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FREQUENTLY ASKED QUESTIONS (FAQs)

We all have so many questions in our mind regarding the various aspects of criminal law but at times, we feel handicapped as far as having access to information on these aspects is concerned. We do not know whom to ask the various fundamental questions. Though the answer to most of our queries lies in the Code of Criminal Procedure but the language used therein is too technical for all of us to thoroughly understand the same.

Though the criminal law is so extensive and vast that it can not be covered in its entirety in a single book, however an attempt has been made in this chapter to put the various basic aspects of the criminal law in question answer format in a very simple manner to enable the readers to get the answers to their queries in the language they readily understand. To understand the contents of this chapter, it is advised that the chapter in this book on 'Salient features of CrPC' is also read together followed by a reading of the Code of Criminal Procedure in its original form.

1. What is the complete procedure being followed after happening of a crime ?

The procedure being followed by the police and the criminal courts in India (particularly in Delhi), after an offence has been committed, is as follows:

- Information or complaint regarding commission of an offence or offences is given to the Officer-in-charge of the police station (commonly referred to as Station House Officer or SHO, in short).
- The said information or complaint is entered in the station/general diary by the police officer on duty and a **FIR** (First Information Report) is registered.
- If on the basis of the FIR or otherwise, the SHO has reason to suspect the commission of a cognizable offence, he forthwith sends a report (occurrence report of the incident) to the concerned Judicial Magistrate (MM, in metros). (Generally, serious offences entailing punishment of 3 years or more are cognizable offences). In reality, the copy of the FIR itself is sent to the MM. The purpose for forthwith sending the copy of FIR to the concerned Magistrate is to keep the concerned Magistrate informed of the investigation of a cognizable

- offence so that he may be able to control the investigation and if required, to issue appropriate directions. Sending the report to the MM at the earliest minimise the possibility of manipulating the FIR and it ensures that the FIR was recorded at the date and time mentioned therein. It further ensures fair investigation. Unreasonable delay in sending the report to the MM weakens the prosecution case. (If the complaint/FIR does not disclose cognizable offence, then the police can not investigate the case without the order of the concerned Magistrate. In a non-cognizable case, the police just registers the complaint and refer the complainant to the concerned Magistrate).
- The SHO or the Investigating Officer(IO) then under section 157(1) proceed to the scene of crime, make investigations and make efforts to arrest the offender. The police is empowered to gather evidence to bring the culprit to book and for that purposes have the power to question the persons who are likely to have relevant information and the police also have the power of search and seizure. {If the FIR does not disclose any offence, no investigation is permitted and the investigation proceedings or court proceedings on the basis of such an FIR can be quashed by High Court under section 482 Cr.P.C.}
- During **investigation**, the police carries out arrest of the offender(s), **search and seizure** of relevant documents and things, call and interrogate and examine the witnesses and record their statements under section 161. {The **statements under section 161** are not required to be signed by the witnesses. Even if the witness is compelled to sign it, the same does not cause any harm since the same is not admissible in evidence and can be retracted in court}
- If evidence against accused is not sufficient, then on his **arrest**, he may be released under section 169 on his executing a bond that he will appear if and when so required. If evidence against him is sufficient, he is forwarded by the police to the Metropolitan Magistrate. The Magistrate may either release him on **bail**, **or** send him to **police custody** (Police Remand), **or** send him to **Judicial custody** (jail).
- Police officer conducting the investigation i.e. the I.O. is under a duty to enter his investigation proceedings day by day in the police diary under section 172. The investigation has to be conducted without unreasonable delay.
- As soon as the investigation is completed, the police report under section 173, which is popularly called "Challan" or "**Chargesheet**",

is filed by the SHO in the court of concerned MM, if police is satisfied that there is prima facie case for proceeding against the accused. (If the police forms an opinion that there is not enough ground for proceeding against the accused, then it files a nil report or closure report. However, it is in the discretion of the Magistrate whether to accept such report or to order fresh investigation). Alongwith the chargesheet, the police also file all the documents and evidence that are gathered during investigation.

- On receipt of the report under section 173, the MM is expected to apply his judicial mind to the chargesheet and documents and decide whether he should take **cognizance** or not. He is not bound by the police opinion in the matter. He is required to ascertain whether any prima facie case exists against the accused person. If in this opinion, it exists, he **issues process** (i.e. summons or warrant) **against the accused** thereby taking the cognizance of the offence. If he is not satisfied, he order for fresh/more investigation under section 156(3). In certain cases, i.e. where the accused is a public servant and the offence is one committed by him in discharge of his official duties, the magistrate can not take cognizance unless prior sanction for prosecution is granted by the Govt.
- The **accused appears** and the **copies of the documents** filed by the police including the chargesheet are **supplied to the accused**. In case, the offence is exclusively triable by the sessions court, the magistrate has to commit the case to the sessions court.
- The accused through his counsel argues that no offence against him is made out and he is entitled to be discharged. **Arguments** are made by the accused's counsel as well as by the prosecution on whether charge can be framed against the accused.
- If after considering the chargesheet and the documents annexed with it, and after examining the accused and after hearing the arguments on charge, the Judge is of the opinion that the charge against the accused is groundless, he is obliged to **discharge** the accused (Section 239). [In a case instituted on a criminal complaint by private person, the Magistrate can discharge the accused at any previous stage also if he considers the charges against the accused to be groundless – section 245(2)]
- If the Judge is of the opinion that there is a ground for presuming that the accused has committed an offence, he shall **frame charges** against the accused.

- The charge is read over to the accused and he is asked whether he pleads guilty of the offence charged or wants to contest the case.
- If the accused pleads not guilty, then actual **Trial** of the case starts. The Judge fix a date for examination of the witnesses. The Judge, on application of the prosecution, issue summons to the **prosecution witnesses**. On the date fixed, Judge take evidence produced in support of the prosecution. The accused cross- examine the prosecution witnesses.
- Then the accused is examined under section 313. He then is asked to produce his evidence. The accused files his written statement and applies to the court for issue of summons to **defence witnesses** for examination and cross examination. Such witnesses then give their statement in court in favour of the accused, followed by their cross examination by the prosecution.
- The Trial concludes and on the basis of the evidence led before the court by the prosecution and the defence, the accused is either **acquitted or convicted** by the court.
- If the accused is convicted, he can file an **appeal to** the court of Addl.**Sessions** Judge (in a case adjudicated by Magistrate) within 30 days. To ensure that he is not arrested and put in jail in pursuance of the judgment of the Magistrate, he has to move an application for bail and the judge is bound to extend his bail. The Addl. Sessions Judge hears the appeal. He may either allow or dismiss the appeal.
- If the appeal is dismissed by the said sessions court, the accused is given 30 days to **appeal to the High Court**. However, in this case, the accused cannot have his bail extended as a matter of right. The moment his appeal is dismissed, the police take him into custody. Immediately, the accused move an application for bail. It is in the discretion of the Court to either extend his bail or send him to the jail. In most cases, the Judge send him to jail.
- The High Court hears the appeal of the accused. Alongwith the appeal, the accused can file an application under section 389 CrPC for suspension of his sentence and for releasing him on bail during the pendency of the appeal. The High court may allow the said application, in which case, the accused is released from the jail pending the disposal of the appeal.
- If the appeal is dismissed by the High Court also, then the accused can **appeal to the Supreme Court**.

- If the appeal is dismissed by the Supreme Court also, then the accused has no remedy except to undergo the sentence. However, the Supreme Court may release the accused on the sentence already undergone by the accused. But in such case, he is deemed to be convicted.

- At any stage of a criminal proceeding in any court in India, the **President** (under article 72 of the Constitution of India) **or** the **Governor** of the concerned State (under Article 161) can invoke their power, either themselves or on the mercy petition of the accused/ convict, and can pardon him or reduce his sentence. While exercising such power, the President and the Governor are not bound by any technicalities of law and they proceed purely on humanitarian basis without being influenced by the judgment of the Court. The Government also can exercise its power to suspend, remit or commute the sentence under Section 432-433 Cr.P.C.

2. What is a First Information Report (FIR) ? What is the procedure for filing an FIR ?

First information report is the information that a police officer receives about the commission of a crime. Provision for FIR in cognizable case is contained in Section 154 and that for non-cognizable case is contained in Section 155 Cr.P.C. Some of the salient features of the law regarding the FIR are :

- An FIR must be in writing, duly signed by the maker thereof. A copy of the FIR is required to be given to the informant free of charge.

- Any person can lodge a FIR. It is not necessary for such person, who lodges it, to be actually present at the scene of incident.

- An FIR must contain the place, date and time of incident. An elaborate description of the incident is also necessary. The basic purpose of filing an FIR is to record the true and correct version of the incident or commission of the offence.

- An FIR can be filed at any police station in the country. There is no necessity that it needs to be filed only at the place where the offence has taken place. It is the duty of the police officer to ensure that it is sent to the police station which has jurisdiction over the matter.

- A denial to register an FIR(which discloses commission of a cognizable offence) on the part of the police officer is illegal. In any such case, the informant may report the matter in writing to the Deputy Commissioner of Police.

- If the complaint discloses the commission of only non-cognizable offence, the police just registers the complaint and refer the complainant to the concerned Magistrate. It can not investigate the case without the order of investigation by the concerned Magistrate.

Once an FIR has been registered, the police has no power to cancel the same. The same can be quashed only by the High Court by exercising its extra ordinary jurisdiction under section 482 Cr.P.C.

The police can not refuse to register FIR in case of **cognizable offence**. If it does not so register, then a complaint can be made to the higher authorities – DCP or Commissioner of Police. If still, no action is taken, then a Criminal Writ Petition under Article 226 of the Constitution of India can be moved in the High Court for direction to the police to register the FIR. [Whether an offence under IPC is cognizable or non-cognizable, can be found out by looking into *First Schedule* of Cr.P.C. In respect of offences under other laws other than IPC, the same can be found out by looking into IInd part of First Schedule].

In case a person wants action to be taken against the offender in a **non-cognizable offence**, he can make a complaint to the police and/or file a criminal complaint in the court of concerned Judicial Magistrate under Section 190 Cr.P.C. The Magistrate's court can direct the police under Section 156(3) to investigate the case (in which case, the police registers the FIR in terms of the complaint and the normal procedure of investigation follows which culminate into filing of chargesheet by the police, upon which the Magistrate takes the cognizance) or the Court can take the cognizance on the complaint itself and summon the accused under Section 204.

When several offences are alleged in the complaint to the police, if even one of them is cognizable, then the case shall be deemed to be a cognizable case in spite of the fact that other offences are non-cognizable. *Section 155(4)*

The police can investigate a cognizable case without the order from the Magistrate but it can not investigate into a non-cognizable case without the orders of the Magistrate. However, it was held by Supreme Court in *H.N.Rishbud vs State of Delhi AIR 1955 SC 196* that investigation of a non-cognizable offence by police without order of the Magistrate is only a curable irregularity and the trial in pursuance of such investigation is not vitiated.

It was held by the Supreme Court in *Madan Bala vs Suresh Kumar AIR 1997 SC 3104* that the provisions of the Code do not, in any way, stand in

the way of a Magistrate to direct the police to register a case at the police station and then investigate the same. When an order for investigation under Section 156(3) is to be made, the proper direction to the police would be to register a case at the police station treating the complaint as the FIR and investigate into the same.

3. What to do if the police does not register the FIR on my complaint ?

Under the law, as expanded by the Supreme Court from time to time, the police is bound to register an FIR on your complaint disclosing commission of cognizable (generally non-bailable) offence. However, if the police does not do so, you can send your complaint by post to the Commissioner of Police, who on being satisfied that the complaint discloses the commission of a cognizable offence, is bound to investigate the matter.

