



Chapter-10 :
Criminal
Procedure
Code, 1973

Contents

Introduction.....	2
Definitions.....	3
Classes & Powers of Criminal Courts.....	6
Arrest of Persons	8
Summons And Warrants	14
Warrant of Arrest	16
Proclamation And Attachment	16
Summons To Produce.....	17
Preventive Action Of The Police	21
Information To Police And Their Powers To Investigate	22
Powers of Magistrate.....	25
Limitation For Taking Cognizance Of Certain Offences.....	29
Summary Trial	30

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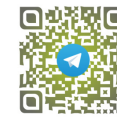
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Introduction

Is the code of Criminal Procedure a substantive or adjective law or both

- Law is popular term. It is very difficult to give a uniform & precise definition of law and has been defined differently by different jurists.
- The Government prescribes a certain uniformity of human actions to be followed by subject in a day to day for welfare & progress of people & society
- That is known as law -
- The duty of state is many fold out of which maintenance of peace in society & administration of justice is importance.
- Functions of law is to maintain law & order in society & that people an leave in peace & pursue their respective goals.
- Without law people can never be able to live in peace and cannot achieve progress.
- To harmonize the above discussion it can safely be concluded that CrPC is not wholly procedural law in natural. It is a mixture of both **Adjective & substantive** law. The major portion of code contain procedural law but however minor it may be. If contains some amount of substantive law. The CrPC is a happy combination of both substantive & procedural law.

* Difference between Substantive Law and Adjective Law

Substantive Law	Adjective Law
<ol style="list-style-type: none"> 1. Substantive Law define rights and duties with right, life, Liberty and Liabilities of individuals. 2. Substantive Criminal Law defines different offence and provides punishments thereof. <p>For Ex. Right of getting bails v/s 436, 437, 438, 439 Right to remove public nuisance v/s 133 are some instance of Substantive Law.</p>	<p>Adjective Law is also know as Procedural Law. If deals with procedural aspect of Substantive Law.</p> <p>Criminal Procedure Code deals with classification of courts and their constitution, powers and procedure to be followed by there besides general provisions of procedure in holding trials etc.</p> <p>From the arrangement of Criminal Procedure Code it can be said that it is piece of Procedural Law.</p>

To harmonize the above discussion it can safely be concluded that the Criminal Procedure Code is not wholly Procedural Law in natural. It is mixture of both Adjective & Substantive Law. The Major portion of Code Contain Procedural Law but however Minor it may be it contains some amount of Substantive Law. The CrPC is happy combination of both Substantive and procedural Law.

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Definitions

→ Offence (2)(n)

- Mean any act or omission made punishable by any law for time being in force
- Includes any Act in respect of which a complaint may be made **u/s 20 of Cattle-trespass Act, 1871.**
- An offence is what the legislature classes as punishable
- Mens Rea is an essential ingredient in every offence.

→ Mens Rea

- Means a guilty mind
- Fundamental principle embodied in maxim -
“**Actus non facit reum nisi mens sit rea**”
means an act itself does not constitute guilt unless done with a guilty intent.
- Unless an act is done with a guilty intention

→ General Rule

- “**There must be a mind at fault before there can be a crime**”
- It is subjective matter
- Thus mens rea is a state of mind which accompanies & directs the conduct resulting in actus reus.

→ Bailable Offences

- Means an offence shown as First Schedule of Cr.P.C.

→ Non Bailable Offences

- Any other offence
[offences not covered in 1st Schedule]

→ Cognizable Offences [**Non-bailable offences**]

- It is an offence in which, a police officer in accordance with First Schedule arrest without warrant.
- In Order to be cognizable case it would be enough if one or more of offences are cognizable.

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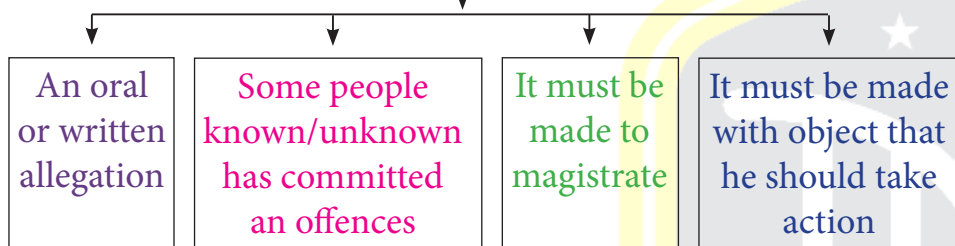


→ Non-cognizable Offence [Bailable]

- Means an offence in which police officer has no authority to arrest without warrant.
- Here police officer needs a special authority to arrest

→ Complaint [Section-2(d)]

Requisites of Complaint



- It does not include a police report
 - Exceptions :
 - If after investigation it discloses a commission of non-cognizable offence police report is included.
 - There is no particular format of complaint.
- If a petition addressed to Magistrate containing & allegation that the offence has been committed and ending with prayer that accept must be dealt with

Ref : Mohd. Yousuf v/s. Afaq Jahan

- In general a complaint about an offence can be filed by any person except in cases of offences relating to : (a) marriage, (b) defamation and (c) offences mentioned under Sections 195 and 197

Bail :

It means the release of the accused from the custody of the officers of law and entrusting him to the private custody of persons who are sureties to produce the accused to answer the charge at the stipulated time or date.

Anticipatory bail

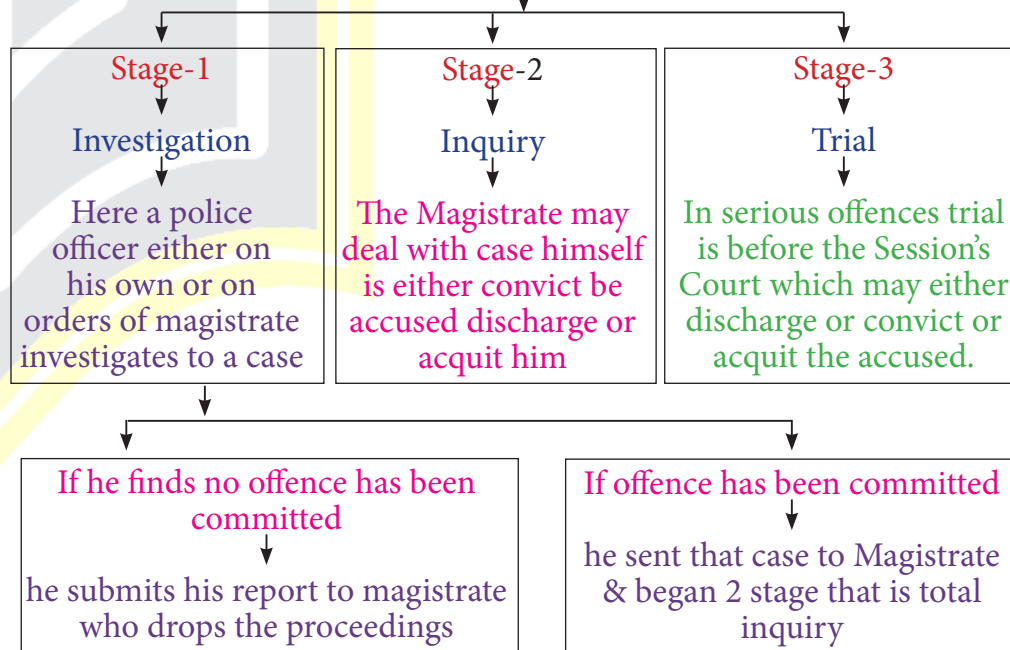
- granted by the High Court or a Court of Session
- to a person who apprehends arrest for having committed a non-bailable offence, but has not yet been arrested
- An opportunity of hearing must be given to the opposite party before granting anticipatory bail

State of Assam v. R. K. Krishna Kumar

→ Investigation [Section-2(h)]

- It include all the proceedings for the collection of evidence
- Conducted by police officer or by any person who is authorised by a Magistrate

3 Stages of Criminal Cases



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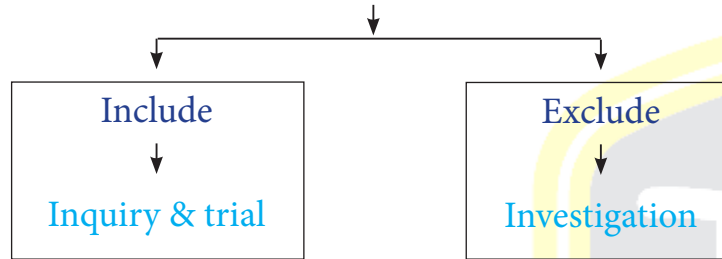
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→ **Judicial Proceeding (2) (i)**

- It includes any proceeding in course of which evidence is or may be legally taken on oath -



→ **Pleader 2 (Q)**

- It means a person authorised by or under any law for time being in force to practice in such Court

- **Include**

Any other person appointed with permission of Court

To act in such proceeding.

