provides for the right of the accused to have a precise and specific accusation.

- Trial in presence of the accused
- One of the principles of a fair trial is that the criminal courts shall not proceed ex parte against the accused person.
- All the proceedings of a criminal trial should be conducted in the presence of the accused.
- It is also based on the major reason that every accused should be given an opportunity to prepare his defence which is possible only if he properly understands the case from the prosecution side.
- Therefore the presence of the accused is necessary for assisting him to prepare his defence. A criminal trial in the absence of the accused is not supported by the principles of natural justice.

- Evidence to be taken in presence of accused
- Sec-273 of Cr.PC provides that all evidence to be taken in the presence of the accused or his pleader when he is represented by one.
- Also, the court does not provide for the mandatory attendance of the accused as sec-317 of the code provides the Magistrate with the power to dispense the attendance of the accused if his personal attendance is not mandatory in the interest of justice.

- However, if any evidence is given in language not understood by the accused, the whole objective of sec-273 will be destroyed.
- Therefore sec-279 of the code provides that if any evidence is given in a language not understood by him, then it should be interpreted to him in open court in a language understood by him.
- However, non-compliance with this provision will not vitiate the trial but will be a mere irregularity.

- Cross-examination of prosecution witnesses

- In order to check the credibility of the witnesses, their cross-examination is necessary.
- The prosecution should inform the court in advance of the witnesses he intends to bring.
- This is based on the underlying principle of giving equal and fair chance to both the parties by means of interrogation of witnesses. The accused should not be denied to examine the prosecution witnesses.

- In the landmark case of *Badri v. State of Rajasthan, 1976* the apex court held that where a prosecution witness was not allowed to be cross-examined on a material point with reference to his earlier statement made before the police, his evidence stands untested by cross-examination and cannot be accepted as validating his previous statement.

- Prohibition of double jeopardy
- This concept of double jeopardy is based on the doctrine of autrefois acquit and autrefios convict which means that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence .

- The prohibition against double jeopardy is also a Constitutional right recognized under Article 20(2) of the Indian Constitution which provides that no person shall be prosecuted and punished for the same offence more than once.

- Sec-300 of Cr.PC is also embodied with the rule that once a person is convicted or acquitted with an offence he should not be tried with the same offence or with the same facts for any other offence.
- In *S.A. Venkataraman v. Union of India* the appellant was dismissed from service as a result of an inquiry under the Public Servants (Inquiries) Act, 1960 after the proceedings were before the Enquiry Commissioner.
- Thereafter, he was prosecuted before the Court for having committed offences under the Indian Penal Code, and the Prevention of Corruption Act.
- The Supreme Court held that the proceeding taken before the Enquiry Commissioner did not amount to a prosecution for an offence. It was in the nature of fact-finding to advise the Government for disciplinary action against the appellant. It cannot be said that the person has been prosecuted.

- Legal Aid
- Every single person whether innocent or accused has the right to legal aid.
- This right is also a constitutional right embodied in Article 22(1) of the Indian Constitution.
- The right to counsel is one of the fundamental rights according to the supreme law in India.
- In the case of Khatri v. State of Bihar, it was held that the accused is entitled to free legal counsel not only at the stage of trial but also when he is first produced before the Magistrate and also when remanded.
- Article 39A has also been introduced by the 42nd Amendment in 1976 in Indian Constitution to provide free legal aid to the persons who cannot afford a lawyer for his defence.
  Sections 303 and 304 of Cr.PC also provide for the right to legal aid through a counsel to every accused.

- Conclusion
- The Criminal Justice of India is embodied with all the necessary provisions required for a fair trial of an accused but still, the country lags behind in the Rule of Law Index.

- The major reason behind this is that the delay and other irregularities in the implementation of the above-mentioned principles of a fair trial.

- For instance, an expeditious trial is one of the major principles of a fair trial, but have you witnessed any criminal case which has been disposed off by the courts within a span of 2 years?

- The answer to this question will be no. Similarly many other irregularities such as delayed investigations, expensive and complicated legal process, judicial corruption etc. have caused the dropping of Indian Rank in the 2019 Rule of Law Index.

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- STATEMENT UNDER SECTION 313 OF CRPC AND ITS EVIDENTIARY VALUE.
- Section 313 of Criminal Procedure Code, 1973 envisages power of the trial court to examine the accused to explain evidence adduced against him.
- We all know it is fundamental principle of justice no one should be condemned un heard. To meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction.

- . OBJECT OF EXAMINATION OF ACCUSED:
- A) The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him."
- The object of section 313 of Criminal Procedure Code, is to cast a duty upon the courts to question the accused properly and fairly, so that it is brought home to the accused in clear words the exact case that the accused have to meet and thereby an opportunity is given to the accused to explain any such point.
- The examination of the accused is not intended to be an idle formality it has to be carried out in the interest of justice and fair play to the accused.