One more effective remedy available to you is to **file a criminal complaint** against the offenders in the court of Magistrate. Under section 190 Cr.PC, the magistrate can take cognizance of an offence on such a complaint, just as he can take cognizance on the basis of the challan (chargesheet) filed by the police after investigation.

On the complaint being filed by you, the magistrate has two options.

- **The first option** is that he can exercise his power under section 156(3) Cr.P.C and order the police to investigate the facts and allegations narrated by you in your complaint, in which case the police is bound to register an FIR (by reproducing your complaint) and investigate the matter. The police after investigation file its report to the Magistrate. The report may either say that after investigation, no case is made out against the accuseds named in the complaint. Such a report is called *'closure report'* by which the police request the court to close the case. The Magistrate may act upon the report and order for closing the case. However, if not satisfied, he may order for investigation afresh. If police is satisfied that there is prima facie case for proceeding against the accused, the report filed by the police is popularly called *challan or chargesheet*, in which case the Magistrate proceeds to take cognizance and issue summons to the accused and after hearing both the prosecution and the defence, frame the charges in writing.

- **The second option** available to the Magistrate is that he can record your statement and the statement of any of the witnesses produced by you and on the basis of evidence so available before him, he can take cognizance and issue summons to the accuseds named in your

complaint. The accused appear before the court, apply for his bail (or if bail was earlier granted, then he apply for extension of his bail), the bail is granted by the court (in case of bailable offence), he is given copies of the documents filed by you and he is given time to argue against framing of charges against him. Thereafter, the court proceeds and either frame charges against him or discharges him.

It is necessary that you are personally present in the court when your criminal case is called. However, it has been held by certain High Courts that complainant can be represented by his attorney. The magistrate may dismiss your complaint under section 249 on account of your absence. The magistrate can also dismiss your complaint under section 203 if after perusing your complaint and considering your statement and the statements of your witnesses, he is of the opinion that there is no sufficient ground for proceeding. The dismissal of the complaint has the effect of discharging the accused.

One more remedy which can be exercised if the police fail to register FIR on your complaint which discloses commission of cognizable offence, is to file a Criminal Writ Petition under Article 226 of the Constitution of India in the High Court.

4. What is the power of police to compel a person to appear before it ?
The power of the police relating to compelling a person to appear before it and relating to his interrogation are prescribed in Sections 160 and 161 of Cr.P.C.

As per **Section 160**, any police officer who is conducting an investigation can ask the following persons to appear before him :

(i) who appears to be acquainted with the facts and circumstances of the case, whether on the basis of any information received or otherwise.

Only such person can be called by the police officer who is within the limits of his police station or the adjoining police station.

However, the police officer can ask the person to appear, only through an order to that effect **in writing**. The person is not bound to appear on verbal direction of the police officer.

As can be seen, the power given to the police officer is very wide. If it appears to him that the person is acquainted with the facts and circumstances of the case under investigation, he can order such person to appear before him and such person is bound to appear before him. However, there is an exemption in case of a woman and a male person

under 15 years of age. Such persons can be interrogated only at their place of residence.

The State Govt. is empowered to frame rules directing the police officer to pay the reasonable expenses incurred by a person in appearing before him.

Under **Section 161**, the police officer may ask questions from such person who is bound to truly answer all those questions which relate to the case. However, he is not bound to answer those questions the answers to which might expose him to a criminal charge or to a penalty/forfeiture.

The police officer may reduce into writing the verbal statement of the person. However, the person is not bound to sign it. Even if he is forced to sign it, he can retract this statement later on.

It is also important to discuss here the powers of the police to arrest. At times, it so happen that a person is called to the police station for asking some questions and he is arrested by the police there. Such arrest action is taken by the police officer by using the powers available to him under section 41 Cr.P.C. Under said Section, the police officer can arrest without an arrest warrant any of the following persons :

(a) who has been concerned in any cognizable offence, or

(b) a reasonable complaint has been made against him, or

(c) credible information has been received regarding his involvement in a cognizable offence, or

(d) a reasonable suspicion exists regarding his involvement in a cognizable offence

The police officer usually resort to arresting the person called for interrogation by claiming that the officer has a reasonable suspicion regarding said person's involvement in a cognizable office.

4A. What are the powers of the police to interrogate a person ?

The police officer can require the attendance of the person, who appears to be acquainted with the facts and circumstances in relation to the commission of an offence, to appear before him. The person has to answer the questions that may be put to him, but is not bound to answer such questions that have a tendency to expose him to a criminal charge or penalty. However, the police officer can not compel a woman or a child of less than 15 years to attend the police station (section 160). The police can record the statement of the person under section 161, but the person can not be asked to sign such a statement. Even if he is forced to sign, it

carries no weight in evidence. A self incriminating confession made to the police officer is inadmissible in a court of law.

During interrogation, the police is bound to permit the person being interrogated to be interrogated in the presence of his advocate.

The questioning/interrogation of a suspect/witness must be made only between sunrise and sunset. *(Susheela Mishra vs Delhi Administration AIR 1983 SC 1153).*

Beating the accused or any other person to extract information during interrogation is not permissible. *(State of A.P. vs Venugopal AIR 1964 SC 33).*

The Police officer can not insist a woman to appear at the police station. *(Nandani Satpathy vs P.L.Dani AIR 1978 SC 1025).*

If there is any mode of pressure – subtle or crude, mental or physical, direct or indirect – but sufficiently substantial, applied by the police for obtaining information from an accused strongly suggestive of guilt, it becomes compelled testimony violative of Article 20(3) of Constitution of India. *(Nandani Satpathy vs P.L.Dani AIR 1978 SC 1025)*

5. What is the law relating to Arrest ?

Arrest means apprehension of a person by legal authority resulting in deprivation of his liberty. For instance, when a policeman apprehends a pick pocket, he is arresting the pickpocket; but when a dacoit apprehends a person with a view to extract ransom, the dacoit is not arresting the person but wrongfully confining him.

Arrest of a person might be necessary under the following circumstances:

1) As a preventive or precautionary measure : If there is imminent danger of the commission of a serious crime (cognizable offence), arrest of the person intending to commit such crime may become necessary as a preventive measure (Section 151Cr.P.C.). There may be other circumstances where it is necessary as a precautionary measure to arrest a habitual offender or an ex-convict (Section 41(2) read with Section 110) or a person found under suspicious circumstances (Section 41(1)(b) &(d), Section 41(2) read with Section 109).

(2) For securing attendance of accused at trial : When a person is to be tried on the charge of some crime, his attendance at the time of trial becomes necessary. If his attendance is not likely to be ensured by issuing a notice or summons to him, probably his arrest and detention is the only effective method of securing his presence at the trial. (Section 87, 204).

(3) For obtaining correct name and address : Where a person, on being asked by a police officer, refuses to give his name and address, then under certain circumstances, it would be proper on the part of the police to arrest such a person with a view to ascertain his correct name and address (Section 42).

(4) For removing obstruction to police : Whoever obstructs a police officer in the execution of his duty is liable to be arrested then and there by such a police officer. This is essential for effective discharge of police duties. (Section 41(1)(e))

(5) For retaking a person escaped from custody : A person who has escaped from lawful custody is liable to be arrested forthwith by the police. (Section 41(1)(e))

The decision to arrest should be made fairly having regard to the liberty of the individual and the interests of the society. Ideally, a judicial officer is best suited to decide such issues with a fair measure of reasonableness, impartiality and detachment. Therefore, basically it is for a magistrate to make an arrest-decision on the information generally obtained from the police or the complainant. If the magistrate makes a decision to arrest, he would issue a warrant of arrest. An **arrest warrant** is a written order signed, sealed and issued by a magistrate and addressed to a police officer or some other person specially named and commanding him to arrest the body of the accused person named in it.

Arrest with a warrant

An arrest warrant may be issued by a magistrate after taking cognizance of any offence, whether cognizable or non-cognizable.(section 87, 204). If the case in which the cognizance has been taken is a *summons case* (i.e. offence punishable with upto 2 years imprisonment), a summons *shall* be issued to the accused person in the first instance for his attendance in court. If the case is a *warrant case* (i.e. offence punishable with more than 2 years imprisonment), a warrant for the arrest of the accused person *may* normally be issued for causing the accused to be brought before the court. In practice, however, there is no occasion for the magistrate to issue arrest warrant after taking cognizance of a cognizable offence on a police report because the police report is submitted to the magistrate after the police had completed the investigation and during the investigation the police has the power to arrest without warrant a person involved in the commission of a cognizable offence (section 41). The arrest warrant can be executed anywhere in India (Section 77).The police officer arresting a person under an arrest warrant is under a duty to show him the arrest warrant, if so required by him *(Section 75)*.

Arrest without a warrant

There might be circumstances where prompt and immediate arrest is needed and there is no time to approach a magistrate and obtain a warrant from him. For instance, in a case where a serious crime has been perpetrated by a dangerous person and there is every chance of the person absconding unless immediately arrested, it would be unwise to insist on the arrest being made only after obtaining a warrant from a magistrate. There may be occasions when preventive action may be necessary in order to avert the danger of sudden outbreak of crime and immediate arrest of the trouble maker may be an important step in such preventive action. In such cases, often the arrest decision will have to be made by a person other than judicial magistrate. Thus, the Criminal Procedure Code empowers the police to arrest without warrant under some such situations (section 41, 151). The police can pursue a person in any place in India to arrest without warrant (Section 48).

However, to ensure that such powers are not misused by the police, the Code stipulates in Section 56 that every person arrested without warrant is required to be produced before the judicial magistrate within 24 hours of his arrest (section 56). Further detention is illegal unless permitted by a competent judicial magistrate (section 57, 167). This is one of the fundamental rights also enshrined in Article 22(2) of the Constitution of India.

Under *Section 58*, the SHO of the police station is under a duty to report to the District Magistrate or SDM the cases of all persons arrested without warrant.

General :

If the person to be arrested is available in any premises, then the police officer acting under arrest warrant or having authority to arrest can enter into such premises (Section 47).

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape (Section 49).

If the person is in custody but upon investigation it appears to the SHO of the police station that there is not sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a magistrate, then instead of producing him before the magistrate, he can release him on his executing a bond (with or without sureties) to appear before the magistrate if and when required (Section 169)

Execution of arrest warrant in other State/District :

If the arrest warrant is to be executed in some other State/District, then the Court issuing it can adopt either of the following two methods :

I. The court can direct the warrant to a police officer in its jurisdiction. The police officer then take it to a Executive Magistrate or SHO of the police station of the area where the warrant is to be executed. The said Magistrate/SHO then endorse his name on the warrant. Such endorsement authorizes the officer (to whom the warrant is directed) to execute the same. The local police is under a duty to assist him in executing the warrant, if so required by him.

In extreme situation, if there is a reasonable belief that taking endorsement may delay the matter which delay may prevent the execution of the warrant, the police officer may execute the same without such endorsement.*(section79)*

OR

II. The court may forward the warrant alongwith FIR and other documents, by post or otherwise, to any Executive Magistrate (EM) or District Superintendent of Police (DSP) or the Commissioner of Police (CP) of the area where the warrant is to be executed. The said authority is then bound to endorse his name on the warrant. If practicable, the said authority causes the warrant to be executed through his officers. *(section 78)*

If the court which issued the warrant is more than 30 km away from the place of arrest or is farther than the EM or DSP or CP of the area in which the person is arrested, then the arrested person should be produced before such EM or DSP or CP.

However, if there is an endorsement on the warrant under Section 71, then there is no need to produce him before them. He can be released on bail after taking bond and surety from him and asking him to appear before the issuing court on the date and time mentioned in the warrant. *(section 80)*

If it appears to the EM or DSP or CP that the arrested person is the same person whose arrest is ordered by the court issuing the warrant, then he shall issue a transit remand directing the police to take the arrested person to the court issuing the warrant.