It also include a non-legal person appointed with permission of Court

→ **Public Prosecutor 2 (U)**

- A public prosecutor means any person appointed u/s 24 of Cr. P.C.
- Include any person acting under directions of Public Prosecutor

- Public prosecutor though an executive officer is also an officer of the Court & he is bound to assist the Court with his fair views & fair executive of his functions.

→ **Summons and Warrant Cases**

[Section 2(w)]

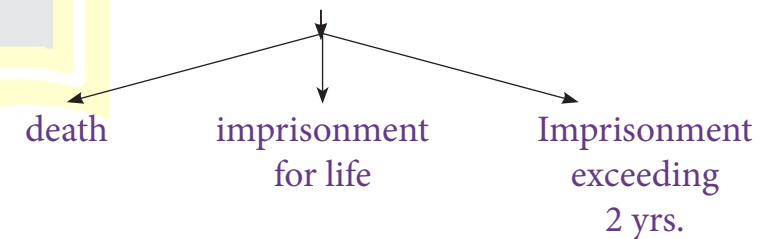
[Section 2(x)]

- Means a case relating to an offence not being a warrant case.

- Punishment : imprisonment for 2 years or less.

- The procedure for trial - provided by Chapter-XX

- Warrant case - Means a case relating to an offence punishable



- Procedure for trial - provided by Chapter XIX

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Classes & Powers of Criminal Courts

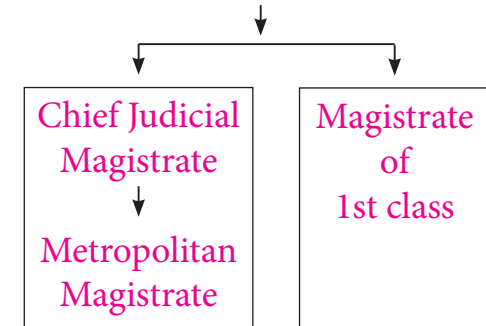
Sr No.	Classes of Criminal Courts	Powers of Criminal Courts
	Section 28	
1.	High Court	Can pass any sentence authorised by law
2.	Sessions Judge or Additional Sessions Judge	Can pass any sentence authorised by law, but death sentence has to be confirmed by High Court.
3.	Assistant Sessions Judge	Can pass any sentence except (a) sentence of death (b) Imprisonment of life (c) Imprisonment exceeding 10 years
	Section 29	
1.	Chief Judicial Magistrate	Can pass any sentence for a term upto 7 year imprisonment
2.	Magistrate of 1st class	Can pass sentence for a term upto 3 years imprisonment or fine upto - Rs. 10,000 or both

3. Magistrate of 2nd class

Can pass sentence for a term upto 1 year imprisonment
or
fine upto Rs. 5000
or
both

4. Chief Metropolitan Magistrate

Shall have powers of



Section 30

1 Sentences of imprisonment in default of fine

Where a fine is imposed on an accused & it is not paid, the law provides that can be imprisoned for a term in addition to a substantive imprisonment awarded to him

It provides that Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law

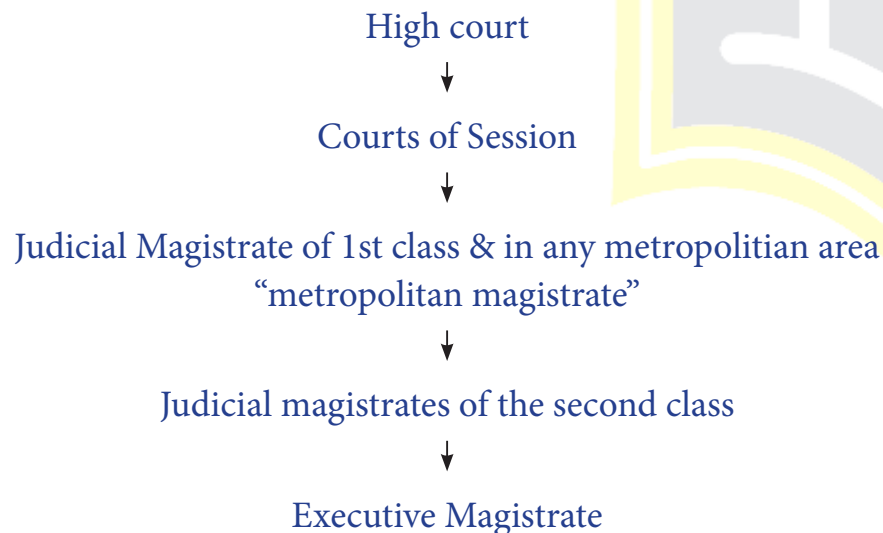
1. Is not in excess of powers of magistrate under sec. 29

And



<p>Section 31</p> <p>2. Sentences in cases of conviction of several offences at one trial</p>	<p>2. where imprisonment has been awarded as part of the substantive sentence, it should not exceed ¼th of term of imprisonment which the Magistrate is competent to inflict as punishment for the offence</p> <p>It relates to quantum of punishment in which the Court is authorised to impose where the accused two or more offences at one trial.</p>
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→ **Classes of Criminal Court -**



→ **Illustrations**

- A magistrate of 1st class passes a sentences of imprisonment for term 3 years with a fine of Rs. 10,000 & in lieu of non-payment thereof, an additional imprisonment for another 1 year. The convict feels aggrieved by sentences

- (1) He has the convict any right to appeal against his sentence ?
- (2) Will the situation change if the sentences is passed by court of a chief judicial magistrate ?

Ans. :

- As per Section-29 Magistrate of 1st class can pass the sentence for a term upto 3 yrs imprisonment (or) fine upto Rs. 10,000 (or) both.
- As per section-30, the court of magistrate may award Additional imprisonment in default of payment of fine
- However the ileum of imprisonment shall not exceed ¼th of term with the magistrate is competent to inflict as punishment for offence.

Considering thou provisions

1. Magistrate order is not valid because the term of sentence in default of payment should not exceed ¼th of 3 year [3years = 36 months ∴ $36 \times \frac{1}{4} = 9$ months] so, Additional imprisonment should not increase 9 months in the case.

∴ As per section-30 appeal can be filed

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2. Yes, the salutation will change if sentence is passed by court of chief judicial magistrate and order will be valid - because,

the term of sentence default of payment of fine should not exceed $\frac{1}{4}$ of 7 years

ie. [7 years = 84 months = $84 \times \frac{1}{4} = 21$ months]

So, Additional imprisonment of 1 year is given, which is valid

Arrest of Persons

[Section-41]

→ Definition of Arrest -

- It means the apprehension or restrain or the deprivation of one's personal liberty to go where he pleases.
- It consists of taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge & preventing the commission of a criminal offence.
- Any police officer may without an order from a Magistrate and without a warrant, arrest any person-
 - (a) who commits, in the presence of a police officer, a cognizable offence.
 - (b) against who a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years whether with or without fine, if the following conditions are satisfied, namely