- The purpose of section 313 of Cr.P.C is set out in its opening words " for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him" , so that it is right of accused to explain to court what are circumstances of the event appearing in evidence against him.
- If lower court fail to give opportunity to him, he is entitled to ask appellate court to place him in the same position as he would have been in, had he been asked.
- It is true accused is having right to maintain silence, he is not compelled to speak during investigation and subsequent there on. At the same time it is duty of court to give an opportunity to speak or explain his case and against the evidence put forth by prosecution during trial.
- It was held by honorable supreme court in decision reported in AIR 2013 SC 3150 Raj Kumar Singh @ Raju @ Batya vs State Of Rajasthan in para No 25 that

- In a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice i.e. audi alterum partem.

- This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation.
- In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete.

- No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him.

- The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and have to be excluded from consideration.

- PROCEDURE OF RECORDING 313 EXAMINATION:
- As per section 313 of Cr.P.C., accused is examined any stage of proceedings and shall after completion of evidence of prosecution.
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- To know procedure of examination of accused it is pertinent to read 313 of cr.p.c. Section 313 of the Code of Criminal Procedure provides that
- 1. In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him,—
- (a) The Court may, at any stage without previously warning the accused, put such question to him as the Court considers necessary;
- (b) The Court shall, after the prosecution witnesses have been examined and before the accused is called upon to put up his defence, question him generally on the case.

- (2) No oath shall be administered to the accused when he is examined under sub-section (1).
- (3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.
- (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
- (5) The court may take help of Prosecutor and defence Counsel in preparing relevant questions which are to be put to the accused and the court may permit filing of written statement by the accused as sufficient compliance of this section".

- A) On plain reading of section 313 of Cr.P.C the first part gives discretion to court to question accused at any stage of enquiry without previous warning where as the second part is mandatory.
- The use of the word “may” in clause (a) shows that a discretion is vested in the Court.
- However, clause (b) uses the word “shall”, and makes the questioning mandatory.
- When an accused is being examined as above, no oath is to be administered to him.
- Moreover, he does not render himself liable by refusing to answer such questions or by giving false answers to such provisions.

- The answers which are given by the accused in such examination may be taken into consideration and put in evidence, for or against him in that or any other inquiry or trial for any other offence which such answers may tend to show that he has committed.

- B) While examining the accused trial court has to take into consideration that the questions should be based on the evidence adduced by prosecution witnesses that to incriminating evidence found from prosecution evidence.
- The questions should be formulated in clear, logical and understandable leaving no ambiguity in questioning accused.
- While examining accused courts has to take into consideration socio economic and academic qualification of accused and capacity of him to understand questions posed to him.
- Court has to take acute care while examining rustic and illiterate accused.

- The accused if he is not a intelligent person with a sharp memory may not even remember all the circumstances put to him while giving his explanation.
- This may lead to miscarriage of justice. If vague questions are put to the accused he may not have opportunity to explain promptly and effectually.
- Evidence of each witness and incriminating evidence found there on should be asked individually but not in a formal way questioning all the accused at one time.
- Questioning of all accused at a time about incriminating evidence found form prosecution is not proper, as role and participation each accused may different according to the facts and circumstances of each case.

- So that, it is always desirable to ask each accused separately about incriminating evidence found against him in a case.

- While examining the accused the following points to be considered:
- a) No oath shall be administered to accused when he is examined under sub section(1) of crpc.
- As no oath is taken to examine accused the statements given by him cannot be taken as an evidence.
- That is why sub section (3) says accused shall not render himself liable to punishment if he gives false answers.

- b) Accused is not compelled to speak, right to keep silence is right of accused governed by our constitution .
- The accused is at liberty to answer them or refuse to do so.
- No punishment can flow from his refusal to answer or giving false answers.
- All that is permissible in such cases for the Court is to draw adverse inference from refusal to answer as it thinks just.

- c) It may be seen that the language in which Section 313 of Criminal Procedure Code, 1973 is couched is plain and simple and leaves no room for any misapprehension as to the scope and purpose of the section.

- The questions to be put, have a limited purpose.
- The object mainly and solely is to enable the accused to explain any circumstances appearing in the evidence against him.
- Whereas there is a statutory obligation on the Court to put such questions, no such obligation is cast on the accused to answer them.
- Each answer should be recorded separately. The examination should be thorough and only with a view to enable the accused to explain the circumstances against him to the best of his ability.

- No vital or salient or incriminating point should be left out which might result in prejudice.
- If any vital point is left out it cannot be used against the accused.
- Any such lapse on the part of the Court may prove fatal.
- A careful reading of the various decisions of the Supreme Court will enable the Presiding Officers to understand fully the significance of drawing attention of the accused to each matter separately by putting him separate questions on each of such points in a form easy to understand and appreciate and giving him a fair and full opportunity to explain the circumstances against him.

- The points to be covered by presiding officer while examining accused basing on prosecution evidence is that :
- 1) The presence and involvement of the accused at the scene of occurrence.
- 2) The part alleged to be played by him at the scene of occurrence in the commission of the offence.
- 3) The motive for crime.
- 4) Anything revealed by the medical evidence as against him. (5) Any objects recovered from him tending to incriminate him.
- (6) Confession.
- (7) Extra-judicial confession
- (8) Motive of the witnesses to depose against him.
- (9) Dying declaration

g) It was never intended by the legislature that the court should not frame its questions on its own initiative but should depend upon questions to be supplied to it by prosecution by way of adducing evidence against accused basing on charges framed.

h) Proper care has to be taken while examining deaf and dumb. It is duty of court to observe whether the accused, though a deaf, mute had sufficient intelligence to understand the criminal character of the act committed by him and take assistance of interpreter or person who is capable of understand signs of accused or even in writing.