However, *if the offence is bailable* or there is an endorsement on the warrant under Section 71 and such person is ready and willing to give bail to the satisfaction of such EM or DSP or CP, then the EM or DSP or CP should take such bail or security, release the person and forward the bond to the court which issued the warrant.

If the offence is non-bailable, he has to be deported back under a transit warrant in custody to the court issueing the warrant. However, in such case, the arrested person is entitled to move a bail application before the court of Chief Judicial Magistrate or the Sessions Judge of the area where he is arrested and the said court can release him on bail after considering the FIR and other documents annexed with the warrant. *(Section 81)*

6. What are bailable and non-bailable warrants ? When are these issued ?

As discussed earlier, an arrest warrant may be issued by a magistrate after taking cognizance of any offence, whether cognizable or non-cognizable. (section 87, 204). If the case in which the cognizance has been taken is a *summons case* (i.e. offence punishable with upto 2 years imprisonment), a **summons** shall be issued to the accused person in the first instance for his attendance in court. If the case is a *warrant case* (i.e. offence punishable with more than 2 years imprisonment), an arrest warrant (i.e. warrant for the arrest of the accused person) may normally be issued for causing the accused to be brought before the court.

Arrest warrant is of two types : bailable and non-bailable.

Bailable warrant is a sort of notice issued by the magistrate, generally to the police to arrest the person concerned named in the notice with the condition that if the said person execute a bond with sufficient sureties (of the amounts mentioned in the warrant) that he will appear before the court on the date and time mentioned in the warrant and thereafter also, then the police officer serving the said warrant shall release the person concerned from his custody on his executing such a bond (Section 71).

Non-bailable warrant(NBW) is also a sort of notice, generally to the police to arrest the person concerned named in the notice but without any condition. The police officer to whom this warrant is addressed is obliged to trace out the person concerned and to arrest him and to produce him before the court without any delay (Section 76). It is normally issued when the person concerned does not appear before the court despite receipt of summons and/or bailable warrant. The NBW may be cancelled by the court when the person, against whom NBWs have been issued, appear in the court with an application for cancellation of NBWs explaining the reasons for his not appearing earlier. If the court is satisfied, it cancels the NBWs , but if it is not, then it sends him to jail for a few days so that he does not repeat it again.

Bailable warrants are issued in criminal cases as well as civil cases. In

criminal cases, non-bailable warrants (NBWs) are generally issued by the court when the person against whom bailable warrants have been issued fail to appear in the court despite receiving the warrant. However, this does not prevent the court from issueing the non-bailable warrants in the first instance if the court is of the opinion that the person concerned may not appear on receipt of summons or bailable warrants (Section 87).

7. What happens if I do not appear in court even after receiving summons as an accused in a criminal case?

If a person does not appear before the criminal court on the day mentioned in the summons served upon him, then the court may issue bailable warrants against him to ensure that next time he appears before the court. However, if the person concerned does not appear even on the next date, despite service of bailable warrants upon him, the court may take a serious view and may issue non-bailable warrants against him to compel his appearance before the court on the next date.

However, if the person concerned does not appear even after issuance of non-bailable warrants against him, the court may draw a inference that he has absconded and is concealing himself deliberately so that the warrant can not be executed. In such a situation, the court may proceed under *Section 82* CrPC and declare him as **Proclaimed Offender (PO)** by publishing a notice under section 82 in the newspaper and affixing a copy thereof in the area of the person concerned. The court may simultaneously order for attachment of the property (moveable or immoveable) of the person concerned. If later on, at a subsequent stage, the person concerned is traced out, he is produced before the court and if the court is not satisfied with his explanation for his non-appearance on earlier occasions, the court may send him to jail. Thereafter, the case proceedings would start from the stage at which these were when the summons were issued against the aid person.

One must remember that if summons are sent by registered post, then endorsement by postman that the witness refused to take the delivery of the summons may be treated by the court as due service of summons (Section 69)

7A. If I am called as a witness by the criminal Court and I do not appear, what happens ?

Such a situation is dealt with in Section 350 and 349 of Cr.P.C. The failure to attend the court may be due to valid and just reasons or may be deliberate.

If the failure to attend the court after receiving summons as witness is due to just and excusable reasons, the court can excuse the non-attendance. However, if the witness without any just excuse neglect or refuse to attend the court on the given day and time, the court may deem it as an offence and try him by summary procedure and give him opportunity to show cause as to why he should not be punished. Depending upon his response, the court can sentence him. However, there is no provision for imprisonment, only fine can be imposed. The maximum fine which can be imposed is Rs.100/-.

However, as per Section 349, if a person has been called by the court to produce any document or thing and fails to produce the same on the given day and time and does not given any excusable explanation for such failure, the court may sentence him for up to 7 days. If he produce the thing in the meanwhile, he is released from custody. However, if he still persists with refusal, he may be tried under Section 345 or 346 of Cr.P.C.

8. What is the sequence of events before and after Arrest ?

An offence is committed. FIR is lodged naming some persons as probable accused. The police conducts investigation. During investigation, the police arrest persons who appears to be connected with the commission of offence. It is the duty of the police officer arresting the accused without warrant to tell him the full particulars of the offence for which he is being arrested and the reasons for his arrest. (section 50). **The arrested person can not be kept by the police in lock up for more than 24 hours.** If the police finds that it is unable to complete the investigation in 24 hours, it is bound to produce the arrested person (accused) before the concerned Magistrate. When the police produce the accused before the Magistrate, it makes an application that the investigation is not yet complete and that it needs the accused for interrogation in connection with the commission of the offence and therefore the custody of the accused may be given to them for some more days. The giving of custody of the accused to the police in this manner is called *'police remand*'.

In such a situation , there are three possibilities :

a. The Magistrate may agree with the police and grant remand to the police. However, the Magistrate can not give police remand for more than 15 days in total.

b. The Magistrate may not agree with the police and may be of the opinion that nothing is to be found out from the accused and that the police is requesting for remand only to torture him in custody. In this situation, the Magistrate reject the application of the police and send

the accused to judicial custody i.e. jail. During investigation by police, the magistrate can authorize the detention of the accused person in judicial custody beyond 15 days if he is satisfied that adequate grounds exist for doing so. However, during investigation, he can not keep him in judicial custody for more than 60 days in case of offences punishable with less than 10 years imprisonment and for more than 90 days in case of other offences. While the person is in judicial custody, he is notionally in the custody of the court. (The incidents of torture mostly happen in police custody. In the jail, the accused has various safeguards and it is difficult to inflict torture upon him. The Hindi film movies exaggerate the conditions in jail. Particularly, the Tihar Jail in Delhi is perhaps the best jail in the country where the prisoners feel themselves to be the part of the society. The hygienic conditions in the kitchen there equals that of a Five star hotel. Computer courses are organized for the inmates of the jail. Inter-jail competitions are organized where the inmates display their skills and talent.)

c. The Magistrate may consider the application moved on behalf of the accused by his lawyer for grant of bail and may grant interim bail and fix a date for arguments on the bail application. On the subsequent dates, the arguments are made by the accused's lawyer and the public prosecutor. The bail application is either allowed in which case the interim bail is confirmed, or the bail application is dismissed.

The investigation is considered to be completed on the day when the challan/chargesheet is filed in the court by the police (Section 173). If the investigation is not completed (i.e. if challan is not filed) by the police within 60 days from the date of arrest of the accused, the Magistrate is obliged to release him on bail on the 61st day. However in case of serious offences punishable with death, life imprisonment or imprisonment above 10 years, this period, within which the challan can be filed, is 90 days (Section 167).

It must always be remembered that an accused becomes entitled to be released on bail under section 167 only if the police fails to file the chargesheet in the court within 60 or 90 days, as the case may be. However, if the police files it before the expiry of 60/90 days, say on 59th day or 89th day, then the accused can not claim any right to be released on bail under section 167.

9. What are the rights of a person who is arrested ?

(1) *Right to be informed of the grounds for arrest* :

In every case of arrest with or without a warrant, the person arresting shall communicate to the arrested person, *without delay*, the grounds for his arrest (Section 50,55,75). This is a precious right of the arrested person and has been recognized by the Constitution has one of the fundamental rights (Article 22(1) of the Constitution of India).

(2) *Right to be informed of the right to bail* :

Every police officer arresting without a warrant any person accused of a bailable offence is required to inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. (Section 50(2).

(3) *Right to be produced before a magistrate without delay*

In case of every arrest, whether the arrest has been made with or without a warrant, the person arresting is required, *without unnecessary delay* and subject to the provisions regarding bail, to produce the arrested person before the magistrate or court having jurisdiction in the case (Section 56, 76).

(4) *Right of not being detained for more than 24 hours without judicial scrutiny* :

In case of *every* arrest, the person making the arrest is required to produce the arrested person without unnecessary delay before the magistrate and it has been categorically provided that such a delay in no case shall exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court (Section 57, 76). This right has been incorporated in the Constitution as one of the fundamental rights (Article 22(2)). It was held by the Supreme Court in *Khatri (II) vs State of Bihar (1981) 1 SCC 627* that this healthy provision contained in Section 57 enables the magistrates to keep check over the police investigation and it is necessary that the magistrates should try to enforce this requirement and where it is found disobeyed, come down heavily upon the police.

(5) *Right to consult a legal practitioner*

Both the Constitution and the provisions of the Criminal Procedure Code recognize the right of every arrested person to consult a legal practitioner of his choice. The right begins from the moment of arrest. The consultation with the lawyer may be in the presence of the police officer but not within his hearing (Section 303 and Art.22(1))

(6) *Right of an arrested indigent person to free legal aid and to be informed about it*

It was held by the Supreme Court in *Khatri (II) vs State of Bihar (1981) 1 SCC 627* that the State is under a constitutional mandate implicit in Article 21 to provide free legal aid to an indigent accused person. The Court cast a duty on all magistrates and courts to inform the indigent accused about his right to get free legal aid. The Supreme Court went a step further in *Suk Dass vs U.T. of Arunachal Pradesh (1986) 2 SCC 401* and laid down that this right can not be denied if the accused failed to apply for it and held that unless refused by the accused, the failure to provide free legal aid to an indigent accused person would vitiate trial, leading to setting aside of the conviction and sentence.

[This right should not be confused with right of free legal aid to accused at State expense in a trial in a sessions court, as provided in *Section 304 Cr.P.C*. If the accused is not represented by a pleader in a sessions trial and it appears to the court that the accused does not have sufficient means to engage a pleader, it shall assign a pleader for his defence at the expenses of the State]

(7) *Right to be examined by a medical practitioner*

If any arrested person alleges, at the time when he is produced before a magistrate or at any time during the period of his detention in custody, that the examination of his body will afford evidence which will disprove the commission of any offence by him or which will establish the commission by any other person of any offence against his body, then the magistrate, on the request of the arrested person, is required to direct the examination of his body by a registered medical practitioner. (However, the magistrate may not give such a direction if he considers that the request for examination has been made by the arrested person for the purpose of vexation or delay or for defeating the ends of justice) (section 54).

It was held by the Supreme Court in *Sheela Barse vs State of Maharashtra (1983) 2 SCC 96* that the arrested person must be informed by the magistrate about his right to be medically examined in terms of Section 54.

The police officer arresting a person under an arrest warrant is under a duty to show him the arrest warrant, if so required by him *(Section 75)*.

