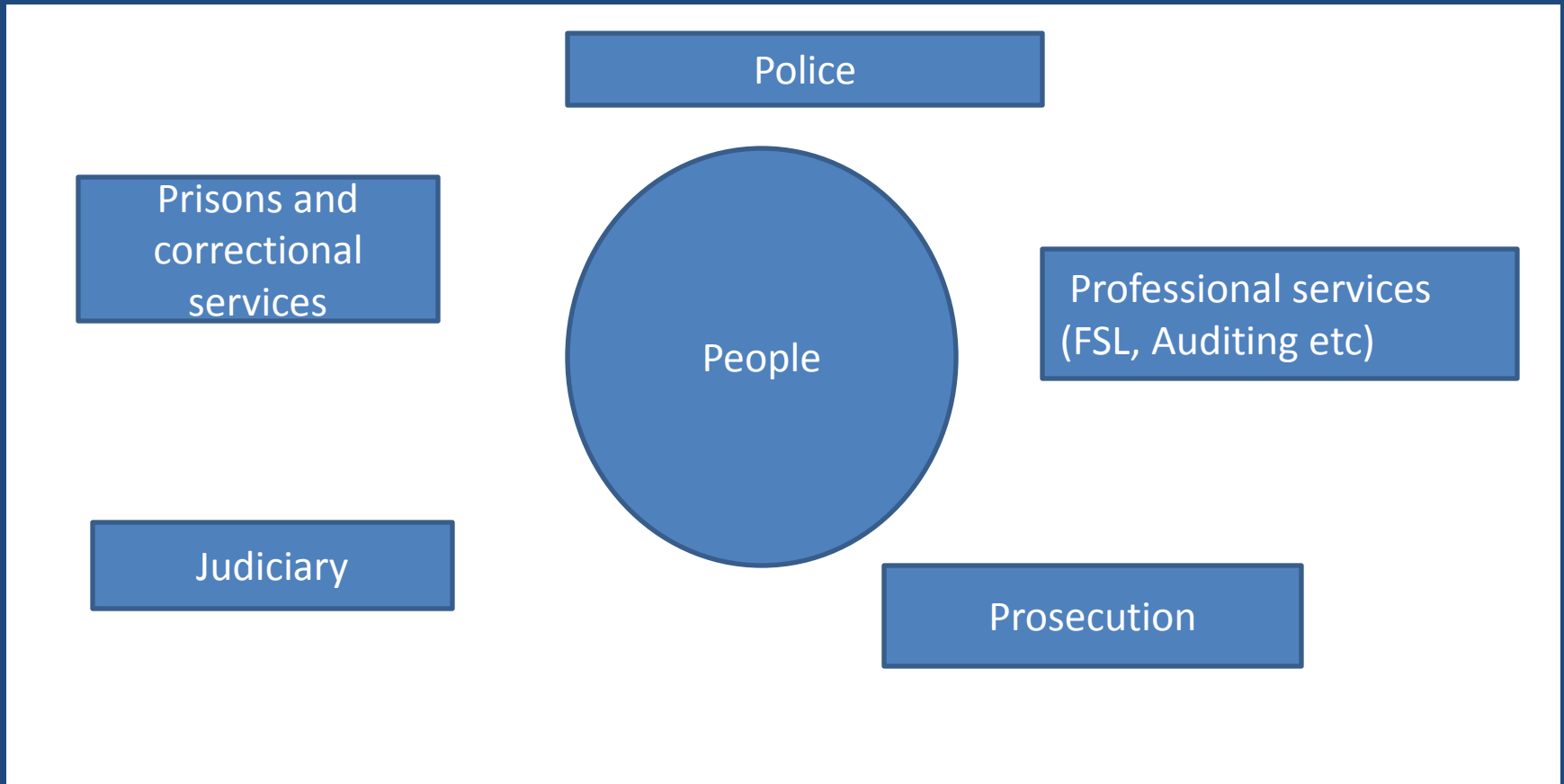


# Over view of Cr PC and IPC

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# The heart and soul of criminal Justice system police



# Cr PC vs IPC

2. Procedural Law vis a vis substantive Law in  
An accusatorial system.

Mostly burden of proof is on prosecution  
(certain exceptions in rape /dowry death /  
death within 7 years marriage life, POCSO Act,  
I.T.P Act, etc.,)

# Jurisprudence principles

- ✓ *Salus populi supreme lex esto*:  
(the welfare/ good of the people is the Supreme Law)
- ✓ Due process of law
- ✓ *Audi alteram partem* : ( Hear the other side)
- ✓ *nemo debet bis vexari* : A man must not be put twice in peril for the same offence.

•  
*Spondes peritia martis* : If your position implies skill you must use it .