- EVIDENTIARY VALUE OF 313 EXAMINATION
- As accused not examined on oath in 313 examination to explain his version or his case against the evidence adduced by prosecution, the statements of him cannot be taken as a evidence against him.
- Even it is right of accused to keep silence or to give any false statement which does not bind him or the court not allowed to prosecute him on false statements given by him in examination.
- The purpose, procedure and consequences of examination of accused in 313 examination was discussed elaborately by our apex court in decision reported in AIR 2010 SC 3507 Sanatan Naskar & Anr vs State Of West Bengal.

- “ The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality.
- Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC.

- . As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime.

- The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded.
- It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct.
- The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the other party to cross-examine him.
- However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law.

- The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain.

- Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial.
- The statement of the accused can be used to test the veracity of the exculpatory (absolve) of the admission, if any, made by the accused.

- It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case.
- The provisions of Section 313 (4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed.
- In other words, the use is permissible as per the provisions of the Code but has its own limitations.

- The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

- Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.PC as it cannot be regarded as a substantive piece of evidence."

- It is settled preposition of law statements given by accused or answers given by accused is not substantive piece of evidence and it is not sole base for convicting the accused.
- The statements of accused can be used for proper appreciation of evidence to accept or reject.

- As no oath is administered to accused and he is not subject to cross examination for the statements given by him , those statements cannot be treated as evidence as contemplated in section 3 of Indian Evidence Act.

- In Dehal Singh v. State of H.P., AIR 2010 SC 3594,
- Honorable Apex Court observed: “Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of the prosecution and it is not an evidence.
- Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, the said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act.

- In State of M.P. v. Ramesh, (2011) 4 SCC 786,
- this Court held as under: “The statement of the accused made under Section 313 CrPC can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case.
- However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined. his statement so recorded under Section 313 CrPC cannot be treated to be evidence within the meaning of Section 3 of the Evidence Act. 1872.

- The statements given by accused in 313 Cr.P.C examination cannot be used to fill up the laches (LACK OF DILIGENCE) on the part of prosecution. In case prosecution evidence is not sufficed to give conviction to accused then, inculpatory statements given by accused cannot be taken into consideration.
- However, his statement cannot be made a basis for his conviction.
- His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions.
- Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution.

- An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same.
- However, the accused has a right to remain silent as he cannot be forced to become witness against himself.

- EFFECT OF NON COMPLENCE OF SECTION 313
- Non examination of accused under section 313 of Cr.P.C does not vitiate the entire proceedings or case of prosecution. Accused can make good of the same even at appellate stage.
- “

- Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred that does not ipso facto vitiate (invalid) the proceedings.
- The accused must show that failure of justice was occasioned by such omission

- WHEN IT IS NOT NECESSARY TO EXAMINE THE ACCUSED UNDER SECTION 313 OF CR.P.C.

- It is settled law that it is not obligatory in each case to examine the accused under above section. If there are no circumstances appearing against the accused in evidnece, then the court should not put any questions to accused.

- When the accused had pleaded guilty to the charge, then the question of examination does not arise.
- In the same way when there is an admission made by the accused himself, then it is not necessary to put that allegation to the accused in examination.
- 6. CONCLUSION:
- The law mandates every incriminating evidence should be put to the accused separately.
- Section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory (incriminating) pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so.

- Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response.
- This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him.
- Trial judge should take care that questions of an inquisitorial nature should be put an accused, simply because statements given by accused under this section is not sole base for conviction, presiding officer cannot be treat as formality as it carries much impotence in appreciation of evidence.

- EXPERT EVIDENCE (Sec. 45 of Evidence Act.)
- Introduction :
- When the court has to form and opinion upon a point of foreign law or of science or art, or as to identity of hand writing or finger impressions, the opinions upon that point of persons specially skilled in such foreign law , science or art, or in questions as to identity of hand writing or finger impressions are relevant facts.
- Such persons are called experts.
- Usually, under the law of Evidence, third parties, that is, persons who are unacquainted with the facts and circumstances of the case are not called upon to give their testimony, opinion or witness in any criminal trial.

- This is a general principle of the law of Evidence. The exception to this principle is “Expert Opinion”, where an expert of a particular subject is consulted to give his opinion on the relevant subject and it is relevant in deciding the case, even though he or she is a stranger to the case and is unacquainted with the facts and circumstances of the case.
- The first question that comes to mind is who really is considered as an expert. An “Expert” is a person who has-
- special knowledge
- skill, or
- experience,

- in either of the following subjects-
- foreign law,
- science,
- art,
- handwriting, or
- finger impression,
- and such knowledge has been gathered by him or her through-
- practice,
- observation, or
- proper studies.

- Even though the definition derived and interpreted from the statute is only limited to the above mentioned five subjects, in practice the Court may consult experts on some other matters as well.