The matter regarding rights of arrested persons was deliberated at length by the Supreme Court in *Dilip K.Basu vs State of West Bengal 1997(7)*

Supreme 169 and certain procedure/guidelines were laid down by the Court to be followed by the police in the matter of arrest :

- The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags and their designations.
- The person who arrests must prepare a memo of arrest, at the time of arrest, in the presence of a family member of the arrestee or a respectable person of the locality. It should mention the date and time of the arrest as well.
- The person must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- In case a person has been arrested, he has every right to know the ground for arrest.
- Such person cannot be kept in detention for more than 24 hours without being produced before a magistrate.
- Such person has a right to have a lawyer even during interrogation. He has a right to remain silent and also entitled to free legal aid.
- Such person should not be handcuffed. Such handcuffing is only allowed after an order of the court in the interest of security.
- A woman or a child below 15 years of age cannot be forced to go to police station for interrogation.
- If the offence alleged is of such a nature that the accused needs to be medically examined, then it shall be done at the instance of a police officer not below the rank of a sub inspector.
- If a person is tortured by the police, then he can bring the incident to the light of the Magistrate when he is produced before him. In such a case, the magistrate is obliged not to send the person to the police custody. Instead, the magistrate can order for his medical examination and/or can send him to the judicial custody i.e. jail so that any further possibility of torture at the hands of the police or any other person is ruled out.

10. What should I do if I am arrested by the police?

If you are arrested and during investigation, the SHO thinks that there is not sufficient evidence against you or that there is no need to forward you to the magistrate, the SHO, by exercising his power under section 169

CrPC, may release you on your executing a bond (with or without sureties) that you will appear before the magistrate if and when so asked. When you are so released, the police will continue its investigation and on conclusion of the same, it may either file a closure report or a chargesheet. If a closure report is filed, then you are not required to appear before the magistrate's court and you are deemed to be discharged. However, if a chargesheet is filed by the police against you, then upon the magistrate taking cognizance, you are issued summons to appear before the court on a particular day. You are given copies of documents filed by the police and given time to argue against framing of charges against you. Thereafter, the court proceeds and after hearing the prosecution and your counsel, may either frame charges against you or may discharge you.

If you are arrested and during investigation the SHO thinks that there is sufficient evidence against you, he may forward you to the magistrate. At this juncture, you can move an application for bail. If the offence is bailable, the magistrate is bound to release you on bail. If the offence is non-bailable, then it is in the discretion of the magistrate whether to grant you bail or not. He may either allow your bail application or dismiss the same.

If you are arrested and the investigation can not be completed within 24 hours, and there are grounds for believing that the allegation or information against you is well founded, then the SHO or the IO(who can not be below the rank of a Sub Inspector) is bound to forward you to the magistrate, alongwith the copy of the police diary showing the investigation conducted so far. At this juncture, you can move an application for bail. If the offence is bailable, the magistrate is bound to release you on bail. However, if the offence is non-bailable, then it is in the discretion of the magistrate whether to grant you bail or not. He may either allow your bail application or dismiss the same.

11. What is the remedy available to me if I am unlawfully detained or arrested? Can I file case against police ? Can I claim compensation from police ?

If you are unlawfully detained/arrested by any person including a police officer, it amounts to an offence of false imprisonment. (Under *Section 43* Cr.P.C., even a private person can arrest (i)a person having committed non-bailable and cognizable offence in his presence or (ii)any proclaimed offender. However, he is bound to hand him over to a police officer without unnecessary delay).

A civil wrong is called a tort while a criminal wrong is called a crime or felony. The remedy to the victim in case of a tort is to file a claim for

compensation in a civil court. The remedy in case of a crime is to prosecute the offender in a criminal court. In tort, the injured party files a suit in a civil court, with the dominant purpose of getting compensation for the injury suffered by him. In criminal law, the proceeding is initiated by the State in a criminal court with the purpose of punishing the person who has committed the crime.

There are certain acts which constitute a civil wrong as well as a crime (criminal offence). Such acts are known as felonious torts. Some of these are negligence, nuisance, defamation, false imprisonment etc.

Where without any lawful justification, there is a restraint imposed on the liberty of the person for any period whatsoever, it is called **false imprisonment**.

To constitute a wrong under civil law, the restraint has to be total. If (i) you are allowed to go through the other direction or (ii) you are allowed to go back or (iii) if the place has the means of escape, it can not be said to be a case of false imprisonment under the law of torts.

However, in criminal law, it is immaterial whether the restraint is total or partial.

If the restraint is partial and you are prevented from going in a particular direction only where otherwise you have a right to go, then it constitute the offence of '**wrongful restraint**' under **Section 339 of IPC** which is punishable with upto 1 month imprisonment and/or with fine upto Rs.500.

If the restraint is total and you are prevented from going out of certain circumscribed limits, then it constitute the offence of '**wrongful confinement**' under **Section 340 of IPC** which is punishable with upto 1 year imprisonment and/or with fine upto Rs.1000/-.

Quite often, the police arrests people under Section 151 Cr.P.C. (under this section, the police officer can arrest without arrest warrant any person whom he knows is planning to commit a cognizable offence, if there is no other way to prevent the commission of such offence). The police for justifying its act of arrest take recourse to Sections 107 to 116 of Cr.P.C. However, the arrested/detained person can still make out a case of false imprisonment. In *State of UP vs Tulsi Ram Patel (AIR 1971 SC)* it was held that if an officer wrongfully orders arrest while acting in his official capacity, he would be liable for committing offence of false imprisonment.

If the public servant (a police officer is a public servant) having authority to make arrests, knowingly exercises that authority in contravention of law and effects an illegal arrest, he can be prosecuted for an offence under

Section 220 IPC.

Following remedies are available to you in case you are unlawfully detained or arrested :

(1) Self help: a person is always authorized to use reasonable force to escape from detention instead of waiting for legal action, in exercise of his right of private defence in accordance with the provisions contained in Section 96 to 106 IPC.

(2) Habeas Corpus: A writ Petition for Habeas Corpus can be filed under Article 226 in the High Court or under Article 32 in the Supreme Court by any relative or friend or any other well wisher of the detained person. It is a speedier remedy for procuring the release/production of a person illegally detained.

(3) Criminal complaint in the Magistrate Court under Sections 342 to 348, 220 and such other appropriate sections of IPC.

(4) Suit for damages : You can also claim compensation from the police on account of your unlawful detention, by filing a civil suit for damages in a civil court.

11A. What is the power of police to compel a person to appear before it?

The power of the police to call a person to appear before it is provided by Section 160 Cr.P.C. Following things are relevant to know in this regard :

(1) Only a police officer making the investigation into any case can use such a power. He is generally called Investigating Officer (I.O.). No other police officer can exercise such power.

(2) He can call the person to appear before him only by a **written order**. A person is not bound to appear before the police officer on his verbal order.

(3) He can call only a person living within the limits of his police station or within the limits of any adjoining police station.

(4) He can call only that person who appears to him, whether from the information given or otherwise, to be acquainted with the facts and circumstances of the case under investigation.

(5) A male person below 15 years or any woman can not be called to the police station. They can be asked questions by the police officer only at their residence.

(6) The person attending in pursuance of the order of the police officer can require the police officer to pay the reasonable expenses incurred by him for such attendence, depending upon the rules framed, if any, by the State Govt. in this regard.

12. What is the law relating to issue of summons and search warrant to compel the production of things, documents etc. ?

This subject is dealt with in Cr.P.C. in Chapter VII in sections 91-105. If a court is of the opinion that a certain document or other thing is necessary for the purposes of the trial of the case, it may issue summons under section 91 to the person in whose possession such document or thing is believed to be, requiring him to produce the same before the court at the time and place mentioned in the summons. Such person is not under an obligation to attend personally. He may send the same through some other person.

The SHO of a police station also can issue a written order to a person to produce a document or thing believed by him to be necessary for the purposes of any investigation or enquiry.

If the court is of the opinion that the person against whom a summon to produce a thing has been issued would not produce the same or if it is not known as to in whose possession such thing is lying, then the court may issue a **search warrant** to search the place where the desired document or thing is believed to be available (Section 93). It is the duty of the police to search/inspect the place or part strictly according to its description in the search warrant and not beyond.

A Judicial magistrate or SDM can issue a search warrant authorising any police officer above the rank of a constable to enter a premises and search for stolen goods, objectionable articles etc. as detailed in *Section 94*.

The search procedure to be followed by a person (including police officer) executing the search warrant is prescribed in **Section 100 Cr.P.C**. :

(i) Before making search of a premises, he must call, for witnessing the search, 2 or more independent and respectable inhabitants of the said locality or of any other locality if no such person from that locality is willing to be a witness to the search.

(ii) The search must be made in their presence.

(iii) A list of the things seized during search and the places where these were found, is required to be prepared by the officer and must be got signed by such witnesses.

(iv) Such witnesses can not be compelled by the police to attend the court as a witness, however, court may specially summon them but only if required.

(v) The occupant of the place or any person on his behalf must be permitted to attend during search.

(vi) A copy of the list prepared as above and signed by the said witnesses must be delivered to him.

(vii) If any person in/about such premises is reasonably suspected of concealing about his person any article for which search is to be made, then body of such person may also be searched. A list of things taken from his possession should be prepared and copy thereof must be given to him. If a woman is so searched, she shall be searched by another woman with strict regard to decency.

Quite often, the police do not comply with the requirement of arranging 2 independent witnesses and plant its own witnesses and take the excuse that independent witnesses were not forthcoming to witness the search. It was held by Punjab & Haryana High Court in *Sadhu Singh vs State of Punjab (1997) 3 Crimes 55* that a streo-type statement of non-availability of any public witness will not be sufficient, particularly, when at the relevant time, it was not difficult to procure the services of public witnesses. Though there can be cases when the public witnesses are reluctant to join or are not available, but the prosecution must show a genuine attempt having been made to join public witnesses.

Search without search warrant (Section 165)

A police officer under following special circumstances is authorized to search a premises without a search warrant :

(a) the SHO or I.O. (investigating officer of the case) has reasonable grounds for believing that anything (which is necessary for the purposes of an investigation into any offence which he is authorized to investigate) may be found in a place

(b) such place must be within the jurisdiction of his police station

(c) in his opinion, such thing can not otherwise be obtained without undue delay, then he may search for such thing at such place

However, to make a search without a search warrant, he must fulfill the following conditions :

(1) before proceeding to make search, he must record in writing the

grounds of his belief and must specify therein, as far as possible, the thing for which search is to be made

(2) he must conduct the search himself personally, if practicable.

(3) If he is not able to conduct search personally, he may authorize by order in writing any subordinate officer. In the order, he must specify the place to be searched and also the thing to be searched, as far as possible. Before authorizing subordinate officer, he must record the reasons in writing why he is not able to carry out the search personally

(4) He must forthwith send the copies of the writings recorded by him in (1) and (3) above to the nearest magistrate empowered to take cognizance of the offence

(5) Copies of these writings must be given free of cost to the owner/ occupier of the place searched if application in this regard is made by him to the magistrate

(6) Provisions of section 100 regarding procedure for search applies to search under this section also

Under *Section 153*, the SHO can enter any place within his jurisdiction without a search warrant for the purpose of inspecting or searching for any false weights, measures or instruments if he has reason to believe that such things are kept therein. If he finds these during search, then he may seize the same and must forthwith give information of such seizure to the concerned magistrate.

Seizure (Section 102)

Any police officer can seize *any* property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of *any offence*. This includes the power to seize/freeze the bank account also.

He must forthwith report the seizure to the concerned magistrate. If he is subordinate to the SHO (Station House Officer i.e. officer in charge of the police station), then he must forthwith report the seizure to the SHO also.

13. How to know whether an offence is bailable or non-bailable, cognizable or non-cognizable ?

Offences under the Indian Penal Code are classified on the basis of various criterion like Cognizable & Non-cognizable, bailable & non-bailable. The classification of various offences is given in the Schedule I of the Cr.P.C.

A **cognizable offence** is one for which a police officer can arrest the

accused person without any warrant or authority issued by a magistrate and can investigate into such a case without any order or directions from the magistrate. (see section 2(c)

A **non-cognizable offence** is one in which a police officer has no authority to arrest without warrant. He does not have the power to investigate into such offence without the authority given by a magistrate. (see section 2(l)

Generally speaking, all serious offences are considered as cognizable. Normally, offences which are punishable with imprisonment for 3 years or more are cognizable and those punishable with less than 3 years imprisonment are non-cognizable. However, whether an offence is cognizable or non-cognizable depends upon whether it is shown as cognizable or non-cognizable in the First Schedule.