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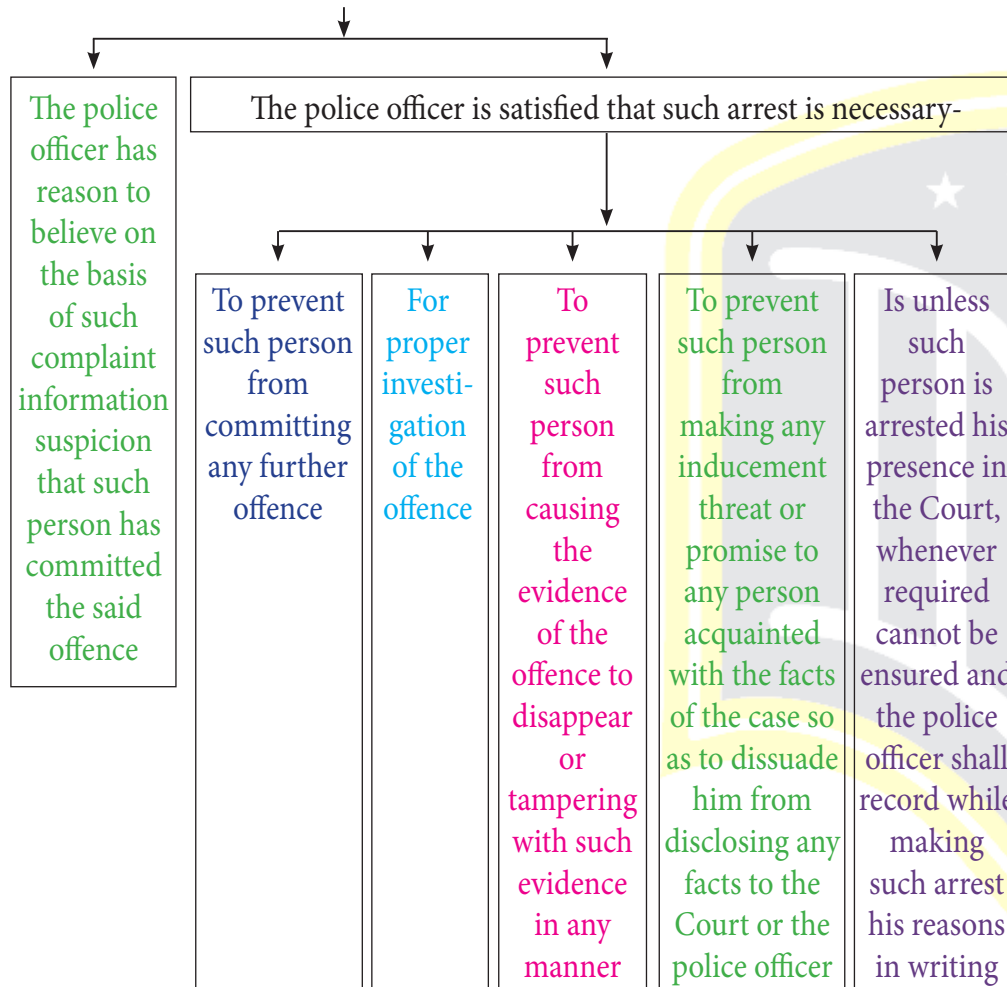
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- Provided that a police officer shall in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) Against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than 7 years whether with or without fine or without death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence

(c) Who has been proclaimed as an offender either under this Code or by order of the S. G. or

(d) In whose possession anything is found which may reasonably be suspected to be stolen property & who may reasonably be suspected of having committed on offence with reference to such thing or

(e) Who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody or

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(f) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union or

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

(h) Who being a released convict, commits a breach of any rule made under sub-section (5) of section 356 or

(i) For whose arrest any requisition, whether written / oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other causes for which the arrest is to be made it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issues the requisition.

→ Certain measures to be followed in the exercise of power under [Section-41]

- It was believed that the power granted the police to make arrests without warrant was misused in a number of cases.
- This emphasized certain rules that must be followed by police while exercising its powers to make arrest.
- Following are some of the grounds / safeguards -

Sr. No.	Sections	Details
1	Section 41A	<p>It says that, the police officer shall, in all cases where the arrest of a person is not required under Issue a notice directing the person against whom</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; text-align: center;">a reasonable complaint has been made</div> <div style="text-align: center;">OR</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">Credible information has been received</div> <div style="text-align: center;">OR</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">At any such other place may specified by notice</div> <div style="text-align: center;">OR</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">Reasonable suspicion exists has committed a cognizable offence, to appear before him</div> </div>



		<p>When such notice is issued to any person, it shall be duty of that person to comply with terms of the</p> <pre> graph TD A[When such notice is issued to any person, it shall be duty of that person to comply with terms of the] --> B[If such person complies and continues to comply with the notice] A --> C[If such person, at any time fails to comply with terms of notice or is unwilling to identify himself] B --> D[He shall not be arrested] C --> E[He should be arrested] </pre>
2.	Section 41B	<p>The procedure of arrest & duties of the officer making arrest, Every police officer while making an arrest shall-</p> <pre> graph TD A[The procedure of arrest & duties of the officer making arrest, Every police officer while making an arrest shall-] --> B[Bear an accurate visible & clear identification of his name which will facilitate easy identification] A --> C[Prepare a memorandum of arrest which shall be-] A --> D[Inform the person arrested unless, the memorandum is attested by a member of a his family, that he has a right to have a relative or a friend named by him to be informed of his arrest] C --> E[Attested by at least 1 witness] C --> F[Countersigned by the person arrested] E --> G[member of the family of the person arrested / respectable member of locality where arrest is made] </pre>

3.	Section 41D	<p>When any person is arrested & interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though or throughout interrogation.</p> <p>Ref : Arnesh Kumar v/s State of Bihar</p>
----	-------------	--



→ Arrest on refusal to give name and residence [Section-42]

- If any person accused of committing a non-cognizable offence - does not give his name, residence or gives false information



Such persons may be taken into custody not beyond 24 Hours

- If his true name and address cannot be ascertained or fails to execute a bond or furnish sufficient sureties.



- He shall be forwarded to the nearest Magistrate having jurisdiction

→ Arrest by a private person [Section-43]

- A private person may arrest any person who in his presence commits



Non-bailable and cognizable offence

OR

Proclaimed offender

→ Arrest by Magistrate [Section-44]

- The magistrate has been given power to arrest a person who has committed an offence in the presence and also commit him to custody.

→ Exceptions for Armed Forces [Section 45]

- It protects members of Armed Forces from arrest where they do something in discharge of their official duties. They could be arrested only after obtaining the consent of the C. G.

- Arrest how made [Section-46]

- A police officer or other person making an arrest to actually touch or confine the body of the person to be arrested and such police officer or other person may use all necessary means to effect the arrest if there is forcible resistance.
- The Section does not give a right to cause the death of a person who is not accused of an offence punishable with death sentence or life imprisonment.
- Some special safeguards have been made for women who are to be arrested.



- However, except in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, & where exception circumstances exist, the woman police officer shall, by making a written report, obtain a prior permission of the Judicial Magistrate of 1st class within whose local jurisdiction the offence is committed / arrest is to be made.

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

+

Persons arrested are to be taken before the Magistrate or officer-in-charge of a police station without unnecessary delay and subject to the provisions relating to bail. Article 22(2) of the Constitution of India also provides for producing the arrested person **before the Magistrate within 24 hours.**

When a person is arrested under a warrant, Section 76 becomes applicable, and when he is arrested without a warrant, **he can be kept into custody for a period not exceeding 24 hours**, and before the expiry of that period he is to be produced before the nearest Magistrate, who can under Section 167 order his

detention for a term **not exceeding 15 days**, or he can be taken to a Magistrate, under whose jurisdiction he is to be tried, and such Magistrate can remand him to custody for a term which **may exceed 15 days but not more than 60 days.**

Officers in-charge of the concerned police stations shall report to the Magistrate the cases of all persons arrested without warrant, within the limits of their respective police stations whether such persons have been admitted to bail or otherwise.

A person arrested by a police officer **shall be discharged only on his own bond or on bail or under the special order of a Magistrate.**

If a person in lawful custody escapes or is rescued, the person, from whose custody he escaped or was rescued, is empowered to pursue and arrest him in any place in India.

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Summons And Warrants

1. Summon [Section-61]

- It may be issued to an accused person or witness either for appearance or for producing a document or thing
- Every summons issued by Court shall be in
 - writing,
 - in duplicate,
 - signed by the Presiding Officer of such Court by such other officer is authorised by the High Court

and

- shall bear the seal of the Court
- The summons should be clear and specific in its term relating to
 1. Title of the Court
 2. The place at which
 3. The day & time

When the attendance of person summoned is required.

→ Service of summons

- Shall be served by - police officer
- (or)
- by officer of Court
- (or)
- Other public servant

- Where the person summoned cannot be found by the exercise of due diligence,



the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him,

and

the person with whom the summons is so left shall,



If so required by the serving officer, sign a receipt on the back of the other duplicate



→ The Service of Summons on Corporate basis and Societies

- It may be effected by serving it on secretary, local manager, principal officer of corporation

OR

- By letter sent by registered post, addressed to the Chief Officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Note : Corporation includes society registered under the Societies Registration Act, 1860.

→ Substituted Service of Summon

- In case the service of summon cannot be effected even after due diligence the serving officer can perform substituted service



by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which person summoned ordinarily resides, and

after making such inquiries as it declare that the summons has been duly served.