- For example, medical practitioners, chemical analysts, explosive experts, fingerprint and handwriting experts etc. are consulted by the Court on matters of expertise.
- In view of the language of sec 45 of Evidence Act it is necessary that before a person can be characterised as an expert there must be some material on record to show that he is one who is skilled on that particular science and is possessed of particular knowledge concerning the same.
- He must have special study of the subject or acquired special experience therein .

- Thus before a testimony of witness became admissible his competency as an expert must be shown, may be by showing that he was possessed of necessary qualification or that he has acquired special skill therein by experience.

- Expert opinion is not required in all cases, whether criminal or civil. Generally, the opinions of experts are admissible whenever an issue comprises a subject of which knowledge can only be acquired by special training and experience.

- If the subject matter is such that an inference regarding it can be drawn conveniently, then expert opinion cannot be sought.

- The subject matter must be such as to require specialized knowledge and only then can expert evidence be sought for. Also, an expert cannot give his opinion suo moto, unless called upon by the prosecution.

- Relevant Provisions
- Section 45 provides that the opinions of third persons are relevant if such third person is an expert who is consulted by the Court on a point of such expertise.
- Section 45A, which was inserted by the Information Technology (Amendment) Act, 2008, regards an Examiner of Electronic Evidence as an expert and makes his opinion relevant.
- Section 46 makes such facts relevant which either support or reject the opinion of the expert.

- Section 47 and 47A pertain to opinions regarding the handwriting or signature and electronic signature of a person.
- Section 47A was inserted by the Information Technology Act, 2000. Also, Section 73 empowers the Court to compel a person to furnish a sample handwriting or signature, and also fingerprints for the purpose of comparison and ascertainment.
- Section 51 makes the grounds on which such opinion is given as relevant.

- Types
- There are various types of expert evidence, and many more new methods and mechanisms are being developed and applied everyday with the continuous advancement in science and technology. The currently available expert evidences are divided into the following types:
- Medical Evidence- This type of expert evidence is given by a medical practitioner and it is conducted in a medical laboratory. These are further subdivided into the following types-
- Cause of Death in cases alleged to be due to physical violence;
- Cause of Death in cases alleged to be due to causes other than physical violence;

- Whether Death was accidental, suicidal or homicidal;
- To prove Legal Insanity;
- In cases of Sexual Offences;
- To determine age;
- In disputed Paternity cases; and
- Miscellaneous matters.

- Non-Medical Evidence-
- These are the expert evidences other than medical in nature. These are further sub-divided into-

- Fingerprints;
- Footprints;
- Handwriting;
- Typewriting;
- Forensic Ballistics;
- Narco-analysis;
- Polygraph Test; and
- Brain Mapping.

- These are just some of the methods that are currently practiced in the investigation process in India.
- Many new methods and techniques are being developed and will soon be in use for the purpose of investigation, but in each method it must be ensured that the rights of the individual are not hampered.
- In cases where the rights of the accused are affected, the constitutionality of the evidence comes into question.

- Constitutionality
- The constitutionality of expert evidence was challenged as against Article 20(3) and Article 21 of the Constitution of India, 1950.
- The basic contention was that by compelling (which could go to the degree of application of physical force) a person to give sample of his handwriting or signature, or forcing him to go through Narco-analysis, Polygraph Test and Brain Mapping, the Court was compelling a person to self incriminate, which is in violation of Article 20(3) of the Constitution.
- This whole process was also in violation of a person's right to life and liberty under Article 21 of the Constitution. Hence, the constitutional validity of the whole process was challenged time and again in the Court.

- These questions were addressed by an eleven-judge bench of the Supreme Court in the case of *State of Bombay* v. *Kathi Kalu Oghad*, where the question was regarding fingerprints and handwriting samples.
- The Court upheld that compelling the accused to provide fingerprint and handwriting samples under Section 73 for the purpose of expert opinion was not hit by Article 20(3), and hence was constitutional.
- It was discussed in this case that giving samples was not equivalent to being a witness against themselves, as the samples were not evidences *per se*. Rather, the report made by the expert would be the evidence in this case, and the expert would act as a witness against the accused.

- Moreover, this case narrowed down the scope of protection under Article 20(3) by stating that the clause “to be a witness” means imparting knowledge about facts of which the person has personal knowledge through oral or written statements,
- whereas giving specimens of fingerprints or handwriting do not fall under this, as these have an intrinsic and unchangeable nature that is verifiable.
- In another case of *Goutam Kundu* v. *State of West Bengal*, where there was a question as to paternity, the Supreme Court held that no person can be compelled to give blood sample and any refusal cannot be interpreted adversely.

- Then, in the case of *Selvi* v. *State of Karnataka*, the Supreme Court was again faced with the validity of three specific and extensively used investigation methods of Narco-analysis, Polygraph Tests and Brain Mapping.
- In Narco-analysis, a truth serum is administered to the subject to ensure that he speaks the truth, whether he is willing or not.
- In the Polygraph Test and the Brain Mapping methods, the physiological responses to various questions are analyzed to decide whether the subject is speaking the truth or not.
- In this case, the Supreme Court declared all three of these methods as unconstitutional.
- The Apex Court emphasized on the distinction between physical privacy and mental privacy. Through these methods, the mental privacy of an accused was encroached upon, hence infringing not only Article 20(3) of the Constitution, but also Article 21. Hence these methods were declared unconstitutional.