Bailable offence means an offence which is shown as bailable in the First Schedule or which is made as bailable by any other law. Any offence, other than this, is non-bailable. (see section 2(a)

Cognizable offences(these are generally serious offences) are generally non-bailable and non-cognizable offences are generally bailable. If a person accused of a **bailable offence** is arrested, he has a right to be released on bail. However, if a person is arrested in a **non-bailable offence**, he can not claim bail as a matter of right. But it does not mean that a person can never be granted bail in a non-bailable offence. The procedure in such a case is that he applies for bail to the concerned court (given in the First Schedule) which allows or rejects the same after proper consideration.

The First Schedule of Code of Criminal Procedure specifies as to what is the maximum punishment provided for offences under the various sections of the **Indian Penal Code**, which are bailable offences, which are non-bailable offences, etc.

The IInd part of this Schedule specifies these parameters in respect of **offences under any other law** other than Indian Penal Code :

(a) If offence is punishable with death, imprisonment for life or for imprisonment for more than 7 years, the offence is cognizable, is non-bailable and can be tried only by the sessions court.

(b) If offence is punishable with imprisonment of more than 3 years but less than 7 years, the offence is cognizable, non-bailable and can be tried by the court of Metropolitan Magistrate.

(c) If offence is punishable with imprisonment for less than 3 years or with fine, the offence is non-cognizable and is bailable and can be tried by Metropolitan Magistrate.

14. Who is a Proclaimed Offender(Bhagoda) ? What happens when a person is declared proclaimed offender ?

Section 82 of Cr.P.C. incorporates the concept of 'Proclaimed Offender' or 'PO'. If a court is of the opinion that a certain person against whom a warrant* (bailable or non-bailable) has been issued by it is trying to hide away from the police so that the warrant can not be executed, then the court may publish a proclamation in writing thereby requiring him to appear on a particular day and at particular time and at a particular place (he is given at least 30 days from the date of publication).

The proclamation is published in the following manner :

(a) it is publicly read in a proper place in the area where the said person ordinarily resides

(b) it is pasted on some prominent portion of the house or the area where he ordinarily resides

(c) a copy of the proclamation is pasted at some prominent place in the court

(d) a copy of the proclamation may also be published in a daily newspaper which has circulation in the area where that person ordinarily resides. (However, this is done if the court thinks it fit).

Once a person is so declared a P.O. under section 82, the court may order for attachment of any property (whether moveable or immoveable) belonging to the said person under section 83. However, it may so happen that some other person or persons may also have some interest in the property so attached. In that case, such person(s) under section 84 may file their claim/objections against such attachment in the court within 6 months from the date of attachment. This is enquired into by the court and is allowed or disallowed in whole or in part by the court. If the claim is disallowed, the person may file a suit within one year of such order to establish his right/claim in respect of the property in question.

If the PO appears within the time mentioned in the proclamation, the court make an order thereby releasing the property from attachment. However, if he does not so appear, the property is at the disposal of the state government which may dispose it off after first disposing off the

claim/objection, if any, against such attachment. However, if the property is of such a nature that it is likely to decay with time or if the court is of the opinion that the sale would be for the benefit of the owner, the court may cause the property to be sold at any time it thinks fit.

If the PO appears before the court himself or is brought before the court by the police after arresting him within 2 years from the date of attachment and he proves that he did not hide to avoid the warrant and that he was not aware of proclamation and thus he could not appear within the specified time and if the court is satisfied, then the property or the proceeds of the property after deducting the expenses of attachment are returned to him.

In practice, if a PO appears after the expiry of the specified time, the judicial magistrates these days usually take a harsh stand and send him to judicial custody for at least 2-3 days.

* warrant is issued by the court against a person when despite summons, notices etc. of the court, the person concerned does not appear before the court or if it appears to the court that he will not obey the summons. The warrant is usually effected through the police machinery of the place where the person concerned ordinarily resides or carries on business.

15. What is Kalandra ?

Kalandra is a sort of notice issued under **section 107** against a person against whom there is an information that he is likely to commit breach of peace or disturb the public tranquility or any other wrongful act leading to breach of peace or disturbance to the public. Such a show cause notice is issued to such person by the Executive Magistrate having jurisdiction over the area where the breach of peace or disturbance is apprehended or where the person likely to create such problem is available. The notice requires such a person to show cause why he should not be made to execute a bond for keeping peace and good behaviour, for a period up to one year. If it appears to the Magistrate that the breach of peace can not be prevented otherwise than by immediate arrest of the alleged person, the Magistrate may issue his arrest warrant.

If it appears to the police officer that there is a likelihood of a cognizable offence taking place, then the police officer can arrest the person planning to commit such offence, without warrant. (section 151)

In Delhi, the Asst. Commissioner of Police (ACPs) are generally delegated the power to function as Executive Magistrate for the purpose of proceedings of kalandra for the area falling under their respective jurisdictions. (under section 20(5), the State Govt. can confer all or any

of the powers of the Executive Magistrate in relation to a metropolitan area upon the Commissioner of Police. Metropolitan area is an area having population of more than 10 lakh people and declared as such by the State Govt. by a notification under section 8). Generally, the kalandra is made by the police when there is clash between two groups or there is a public brawl etc.

16. What is the remedy in the criminal law for removal of public nuisances ?

Public nuisance is both a civil wrong as well as a criminal wrong. A person aggrieved by the same can file a suit for damages/compensation in a civil court against the person causing the public nuisance.

In criminal law, public nuisance is defined in section 268 IPC. As per this, *a person is guilty of public nuisance*

- *who does any act or is guilty of an illegal omission*
- *which causes*
- *any common injury, danger or annoyance*
- *to the public, or*
- *to the people in general who dwell or occupy property in the vicinity, or*
- *which must necessarily cause*
- *injury, obstruction, danger or annoyance*
- *to persons who may have occasion to use any public right.*

Generally, negligence gives rise to the nuisance. Depending upon the type of negligence and nuisance, there are various offences specified in *Sections 269 to 291 IPC*. Several of such offences are cognizable. Thus, a FIR can be registered in respect of these. The police will then investigate the offence and file its chargesheet in the court of magistrate. Alternatively, a criminal complaint under section 190 CrPC can also be filed directly to the concerned magistrate's court. It may be noted that almost all these offences are bailable. The result of FIR or the criminal complaint is the punishment of the person causing nuisance. Such an action seeks to punish the wrong doer.

However, there are special provisions prescribed in the CrPC itself ***for removal*** of nuisance. These are provided in Chapter X(B) running from *Sections 133 to 148 Cr.P.C*. The main provision is section 133. The power for removal of nuisance is given to the District Magistrate or the S.D.M. or any other authorized Executive Magistrate. If any of these officers, on receipt of the report of a police officer or other information and on taking

such evidence (if any) as he thinks fit, considers that any act or conduct of a person or any thing is causing obstruction, nuisance etc. in any of the manner specified in section 133, then the officer can make a conditional order directing the person causing such obstruction or nuisance to remove it in the manner specified therein. If the offender objects, then he is given show cause notice as to why such conditional order be not made absolute.

The offender must either comply with the said order within the time and manner specified therein or must appear and show cause. If he does neither of these, then he is guilty of offence under section 188 IPC (disobedience to order duly promulgated by public servant) which is punishable with up one month imprisonment and/or fine upto Rs.200/-. However, if the disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, it is punishable with up six month imprisonment and/or fine upto Rs.1000/-.

If the offender appears and show cause, then the magistrate takes evidence. If the magistrate is satisfied that the order is reasonable and proper, he must make the order absolute, with or without modification. If he is not so satisfied, no further proceedings are required in the case. (section 138)

If the order is made absolute, the magistrate must give notice thereof to the offender and require him to remove the nuisance specified in the notice within a time fixed in the notice. (sec.141)

If the order/notice is not complied by the offender, the magistrate may himself cause the nuisance to be removed and recover the costs thereof by attachment and sale of any building, goods or property removed or any other movable property of the offender.

Pending the inquiry, the magistrate can issue injunction order against the offender to prevent imminent danger or injury of a serious kind to the public. (section 142)

In urgent cases of nuisance or apprehended danger, an order under *section 144* can be issued. (see Note No.29 also)

17. What are the proceedings before an Executive Magistrate in case of dispute/ quarrel over immoveable property?

Such proceedings are contemplated under **Section 145** of the Code of Criminal Procedure 1973. If the Executive magistrate of an area comes to know that there exist a dispute regarding any land, water, building, market, crop, etc. in his area and he is satisfied that the said dispute is likely to

cause a breach of peace in the area, then he can send notice to the parties involved in the dispute to appear before him on the given day and time and give in writing their submissions about their respective claims to the subject matter of the dispute. The parties can appear personally or through their pleader.

After hearing the parties and after taking the evidence, the Magistrate can pass an order declaring which party is entitled to the possession of the property in dispute and can restore the possession to the party forcibly and wrongfully dispossessed.

If the Magistrate is not able to find out as to which of them is entitled to possession, he may attach the property under dispute and appoint a receiver to collect the income from that property, until a competent court has decided such a question. The Magistrate can withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of peace with regard to property in dispute.

Similarly, if any dispute exist regarding the right of usage of any land or water, which dispute is likely to cause breach of peace, the Magistrate can order the parties concerned to appear and file their respective claims. After hearing them and after taking evidence, he shall decide as to if any party has the right to use the land or water in question.

While taking proceedings under section 145, the Magistrate can simultaneously exercise his powers of kalandra under section 107.

If a police officer comes to know that some person is planning to commit any cognizable offence, then he may arrest such person under Section 151 without any warrant and without any order from the Magistrate if it appear to him that without arresting him, the commission of the said cognizable offence can not be prevented.

18. Can I compromise a criminal matter with the other party, so that the case is closed against me ?

Compromising in a criminal matter is called **compounding of offence**. Suppose you are an accused in a cheating case under section 420 IPC. In such a case, you can compromise the matter with the person so cheated. This is legally permissible under section **320 Cr.P.C**. wherein various offences under Indian Penal Code can be compounded. However, all offences are not compoundable. Only the offences mentioned in section 320(1) can be compounded by the persons mentioned therein. Section 320(2) mention the offences which can be compounded only with the

permission of the court before whom the case is pending. The compounding of an offence in this manner has the effect of the acquittal of the accused.

For closing the case against you, you have to file an application before the Court, where the case is being tried, mentioning therein that you have compromised the matter with the affected person. It is better if the affected person also files his affidavit alongwith this petition that he has compromised the matter with you and that he has no objection if the FIR and the criminal proceedings against you are quashed. If there is a written compromise, a copy of the same should also be filed alongwith the petition. The court ordinarily send/refer the case to the Lok Adalat for settlement and disposal, if the offence is compoundable.

In practice, the people mostly file a Criminal Miscellaneous Main petition in the High Court under section 482 Cr.P.C for quashing of the FIR and for quashing of the criminal proceedings pending in the trial court. The High Court, on recording the statements of both the parties, or after being satisfied in any other manner that no fruitful purpose would be served by continuing the proceedings against the accused, allows the petition and quashes the FIR and the criminal proceedings pending in the trial court.

19. If I am called as a witness and I then appear in the court, am I entitled to the expenses incurred by me ?

There is mainly one provision in the entire Code which talks of payment of expenses to the witnesses, which is contained in **Section 312** of the Code of Criminal Procedure :

"312. Expenses of complainants and witnesses

Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of the Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such court under this Code."

