

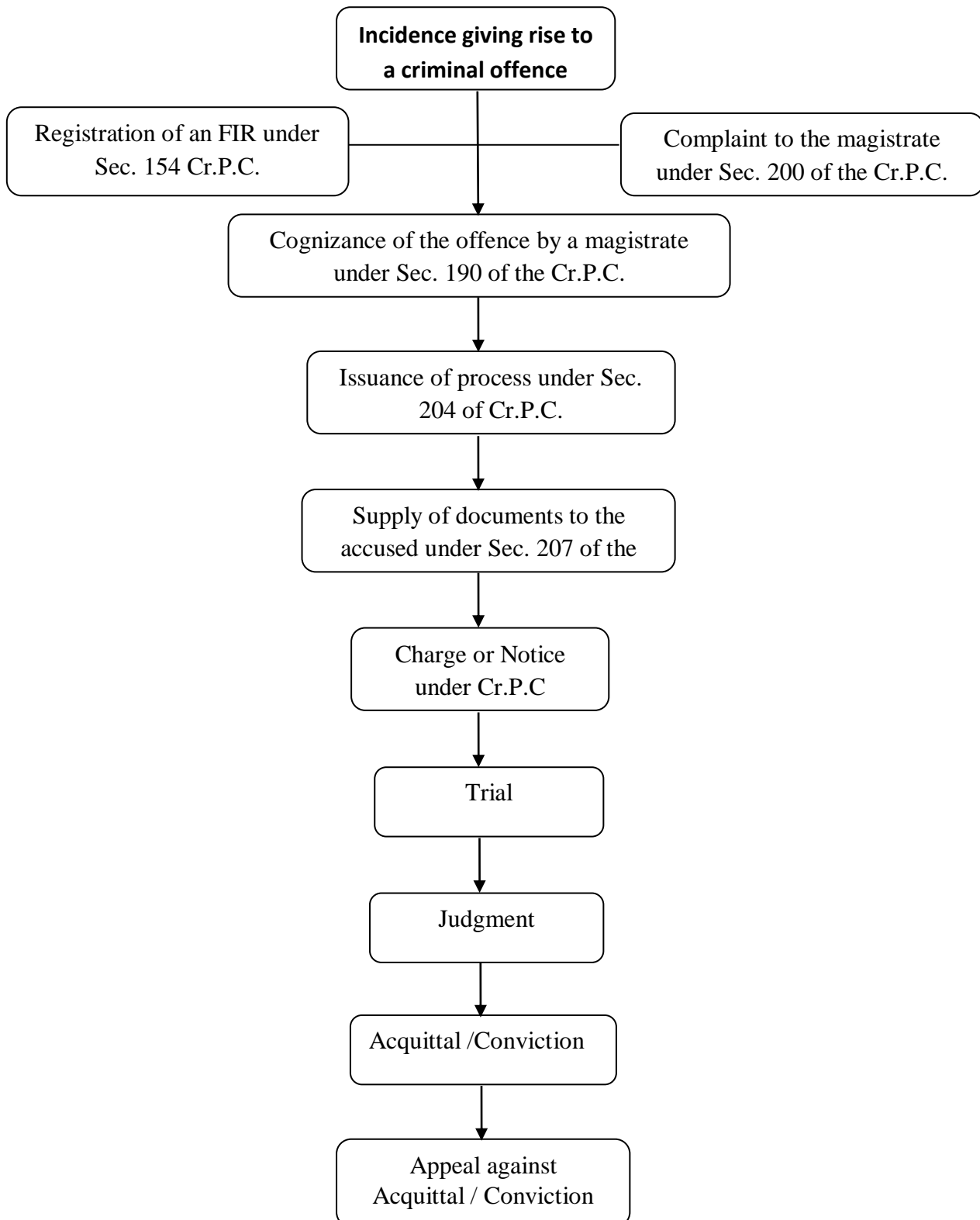
# **CODE OF CRIMINAL PROCEDURE, 1973**

(Compared with Bhartiya Nagrik Suraksha  
Sanhita, 2023)