In case of Government Servant,

- The duplicate copy of the summons shall be sent to the head of the office by Court

and

such head shall served the summon in the manner provided

and

shall return it to the Court under his signature. Such signature shall be evidence of due service.

→ Court issuing a Summons to a Witness

- A Court issuing a summons to witness may, in addition to and simultaneously with the issue of such summons, direct a copy of summons to be served by registered post -

- where he ordinarily resides

OR

- Carries on business

OR

personally works for gain and

- When an acknowledgement is signed by witness

OR

an endorsement is made by a postal employee that the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served

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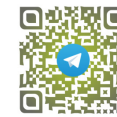
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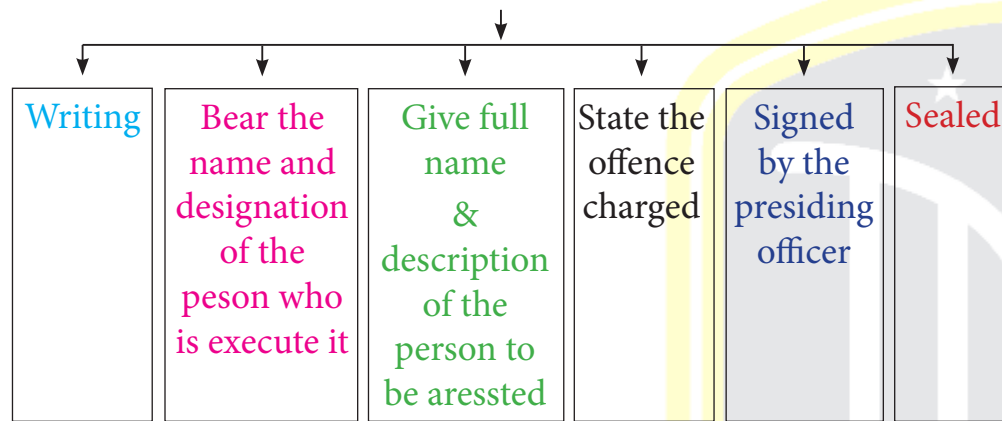
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Warrant of Arrest

- Requisites of a warrant,

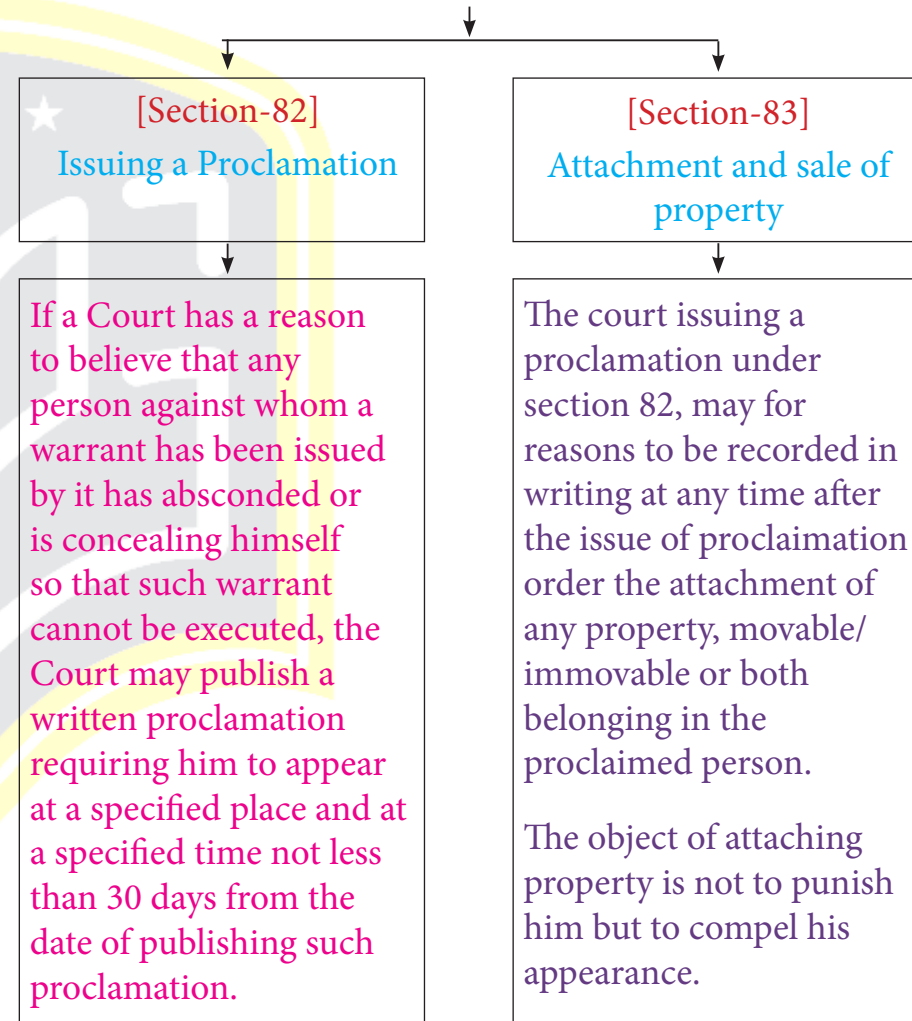
it must be



- Issue of warrant is more drastic step then Issue of Summon.
- Ordinarily a warrant is issued in serious cases and after duly served summon is disobeyed or if the accused has wilfully avoided service of summon
- Warrant is for production of person before concern Court [not before the police officer]
- As per Section 76 the police officer or other person executing the warrant of arrest shall bring the person arrested before Court within 24 hours excluding the time necessary for the journey from the place of arrest to Magistrate's Court.

Proclamation And Attachment

- Where a warrant remains unexecuted, the CPC 1973 provides for two remedies

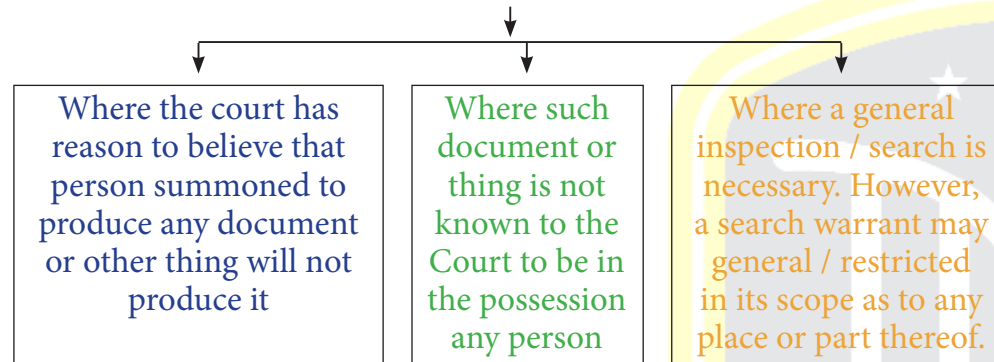




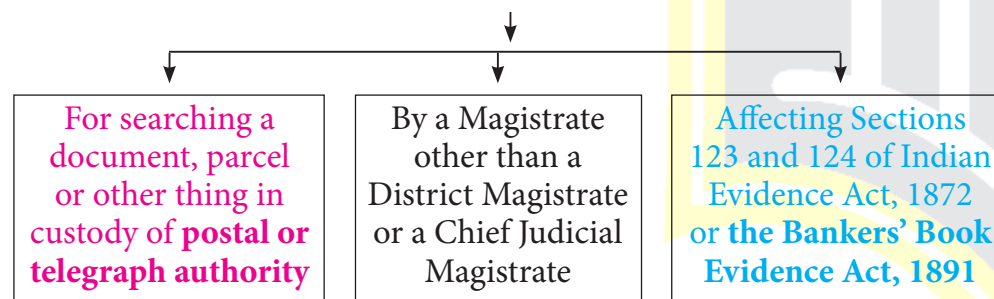
Summons To Produce

→ Search Warrant -

- According to Section 93, a warrant can be issued only in the following cases



- Such warrant shall not be issued



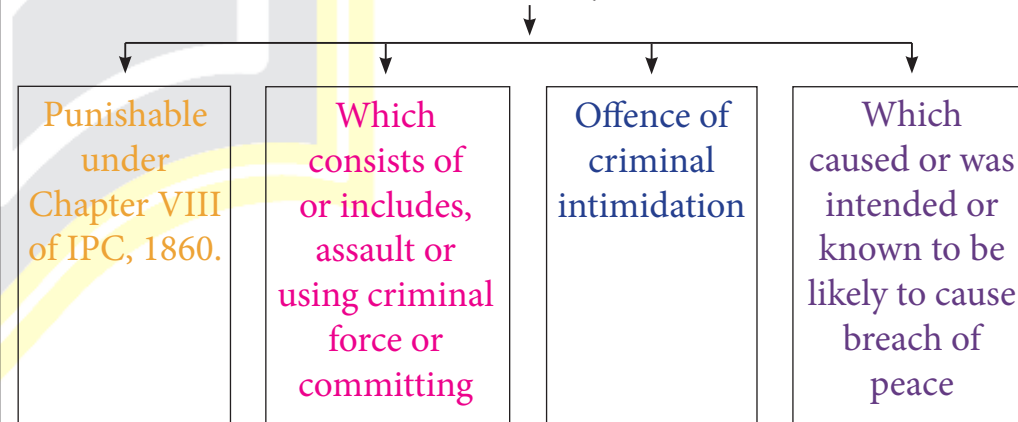
- As per section-97, any District Magistrate, Sub-Divisional Magistrate / Magistrate of the 1st class who has reasons to believe that any person confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant for the search of person so confined. The person if found shall be immediately produced before the Magistrate.