Thus, any criminal court can order for the payment of reasonable expenses to a witness for attending the court. 'Reasonable' is not defined anywhere in the Code. Thus, it can be safely deduced that reasonable expenses would at least be the actual expenses incurred by the witness in traveling to and from the court and would also include the cost of time devoted by him in the court which he would otherwise devoted in his business/ profession for earning money. As per the section, these expenses, which in common parlance is called **diet money**, can be ordered by the court

only if it thinks it fit. In practice, the courts do order for the payment of expenses to witnesses but the amount ordered is very small amount compared to the actual expenses. If a witness fails to appear before the court on the date and time fixed, he can be sentenced to fine up to Rs.100 by the court under Section 350 after giving him a show cause notice.

If a police officer making an investigation require a person to appear as witness before him by written order, then the State Govt. may provide for the payment by the police officer concerned of the reasonable expenses to every person attending at any place other than his residence (Section 160(2)).

During trial of a complaint case, if the accused makes an application to the Magistrate's court to summon certain witnesses, then before summoning the witnesses, the Magistrate can require the accused to deposit reasonable expenses, to be incurred by the witness in attending for the purposes of trial, in the court (Section 243(3) and 247).

Though the witnesses are there to assist the court, but in practice, they are the most harassed one. Instead of receiving appreciation for assisting the court in coming to give evidence, they are often treated in the same manner as the accused. The Hon'ble Supreme Court was constrained to observe about the **plight of the witneses** in the following words in the case of *Swaran Singh vs State of Punjab reported in IV (2000) SLT 138 (at page 147)*:

"A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required whether it is direct evidence or circumstantial evidence. Here are the witnesses who are harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the court many times and at what cost to his own self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause, a court unwittingly becomes a party to miscarriage of justice. A witness is then not treated with respect in the Court. He is pushed out from the crowded court room by the peon. He waits for the whole day and then he finds that the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in court, he is subjected to unchecked and prolonged examination and cross-examination and

finds himself in a hapless situation. For all these reasons and others, a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry. Here again, the process of harassment starts and he decides not to get the diet money at all. High Courts have to vigilant in these matters. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. …"

20. What questions can not be asked from a witness in a court?

The asking of questions from a witness or accused or any other person in a trial, whether in civil court or criminal court, is governed by the Indian Evidence Act 1872. Chapter IX (sections 118 to 134) and Chapter X (sections 135 to 166) of this Act deals with the witnesses, their examination, cross examination etc.

Under *Section 149*, any question, which is not relevant to the case and which affect the credit of the witness by injuring his character, can not be asked from a witness unless the basis of allegation is well founded.

Under *Section 151*, the court can prohibit asking of indecent and scandalous questions.

Under *Section 152*, the court is bound to prohibit the advocate from asking any question which is intended to insult or annoy the witness or which is needlessly offensive.

21. Is there any punishment for giving false evidence or making false statement in affidavit or for fabricating false evidence for the purpose of falsely convicting others? (perjury)

Yes.

A person is said to '**give false evidence**' if he makes a statement on oath, orally or in writing, which he either knows/believes to be false or which he does not believe to be true.

For example :

(a) A, in support of a valid claim which B has against Z for Rs.1000/-, falsely swears on a trial that he heard Z admit the justness of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z; *when he does not believe*

it to be the handwriting of Z. Here A has stated that which he knows to be false and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; *A in good faith believing it to be so*. Here, A's statement is merely as to his belief and is true as to his belief and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence. *(Section 191 IPC)*

A person is said to '**fabricate false evidence**' who :

- causes any *circumstance* to exist, or
- makes any *false entry* in any book/record, or
- makes any document containing a *false statement*
- ***intending***
- that such circumstance, false entry or false statement may appear
- in a judicial proceeding, or
- in a proceeding taken by law
- before a public servant as such, or
- before an arbitrator
- *and* that such circumstance, false entry or false statement so appearing in evidence may *cause any person* who in such proceeding is to form an opinion upon the evidence, *to entertain an erroneous opinion* touching any point material to the result of such proceeding.

For example,

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as

corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search.A has fabricated false evidence. *(Section 192 IPC)*

Such a person giving false evidence or fabricating false evidence also includes a police officer or any other Govt. servant and thus, a case can be instituted against them also for such acts.

Punishment :

#Intentionally giving or fabricating false evidence in any stage of a *judicial proceeding* is punishable with ***upto 7 years imprisonment*** and fine. An investigation directed by law prior to proceeding before a court or directed by the Court according to law and conducted under the authority of court, is a stage of judicial proceeding. Thus, investigation by a police officer or by a local commissioner under order of a court is a judicial proceeding. *(Section 193)*

Intentionally giving or fabricating false evidence in *any other case* is punishable with upto 3 years imprisonment and fine.

If giving or fabricating false evidence is with the intention to cause or knowing that it is likely to cause any person to be convicted of an offence which is punishable with death, then the punishment is ***upto life imprisonment*** or rigorous imprisonment upto 10 years and fine.

If an innocent person is convicted of an offence punishable with death and such death punishment is carried out, in consequence of such false evidence, then the person giving false evidence is punishable with ***death or life imprisonment or rigorous imprisonment upto 10 years*** and fine. *(Section 194)*

If giving or fabricating false evidence is with the intention to cause or knowing that it is likely to cause any person to be convicted of an offence which is punishable with upto life imprisonment or minimum imprisonment of 7 years, then the punishment is the same to which the person convicted would be liable.

For example,

A gives false evidence before a Court of Justice intending thereby to cause Z to be convicted of dacoity. The punishment of dacoity is

imprisonment for life or rigorous imprisonment for upto 10 years, with or without fine. Therefore, A is liable to be punished for life imprisonment or rigorous imprisonment for upto 10 years, with or without fine. *(Section 195)*

As per Section 196, if anyone *corruptly* uses or attempts to use as true/genuine any evidence which he *knows to be false or fabricated*, then he is also liable to be punished in the same manner as if he has given or fabricated the false evidence.

Issueing or signing false certificate with the knowledge or belief that such certificate is false in any material point, is also punishable in the same manner *(Section 197)*.

Deliberately using a false certificate as a true certificate is also punishable in the same manner *(Section 198)*.

Making a false statement in a declaration which is by law receivable as evidence, is also punishable in the same manner *(Section 199)*.

Deliberately using such false declaration as true, is also punishable in the same manner *(Section 200)*.

If a person knows or has reason to believe that an offence has been committed, but still gives false information in respect of that offence, he is liable to be punished with upto 2 years imprisonment or with fine or with both. *(Section 203)*

The readers must also see Chapter XVIII *(Sections 463-477A)* of IPC dealing with forgery etc.

At the time of delivering judgment, if the court is of the opinion that any witness had knowingly or willfully given/fabricated false evidence, then it may try this offence summarily. It may give a show cause notice to him. Such witness can be sentenced for upto 3 months or fine upto Rs.500/- or both *(Section 344 CrPC)*

In respect of an offence relating to false evidence committed under Sections 193-196, 199, 200, 205-211, 228, 463, 471, 475, 476 of Indian Penal Code where the offences are committed in relation to any proceeding in any court, the complaint can be filed by the court in which the offence was committed or by higher court *(Section 195 CrPC)*.

The procedure for such complaints is governed by *Section 340 CrPC*.

22. Under what circumstances, screening the offender from punishment is punishable ?

Sometimes, the police or the other Govt. servants or any other person

misuse their powers and try to protect/save the actual offender. It is a great set back to the victim and the victim's family. However, there is a remedy. A case can be instituted under the following sections of IPC against such officers/persons through FIR or on criminal complaint to the Judicial Magistrate's court, as the case may be, by any one :

Section 201 : Causing disappearance of evidence:

If an offence has been committed and someone knowing or having reason to believe that an offence has been committed,

- causes any evidence of the commission of that offence to disappear

- *with the intention of screening the offender from legal punishment,* or

- with that intention gives any information in respect of the offence which he knows/believes to be false, then,

(i) he is liable to be punished with upto 7 years and fine, if the offence which he knows/believes to have been committed is punishable with death.

(ii) he is liable to be punished with upto 3 years and fine, if the offence which he knows/believes to have been committed is punishable with life imprisonment or imprisonment upto 10 years.

(iii) he is liable to be punished with upto 1/4th of the longest term of imprisonment provided for the offence or with fine or both, in case the offence which he knows/believes to have been committed is punishable with less than 10 years imprisonment.

Section 204 : Destruction of document to prevent its production as evidence :

- Whoever secretes or destroys

- any document

- which he may be lawfully compelled to produce as evidence

- in a court of justice, or

- in any proceeding lawfully held before a public servant,

- or, obligates or renders illegible the whole/part of such document

- with the intention of preventing the same from being produced or used as evidence before such court or public servant

- or after he shall have been lawfully summoned/required to produce the same for that purpose,

he is liable to be punished with upto 2 years imprisonment or with fine or with both.

Section 212 : Harbouring offender :

If an offence has been committed and a person **A** harbours/conceals a person **Z** knowing or reason to believe him to be the offender, with the intention of screening **Z** from legal punishment, then he would be liable for punishment.

The quantum of punishment would be as follows :

(i) If the offence which has been committed is punishable with death, then **A** is liable to be punished with imprisonment of upto 5 years and fine.

(ii) If the offence which has been committed is punishable with life imprisonment or with upto 10 years, then **A** is liable to be punished with imprisonment of upto 3 years and fine.

(iii) If the offence which has been committed is punishable which may extend to 1 year and not to 10 years, then **A** is liable to be punished with upto 1/4th of the longest term of imprisonment provided for the offence or with fine or both.

However, harbour/concealment of the offender by the husband or wife of the offender, is not an offence.

Section 213 : Taking gift, etc., to screen offender from punishment:
If someone

- accepts, or
- attempts to obtain, or
- agrees to accept
- any gratification for himself or any other person, or
- any restitution of property to himself or any other person
- in consideration of
- his concealing an offence or
- of his screening any person from legal punishment for any offence or
- of his not proceeding against any person for the purpose of bringing him to legal punishment,

then he would be liable to be punished. The quantum of punishment varies with the type of offence committed.

Section 214 : Offering gift or restoration of property in consideration of screening offender :

If someone

- gives or causes, or

- offers to give or cause, or

- agrees to give or cause

- any gratification to any person, or

- restores or causes the restoration of any property to any person

- in consideration of

- that person's concealing an offence or

- of his screening any person from legal punishment for any offence or

- of his not proceeding against any person for the purpose of bringing him to legal punishment,

then he would also be liable to be punished. The quantum of punishment varies with the type of offence committed.

Section 215 : Taking help to recover stolen property etc.:

If someone

- takes, or

- agrees to take, or

- consents to take

- any gratification

- under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under IPC, then he would also be liable to be punished. The quantum of punishment varies with the type of offence committed. However, if he uses all means in his power to cause the offender to be apprehended and convicted of the offence, then he is not liable.

Section 216 : Harbouring offender who has escaped from custody or whose arrest has been ordered

If any person **A** convicted of or charged with an offence escapes from lawful custody or he has been lawfully ordered by a public servant to be arrested, then *whoever harbours/conceals **A*** (knowing of such escape or arrest order) with the intention of preventing **A** from being arrested, is liable to be punished. The quantum of punishment varies with the type of offence committed.

Section 216A : Penalty for harbouring robber or dacoits

If someone knows or has reason to believe that any persons

- are about to commit, or
- have recently committed
- robbery or dacoity,
- but still harbours them or any of them,
- with the intention
- of facilitating the commission of such robbery or dacoity, or
- of screening them or any of them from punishment,

then he is liable to be punished with rigorous imprisonment for upto 7 years and fine. However, harbour by the husband or wife of the offender, is not an offence.

23. What are the offences which are punishable only when committed by public servants ? Can they also be punished for any of their act or omission which amounts to an offence ?