	INDEX	
Sr. No	TOPICS	Pg. No
	<b>INTRODUCTION</b> <b>Special reference to introduction of Bhartiya Nagrik Suraksha Sanhita, 2023</b>	4
PART I	PRELIMINARY	13
PART II	CONSTITUTION OF CRIMINAL COURTS AND OFFICES	21
PART III	POWER OF COURTS	33
PART IV	(A)- POWERS OF SUPERIOR OFFICER OF POLICE (B)- AID TO MAGISTRATE AND THE POLICE	38
PART V	ARREST OF PERSONS	41
PART VI	PROCEDURE TO SECURE PRESENCE OF THE ACCUSED	53
PART VII	SEARCH, SEIZURE AND PRODUCTION OF THE MATERIAL	65
PART VIII	RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORTFIETURE OF PROPERTY	76
PART IX	SECURITY FOR KEEPING PEACE FOR GOOD BEHAVIOUR	77
PART X	MAINTENANCE	87
PART XI	MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY	96
PART XII	PREVENTIVE ACTION OF POLICE	105
PART XIII	INFORMATION TO POLICE AND POWER TO INVESTIGATION	106
PART XIV	JURISDICTION OF CRIMINAL COURTS	136
PART XV	COGNIZANCE OF AN OFFENCE BY MAGISTRATE	140
PART XVI	COMPLAINT PROCEEDINGS	152
PART XVII	CHARGE	162
PART XVIII	TRIAL	171
PART XIX	PLEA BARGAINING	189
PART XX	ATTENDENCE OF PERSONS CONFINED OR DETAINED IN PRISONS	193
PART XXI	EVIDENCE IN INQUIRY AND TRIALS	196
PART XXII	GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS	207
PART XXIII	PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND	225
PART XXIV	PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE	230

PART XXV	THE JUDGMENT	234
PART XXVI	APPEAL, REFERENCE AND REVISION	250
PART XXVII	EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES	260
PART XXVIII	PROVISIONS AS TO BAIL AND BONDS	268
PART XXIX	DISPOSAL OF PROPERTY	279
PART XXX	IRREGULAR PROCEEDINGS	280
PART XXXI	LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES	285
	INHERENT POWERS OF HIGH COURT	287
	MISCELLANEOUS	290

**INTRODUCTION**  
**PROCEDURE IN CRIMINAL LAW**



## **JURISPRUDENTIAL ESSENCE OF CRIMINAL PROCEDURE CODE**

The Code of Criminal Procedure (CrPC) of 1973 embodies several jurisprudential principles that are fundamental to the administration of criminal justice in India. One of its primary tenets is the assurance of due process, ensuring that individuals accused of crimes are accorded fair treatment throughout the legal proceedings. This includes the right to a fair Trial, legal representation, and other safeguards aimed at preventing miscarriages of justice.

Central to the CrPC is the principle of **presumption of innocence** until proven guilty. This foundational concept underscores the requirement for the prosecution to establish the guilt of the accused beyond a reasonable doubt, thus safeguarding individuals from arbitrary or unjust conviction. The CrPC's procedural framework is designed to uphold this presumption and ensure that legal outcomes are based on credible evidence and rigorous adjudication.

Moreover, the CrPC establishes an **adversarial system of justice** wherein the prosecution and defense present their respective cases before an impartial adjudicator, typically a judge. This adversarial process allows for a transparent and rigorous examination of evidence and arguments, contributing to the integrity and reliability of criminal proceedings.

Importantly, the CrPC delineates the **rights of the accused**, including the right to be informed of the charges, the right to legal counsel, and the right to a speedy Trial. These rights are integral to protecting individuals from arbitrary state action and ensuring that their dignity and autonomy are respected throughout the criminal justice process.

**Judicial discretion** also plays a crucial role within the CrPC framework, allowing judges to interpret and apply the law in a manner that is consistent with principles of justice and equity. This discretionary authority empowers judges to tailor legal remedies to the specific circumstances of individual cases, thereby promoting fairness and flexibility within the legal system.

Furthermore, the CrPC facilitates **judicial review** of lower court decisions, ensuring that errors of law or procedure can be corrected through the appellate process. This mechanism enhances the overall integrity and reliability of the criminal justice system by providing a means for redressal of grievances and ensuring accountability in judicial proceedings.

In essence, the jurisprudential aspects of the Code of Criminal Procedure, 1973, reflect a commitment to fairness, justice, and the rule of law in the administration of criminal justice in India. By upholding principles such as due process, presumption of innocence, and the protection of individual rights, the CrPC serves as a cornerstone of the country's legal system, fostering confidence and trust in the pursuit of justice.

## **HISTORICAL BACKGROUND**

The Criminal Procedure Code, **1861** was passed by the British parliament. The CrPC was created first time ever in 1882 and then amended in 1898, then According to 41st law commission report in 1973.

In the olden days, there was no uniform law relating to criminal procedure for the whole of India. There were separate Acts, mostly rudimentary in their character, for the Courts within and outside the Presidency-towns. Later on, the Acts in force in the Presidency-towns were consolidated into the Criminal Procedure Supreme Court Act, 1852, subsequently replaced by the High Court Criminal Procedure Act, 1865.

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The numerous Acts prevailing in the mofussils were all absorbed in the Criminal Procedure Code, 1861, which was subsequently replaced by the Code of 1871. The Criminal Procedure Code, 1882, gave a uniform law of procedure for the whole of India, both in the Presidency-towns and in the mofussils, and it was supplemented by the Code of 1898. The last mentioned Code was amended several times, with major amendments in 1923 and 1955.