- Security for keeping the peace and for good behaviour
(Chapter VIII, Section 106)

- When a Court of Session or a Court of Magistrate of 1st class convict a person for any offences specified or abetting any such offence and is of the opinion that it is necessary to take security from such person for keeping the peace

- The Court may order a person to execute a bond with or without sureties for keeping peace for such period, not **exceeding 3 years**

The offences specified under sub-section (2) are as follow any offences



Imp - If the conviction is set aside on appeal or otherwise, the bond executed shall become void.

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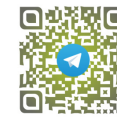
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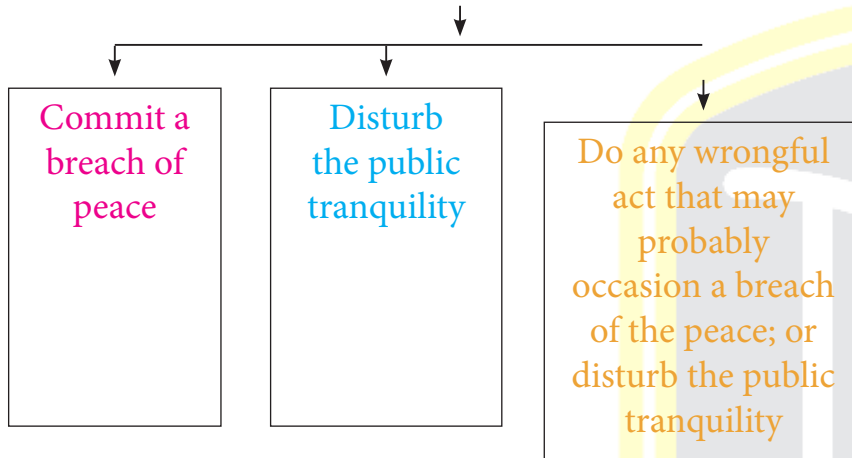
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→ Security for keeping the peace in other cases [Section-107]

- When an Executive Magistrate receives information that any person is likely to -



- He may require such person to show cause why he should not be ordered to execute a bond for keeping the peace for a period not **exceeding one year** as the Magistrate deem fit.

→ Maintenance of public order and tranquility



A—Unlawful assemblies

Dispersal of assembly by use of civil force

Any Executive Magistrate

or

office in-charge of a police station

or,

in the absence of such officer in-charge-----any other officer not below the rank of sub-inspector **may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace** ----- to disperse and it shall be thereupon the duty of the members of such assembly to disperse accordingly.

If any such assembly does not disperse or conducts itself in a manner as to show a determination not to disperse, steps can be taken to disperse such assembly by force.

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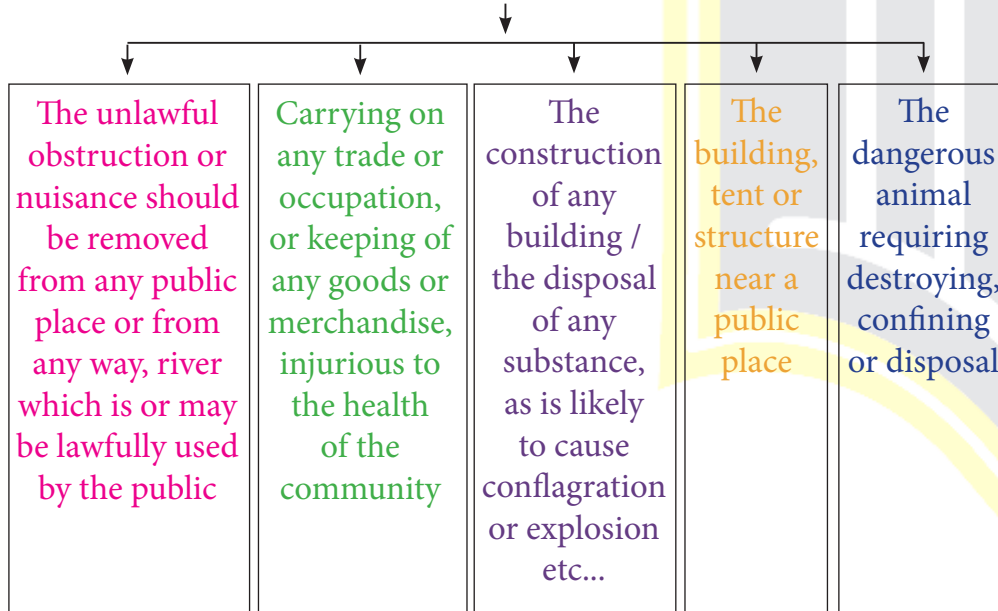


(2) Use of armed forces to disperse assembly [Section-130]

- If any such assembly cannot be otherwise dispersed, Executive Magistrate of highest rank who is present may cause it to be dispersed by armed forces and to arrest and confine such persons in order to disperse the assembly or to have them punished

[B] Public Nuisances -

(1) Conditional order for removal of nuisance [Section-133]



- For initiating prevention under this Section the Magistrate should keep in mind that he is acting purely in the public interest. For applicability of clause 1, the public must have the right way being obstructed.

[C] Urgent cases of nuisance or apprehended danger [Section-144]

- Power to issue order in urgent cases of nuisance or apprehended danger
- As per Section 144, where in the opinion of District Magistrate, Sub-divisional Magistrate any other Executive Magistrate empowered by State Government
- If there is a sufficient ground for proceeding & immediate prevention or speedy remedy is desirable, in such cases the Magistrate may by written order stating the material facts of the case
- Direct any person to abstain from a certain act respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent or tends to prevent, obstruction, annoyance of injury to any person lawfully employee danger to human life, health or safety or a disturbance of the public tranquility, or not, or an affairs.

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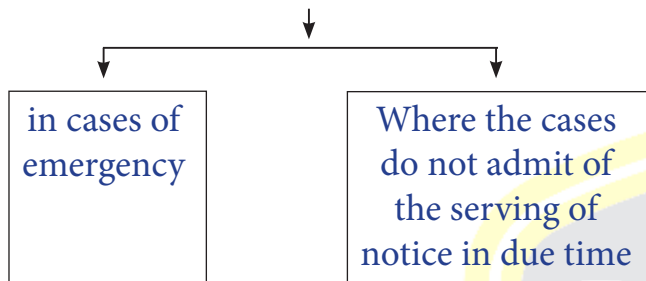
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- An order under this Section may be passed ex-parte -



- An order under this Section can remain in force for 2 months upto a months.

[D] Disputes as to immovable property

Section	Heading	Details
Section 145	Procedure where dispute concerning land / water is likely to cause breach of the peace	<p>If executive magistrate is satisfied from a police report or from any other information - That dispute likely to cause breach of peace concerning land and water</p> <p>↓</p> <p>He shall make an order in writing stating the grounds & requiring parties to attain a court in person on a specified date & time & put in a written statement of their respective claims</p>

2.	Section 146	Power to attach Subject of dispute & to appoint a receiver	<p>If the magistrate after making a order under section 145, considered the case to be emergency (or) if he decides that none of the parties was in such possession or he is unable to satisfy as to which off them of them was such possession</p> <p>↓</p> <p>He may attach the subject of dispute untila competent court determines the right of part.</p>
3.	Section 147	Provides for dispute concerning right of use of land or water	<p>If executive magistrate is satisfied that a dispute likely to cause a breach of peace regarding any alleged right of user of land or water, whether such right claimed as an easement or otherwise</p> <p>↓</p> <p>He shall make order sameas section 145</p>

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4.	Section 148	Whenever local enquiry is necessary for section 145, 146, 147.	Here a district magistrate or sub-divisional magistrate may depute (appoint) any magistrate subordinate to him to make an enquiry and furnish him with such written instruction as necessary.
----	-------------	--	---

Preventive Action Of The Police

(Chapter XI) [Section-149]

- A police officer to prevent commission of any cognizable offence.