Several such offences are dealt with in Sections 217-223, 225A, 166, 167 of Indian Penal code.

Section 217 : Public Servant disobeying direction of law with intent to save person from punishment or property from forfeiture

If any public servant

- knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant,
- intending thereby - to save, or
- knowing it to be likely that he will thereby save,
- any person from legal punishment, or
- subjects him to a lesser punishment that that to which he is liable, …

then he is liable to be punished with upto 2 years imprisonment or with fine or with both.

Section 218 : Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture :

If any public servant who is authorized to prepare any record or writing

- frames that record or writing in a manner which he knows to be incorrect,
- with intent to cause, or
- *knowing* it to be likely that he will thereby cause,

- loss or injury to the public or any other person, *OR*

- *with intent* thereby to save, or

- knowing it to be likely that he will thereby save,

- any person from legal punishment, …..

then he is liable to be punished with upto 3 years imprisonment or with fine or with both.

Section 219 : Public servant in judicial proceeding corruptly making report, etc., contrary to law:

If a public servant

- *corruptly or maliciously*

- makes/pronounces in any stage of a judicial proceeding

- any report, order, verdict or decision

- which he *knows to be contrary to law*,

then he is liable to be punished with upto 7 years imprisonment or with fine or with both.

This section can also be invoked against a public servant passing order in quasi judicial capacity.

Section 220 : Commitment for trial or confinement by person having authority who knows he is acting contrary to law :

If any person who is authorized

- to commit persons for trial or to confinement, or

- to keep persons in confinement,

- *corruptly or maliciously*

- commits any person for trial or to confinement, or

- keeps any person in confinement,

- in the exercise of that authority,

- *knowing* that in so doing he is acting contrary to law,

then he is liable to be punished with upto 7 years imprisonment or with fine or with both.

This section can be invoked in case of illegal arrest by a police officer.

Section 221 : Intentional omission to apprehend on the part of the public servant bound to apprehend :

If a public servant

- who is legally bound to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence,

- *intentionally* omits to apprehend such person, or

- *intentionally* suffers such person to escape, or

- *intentionally* aids such person in escaping or attempting to escape from such confinement,

then he is liable to be punished. The quantum of punishment varies with the type of offence committed.

Section 222, which is similar, is applicable in case of persons who are already sentenced by a Court and who escape.

Section 223 : Escape from confinement or custody negligently suffered by public servant :

If a public servant

- who is legally bound to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody,

- *negligently* suffers such person to escape from confinement,

then he is liable to be punished with upto 2 years imprisonment or with fine or with both.

Section 166 : Public servant disobeying law, with intent to cause injury to any person :

If any public servant

- *knowingly disobeys* any direction of the law as to the way in which he is to conduct himself as such public servant,

- *intending* thereby

- to cause, or

- knowing it to be likely that he will, by such disobedience, cause

- injury to any person

then he is liable to be punished with upto 1 year imprisonment or with fine or with both.

Section 167 : Public servant framing an incorrect document with intent to cause injury:

If any public servant who is given charge of preparation or translation of any document

- frames or translates that document in a manner which he knows or

believes to be incorrect,

- *intending* thereby to cause, or

- *knowing* it to be likely that he may thereby cause,

- injury to any person,

then he is liable to be punished with upto 3 years imprisonment or with fine or with both.

Under ***Section 168***, if a Public servant unlawfully engages in trade, then he is liable to be punished with upto 1 year simple imprisonment or with fine or with both.

Under ***Section 169***, if a Public servant unlawfully buys or bids for property, then he is liable to be punished with upto 2 year simple imprisonment or with fine or with both

It must be remembered that a public servant can also be punished for an offence for which an ordinary person can be punished. That is, apart from these special sections meant exclusively for public servants, the public servants can also be prosecuted for offences under other sections.

OTHER RELATED OFFENCES :

Section 182 : False information with intent to cause public servant to use his lawful power to the injury of another person :

Whoever gives to any public servant

- any information

- which that person knows or believes to be false,

- intending thereby to cause, or

- knowing it to be likely that he will thereby cause,

- such public servant

- to do or omit to do anything (which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known to him), or

- to use the lawful power of such public servant to the injury or annoyance of any person,

then he is liable to be punished with upto 6 months imprisonment or with fine or with both.

Illustrations :

(a) A falsely informs a public servant that Z has contraband in a secret

place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(b) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailiants, but knows it to be likely that in consequence of this information, the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Section 209 : Dishonestly making false claim in court :

Whoever

- fraudulently, or
- dishonestly, or
- with intent to injure any person, or
- with intent to annoy any person
- makes any claim in a court
- which he *knows* to be false

then he is liable to be punished with upto 2 years imprisonment and fine.

Section 210: Fraudulently obtaining decree for sum not due

Whoever

- fraudulently obtains a decree/order against any person
- for a sum not due, or
- for a larger sum than is due, or
- for any property or interest in property to which he is not entitled, OR
- fraudulently causes any decree/order to be executed against any person
- after it has been satisfied, or
- for anything in respect of which it has been satisfied, OR
- fraudulently suffers/permits any such act to be done in his name,

then he is liable to be punished with upto 2 years imprisonment or with fine or with both.

Section 211: False charge of offence made with intent to injure

Whoever

- with intent to cause injury to any person,

- institutes or cause to be instituted any criminal proceeding against that person, or

- falsely charges any person with having committed an offence,

- *knowing* that there is no just or lawful ground for such proceeding or charge against that person,

then he is liable to be punished with upto 2 years imprisonment and fine.

If the criminal proceeding instituted is in respect of an offence punishable with death or life imprisonment or imprisonment of 7 years or above, then punishment may go upto 7 years, with fine.

Section 330: Voluntarily causing hurt to extort confession, or to compel restoration of property

Whoever

- voluntarily

- causes hurt

(i) for the purpose of extorting from the sufferer or from any person interested in the sufferer,

- any confession or any information which may lead to the detection of an offence or misconduct, or

(ii) for the purpose of constraining the sufferer or any person interested in the sufferer

- to restore or to cause the restoration of any property or valuable security or

- to satisfy any claim or demand, or

- to give information which may lead to the restoration of any property or valuable security,

then he is liable to be punished with upto 7 years imprisonment and fine.

Illustrations :

(a) *A,* a police-officer, tortures Z in order to induce Z to confess that he committed a crime. *A* is guilty of an offence under this section.

(b) *A,* a police-officer, tortures *B* to induce him to point out where certain stolen property is deposited. *A* is guilty of an offence under this section.

(c) *A,* a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z, *A* is guilty of an offence under this section.

(d) *A,* a zamindar, tortures a raiyat in order to compel him to pay his rent. *A* is guilty of an offence under this section.

Section 331: Voluntarily causing grievous hurt to extort confession, or to compel restoration of property

Whoever

- voluntarily

- causes grievous hurt

(i) for the purpose of extorting from the sufferer or from any person interested in the sufferer,

- any confession or any information which may lead to the detection of an offence or misconduct, or

(ii) for the purpose of constraining the sufferer or any person interested in the sufferer

- to restore or to cause the restoration of any property or valuable security, or

- to satisfy any claim or demand, or

- to give information which may lead to the restoration of any property or valuable security,

then he is liable to be punished with upto 10 years imprisonment and fine.

In addition to above, public servant, like any other person, can also be punished for any of his act or omission which amounts to an offence, whether under IPC or any other law.

Under the **Official Secrets Act 1923**, it is an offence to disclose confidential information to anybody. A public servant can be hauled up under this Act also.

Apart from these, corrupt public servants and persons aiding corrupt public servants to take bribe, can be punished under the special law i.e. ***Prevention of Corruption Act 1988***.

24. Is there any provision in law for compensating the victim of an offence ?

Yes. Under **Section 357(3)** of Code of Criminal Procedure, if the court convicts the accused and imposes a sentence of imprisonment on him, the court can order in the judgment for the accused to pay specific amount as compensation to the person who has suffered any loss or injury due to the act for which the accused has been punished. There is **no limit**

prescribed on the amount of compensation in this section and the court can order any amount of compensation. For the purpose of applying section 357(3), it is necessary that fine should not be a part of the sentence imposed by the court.

If fine forms the part of the sentence or the only sentence is of fine, then **Section 357(1)** applies under which the court can order in the judgment that a part of the fine recovered from the accused be paid as compensation to any person for any loss or injury caused by the offence. However, the court can so order only if the person getting the compensation is entitled to recover such compensation in a civil court.

Under **Section 358**, if the police arrest a person A at the instance of a person B and it appears to the Magistrate hearing the case that there was no sufficient ground to arrest A, the Magistrate can order B to pay compensation of upto Rs.100 to A for loss of time and expenses incurred by A. If this compensation is not paid by B, then he is bound to be sentenced to simple imprisonment of upto 30 days.

If you have filed a criminal complaint in the Court against some offender in respect of a non-cognizable offence and if the court ultimately held the offender guilty and convicts him, the court can order him to pay you the costs/expenses incurred by you in pursuing your complaint (including your advocates fees and charges paid to witnesses and process servers), in addition to the penalty (of imprisonment or fine or both) imposed upon him. If the offender fails to pay you these costs, he can be further sentenced to simple imprisonment of upto 30 days. This remedy is provided under **Section 359** of the Code of Criminal Procedure.

Under **Section 237**, compensation of upto Rs.1000/- is payable to a person against whom a complaint of defamation under section 199 was made and he is ultimately discharged or acquitted by the court. However, this does not prevent the acquitted person to file a civil suit for damages.

Under **Section 250**, compensation is payable to a person against whom a case was instituted (otherwise than on a police chargesheet) triable by a Magistrate and he is ultimately discharged or acquitted by the magistrate. The amount of compensation, however, can not exceed the amount of fine which the magistrate is empowered to impose. (Judicial Magistrate 1st class is empowered to impose fine of upto Rs.5000/-. Judicial Magistrate 2nd class is empowered to impose fine of upto Rs.1000/-). However, this does not prevent the acquitted person to file a civil suit for damages.

Off late, the Supreme Court has, by various judicial pronouncements, evolved the concept of payment of compensation in writ jurisdiction by the Govt. functionaries for violation of the fundamental rights of the people. For example, in a case where two persons were killed by the police in Manipur (a troubled area) thinking them to be terrorists, Supreme Court held this to be infringement of right to life guaranteed under Article 21 of the Constitution of India and awarded compensation of Rs.1 lakh to the families of the deceased *(People's Union for Civil Liberties vs Union of India reported in 1997 II AD SC 377).*

25. What is the effect of absence of the accused or the complainant in a complaint case before a magistrate ?

Accused

In any criminal case/trial, it is compulsory for the accused to be present on every date of hearing.

If he is not present in the court when his case is called, the magistrate nowadays usually issue **n**on-**b**ailable **w**arrants (NBWs) against him. It may so happen that the accused has come to the court but he is not present in the concerned court when his case is called by the court staff, may be on account of his waiting outside the court or gone for drinking the water. Once an order has been passed by a judge in a criminal court rightly or wrongly, he can not change the same, as power of review is not available to a criminal court. The option is to file an appeal against the said order. If NBWs have been issued, then the accused can move an application for cancellation of NBW, giving the reasons for his not appearing when his case was called. If satisfied, the Magistrate may cancel the NBWs.

If the accused is not in a position to appear on a certain date, then he should move an application for exempting him from personal appearance on the date fixed. The court, if satisfied, may allow such application and allow the accused to appear through his lawyer, instead of requiring him to appear in person. However, every time a new application for exemption has to be moved whenever the accused is not in a position for personally appearing. However, if the Magistrate require the presence of the accused, he can direct the personal attendance of the accused at any stage. (Sec.205)

Complainant

If the case has been instituted on the criminal complaint filed by a complainant and on the day fixed for the hearing of the case, he is absent, the magistrate may in his discretion dismiss the complaint and discharge the accused. However, before exercising this discretion, following

conditions must be satisfied :

(a) the offence is one which can be lawfully compounded or is a non-cognizable offence

(b) Such an action can be taken by the magistrate at any time but before the charge has been framed

This is the mandate of Section 249 which applies to the warrant cases only.

