

General Provisions of CrPC

ASR

Introduction

- Criminal law consists of both the substantive criminal law and the procedural criminal law. Substantive criminal law is that part of the criminal law which defines offences and prescribes punishments for the same, while the **procedural criminal law provides the machinery for the enforcement of substantive criminal law**. Thus, the Code of Criminal Procedure, 1973 provides a mechanism for the treatment of offences provided in substantive criminal laws. The Code of Criminal Procedure, 1973 is essentially a procedural law. It contains 484 Sections arranged in 37 chapters. It also contains 2 schedules.

FUNCTIONARIES UNDER THE CODE

- The Police.
- The Prosecutors.
- The Defence Counsels.
- The Courts.
- The Executive Magistrates.
- The Prison Authorities & Correctional Services Personnel.

The Prosecutors

- Public Prosecutors are appointed for conducting any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be. *The Prosecutor must be impartial even though acts on behalf of the State.* His duty is to *place before the court all evidence in his possession, even the evidence which is in favour of the accused.*

Appointment of Public Prosecutors

- The Public Prosecutors and Additional Public Prosecutors are appointed to conduct prosecutions in High Court and Courts of Session. The Assistant Public Prosecutors are appointed to conduct prosecution in the Courts of Magistrates. The Special Public Prosecutors can be appointed for any court.
- In some states Assistant Public Prosecutors are regular government servants, while Public Prosecutors and Additional Public Prosecutors are appointed for fixed term from the bar.

CLASSIFICATION OF OFFENCES

- The offences have been classified into the following categories :
 1. Cognizable and Non-cognizable offences.
 2. Bailable and Non-bailable offences.
 3. Compoundable and Non-compoundable offences.
 4. Summons and Warrant cases.
 5. Plea bargaining & non-plea bargaining cases

Cognizable offences

1. Nature of offences

Cognizable offences are usually serious offences

2. Arrest without warrant

In a cognizable offence the concerned police officer may arrest without a warrant

3. Investigation by police

In a cognizable offence the concerned police officer has the duty and power to investigate the case

Non-cognizable offences

1. Nature of offences

Non-cognizable offences are usually lighter offences

1. Arrest with warrant

In a non-cognizable offence the police officer cannot arrest without a warrant.

3. Investigation of police

In a non-cognizable offence, a police officer cannot investigate without an order from the Magistrate.

Cognizable/Non-cognizable

Other differences

- **No FIR in Non-cognizable cases-** Only complaint to the concerned Magistrate
- Non-cognizable offences= **The rule that any person can set the law in motion does not apply**
- **No investigation in non-cognizable cases**
- **No Prosecutor in non-cognizable cases**
- **State is a party in all Cognizable offences on behalf of the victim and with respect to Non-cognizable offences, the victim has to take initiative and efforts to collect evidence and have his representative in Court.**

Bailable offences

1. Nature of offences

Bailable offences are minor offences

1. Release on bail

In a bailable offence, bail can be claimed as a matter of right.

1. Anticipatory bail

Anticipatory bail is not necessary in bailable offences

Non- Bailable offences

1. Nature of offences

Non-bailable offences are serious offences

2. Release on bail

In a non-bailable offence, grant of bail is left to the discretion of concerned authorities.

3. Anticipatory bail

Anticipatory bail is granted in non-bailable offences only.

Compoundable offences

1. Nature of offences

Compoundable offences are minor offences

2. Sub-classification

Compoundable offences are sub-classified into offences

(a) compoundable with permission of court and (b) compoundable without permission of the court.

3. Effect of compromise

In a compoundable offence a compromise is valid and legal (after taking permission of the court for the second category).

Non-compoundable offences

1. Nature of offences

Non-compoundable offences are serious offences

2. Sub-classification

There is no sub-classification with respect to non-compoundable offences.

3. Effect of compromise

In a non-compoundable offence, a compromise is invalid and illegal as it is considered to be against public policy.

Summons cases and Warrant cases

- A summons case means a case relating to an offence punishable exclusively with fine or punishable with imprisonment **for two years or less than two years.** A warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment **for a term exceeding two years.**
- This classification is useful for determining the type of trial procedure to be adopted in the case. The trial **procedure of a warrant case is elaborate than that provided for a summons case.** When the charges reveal both a warrant case and a summons case, the case is treated as a warrant case.

PLEA BARGAINING

- **Section 265-A (Application of Chapter)** the plea bargaining shall be available to the accused who is charged with any offense **other than** offenses punishable with death or imprisonment or for life or of an imprisonment **for a term exceeding to seven years.**
- The Central Government issued Notification No. SO1042 (II) dated 11-7/2006 specifying the offences affecting the socioeconomic condition of the country.