If police officer receives any information of design to commit such an offence



He can communicate such information to superior police officer and to prevent such offence.



Police officer may arrest such person without orders of Magistrate

(+)

without warrant



Arrested person can be detained for max - 24 hours unless further detention required.

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→ Inspection of weight & measures

[Section-152]

- Any person in charge may without warrant enter any place within limits of such station for inspecting or searching any weight or measures for weighing, used to kept

Whenever he has reason that such weights or measures are false

And if he finds such false measures he seize the same

+
inform Magistrate

Information To Police And Their Powers To Investigate

(Chapter XII)

→ Information in Cognizable Cases [Section-154]

- Every information relating to commission of cognizable offence - if given orally to an officer, in charge of police shall be reduced in writing and to be read over the informant.

Such information shall be signed by the person giving it

It shall be entered in a book kept by such officer prescribed form by State Government

Such information given to police officer & reduced in writing is known as First Information Report [FIR]

The investigation of the case proceeds on this information.

FIRs must be lodged promptly because any delay is viewed adversely by the Court.

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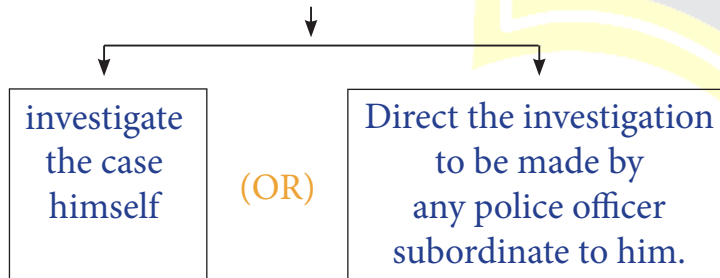


- Ref : Dilawar Singh v/s State of Haryana
- Here delay in lodging complaint and registration of FIR has been satisfactory explained, the delay by itself was no grounds for disbelieving the prosecution evidence.

Thus, the principal object of this Section is to set the criminal law in motion and to obtain information about the alleged criminal activities so as to punish the guilty

Note : Any person aggrieved by refusal on a part of an officer incharge of police to record the information may send -
The substance of such information in writing & by post to the Superintendent of Police

On being satisfied that such information discloses the commission of an cognizable offence shall either



- Copy of such information shall be given informant free of cost.

→ Information as to non-cognizable cases & investigation of such cases [Section-155]

- When information is given to police incharge of non-cognizable offence,



He shall enter the substance of information in a book kept by such officer in the form prescribe by state government.



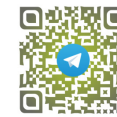
The police officer is not authorised to investigate a non-cognizable case without order of Magistrate.



On receiving the order police officer may exercise same power as he may exercise in cognizable case.



- If a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be cognizable case.



→ **Police officer's powers to investigate cognizable case**
[Section-156]

- Here, the police officer may conduct investigations without order of Magistrate.



Investigation includes collection of evidence by police officer or any person who is authorised by Magistrate in its behalf.



A police officer making an investigation is authorised to require the attendance of and may examine orally any person who appears to be acquainted with the facts and circumstances of case.

→ **Search by police officer** [Section-165]

- It authorises general search if the police officer has reason to believe that anything necessary for the purpose of an investigations may be found.



- The officer acting under this section must record in writing his reasons for making of a search.

- While conducting search, police should take all the steps that are required under Section 100 and Section 165 of the Code

Ref : State of Punjab v/s Balbir Singh

- The illegality of search will not affect the validity of the articles or in any way vitiate the recovery of articles & the subsequent trial but the search would not have the same credibility which a search would have if the safeguards were duly followed.

Whenever any person is arrested or detained in custody & it appears that the investigation cannot be completed within the period of 24 hrs, & that there are grounds for believing that the accusation or information is well founded, the police in charge or other competent investigation officer shall promptly transmit to nearest judicial Magistrate a copy of entries in the diary relating to case shall forward the accused to such Magistrate at the same time

- Every Investigation must be completed without undue delay. On completion of investigation, the competent police officer under the Code shall forward a police report to Magistrate.

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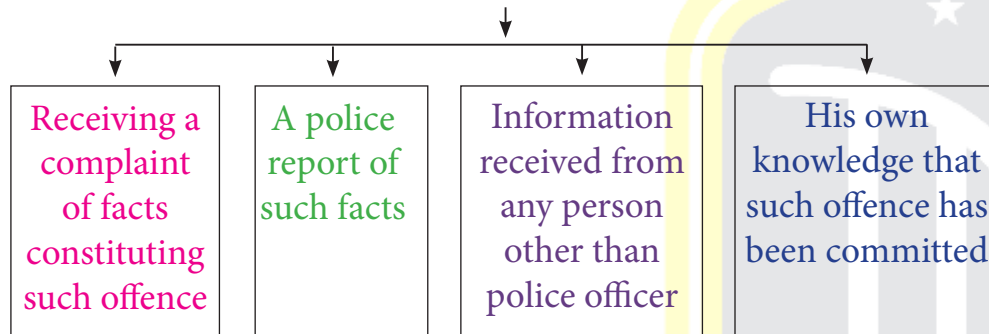
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Powers of Magistrate

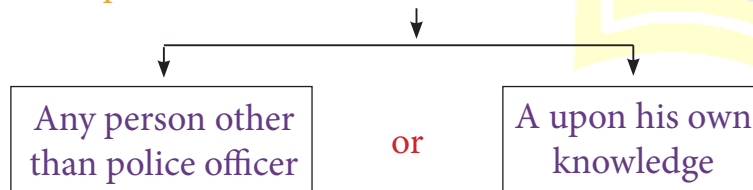
→ Cognizance of an offence by Magistrate [**Section-190**]

- Any Magistrate of 1st class and 2nd class specially empowered may take cognizance of offence.



[Section-191]

- When a Magistrate takes cognizance of an offence upon information received from



- then the accused is informed that he is entitled to have the case inquired into or tried by another Magistrate & if the accused objects the case is transferred to other Magistrate & specified by the Chief Judicial Magistrate

[Section 192]

The Chief Judicial Magistrate may transfer the case for inquiry or trial to any competent Magistrate & subordinate to him

→ Cognizance of an Offence by Courts of Session

[Section-193 & 194]

- The Court of Session does not take cognizance of any offence unless the case has been committed to it by competent Magistrate.



Additional Sessions Judge & Assitant Sessions Judge try such cases as High Court may direct.

→ Complaints to Magistrates

A Magistrate taking cognizance of an offence on complaint examines the complainant & the witnesses upon oath and then substance is reduced to writing & signed by the complainant and witnesses and also Magistrate.