*actus reus* : guilty act

*Mens rea* : intention

*Bonafide* : in good faith ( Since good intention)

*Corpus delicti* : Body of the crime (a person can not be convicted of a crime unless it can be proven that crime was even committed)

*Habeas Corpus* : may you have the body .

- ✓ *Ignorantia Juris non-excusat* : Ignorance of law does not excuse
- ✓ *Lex Specialis derogat legi genarali* : Specific law takes away from the general law.
- ✓ *nemo Judex in sua causa* : No one shall be a judge in his own case.
- ✓ *Locus standi* : The right of a party to appear and be heard before a court.
- ✓ *Nemo debet esse judex in propria* : No one shall be judge in his own case.

- ✓ *Prius quam exaudias ne judices* : Do not Judge before you hear.
- ✓ *Probatio vincet praesumptionem* : proof over comes presumption
- ✓ *Pro bono publico* : for the public good.
- ✓ *Quid pro quo* : this for that
- ✓ *Res ipsa loquitur* : things speak for it : a matter that has been finally adjudicated

- ✓ *Respondent superior* : A concept that the master (the employer) is responsible for the action of subordinates.
- ✓ *Ultra vires* : Beyond the powers.
- ✓ Autrefois convict autrefois acquit Sec. 300 Cr.Pc r/w Article 20 (2)  
(person once convicted or acquitted not to be tried for the same offence).



# Importance of Evidence Act

- ✓ All judicial proceedings are based on Evidentiary value of the investigation process /procedures.
- ✓ Oral /documentary /electronic evidence.
- ✓ Scientific evidence
- ✓ Admissibility vs. Inadmissibility.
- ✓ Relevant Vs not relevant
- ✓ presumptions

- ✓ Expert evidence recording ( u/s 293 Cr. PC ) r/w Sec. 45/45 A Evidence Act
- ✓ Recording of evidence in the absence of accused ( u/s 299 Cr.PC ) r/w 33 Evi Act.
- ✓ Double jeopardy ( sec 300 Cr.PC ) r/w Sec. 40 Evidence Act.

Visiting Scene of Crime(157 Cr.PC)

Visiting Scene of Crime(157 Cr.PC)

To investigate facts & circumstances  
(*Crime details form No.76 IIF-2*)

Discovery and arrest of offender

Examination of Witnesses  
(u/s 160,161,162 Cr.PC r/w 8/14 IEA)  
Recording of Dying declaration (u/s 32 IEA)  
Recording of Statement/Confession, by Court u/s 164 Cr.PC(*IIF-3 Form No.62*)

Arrest of accused  
u/s 41,41-B,41-C,42,46 Cr.PC

Notice to accused u/s 41-A Cr. PC, where  
punishment is less than 7 yrs.

Search by police officer (Sec. 165  
r/w 100 Cr.PC, 166 CrPC

Case Diary ( 172 Cr.PC) Remand Case Diary (u/s  
167 Cr.PC)

Seizure panchanama (I.I.F.4  
Form 58)

Consult PP/Addl. PP/APP

**Trial** : Conviction/Acquittal (I.I.F.6  
Court Disposal from no.83)

Charge sheet/final report (u/s 173 Cr. P.C) I.I.F 5  
(form 69) further investigation u/s 173 (8) Cr.PC

Victim support

Appeal (I.I.F.7 (Result of appeal form No. 84)

# Overview of IPC Cr.PC

1. Definition clauses like public servant, (Sec. 21)  
movable property (Sec. 22)  
Wrongful gain / wrongful loss ( Sec. 23),  
Dishonesty ( Sec.24), fraudulently ( Sec. 25)  
Reason to believe (Sec. 26), Counterfeit  
( Sec.28),  
Document (Sec.29), electronic record (29A),  
valuable security ( 30), will (31), Act/omission (33)

# Acts Done in the furtherance of common intention

2. Intention (sec. 34) All participants must have shared a common intention to commit Criminal Act, which was finally committed by one or more

- Being a member of pre-concerted plan.
- Principles of joint liability in doing of a criminal Act.
- Direct/ Circumstantial evidence of meeting of minds

### 3. Voluntarily ( Sec. 39) Offence ( Sec.40)

Injury ( sec. 44) – harm illegally caused to any person in body, mind, reputation or property

Good faith: ( sec. 52) things done with due care and caution.

Crime against body

## 4. Procedural Law :

Consist of the set of rules that govern the proceeding of the court in criminal law suits as well as civil and administration proceedings

- ✓ Court needs to conform to the standards set up by procedural law.
- ✓ These rules ensure fair practice consistency and “ due process”

# Due process

5. Due Process : State must respect all legal rights that one owed to a person

Due Process : balances the power of law of land and protects individuals

Due process acts as safeguard from arbitrary denial of life, or property, by Govt outside the sanction of law.