- Evidentiary Value
- Expert opinion is a rather weak type of evidence and the Courts do not generally consider it as offering conclusive proof, and therefore do not rely solely upon it without seeking independent and reliable corroboration.
- It is well settled law that the opinion of a handwriting expert cannot be considered as conclusive proof unless substantiated by corroborating evidence.
- In the case of *Ram Chandra* v. *State of U.P.*, it was held by the Supreme Court that it would be unsafe to treat the opinion of the handwriting expert as sufficient basis for conviction, but it can be relied upon when supported by other items of internal and external evidence. (only opinion evidence.)

- In *Ram Narain* v. *State of Uttar Pradesh*, the kidnapper was convicted solely on the basis of handwriting expert's opinion by the lower courts and the Supreme Court upheld the conviction while stating that if after comparison of the disputed and admitted writings by the Court itself, it is considered safe to accept the opinion of expert, then the conclusion so arrived at cannot be attacked on special leave merely on the ground that expert opinion is generally considered inconclusive.

- Conclusion
- Expert evidence is an extensively used method in the investigation process, as with the advancement of technology, it has now become imperative in almost all cases, especially criminal.
- Whether it is a case of murder, rape, accident, suicide or theft, in all kinds of cases, expert opinion can and is used to strengthen the prosecution case. To be able to successfully use expert opinion, many intricacies need to be considered and be taken care of. First of all, the types of experts that need to be consulted in each case has to be determined.

- Then, it must be confirmed that the selected methods are constitutional in nature. This is a controversial issue and a grey area in the law of expert evidence. The Supreme Court has attempted to provide some basic guidelines on the basis of which the constitutionality of the expert evidence methods may be analyzed. The kinds of methods in which the accused is only directed to give a sample of his handwriting, signature, fingerprint, DNA and the like, where it does not amount to evidence in itself, but only amounts as a sample, then it cannot be said that the accused is being compelled to be a witness against himself and hence, such methods are constitutional.

- Whereas, if the methods are such that compel the accused to give certain information of which he has special and exclusive knowledge, then that amounts to compelling him to be a witness against himself and hence, are considered to be unconstitutional. Even after the test of constitutionality is passed, the opinion of the expert is not considered as conclusive proof, and a conviction is usually not solely based on expert opinion.

NYAYA PANCHAYAT

- The Nyaya Panchayat is **a part of the Panchayat system, which was established to resolve villagers' problems**. Its many functions include resolving minor criminal and civil issues in which the parties present their arguments to the Panchayat members.

- A **Nyaya panchayat** is a system of dispute resolution at the village level in the panchayati raj system of India.

- Legislation to formalize these bodies and bring them within the ambit of organised justice in India was planned as part of the Panchayati Raj reforms of Rajiv Gandhi in the 1980s, but was put on hold to coincide with broader reform of the justice system, which was never carried out.

- Following the victory of the Congress Party-led United Progressive Alliance in the 2004 Indian general election, the National Advisory Council advised the Government of India to introduce legislation.

- To draft legislation in this regard a drafting committee, under the chairmanship of Professor Upendra Baxi, has been formed by the **Ministry of Panchayati Raj**, Government of India.
- The bill on the issue is proposed to be debated in the winter session of the Indian Parliament. Nyaya panchayat can only fine up to ₹100 and cannot send anyone to jail.

- Since a forum for the resolution of disputes with the participation of people in local justice administration is the goal envisaged by Article 39A of the Constitution of India, it is strongly felt by some jurists and social scientists that it is incumbent on the government to take immediate steps to activate nyaya panchayats, given that it might not be possible to render access justice in rural areas simpler and quicker.

- It is also argued that nyaya panchayats guided by local traditions, culture and behavioural pattern of the village community instill confidence in the people towards the administration of justice.

- With a rapid increase in the number of people approaching the courts, the primary concern faced by the Judiciary is the escalation in the number of new cases coming in and an ever-increasing backlog, which seems to have assumed insurmountable propositions making access to justice to the public at large a far delayed and long drawn process.

- The following considerations seem to have prompted the Law Commission and the Study Team on nyaya panchayats to recommend the revitalisation of nyaya panchayats:

- 1. They would dispose of a large number of cases and thus relieve the burden of regular courts.
- 2. They would succeed in getting a large number of cases compromised through peaceful conciliation.
- 3. The villagers in general would be satisfied with the administration of justice obtaining in village or panchayat courts and that the decisions of these courts on the whole would do substantial justice.
- 4. Appeals and revisions from these decisions would be small in number.
- There should be speedy and cheap disposal of cases.

- 5. The litigants and witnesses who are mostly agriculturists can conveniently attend the courts and thus there would be no interference with agricultural activities in the village.

- 6. The panchayat could bring justice nearer to the villager without involving the expenditure which would otherwise have to be incurred in establishing regular courts.

- 7. Local courts acquainted with the customs of the neighbour hood and nuances of the local idiom are better able to understand why certain things are said or done.
- 8. An institution nearer to the people holds out greater opportunities for settlement and a decision taken by it does not leave behind that trial of bitterness which generally follows in the wake of litigation in ordinary courts.