The Law Commission, set up in 1955, studied the old Code extensively, and made various recommendations and suggestions in its detailed report submitted in September 1969. These suggestions were incorporated in the Criminal Procedure Code, 1973, which came into force on 1st April 1974, and which has since been amended several times thereafter.

While drafting the Code, the following three basic considerations have been kept in mind, viz.—

- (a) That an accused person should get a fair Trial in accordance with the accepted principles of natural justice;
- (b) That every effort should be made to avoid delay in investigation and Trial, which is harmful, not only to the individual involved, but also to the society;
- (c) That the procedure should not be complicated, and should, to the utmost extent possible, ensure a fair deal to the poorer sections of the community.

### **Codification of Law of Crime in India**

The history of codification of modern criminal law in India generally begins from the advent of the British rule. However, its roots date back to the Vedic age and the rule of various Hindu and Muslim dynasties. The modern criminal justice system is based on English laws and practices. These practices are practical as well as contemporary. As a result, a major chunk of criminal laws that exist today still relies on the British-era laws.

### **Different Types Of Codification of Criminal Law**

- **Criminal law in the Vedic age-**

In ancient India, Hindu religious laws contained many provisions for governing criminal as well as civil matters. The Vedas, Shrutis, Smritis and even other documents like Manusmriti contain provisions regulating criminal law. The practice of codifying criminal offences existed in this period as well.

These laws also contained detailed procedural rules and regulations for Trials. There are some records which also show the existence of principles of evidence to govern these Trials.

- **Criminal law in the Islamic age**

With the advent of Islamic rule in India, criminal laws in several parts of the country saw major changes. Even prior to the Mughal rule, the Delhi sultanates had already introduced offences based on Islamic laws of Shariat. The main influence of these laws was Islamic religious texts like the Quran, Sunna, Hadis, Ijma, Qiya, etc.

During the Mughal rule, the codification of criminal law of law became more sophisticated. Muslim criminal law came under three broad categories: crimes against God, crimes against sovereignty, and crimes against individuals.

The law even divided modes of punishments into categories. These included death, dismembering of limbs, stoning, levy of fines, confiscation of property, the punishment of exile, etc.

After the British arrived in India, they initially decided not to interfere much with existing Muslim criminal laws. They implemented changes in a phased manner so as to not upset the locals.

- **Criminal law in the British period**

When Warren Hastings introduced his Judicial Plan of 1772, he did not make many severe changes to substantive criminal law. In 1773, he slowly started changing rules of procedure and evidence in existing criminal laws. For example, he abolished the practice of allowing male relatives of victims to pardon their killers.

During this time, serious offences like homicide became crimes against the state instead of being private offences. This laid the foundation of the modern practice of the state prosecuting people who commit public offences.

From 1790 onwards, Lord Cornwallis extended the process of codifying criminal law. Major changes took place in the subject of sentencing. As a result, the process of levying punishments physically harming and dismembering convicts slowly started fading.

Lord Wellesley made even more changes to the offences of murder and homicide in the early 1800s. For example, the law now made distinctions between intentional and unintentional killing.

Furthermore, rules of evidence became stricter and the threshold of proof to indicate guilt increased greatly. In presidency towns like Madras, Bombay and Calcutta, the British made many changes keeping local conditions in mind.

### **Codification of Substantive Criminal Laws**

According to the Charter Act, 1833, India's first law commission in 1834 recommended drafting of the Indian Penal Code. Lord Macaulay, who was the chairman of that law commission, spearheaded its drafting. The Code was basically a comprehensive enactment describing all major crimes in existence at that time.

Despite several revisions over almost thirty years, the law did not come into force until 1860. It was only after the Rebellion of 1857 that the British decided to implement it. IPC has seen several amendments since it first came into existence. Although it largely relied on British laws and practices, many of its provisions are still the same.

Even the Indian Evidence Act came into existence in 1872 under the guidance of Lord Macaulay. Its foundation was largely the British law of evidence, but it has seen many changes since then.

### **Codification of Procedural Criminal Laws**

Although the British had enacted a Criminal Procedure Code for India in 1862, modern procedural laws came much later. The Code of 1862 was amended and replaced many times later to make procedural laws modern.

After Independence, the Law Commission made many recommendations to update CrPC. Some of these changes were the abolition of jury Trials. The most important reason for these changes was to make the criminal procedure quick and effective. CrPC was finally enacted again by the Parliament in 1973, and it has been amended many times since then.

### **Objective of BHARTIYA NAGRIK SURAKSHA SANHITA, 2023**

- To improve the efficiency of Criminal Justice System.
- Strengthening and balancing the Rights of the Accused and Victim/Complainant.
- Consolidating and simplifying the law.
- For bringing key changes in the matters of-
  - Arrest
  - Bail
  - Investigation
  - Summoning of accused and records
  - Proper and expeditious conduct of investigation and trials.
  - Fixing the timeline concerning several aspects in investigation and trials
- Giving recognition to the forensic evidence in the investigation of the cases with particular reference to the cases where punishment is 7 years or more.
- To achieve the objective of paperless courts-
  - Introduction of electronic communication
  - Audio-video electronic evidence
  - Electronic communication in method of summoning
  - Investigation reports submission in electronic mode.