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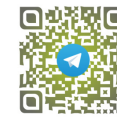
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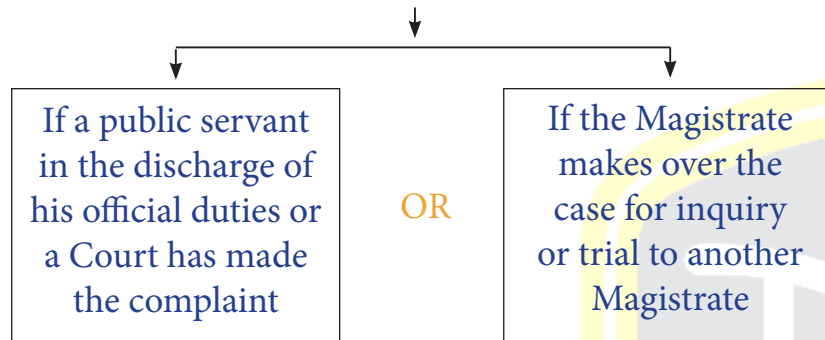
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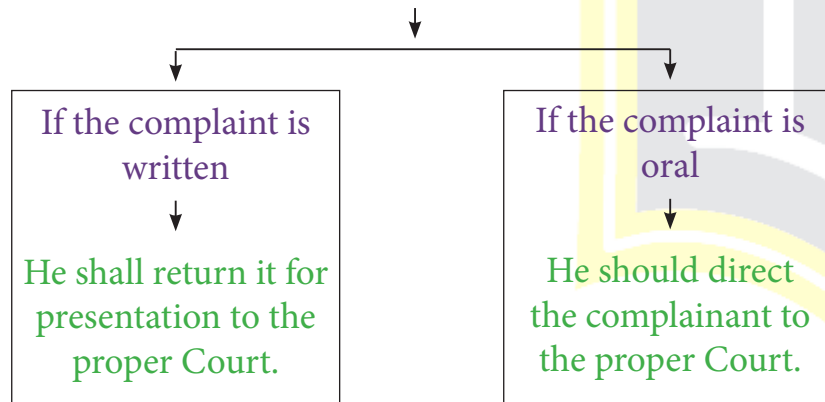
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- Even when the complaint is made in writing, the Magistrate need not examine the complainant & the witnesses



- If a complaint is made to a Magistrate who is not competent to take cognizance of the offence -

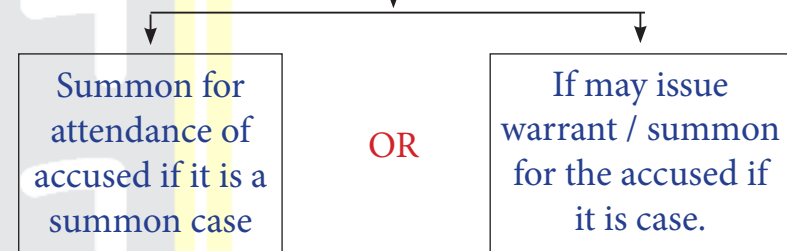


- The Magistrate enquiring may take evidence of witnesses on oath **BUT**
- Where the offence is triable by the Court of Session
- he shall call upon the complainant

to produce all his witnesses and examines on oath.

- He may dismiss the complaint if after considering the statement on oath there is no sufficient ground for proceeding

If there is a sufficient ground, he may issue -



- No summon / warrant shall be issued unless list of prosecution witnesses has been filed
- Every charge shall state
- Offence with which the accused is charged
- Name of offence
- particulars of time and place of alleged offence.



- For every distinct offence there shall be separate charge and every such charge shall be tried separately
- If more than one offence is committed by the same person in one series ie. connected together to form same transaction - He may be charged with and tried with one trial.
- Persons accused of same offence may be charged with and tried with one trial.
- A person who has been tried by a competent court and is convicted or acquitted of such offence shall while such conviction or acquittal remains in force - Shall not be liable to be tried again for same offence nor on the same facts for any other offence.
- A person discharged shall not be tried under the same offence without consent of Court by which he was discharge or of any other Court to which such Court is subordinate.
- The judgement in every trial shall be pronounced by the presiding officer by delivering or reading out of whole judgement in open Court.
- Every judgement should be written in the language of Court and should contain -
 - Point for determination,
 - Decision
 - Reasons for the decision.
- It should specify the offence and the section of Indian Penal Code.
- Once the court has signed its judgement or final order disposing a case -
Shall not alter or review the same except correcting, clerical or arithmetical error
↓
- A copy of judgement shall be given to accused for free of cost.
- No appeal shall lie from any judgement or order of Criminal Court except provided by the Code.
- In case of acquittal, the State Government may direct the Public Prosecutor to present an appeal to High Court.

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- Every shall be made in the form of petition in writing presented by appellant and shall be accompanied by copy of judgement
- No appeal shall be dismissed unless the appellant had a reasonable Opportunity of being heard.
- After hearing the parties the appellant Court may dismiss the appeal if there are no sufficient grounds
- An Appellate Court may if take an additional if necessary and record the reasons thereof
- A Court may refer a case to High Court if it involves the question as to the validity of any Act, Ordinance or Regulation
- As per section 438, provisions have been made for a person who has reason to believe that he may be arrested on an accusation or having committed non-bailable offence
- He may apply to High Court or Court of Session for direction.

If the Court thinks fit that in the event of such arrest the person shall be released on bail.



On such conditions which Court directs



This is known as Anticipatory bail.

Bail : Where any person other than a person accused of a non-bailable offence, is arrested or detained without warrant by an police in charge or is brought before a Court, & is prepared at anytime while in custody or at any stage of proceeding before such Court to give bail, such person shall be released on bail.



Such police officer or Court if it thinks fit may instead of taking bail or discharge him on executing a bond without sureties for his appearance



In case any sureties becomes insolvent / dies the Court / Magistrate may order the person from whom such security was demanded to furnish fresh security.



Limitation For Taking Cognizance Of Certain Offences

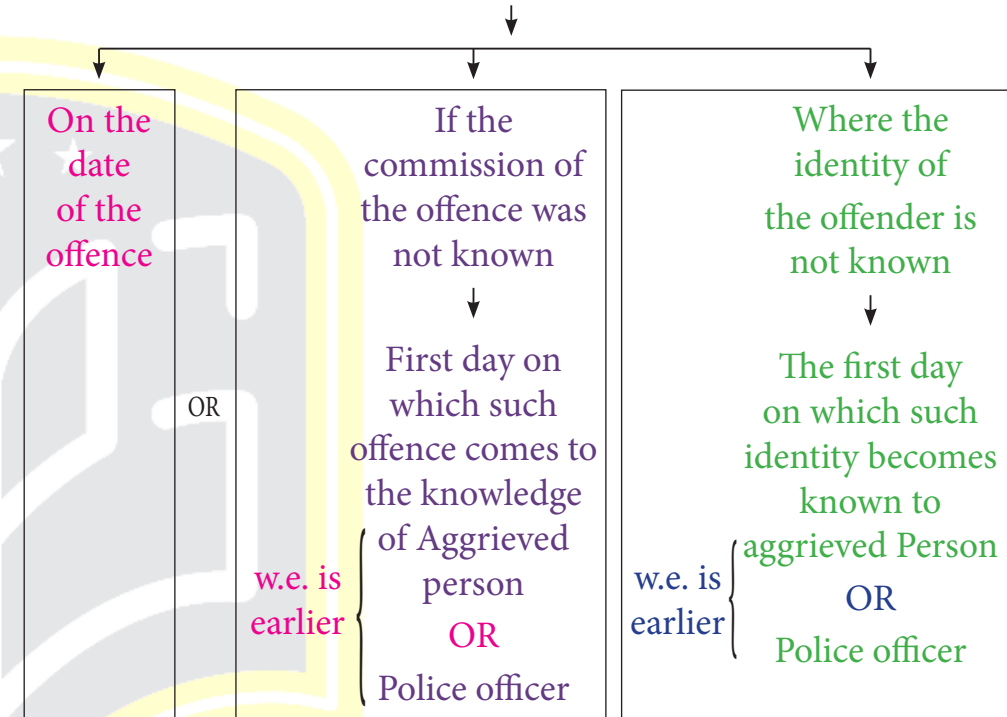
- There is no limitation of time in filing complaints under the Code. BUT delay may hurdle the investigation.
- No Court shall take cognizance of an offence after the expiry from the period of limitation

No.	Period of Limitation	Punishment / Offences
1	6 months	Offence punishable with fine only
2	1 year	Offence punishable with imprisonment upto 1 year
3	3 years	Offences punishable with imprisonment for a term exceeding 1 year upto 3 yrs.

- Here period of Limitation shall be determine with reference to gravity of the offences
[ie. Offences more severe or most severe]

→ Commencement of Period of Limitation

- The period in relation to an offender commences



→ Object to Prescribe Period of Limitation

- The Court is enjoined not to take cognizance of an offence after expiry of period of limitation
- To prevent the parties from filing the case after a long time. So that material evidence may not vanish.