- People in a village are so closely known to each other that the parties to a dispute would not be able to conceal or produce false evidence easily and those who tell lies before the nyaya panchayat face the risk of being looked down upon and even boycotted by others.
- Panchas being drawn from among simple village folk strive at decisions which are fair and at the same time consistent with the peculiar conditions of the parties.
- Features of a Nyaya panchayat :
- The essential pre requisities for the member of a Nyaya Panchayat are that the member must be able to read and write the state language and must not hold an offficeof Sarpanch or be a member in the samiti, parishad or

- State or union legislature .
- A Nyaya Panchayat
- 1. Has a chairperson and secretary elected by its members.
- 2. One third of its members retire every second year.
- 3. Gram Panchayat elects members for Nyaya Panchayat.

- CRIMINAL JURISDICTION OF NYAYA PANCHAYAT
- The Criminal jurisdiction is comparatively extensive such as criminal negligence or trespass, nuisance, possession or use of weights and measurement, theft, missappropriation with pecuniary limit as low as Rs .25 to 50, intimidation , perjury and attempt to evade a summons and so forth.

- It has authority to levy fines, but they have no power to sentence offender to imprisonment, substantially or in default of fine. The state Government has the power to enhance as well as diminish the jurisdiction in case of admission of injustice .
- More emphasis is given on the amicable settlement of dispute in the system of Nyaya panchayat. Therefore , the method of conciliation is being emphasised over adjudication.
- PROCEDURE OF THE NYAYA PANCHAYAT SYSTEM
- The procedure adopted by the Nyaya Panchayat are simple and fleible

- 1. The complaints may be oral or in writing. Hearing is informal. Panchas confer among themselves and arrive at a decision, which is pronounced in the open court.
- 2. The final judgement is written and read out in open court. It is signed by the parties to the dispute , signifying the communication of judgement to them.
- 3. Nyaya Panchayat has power to issue summons and to proceed exparte in case of reluctant defendant.
- 4. Maintains the records of cases , judgments, gist of depositions by witness, fines, summons and the expenses.
- 5. The subdivisional or District Magistrate can transfer the case form one Nyaya panchayat to another in case of miscarriage of justice.

- 6. Appeals can be made to Magistrate court and also for revision of decision of Nyaya Panchayat.
- 7. They must conform to the principles of Natural Justice and must avoid bias. Training of the panchas is also recommended by the Law Commission in its 14 th report.
- The Indian Constitution , with the 73rd amendment in 1992 accommodated the idea to establish Panchayats in various States . The constitution Amendment Act of 1992 contains provision for devolution of powers and responsibilities to panchayats to both for preparation of plans for economic development and social juistice .

- THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015
- An Act to consolidate and amend the law relating to children alleged and found 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 processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

- . Definitions.—In this Act, unless the context otherwise requires,—
- "abandoned child" means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry;

- "adoption" means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.

- “administrator” means any district official not below the rank of Deputy Secretary to the State, on whom magisterial powers have been conferred .
- “aftercare” means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society.
- begging” means— (i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, under any pretence;
- (ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal.

- "best interest of child" means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.

- "Board" means a Juvenile Justice Board constituted under section 4.
- "child" means a person who has not completed eighteen years of age.
- "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

- “child in need of care and protection” means a child—
- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person—
- (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
- (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

- c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee;
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or

- (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;
- "child friendly" means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;

- "Child Welfare Officer" means an officer attached to a Children's Home, for carrying out the directions given by the Committee or, as the case may be, the Board with such responsibility as may be prescribed

- "Children's Home" means a Children's Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50;

- "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

- "child care institution" means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services;

- “corporal punishment” means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child;
- “foster care” means placement of a child, by the Committee for the purpose of alternate care in the domestic environment of a family, other than the child’s biological family, that has been selected, qualified, approved and supervised for providing such care;
- “foster family” means a family found suitable by the District Child Protection Unit to keep children in foster care under section 44;

- "guardian" in relation to a child, means his natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings;
- "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;
- "inter-country adoption" means adoption of a child from India by non-resident Indian or by a person of Indian origin or by a foreigner.

- “narcotic drug” and “psychotropic substance” shall have the meanings, respectively, assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- “observation home” means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such, for the purposes specified in sub-section (1) of section 47;
- “orphan” means a child— (i) who is without biological or adoptive parents or legal guardian; or
- (ii) whose legal guardian is not willing to take, or capable of taking care of the child;

- “probation officer” means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958) or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit;
- serious offences” includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years.
- “special home” means an institution established by a State Government or by a voluntary or non-governmental organisation, registered under section 48, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board

- surrendered child" means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee;

CHAPTER III
JUVENILE JUSTICE BOARD

- 4. Juvenile Justice Board.—
- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

- (2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, 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 First Class.

- (3) No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for atleast seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.
- (4) No person shall be eligible for selection as a member of the Board, if he—
- (i) has any past record of violation of human rights or child rights; (ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;

- (iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
- (iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.
- (5) The State Government shall ensure that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

- (6) 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.
- (7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he—
- (i) has been found guilty of misuse of power vested under this Act; or
- (ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or
- (iii) fails to attend less than three-fourths of the sittings in a year; or
- (iv) becomes ineligible under sub-section (4) during his term as a member.