### **HISTORICAL BACKGROUND OF THE CRIMINAL PROCEDURE CODE-**

- ♦ The first version of the Code of Criminal Process was enacted in 1861, following the passing of the Indian Penal Code, 1860. Act 10 of 1882 superseded the code.
- ♦ Sixteen statutes relating to the criminal procedure have been passed since 1882.
- ♦ The code of Criminal Procedure replaced it once more in 1898.
- ♦ The code of Criminal Procedure Amendment Act of 1923 then updated the 1898 statute.
- ♦ In its 14<sup>th</sup> report (1958), the first law commission presented significant suggestions for criminal justice reform.
- ♦ The recommendations of the committee were taken into consideration and the Code was changed.
- ♦ Parliament passed the Code of Criminal procedure, 1973 in response to the recommendations of the Fifth law Commission's Forty-First Report. It was applicable from April 1<sup>st</sup>, 1974.
- ♦ The Criminal Law (Amendment) Act, 2013.

### **HIGHLIGHTS OF THE BHARTIYA NAGRIK SURAKSHA SANHITA, 2023**

- ❖ The need for forensic investigation in the cases which are punishable with 7 years or more has been emphasized.
- ❖ Trials, inquiries and Proceedings in the Courts can be held in electronic mode.
- ❖ Investigation can also be allowed by electronic means containing digital evidence. The final reports of the investigation can also be submitted in electronic mode.
- ❖ Specimen signature and writing and other impressions and samples can be collected for investigation from the persons who have not been arrested.

### **DELETED PROVISIONS OF CrPC-**

From definitions-

- ♦ India- Section 2(f)
- ♦ Metropolitan area- Section 2(k)

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- ♦ Pleader- Section 2(q)
- ♦ Prescribed- Section 2(t)

### **Regarding Courts and Powers-**

- ♦ Section 8- Metropolitan Areas
- ♦ Section 10- Subordination of Assistant Session Judges
- ♦ Section 16- Court of Metropolitan Area
- ♦ Section 17- Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate
- ♦ Section 18- Special Metropolitan Magistrate.
- ♦ Section 19- Subordination of Metropolitan Magistrates
- ♦ Section 27- Jurisdiction in cases of Juveniles

### **HOW THE SENTENCES TO RUN-**

In the matter of sentences in several offences, an addition has been made in section 25 of BNSS, 2023 that the Court considering the gravity of the offence shall order punishments to run concurrently or consecutively.

It can be in excess of competency to inflict punishment. No person can be so sentenced for longer period than twenty years. The aggregate punishment shall not exceed twice the amount of the competency of court for single offence.

### **INVESTIGATION RELATED CHANGES-**

1. **FIR-** Introduction of Zero FIR, e-FIR and Preliminary Enquiry.
2. **INVESTIGATION-** by senior police officer, by forensic experts, timeline for completing further investigation (90 days), deemed sanction in 120 days.
3. Magisterial power to direct registration of FIR and investigation is subjected to complainant's affidavit and submission made by the police officer.
4. Public servant is protected against false and frivolous cases at both the stages- complaint before the Magistrate and Application made under Section 175(3) of BNSS- Now consideration of assertions made by the public servant and a report containing facts and circumstances of the incident from his superior officer is mandatory.
5. In complaint cases- hearing the accused is made mandatory before taking cognizance.

### **CHANGES IN ARREST AND CUSTODY-**

- ♦ Partial restriction in making arrest in less than three years punishable offence.
- ♦ No need of arrest while forwarding the police report to the Magistrate.
- ♦ No arrest for taking samples of handwriting, signature, voice sample or finger impressions.
- ♦ Additional medical examination of the arrested person in police custody.
- ♦ Designated police officer in every district- police officer not below the rank of ASI at every police station is to maintain records of arrest. (Section 37)
- ♦ Notice of appearance- Form 1 has been added in Schedule 1 of BNSS.
- ♦ Use of handcuffs while effecting the arrest keeping in view the nature and gravity of offence like terrorists acts, drug related crimes etc. and production before the court of an arrested person. (Section 43)
- ♦ Power of police to detain or remove any person resisting, refusing, disregarding etc. to conform to any direction of a police officer is introduced in Section 172 of BNSS.
- ♦ Police custody period is 15 days spread over the initial period of 40/60 days based on the total period of 60/90 days

- ♦ Scope for house arrest- detention shall only be in a police station under police custody or in prison under judicial custody or any other place declared as a prison by the Central Government or the State Government.