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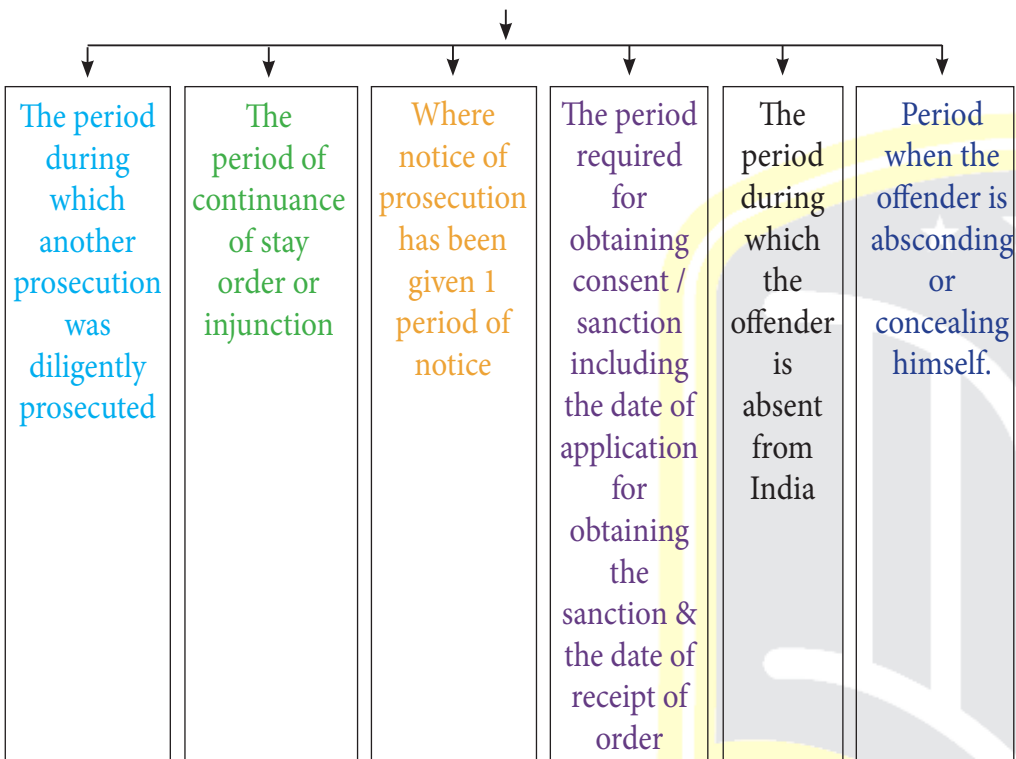
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→ Provisions for Exclusion of Time In Certain Cases [Section-470]



Note : If limitation expires on a day when the Court is closed, cognizance can be taken on the day the Court re-opens.

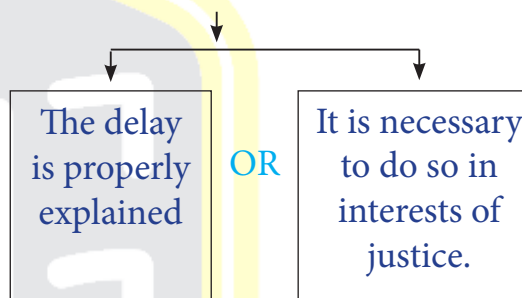
→ Continuing Offence [Section-472]

- In case of a continuing offence a fresh period of limitation begins to run at every moment during which the offence continues.

→ Extension of Period of Limitation [Section-473]

- The Court may take cognizance of an offence after the expiry of the period of limitation

- if it is satisfied that



Summary Trial

- It is speedy trial by dispensing with the formalities or delay in proceedings.
- It will apply to such offences punishable with imprisonment upto 2 years.
- Summary cases is a case which can be tried and disposed at once.



Criminal Procedure Code sets out the provisions for summary trials - It says

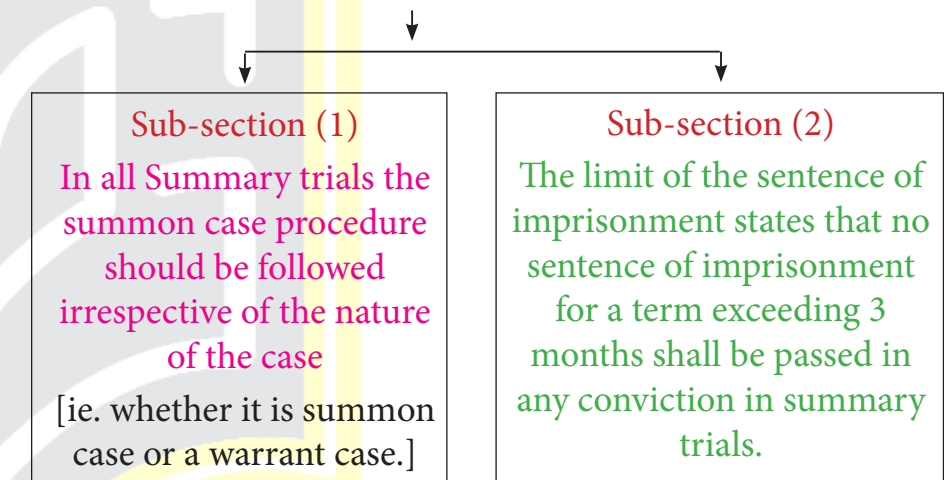
- (a) Any Chief Judicial Magistrate
- (b) Any Metropolitan Magistrate
- (c) Any Magistrate of the 1st class

who is specially empowered by the High Court may try in a summary way all or any of the following offences

Offences not punishable with death imprisonment for life / imprisonment for a term exceeding 2 years	Theft where the value of the property stolen does not exceed Rs. 2000	Receiving or retaining stolen property where the value of property not exceed Rs. 2000	Assisting in the concealment or disposal of stolen property where the value of such property does not exceed Rs. 2000	Offences under Sections 454 & 456 of the IPC	Insult with intent to provoke a breach of the peace	Abatement of any of the foregoing offences	An attempt to commit any of foregoing offences when such attempt is an offence	Any offence constituted by an act in respect of which complaint may be made under Cattle Trespass Act, 1871
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- When in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined & proceed to re hear the case in the manner provided in Code.

→ Procedure for Summary Trials [Section-262]



→ Judgement in Summary Trials

- In every case tried summarily in which the accused does not plead guilty,
- ↓
- the Magistrate shall record the substance of the evidence and a judgement containing a brief statement of reason for finding.

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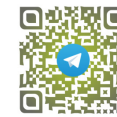
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The concerned Magistrate must sign such record and judgement.

→ **Inherent Power of High Court**

- Nothing in this Code shall limit or affect the inherent powers of the Code to make such orders as necessary or to prevent the abuse of the process of any Court to secure the ends of justice.
- The powers of the High Court u/s 482 of Cr.P.C are partly administrative and partly judicial.



Inherent powers include powers to -

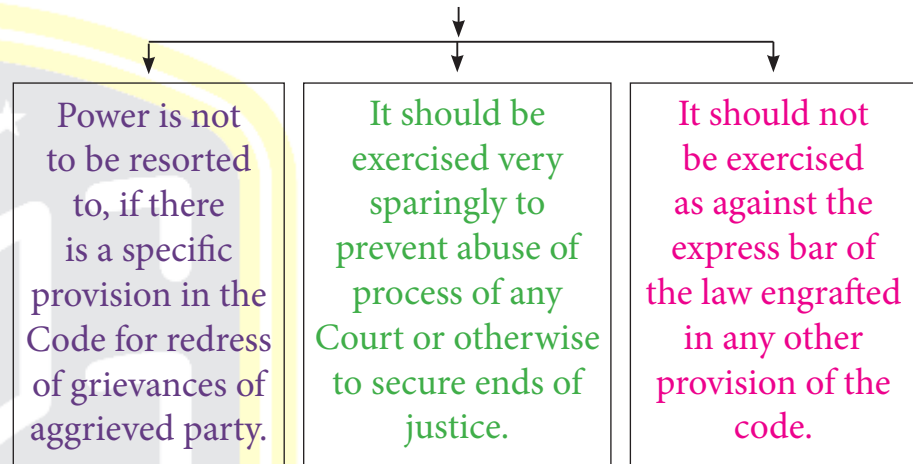
- quash FIR,
 - Investigation, or
 - Any criminal proceedings pending before High Court, or
 - Any Courts subordinate to it
- and
- Are of wide magnitude and ramification

Court can take always note of any miscarriage of justice and prevent the same by exercising its powers under section 482 of Cr.P.C.

- These powers are neither limited nor curtailed by any other provisions of this Code.
- However, such inherent powers are to be exercised sparingly & with caution.

Ref : Madhu Limaye v/s State of Maharashtra

- Held the following principles would govern the exercise of inherent jurisdiction of High Court



- It is well settled that the inherent powers u/s 482 can be exercised only when no other remedy is available to the litigant & not where a specific remedy is provided by the statute.
- If an effective alternative remedy is available, the High Court will not exercise its powers especially when the applicant may not have availed of that remedy