- 5. Placement of person, who cease to be a child during process of inquiry.—Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.

- 6. Placement of persons, who committed an offence, when person was below the age of eighteen years.—
- (1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.
- (2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.
- (3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act

- 7. Procedure in relation to Board.—
- (1) The Board shall meet at such times and shall observe such rules in regard to the transaction of business at its meetings, as may be prescribed and shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular courts.
- (2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting.
- (3) A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the 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 or in making an order under sub-section (3) of section 18.
- (4) In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

- 8. Powers, functions and responsibilities of the Board.—
- (1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.
- (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

- (3) The functions and responsibilities of the Board shall include—
- (a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;
- (b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;
- (c) ensuring availability of legal aid for the child through the legal services institutions;
- (d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

- (e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;
- (f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;
- (g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

- (h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;
- (i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;
- (j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

- (k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;
- (l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

- m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and
- (n) any other function as may be prescribed.
- 9. Procedure to be followed by a Magistrate who has not been empowered under this Act.—(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

- (2) In case a person alleged to have committed an offence claims before a court other than a Board,
- that the person is a child or was a child on the date of commission of the offence,
- or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:
- .

- Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

- (3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

- . (4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.
- CHAPTER IV
- PROCEDURE IN RELATION TO CHILDREN IN CONFLICT WITH LAW
- 10. Apprehension of child alleged to be in conflict with law.—
- (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

- Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.
- (2) The State Government shall make rules consistent with this Act,—
- (i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board;
- (ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

- 11. Role of person in whose charge child in conflict with law is placed.—
- Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance:

- Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

- 12. Bail to a person who is apparently a child alleged to be in conflict with law.—
- (1) When any person, who is apparently a child and is alleged to have committed a abailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

- Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

- 2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.
- (3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

- (4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.
- 21. Order that may not be passed against a child in conflict with law.—
- No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

- 23. No joint proceedings of child in conflict with law and person not a child.—
- (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

- CHAPTER V
- CHILD WELFARE COMMITTEE
- 27. Child Welfare Committee.—
- (1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.

- (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 the matters concerning children.
- (3) The District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.
- (4) No person shall be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for at least seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development.

- (6) No person shall be appointed for a period of more than three years as a member of the Committee.
- (7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if—
- (i) he has been found guilty of misuse of power vested on him 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 consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.

- (8) The District Magistrate shall conduct a quarterly review of the functioning of the Committee.
- (9) The Committee shall function as a Bench 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 First Class.
- (10) The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.

- 28. Procedure in relation to Committee.—
- (1) The Committee shall meet at least twenty days in a month and shall observe such rules and procedures with regard to the transaction of business at its meetings, as may be prescribed.
- (2) A visit to an existing child care institution by the Committee, to check its functioning and well being of children shall be considered as a sitting of the Committee.
- (3) A child in need of care and protection may be produced before an individual member of the Committee for being placed in a Children's Home or fit person when the Committee is not in session.
- (4) In the event of any difference of opinion among the members of the Committee at the time of taking any decision, the opinion of the majority shall prevail but where there is no such majority, the opinion of the Chairperson shall prevail.

- (5) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding:
- Provided that there shall be at least three members present at the time of final disposal of the case.
- 29. Powers of Committee.—(1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.
- (2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

- 30. Functions and responsibilities of Committee.—
- The functions and responsibilities of the Committee shall include—
- (i) taking cognizance of and receiving the children produced before it;
- (ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;
- (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

- (iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;
- (v) directing placement of a child in foster care;
- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need.
- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;
- (vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

- (viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;
- (x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;

- (xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;
- (xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;
- (xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

- (xiv) dealing with cases referred by the Board under sub-section (2) of section 17;
- (xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;
- (xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;
- (xvii) accessing appropriate legal services for children;
- (xviii) such other functions and responsibilities, as may be prescribed.

- 47. Observation homes.—
- (1) The State Government shall establish and maintain in every district or a group of districts, either by itself, or through voluntary or non-governmental organisations, observation homes, which shall be registered under section 41 of this Act, for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act.
- (2) Where the State Government is of the opinion that any registered institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of such child alleged to be in conflict with law during the pendency of any inquiry under this Act, it may register 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 and monitoring of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a child alleged to be in conflict with law and the circumstances under which, and the manner in which, the registration of an observation home may be granted or withdrawn.
- (4) Every child alleged to be in conflict with law who is not placed under the charge of parent or guardian and is sent to an observation home shall be segregated according to the child's age and gender, after giving due consideration to physical and mental status of the child and degree of the offence committed.

- 48. Special homes.—
- (1) The State Government may establish and maintain either by itself or through voluntary or non-governmental organisations, special homes, which shall be registered as such, in the manner as may be prescribed, in every district or a group of districts, as may be required for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board made under section 18.
- (2) The State Government may, by rules, provide for the management and monitoring of special homes, including the standards and various types of services to be provided by them which are necessary for social re-integration of a child, and the circumstances under which, and the manner in which, the registration of a special home may be granted or withdrawn.