#### **CHANGES IN SUMMONING PROCESS-**

- ♦ Section 63 introduced technology compatible in issuance of service of summons. The court can now issue summons in electronic form authenticated by the image of the seal of the court/ digital signatures.
- ♦ Service of summons through electric means. For the purpose of making the process effective, transparent and accountable, a provisions has been made in Section 64 for maintaining the register in the police station and in the court to keep the address, email address, phone number etc of the person to be summoned and service of such summons by electronic communication as per rules made by the State Government.
- ♦ In section 66, the earlier reference to '**some adult male member**' has been replaced by with '**some adult member**'. Thus gender neutrality has been introduced and women have been included as an adult member of the family for the purpose of service of summons on behalf of the person summoned.
- ♦ **In section 227**, which deals with issuance of process in commencement of proceedings, the summons and warrants may also be issued through electronic means.
- ♦ **In Section 94**, the BNSS which is for production of document or thing introduced production of electronic communication, including communication devices which are likely to contain digital evidence.

#### **CHANGES IN SEARCH AND SEIZURE-**

- ♦ **Section 105-** the process of search and seizure has to be video-graphed including the preparation of a list of seized items and the signing of it by the witness is made mandatory and this process should be done through any audio video electronic means preferably by MOBILE PHONE.
- ♦ **Proceeds of crime-** Enable the police, with the permission of the Court, to attach and forfeit any property obtained as proceeds of crime.
- ♦ **Disposal of case property-** Section 497 introduces the quick disposal of case properties even during the investigation, on preparation of a statement of property by the Court within 14 days after such property has been photographed/ video graphed.

#### **RECORDING OF STATEMENTS AND CONFESSIONS-**

- ♦ In section 179 of BNSS deals with disability and a person with acute illness. Furthermore, exemption from attending the police station is given to women, person below 15 years and above 60 years. A proviso is added to allow the persons mentioned in the exemption category to attend at the police station, if he/she is willing to do so.
- ♦ In Section 183, now the Judicial Magistrate, in whose district the offence has been registered (whether having the jurisdiction of the case or not) is made competent to record the confession or the statement in the course of investigation.
- ♦ For serious and heinous offences, it has been introduced in Section 183 that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Judicial Magistrate shall mandatorily record the statement of the witness brought before him by the police officer.
- ♦ Affording further protection to the victims of rape, it has been mandated in Section 183(6)(a) that their statement shall be recorded only by a lady Judicial Magistrate and in her absence, by a male Judicial Magistrate in the presence of a woman.

- ♦ In order to provide more protection to the victims of rape, section 176(1) proviso that the statement of such victim shall be recorded through audio-video electronic means including mobile phone and it shall be conducted at the residence of the victim or in place of his choice- by the woman police officer in the presence of her parents, guardian and near relatives.

#### **APPLICATION OF TECHNOLOGY IN POLICE REPORT AND DOCUMENTS**

- ♦ Section 193(3)(i)- after the completion of the investigation the report of the in-charge of police station can be through electronic communication to the magistrate having the jurisdiction to take the cognizance of the case.
- ♦ Under Section 210(1)(b), technology compatibility has been further provided and the Magistrate has been enabled to take cognizance of any offence upon receiving a police report electronically.
- ♦ The supply of police report and other documents by electronic communication shall be considered as duly served- Proviso to Section 193(8)

#### **CHANGES IN COMMENCEMENT OF PROCEEDINGS AND TRIAL PROCEDURE-**

##### **A. Introduction of timeline:**

- ♦ Supply of police report, documents etc, (Section 230)- 14 days from the date of production/appearance of the accused.
- ♦ Committal of the case (Section 232)- 90 days extendable up to 180 days from the date of the Magistrate takes cognizance, further any application filed before the Magistrate by the accused or the victim shall also be forwarded to the court of sessions.
- ♦ Filing discharge application- 60 days from the date of the committal of the case.
- ♦ Framing of charge- 60 days from the first hearing on charge.
- ♦ Delivering and uploading of judgments- 30 days extendable up to 45 days and 7 days respectively.
- ♦ Complaint case- 30 days notice to complainant for appearance (Section 272 and 279)

##### **B. Plea Bargaining-**

- ♦ In section 290, a time period of 30 days has been prescribed for filing an application for plea bargaining from the date of framing of charges.
- ♦ Further, a time period of 60 days has been prescribed for completing the process of 'mutually satisfactory disposition'.
- ♦ Section 293 adopts a lenient and rehabilitative approach in plea bargaining sentences. In instances involving first-time offenders, where minimum punishment is prescribed one-fourth of the minimum punishment is prescribed, a first-time offender may receive a sentence equivalent to one-sixth of the prescribed punishment.