Plea bargaining- Procedure/Punishment

- **Section 265-B** contemplates an application for plea bargaining to be filed by the accused
- The court will thereafter issue notice to the public prosecutor concerned, investigating officer of the case, the victim of the case and the accused for the date fixed for the plea bargaining. When the parties appear, the court shall examine the accused in-camera wherein the other parties in the case shall not be present, with the motive to satisfy itself that the accused has filed the application voluntarily.
- While punishing the accused, **the Court, at its discretion, can pass sentence of minimum punishment**, if the law provides such minimum punishment for the offences committed by the accused or if such minimum punishment is not provided, **can pass a sentence of one fourth of the punishment provided for such offence.**

INVESTIGATION, INQUIRY AND TRIAL

- The three terms “investigation” “inquiry” and “trial” ordinarily denote three different stages of a criminal case.
- **Investigation** : Investigation includes all proceedings under the Cr.P.C. for the *collection of evidence conducted by a police officer* or by any person authorised by a Magistrate.
- *Section 160 prohibits the investigating police officer from requiring a woman(or a male under the age of 15 years or above 65)to attend before himself for the purpose of examination. Such persons must be examined only at their residence.*

Investigation-Steps

1. Proceeding to the spot of crime;
2. Ascertainment of the facts and circumstances;
3. Discovery of the suspected offender;
4. Taking measures for the arrest of the suspected person;
5. Collection of evidence which includes-
6. Examination of the accused and various other persons appearing to be acquainted with the facts and circumstances of the case;
7. Search of places of seizure of things.;
8. Submission of final report on completion of investigation.

The investigation would be more effective if the Investigating Police Officer takes the following steps

- a) Taking of photographs and sketching the scene of crime.
- b) Taking finger prints, foot prints, blood stains and any other material which is likely to implicate the accused.
- c) Using scientific aids at the scene of crime.
- d) Requisitioning tracker dogs.
- e) Conducting identification parade.
- f) Seeking opinion of experts.

INQUIRY & TRIAL

- **Inquiry:** An inquiry means every inquiry, other than a trial, conducted under this code by a magistrate or a Court. In other words, inquiry means a process to determine any question (under the Cr.P.C.) other than the one relating to the guilt or innocence of the accused.. It is never conducted by the police.
- **Trial:** Trial means a judicial process to determine the guilt or innocence of the accused. It is conducted by a Magistrate or Court.

Sl No.	Investigation	Inquiry	Trial
1.	It is conducted by a Police Officer	It is usually conducted by a Court or Magistrate	It is conducted by a Court or Magistrate.
2.	Its object is collection of evidence for inquiry or trial	Its object is determination of any question other than the question of guilt or innocence of the accused.	Its object is determination of the guilt or innocence of the accused.
3.	It is always a non-judicial proceeding	It may be a judicial or non-judicial proceeding.	It is always judicial proceeding.

Sl No.	Investigation	Inquiry	Trial
4.	It always relates to an offence.	It may or may not relate to an offence	It always relates to an offence.
5.	Oath cannot be administered to person examined in investigation	Oath can be administered to persons examined in Inquiry	Oath can be administered to persons examined in trial.
6.	It is always exparte	It may or may not be exparte	It is never exparte
7.	It ends in filing of charge-sheet or submission of final report.	It ends in various orders/repors	It ends in judgment of conviction or acquittal.

F.I.R. AND COMPLAINT

- 'First Information Report' denotes
 1. the written report given to the police conveying such information, or
 2. in case such information is given orally, the written report prepared by the police in accordance with Section 154.
- The First Information sets the criminal law in motion or starts the police on their investigation.
- Thus, F.I.R. means a report made to a police officer regarding the commission of a cognizable offence and which is first in point of time.

Essentials of an F.I.R. :

1. It must be information.
2. It must be given to a police officer.
3. It must relate to a cognizable offence.
4. **It must be first in point of time (amongst such information).**
5. **A copy of the information shall be given immediately to the informant.**

Evidentiary Value of the F.I.R. : The F.I.R. is admissible in evidence in all cases whether made by a prosecution witness or a defence witness and both for the purposes of corroboration and contradiction.

Essentials of Complaint

1. It is *usually made to a Magistrate.*
2. It *must be made with a view that the Magistrate may take action on it.* Thus a mere statement to a Magistrate by way of information without asking him to take action, is not a complaint.
3. It *must allege the commission of an offence.* *Thus, a petition for maintenance (under S. 125 Cr.P.C.) is not a complaint.*

Examination of complainant - When a petition of complaint is filed, *the Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any.*

Complaint	F.I.R.
1. It is made to a Magistrate	1. It is given to a Police Officer.
2. The complaint made to Magistrate must be under oath.	1. The person giving F.I.R. need not take oath
3 Complaint may relate to a cognizable or non-cognizable offence.	3 F.I.R. relates only to a cognizable offence.
4.Cognizance of an offence can be taken directly on the basis of complaint	4.Cognizance of an offence cannot be taken directly on the basis of F.I.R.

Red Corner Notice

- This notice is issued to seek the arrest or provisional arrest of wanted criminals, **with the intention of extradition** of the culprits.

A Red corner Notice is a request to locate and provisionally arrest an individual who is convicted in a criminal case. **But just issue of red corner notice does not mean the person is guilty; he should be proven guilty by the court.**

It is issued by the General Secretariat at the request of a member country or an international tribunal based on a valid national arrest warrant. **A Red corner is not an International arrest warrant.**

INTERPOL cannot compel on any member country to arrest an individual who is served a Red corner Notice. **Each member country is free to decide the value of a Red corner Notice within their borders.** This notice is issued against the Dawood Ibrahim on the request of Indian government.

*international airports, railway stations,
sea routes*

- **Example:** INTERPOL had refused to issue red corner notice against Islamic guru Zakir Naik on request of India. The Indian police had demanded red corner notice from INTERPOL without filing a charge sheet against Zakir. Now the CBI has filed the charge sheet against the Zakir and it will file a fresh appeal to INTERPOL for issuing red corner notice against Zakir Naik.

82. Proclamation for person absconding

- (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.
- (2) The proclamation shall be published as follows:— (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court-house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.