- (3) The rules made under sub-section (2) may also provide for the segregation and separation of children found to be in conflict with law on the basis of age, gender, the nature of offence committed by them and the child's mental and physical status.

- 49. Place of safety.—
- (1) The State Government shall set up atleast one place of safety in a State registered under section 41, so as to place a person above the age of eighteen years or child in conflict with law, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence.
- (2) Every place of safety shall have separate arrangement and facilities for stay of such children or persons during the process of inquiry and children or persons convicted of committing an offence.
- (3) The State Government may, by rules, prescribe the types of places that can be designated as place of safety under sub-section (1) and the facilities and services that may be provided therein.

- 50. Children's Home.—
- (1) The State Government may establish and maintain, in every district or group of districts, either by itself or through voluntary or non-governmental organisations, Children's Homes, which shall be registered as such, for the placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation.
- (2) The State Government shall designate any Children's Home as a home fit for children with special needs delivering specialised services, depending on requirement.
- (3) The State Government may, by rules, provide for the monitoring and management of Children's Homes including the standards and the nature of services to be provided by them, based on individual care plans for each child.

- PREVENTIVE MEASURES UNDER CRPC 1973

- SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR (SEC. 106 TO 124)
- This deals with taking security from a person who has committed any offence to prevent him from committing the same offence again . The executive Magistrate when receives information that a certain person may
- 1. Commit breach of peace
- 2. Disturb Public tranquillity or
- 3. Do any act to cause any or both or the above
- Then he may require that person to show cause as to why he should be ordered to execute a security bond with or without sureties to prevent the occurrence of any such untoward event.

- Thus , such a person has to execute a bond for keeping peace for a period of maximum up to one year.
- The provisions regarding bond for keeping the peace and the consequences on breach of such a bond is given in sections 111 to 124.

- Sections 108 to 110 provide for taking security from persons mentioned below to maintain good behaviour thus preventing them from repeating their crime.
- 1. Against persons disseminating seditious matter.
- 2. Against suspected Criminals .
- 3. Against habitual offenders.

- MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY A.–Unlawful assemblies (sec. 129 to 132)
- Such assemblies that have a potential danger of becoming violent or Causing unrest are dispersed by the police so as to prevent any offence or mishap from happening . For the purpose of doing , civil or armed force may be used .
- An use of civil force can be ordered by an Executive Magistrate or an officer in charge of police station to disperse
- 1. Any unlawful assembly .
- 2. Any assembly of five or more than five persons likely to cause a disturbance of peace .

- If the assembly mentioned above cannot be dispersed otherwise and dispersal is necessary for public security then the Executive Magistrate of the Highest Rank who is present may cause it to be dispersed by the aid of armed forces in accordance with the provisions of the code.
- REMOVAL OF PUBLIC NUISANCE
- (Sec 133 to 143)
- According to sec.133 , whenever a DM, SDM or any other EM receive any information from a police officer or any other source after taking required evidence that there is an urgent need for removal of public nuisance, if the Magistrates thinks and considers that,
- 1. Any unlawful assembly should be removed from the public place.

- 2. Conduct of any trade or keeping of goods is injurious to health.
- 3. Any building or structure is dangerous to life.
- 4. Any tank or well should be fenced.
- 5. Any dangerous animal should be destroyed or confined or disposed of otherwise.
- he may make a conditional order requiring such person to remove the obstruction or nuisance as mentioned above.

- Urgent cases of nuisance or apprehended danger
- 144. Power to issue order in urgent cases of nuisance or apprehended danger .
- Preventive Measure for public Order and Peace U/S 144 of crpc.
- Under the Criminal Procedure Code wide powers have been conferred on an Executive Magistrate to deal with emergency situations. One such provision deals with the Magistrates powers to impose restriction on the personal liberties of individuals , whether in a specific locality or in a town itself, where the situation has the potential to cause unrest or danger to peace and tranquillity in such an area , due to certain disputes.
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- Therefore , sec 144 confers powers to issue an order absolute at once in urgent cases of nuisance or apprehend danger.
- Action under this section is anticipatory , i.e it is utilized to restrict certain actions even before they actually occur. Anticipatory restrictions are imposed generally in cases of emergency, where there is an apprehended danger of some event that has the potential to cause major public nuisance or damage to public tranquillity.

PREVENTIVE ACTIONS OF THE POLICE

(Sec 149 to 153)

- Sec 149 to 153 provides for preventive action of the police. Such action of the police officer falls into following three categories.
- 1. Prevention of Cognizable offences .
- 2. Prevention of Injury to Public Property and
- 3. Inspection of weights and measurements.

- 149. Police to prevent cognizable offences.—
- Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.
- 150. Information of design to commit cognizable offences.—Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.
- 151. Arrest to prevent the commission of cognizable offences.—
- (1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

- (2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.
- 152. Prevention of injury to public property.—
- A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.
- 153. Inspection of weights and measures.—
- (1) Any officer in charge of a police station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

- 2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.
- THESE ARE SOME OF THE PREVENTIVE MEASURES UNDER CRIMINAL PROCEDURE CODE.