#### **CHANGES IN BAIL MATTERS-**

- ♦ Bail, bail-bond and bond has been defined.
- ♦ Section 479 provides for bail to undertrials has been liberalized. A sympathetic view has been taken towards first-time offenders, who are now eligible to be released on bond by the court if they have undergone detention period extending up to one-third of the maximum period of imprisonment specified for that offence.
- ♦ The jail superintendent is to make an application for bail to the Court where an under-trial completes one-half or one-third of maximum period.
- ♦ The release of an under trial who is involved in more than one offence or in multiple cases has been made stringent under the provisions.

- ♦ Bail in cases of acquittal is made liberty oriented. Section 483 has given relaxation in the term of surety/bail for acquitted persons. Under the changed provision release on personal bond is also added.

# PART I

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## PRELIMINARY

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### **Short title, extent and commencement**

**OLD-** This Act is called the Code of Criminal Procedure, 1973. It extends to the whole of India. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019). Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply to the State of Nagaland, to the tribal areas.

But the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

*The Supreme Court in case of Srinivas Gopal v. UT of Arunachal Pradesh, (1988) 4 SCC 36*

The Supreme Court has reiterated that the inapplicability of the provisions of the Cr PC in the above areas is of little consequence because in the context of Nagaland it has been held that even though the provisions of the Cr PC are not applicable in certain districts of the State of Nagaland, it only means that the rules of the Cr PC would not apply but the authorities would be governed by the substance of these rules." It has also to satisfy the standard of fairness as is implicit in Article 21 of the Constitution.

**New-**

- Title of the Act has changed from "Code of Criminal Procedure, 1973" to "**Bharatiya Nagrik Suraksha Sanhita, 2023.**"
- Earlier the provisions of Chapter VIII, X, XI of CrPC, 1973 were applicable to State of Nagaland and Tribal Areas, now chapters IX, XI and XII are applicable to State of Nagaland and Tribal Areas.

### **IMPORTANT DEFINITIONS – SECTION 2.**

1. **Bailable offence Section 2(a) of CrPC-** Bailable offences means the offence that has been shown in the First Schedule as bailable or which is made bailable by any other law for the time being in force. The first schedule of the CrPC is divided into two parts wherein the first part deals with the offences given under IPC and the second part deals with the offences under other laws. As per the last item of the First Schedule, an offence in order to be bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only.

For example- Simple Hurt (Section 337; IPC), Bribery (Section 171E; IPC), Public Nuisance (Section 290; IPC), Death by Rash or Negligent Act (Section 304A; IPC).

*In the case of Rasik Lal v Kishore (2009) 4 SCC 446*, Supreme Court held that, in case a person is arrested for any bailable offence, his right to claim bail is absolute and indefeasible and if the person accused is ready, the court or the police as the case may be will be bound to release him on bail.

**2. Non-Bailable Offence Section 2(a) of CrPC**

Non-bailable offence includes all those offences which are not included in bailable offence in the First Schedule. Further, the First Schedule in its Second part at its end has defined non-bailable offence as the offences which are punishable with death, imprisonment of life or imprisonment for more than seven years. A person accused of a non-bailable offence doesn't have right to be released on bail but the bail can be granted at the discretion of the court.

**3. Cognizable offence Section 2(c) of CrPC**

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

Thus cognizable offence is an offence in which the police officer as per the first schedule or under any other law for the time being in force, can arrest the convict without a warrant and can start an investigation without the permission of the court. Cognizable offences are generally heinous or serious in nature such as murder, rape, kidnapping, theft, dowry death etc. The first information report (FIR) is registered only in cognizable crimes.

**4. Non- Cognizable offence Section 2(l) of CrPC**

Non-cognizable offence means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

Thus In case of a non-cognizable offence, the police cannot arrest the accused without a warrant as well as cannot start an investigation without the permission of the court. The crimes of forgery, cheating, defamation, public nuisance, etc., fall in the category of non-cognizable crimes.

**5. CHARGE Section 2(b) of CrPC**

Charge includes any head of charge when the charge contains more heads than one;

Thus charge simply means an accusation. A charge is a formal recognition of concrete accusation by magistrate or a court based upon a complaint or information against the accused. In *V C Shukla Vs State 1979 AIR 962*- The Court held that the purpose of framing of charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.

**6. COMPLAINT Section 2(d) of CrPC**

Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but does not include a police report.

**Explanation.--**A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

### **Essential Requirements of a complaint:**

- It must contain an allegation of commission of offence by anyone.
- It can be made either orally or in writing.
- It must be made to a Magistrate.
- It must be made with a view to take action by the Magistrate

A report made by police officer in a case which discloses, after investigation, the commission of a non cognizable case shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

### **Distinction between Complaint and First Information Report (FIR)**

COMPLAINT	F.I.R.
1. In complaint, the allegation is made orally or in writing to a Magistrate.	In FIR, information is given to an officer-in charge of a police station.
2. A complaint may relate to a cognizable or non-cognizable offence.	FIR must relate to a cognizable offence on the face of it.
3. A Magistrate takes cognizance of an offence on a complaint made to him.	A Magistrate cannot take cognizance of an offence on first information report.
4. A complaint generally does not include the report of a police officer.	FIR may be given by a police officer.