## 6. Substantive Law

Statutory Law that deals with the legal relationship both people or people and the state

Substantive Law defines the rights and duties of the people.

Substantive Law is the Statutory or written law. It defines rights and duties such as Crime and punishment

Civil rights and responsibilities in civil law.

## 7. Adversarial system : ( India)

Implies that two parties assume opposite position in debating the guilt or innocence of an individual.

Right to Silence ( of accused) is a legal system recognized explicitly, or by statute in India. (Right to avoid self - incrimination) Art 20(3) “ No person accused of any offence shall be compelled to be a witness against himself” (July 2010 S.C made Narco-analysis, Brain mapping and like detector lets as a violation of Article 20(3).

Contd .....

All evidence must be relevant and police/ LEAs  
must gather admissible evidence

“Justice is not only but seen to the done”

## 8. Ingredients of offences to be proved :

Ex : 415 IPC:( fraudulently, dishonestly, inducing delivery of property etc, cause damage to a persons body, mind, reputation, property is said to cheat.)

300 IPC: ( intention of causing death, of causing such bodily injury, intending to inflict such bodily injury causes death in ordinary course)

375 IPC : ( against her will, without her consent, consent obtained by fear etc)

# 9. Every Offence will have..

Intention ( Mens-rea )

Preparation

Commission ( previous or subsequent conduct)

Investigating officer to elicit the details)

(Sec. 8 of Evi Act)

# General Exception (IPC)

- ✓ Act of Child under 7 years no offence ( 82 IPC)
- ✓ Act of child above 7 years, below 12 yrs of immature understanding – No. Offence ( Sec. 83)

# Cr. Pc Amendments

Supreme Court Direction in D.K. Basu ( 1997) case arrest procedure – Legal amendments brought in to enforce rights of accused

- i. Identification of police officer
- ii. Memo of arrest to be attested by a witness
- iii. A member of the family of arrested accused to be informed of the arrest
- iv. Notifying the arrest in District Police control Room
- v. G.D. Entry
- vi. To have a person at the time of interrogation ( Art 20)

Cri Law Amendment Act 2013 ( Nirbhaya Act)  
354 A IPC Sexual harassments at  
amends Rape Law. If police/ public servant /  
armed forces are involved see 376 (2) IPC  
work place  
envisages min. of 10 yrs imprisonment and upto  
natural life.

Inquiry into custodial rape by Judl Magistrate in  
addition to police invn (sec 176 CrPC)

Sexual harassment at work place ( sec 354 A IPC)  
physical contact, demand for sexual favours,  
showing pornography, making sexual coloured  
remarks Cog, Bailable, upto 3 yrs or fine +  
departmental disciplinary action



# Preventive Powers of Police

1. Sec. 149 Cr. PC – Nakabandi/ Surveillance/ opening of history sheets/Frisking /externment.
2. Sec. 151 Cr. PC - Preventive arrests
3. Sec. 129 Cr. PC : Dispersal of unlawful assembly – use of Non-lethal weapons.
4. Sec. 144 Cr. Pc curfew etc.,
5. Sec. 144 A Cr. PC Prohibition to carry arms during mass drill.

6. 107 to 110 Cr. PC : Bodily Offenders/Communal offenders/ property offenders / habitual Offenders.
7. Prevention Detention of smugglers/ Goondas/Boot leggers /Immoral Trafficking Offenders/sand smugglers ( TN)

# Right of private Defence (RPD)

Sec. 100 IPC : RPD to the extent to the causing death ( person apprehending death)

( a person assaults a woman with an intention of committing lust)

( an assault with an intention to gratify )

Sec. 109 Cr. PC : Prosecution of public servant while discharging lawful duty - civilians do not have R.P.D.

Sec. 103 IPC : RPD to the extent of causing death of persons attempting/committing offence of robbery, House breaking by night, mischief by fire, when such person apprehends imminent threat to his life or grievous hurt.

## Cr. PC

176 Cr. PC : Parallel inquiry by a Judicial Magistrate in addition to investigation by police where ;

- I. Any person dies/disappears
- II. Rape is alleged to have been committed while such woman is in police custody or in any other custody.

# Trafficking of persons ( sec 370 IPC)

- By Threat, force, abduction, fraud, abuse of power, inducement if a person Recruits, Transports, harbours, Transfers, receives a person for purpose of exploitation he commits offence of trafficking. min 7 yrs imprisonment. Cog/ nonbailable/ sessions.
- If offence committed by public servant/ police officer. Imprisonment for life.
- similarly under POCSO (protection of children from sexual offences act 2012) envisages severe punishment for police/ armed forces/ public servants.
- Idea is Law enforcer should not be law violator/ breaker.

# Be a change maker/ donot be status quoist

- Questions ???