#### **7. Inquiry Section 2(g) of CrPC**

It means every inquiry other than a Trial, conducted under this Code by a Magistrate or Court. An Inquiry primarily aims at determining the truth of reported crime or falsity of facts if any. It carries the following three features:

- 1) The inquiry is different from a Trial in criminal matters;
- 2) An inquiry is wider than Trial;
- 3) It stops when trial begins;

#### **8. Investigation Section 2(h) of CrPC**

Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

An investigation refers to the proceedings or steps taken by an authority like Police Officer. An investigation is not conducted by Magistrate. It is conducted by a person authorized in this behalf by the Magistrate. Investigation mainly comprises the process of collection of evidence. Investigation cannot be a judicial process.

### **➤ INVESTIGATION, INQUIRY AND TRIAL**

The three terms denote three different stages of a criminal case. The first stage is reached when a police officer either by himself or under orders of a Magistrate investigates into a case. If he finds that no offence has been committed, he submits report about the fact to a



Magistrate who drops the proceedings. But if he is of a contrary opinion, he sends up the case to a Magistrate. Then the second stage begins, which is an inquiry into the case by Magistrate. If no prima facie case is made out, the Magistrate dismisses the complaint or discharges the accused. If he is of a contrary opinion, he frames a charge. Then the third and final stage is reached when the charge is framed and the Trial begins. The Magistrate may deal with the case himself, and either convict the accused, or acquit him. In cases of serious offences, the Trial is before the Sessions Court.

#### **9. Judicial proceedings Section 2(i) of CrPC**

Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath; the term judicial proceeding includes inquiry and Trial but not investigation.

It is a general term of proceedings in the court which is authorized to be taken in various cases to secure the determination of controversy, to obtain the enforcement of a right, the redress or prevention of wrong.

#### **10. Offence Section 2(n) of CrPC**

Offence means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle- trespass Act, 1871 (1 of 1871 );

As per Section 40 Indian Penal code, 1860 " offense" denotes a thing made punishable by the Indian Penal Code. There are three types of classification of offenses which are as follows –

- 1) Cognizable offenses and non-cognizable offenses
- 2) Bailable offenses and non-bailable offenses
- 3) Compoundable offense and non-compoundable offenses

Under Article 21 of Indian constitution the word offence means something which is in violation of law in force and for the violation of that law prescribe a penalty.

#### **11. Officer in charge of police station 2(o) of CrPC**

It includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present;

#### **12. PLEADER 2(q) of CrPC**

Pleader when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practise in such Court, and includes any other appointed with the permission of the Court to act in such proceeding;

#### **13. POLICE REPORT 2(r) of CrPC**

Police report means a report forwarded by a police officer to a Magistrate under Sub-Section (2) of section 173;

As soon as investigation of a case involving at least one cognizable offence is completed by the police, the officer-in-charge of the police station, where the case has been registered, has to submit a report to the Magistrate. The Magistrate here refers to any Magistrate competent to take cognizance. He is generally Judicial Magistrate First Class;



Judicial Magistrate Second Class may also take cognizance, provided that he is specially empowered to do so by the Chief Judicial Magistrate.

Hence, the report submitted by the officer-in-charge of the police station to the competent Judicial Magistrate at the end of investigation, incorporating Agency, is known as “Police Report”.

#### **14. POLICE STATION 2(s) of CrPC**

Police station means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

#### **15. PUBLIC PROSECUTOR 2(u) of CrPC**

“Public Prosecutor” means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

#### **16. SUMMON CASE 2(w) of CrPC**

Summons-case means a case relating to an offence, and not being a warrant-case; Summon” is a document that commands a person to whom it is served to appear before the court and to answer the complaint made against him. Summon is issued by the Magistrate to the accused. It can be said that summon cases are not of serious nature and in these cases punishment will not exceed imprisonment for two years.

#### **17. WARRANT CASE 2(x) of CrPC**

“warrant-case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

Warrant is an official authorisation enabling the police or some other body to make an arrest, search premises etc. Thus it is an order or writ of the Court directing and empowering a particular person/authority to execute the directions in the warrant. Section 2 (x) defines warrant cases where the punishment prescribed by the law for the offence tried is more than 2 years of imprisonment including incarceration for life and the death penalty. In these cases, the Magistrate is empowered to issue a warrant of arrest of the alleged offender and the police are empowered to arrest the person on such warrant without allowing the person an opportunity to surrender.

#### **18. VICTIM SECTION 2(wa) OF CrPC-**

**It has been inserted by the 2008 Amendment [Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009)]**

“Victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.

Thus, it introduces a definition of “victim” to confer certain rights on the guardian and legal heirs of the victim.

### **DIFFERENCE BETWEEN BAILABLE AND NON BAILABLE OFFENCES**

<b>BAILABLE</b>	<b>NON-BAILABLE</b>
1. Section 2(a) defines bailable offence- It means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force.	Section 2(a) also defines non-bailable- It means any other offence.
2. Bailable offences are regarded as less grave and less serious.	Non Bailable offences are grave and serious offences, For example- offence of murder.
3. According to the first schedule of offences which are punishable with less than 3 years imprisonment are considered as a bailable offence.	According to the first schedule of offences under laws other than the Indian Penal Code which are punishable with imprisonment for three years or more have been considered as non-bailable.
4. Under bailable offences, bail is claimed as a matter of right.	Under Non-bailable offences, bail is a matter of discretion.

### **DIFFERENCE BETWEEN COGNIZABLE AND NON-COGNIZABLE OFFENCES**

<b>S. NO.</b>	<b>Cognizable</b>	<b>Non-Cognizable</b>
1.	Section 2(c) Definition – “Cognizable offence” means an offence for which and “cognizable case” means a case in which, a police officer may, in accordance with the first schedule or under any other law for the time being in force, arrest without warrant.	Section 2(l) Definition – “Non-cognizable offence” means an offence for which, and non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant.
2.	It is the offence in which a police officer can arrest the convict without the warrant.	It is the offence in which a police officer cannot arrest a person without the warrant.
3.	The police can start a preliminary investigation without the permission of the court or without registering the FIR.	The police officer cannot start the investigation without the permission of the court.
4.	These are heinous crimes like murder, rape, dowry death etc.	These crimes are not so serious like forgery, cheating, defamation etc.
5.	The victim can file an FIR or make a complaint to the magistrate.	The victim can only make a complaint to the magistrate or NCR under section 155.
6.	The police officer is bound to register the FIR even without the permission of Magistrate.	The police officer is not bound to register the FIR or cannot register the FIR without prior permission of the magistrate.
7.	It is a non-bailable offence.	It is a bailable offence.

### **DIFFERENCE BETWEEN SUMMON CASE AND WARRANT CASE**

<b>S. NO.</b>	<b>Summon</b>	<b>Warrant</b>
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1.	Definition – “Summon – case” means a case relating to an offence, and not being a warrant – case (vide Section 2(w) Cr.P.C)	Defination – “Warrant-case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years, (Vide Section 2(x) Cr.P.C)
2.	It is a legal order issued by the presiding officer to the defendant or a witness or any other person involved in a case.	It is a written authorization issued by a judicial officer like judge or magistrate to a police officer to authorize or empower him to perform an act in order to regulate justice.
3.	The procedure for the Trial of summons cases is provided by Chapter XX (Section 251 to 259, Cr.P.C)	Whereas the procedure for the Trial of warrant cases is provided by Chapter XIX (Section 238 to 250) of Cr.P.C)
4.	In summons cases, the maximum punishment may be imprisonment upto two years.	In warrant cases, the maximum punishment is death-penalty.
5.	It orders the defendant to appear in the court or to produce a document or thing before the court.	It is an official authorization to the law enforcement officer to arrest the accused and produce before the judge in the court.
6.	It is addressed to the defendant, witness and any other person involved in the case.	It is addressed to the police officer, not to the accused.
7.	In a summon case the complainant may withdraw the complaint with the permission of the magistrate.	In a warrant case, the complainant cannot withdraw the complaint.
8.	A magistrate can convert a summon case into a warrant case.	Warrant case cannot be converted into a summon case.

New-

- There is a change in the definition section, as new definitions such as “audio video electronic means”, “bail”, “bail bond”, “bond” and “electronic communication” are added as a result of which various definition clauses are rearranged.
- Definitions of ‘India’ and ‘pleader’ are omitted.
- Section 2. (1) In this Sanhita, unless the context otherwise requires,—
  - (a) **"audio-video electronic means"** shall include use of any communication device for the purposes of video conferencing, recording of processes of identification, search and seizure or evidence, transmission of electronic communication and for such other purposes and by such other means as the State Government may, by rules provide;
  - (b) **"bail"** means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond;

- (c) "**bailable offence**" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;
- (d) "**bail bond**" means an undertaking for release with surety;
- (e) "**bond**" means a personal bond or an undertaking for release without surety
- (i) "**electronic communication**" means the communication of any written, verbal, pictorial information or video content transmitted or transferred (whether from one person to another or from one device to another or from a person to a device or from a device to a person) by means of an electronic device including a telephone, mobile phone, or other wireless telecommunication device, or a computer, or audio-video player or camera or any other electronic device or electronic form as may be specified by notification, by the Central Government;