There is somewhat similar provision contained in Section 256 which applies to the summons cases only :

If summons have been issued on the complaint (any complaint) and on the day fixed for appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the magistrate is required to acquit the accused. However, he is not required to do so if for some reason, he thinks it proper to adjourn the hearing of the case to some other day. The magistrate can also dispense with complainant's attendance and proceed with the case if :

(a) the complainant is represented by a pleader or by the officer conducting the prosecution, or

(b) the magistrate is of the opinion that the personal attendance of the complainant is not necessary.

It was recently held by the Supreme court in *Mohd. Azeem vs A.Venktesh and another VII (2002) SLT 433* that Magistrate is not justified in acquitting the accused for the absence of the complainant on just one day. He should restore the complaint if sufficient cause is shown for non-appearance. It has also been held by certain High Courts that there is no requirement for the complainant to be personally present and that he can appear through a attorney. In this regard, kindly see the following judgments :

M/s Ruby Leather Exports vs K.Venu 1994(1) Crimes 820 (All)
Anil G.Shah vs J.Chittaranjan 1998 (2)Crimes347 (Guj)
Punno Devi vs John Impex 1996 (2) BCLR482(P&H)
Manimekalai vs Chapaldas Kalyanji 1995 Cri.L.J 102 (Mad)

26. Is there any limitation for entertaining a case against a person ?

Under Section 468 Cr.P.C., no court can take cognizance of an offence after the expiry of period of limitation.

The period of limitation is different for different types of offences. The period of limitation is -

- 6 months, if the offence is punishable with fine only;

- 1 year, if the offence is punishable with term up to 1 year;

- 3 years, if the offence is punishable with imprisonment of more than 1 year but not exceeding 3 years;

The limitation starts -

- from the date of the offence, or

- where the commission of offence was not known, from the day when the police officer or aggrieved person first comes to know of the commission of offence, or

- where the identity of the offender was not known, from the day when the identity of the person is first made known to the police officer conducting investigation or the aggrieved person

However, under section 473, any court may take cognizance after the expiry of period of limitation, if it is satisfied, on the facts and the circumstances of the case, that the delay has been properly explained or that it is necessary to do so in the interests of justice. There is no period of limitation for taking cognizance in relation to an offence punishable with more than 3 years imprisonment.

27. Are there any circumstances when a criminal case can be disposed off without full trial ?

Normally, once the cognizance has been taken, the case proceeds and after full trial, results in conviction, acquittal or discharge of the accused. However, there are circumstances when it is not desirable to adopt the course of full trial. In some situations, the further trial becomes impossible or infructuous. These circumstances and situations when a criminal case can be disposed off without full trial are :

A. Criminal proceedings barred by Limitation

When the accused appears or is brought before the court, he can raise the preliminary objection that the criminal proceedings against him are barred by limitation under section 468 Cr.P.C. The reasons behind prescribing a limitation in respect of relatively less serious offences are :

- With the passage of time, the memory of the witnesses fades and thus no useful purpose is served by entertaining a criminal case after a long gap and then call the witnesses, most of whom may have died, or may not be available or if available, may not remember the events exactly. In such a scenario, the accused, in all probability is likely to be acquitted.

Thus, it would be unfair to force an accused to undergo the rigours of a criminal case, instituted belatedly, when it is apparent that he may be ultimately acquitted. Criminal Justice system is expected to be swift and speedy to ensure that the guilty is punished while the events are still fresh in public mind.

- For the purpose of peace of mind, it is necessary that at least in case of petty offences, the accused is not kept in continuous apprehension that he may be prosecuted at any time.
- The purpose behind giving the punishment is defeated if the offender is not prosecuted and punished within a reasonable time from the date of occurrence of the crime.
- The period of limitation put pressure on the police and prosecution to make every effort to ensure detection and punishment of crime quickly.

B. A person once tried and acquitted or convicted for an offence, can not be tried again for the same offence again.

Section 300 Cr.P.C. and also Article 20(2) of Constitution of India.

C. Compounding of offences

A crime is essentially a wrong done to the society as a whole and therefore even if the wrongdoer compromise with the individual victim, it may not absolve the wrongdoer from criminal responsibility. However, in case of offences, which are basically of private nature and which are less serious, the Law has recognized the need to close such cases, if the victim desire (out of his own free will and without any pressure) that the case may be closed and the accused may be let off. There are certain offences which can be compromised by the accused and the victim without anybody's intervention. However, there are certain offences which can be compromised by the victim and the accused, only with the permission of the court. The details of the offences which can be compounded are given in section 320 Cr.P.C. A compromise petition can not be withdrawn once it has been filed. A case can be compromised at any stage, before the sentence is pronounced. The compromise by the victim and the accused has the effect of acquittal of the accused.

D. Withdrawal from prosecution

The Public Prosecutor (P.P.) can withdraw from the prosecution of a criminal case, with the permission of the court. It is the duty of the court to see that the permission is not sought to favour someone or on grounds contrary to interests of justice. The P.P. can withdraw from the case at any

stage, before the judgment is pronounced by the trial court. Such withdrawal has the effect of discharge or acquittal of the accused, as the case may be. (section 32)

E. Withdrawal of complaint

A summons case* initiated on a criminal complaint filed by an individual, is deemed to be closed if the complaint is withdrawn by that individual, with the permission of the court. The withdrawal of the complaint has the effect of acquittal of the accused. However, if a warrant case** has been initiated on the complaint, the complaint can not be withdrawn by that individual. (section 257)

F. Absence or non-appearance of the complainant

In a warrants case initiated on a complaint, if the complainant is absent on the date fixed, the court may, in its discretion, discharge the accused, if the charge has still not been framed and the offence is such which may be lawfully compounded or is not a cognizable offence. (section 249)

In a summons case initiated on a complaint, if the complainant does not appear on the date fixed (may be because of his death), the court may, in its discretion, acquit the accused. (section 256)

G. Abatement of proceedings on the death of the accused

The ultimate object of the criminal proceedings is to punish the accused on his conviction of any offence. Therefore, the criminal proceedings come to an end on the death of the accused, as their continuance thereafter is infructuous and meaningless. (section 394)

H. Power of the court to close a case

In a summons case, not instituted on a criminal complaint, the Magistrate has the power to stop the proceedings, at any stage, by giving reasons in writing. Such stoppage of proceedings has the effect of discharge or acquittal of the accused. However, for exercising this power, the Magistrate must be of the opinion that there are special and unusual circumstances to do so. (section 258).

I. Conditional pardon to an accused

The criminal proceedings against an accused come to an end if he agrees to give evidence against his accomplices (other co-accuseds). If the accused agrees to this condition, then he may be granted pardon. The idea is that that his evidence can be used to convict the other accuseds. Such a step is resorted to in case of a grave offence. Such a person, called **approver**, is

liable to be kept in custody, if not on bail. However, if the accused fails to comply with the conditions of pardon and conceals the truth in the witness box, then the pardon is withdrawn and he is liable to be tried for the offence. (section 306)

**warrant case is one which relates to an offence punishable with death, life imprisonment or imprisonment for more than 2 years (sec.2(x)

*summons case is one which relates to an offence punishable with imprisonment for **upto** 2 years and/or with fine. (sec.2(w)

28. Is there any duty of a person under the law towards his parents, wife and children ?

Yes. As provided in Section 125 of the Code of Criminal Procedure, a person is duty bound to maintain his parents, wife and children. If a man having the means to maintain his family but neglects or refuses to do so, the following (basically dependents) can claim maintenance from him under Section 125 of the Code of Criminal Procedure :

a. wife who is unable to maintain herself;
b. legitimate major children unable to maintain themselves by reason of physical or mental abnormality or injury (this however does not include a married daughter);
c. illegitimate major children unable to maintain themselves by reason of physical or mental abnormality or injury (this however does not include a married daughter);
d. legitimate or illegitimate minor children whether or not unable to maintain themselves;
e. father unable to maintain himself;
f. mother unable to maintain herself.

In the case of a minor daughter whose husband does not have sufficient means, the Magistrate may order her father to grant maintenance to her until she has reached the age of majority.

Any of the above can approach the Magistrate Court for claiming monthly allowance for their maintenance. In order to obtain an order of maintenance under this provision, such person should prove that he/she has been neglected and refused maintenance and that the person from whom he/she is claiming maintenance has the means to provide it.

Earlier, the maximum amount of maintenance that could be provided under this provision was Rs. 500 per person only. However, realizing the steep

rise in inflation in last few decades, the Parliament vide Amending Act No.50 of 2001 (applicable w.e.f. 24.9.2001) has deleted the words "not exceeding five hundred rupees in the whole". Now, there is no limit on the amount of compensation which can be granted under this Section. However, the discretion lies with the Court which has to grant reasonable compensation based on the financial capacity of the opposite party and the facts and circumstances of each case.

In case the maintenance amount ordered by the Magistrate is not paid to the claimant, the provision provides for levy of fines and also imprisonment of upto one month or till payment is made, whichever is earlier.

Under Section 125, a wife who has divorced her husband can also obtain maintenance till she gets married again. If an offer is made by the husband to provide maintenance only if the wife lives with him and she refuses to live with him, she can still claim maintenance after providing adequate reasons for refusing to live with her husband. If the reasons provided by her are to the satisfaction of the Magistrate, maintenance would be awarded. If the husband has married another woman or has a mistress, it would be a sufficient ground to claim maintenance without having to live with him. However, the wife would not be entitled to receive allowance for maintenance from her husband if she is living in adultery or if she refuses to live with her husband without providing adequate reasons or if she is living separately by mutual consent.

A wife can also claim litigation expenses and maintenance (alimony), under Section 24 and 25 of *The Hindu Marriage Act 1955*, from her husband for her and for her children depending upon the financial status of her husband. There is no limit on the amount of maintenance under said provision. Similarly, under the said provisions, the husband can also claim maintenance and expenses from his wife.

29. What is Curfew?

Curfew, in lay man's language, is an order passed under **Section 144** of the Code of Criminal Procedure when there is grave likelihood of a riot taking place or disturbance of public peace or risk of obstruction, annoyance or injury to any person or danger to human life, health or safety in an area. Such an order is passed by the Magistrate (District Magistrate or SDM or any other competent Executive Magistrate) in charge of the area concerned, when he is of the opinion that immediate prevention or speedy remedy is desirable. Such an order may be directed to a particular person directing him to abstain from a certain act or may

be directed to all persons residing in a particular place/area or may be directed to the general public in a particular area/place. Such an order remain in force for up to 2 months, but is extendable by another 6 months by State Govt. if need so arises.

The Magistrate can alter or withdraw such an order, either on his own or on the application of any aggrieved person. If the State Govt. has extended the order beyond 2 months, then it can alter or withdraw such order either itself or on the application of any aggrieved person.

30. What is the offence of obscenity ?

Obscenity is not defined under the Indian Penal Code. However, Section 292 thereof makes a reference to 'obscenity' in reference to the said section, which can throw light on the meaning of the term 'obscenity'. It follows from the language of this section that anything would be obscene

- if it is lascivious or

- if it appeals to the prurient interest or

- if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear it.

Under **Section 294**, doing any obscene act in any public place or uttering/ singing any obscene words or songs in or near any public place, which has the effect of causing annoyance to others, is an offence punishable with imprisonment of upto 3 months or fine or with both.

Under **Section 292**, sale, distribution, exhibition, circulation, advertisement, import, export etc. of any obscene book, paper, pamphlet, poster, painting, figure etc. in any manner whatsoever is an offence punishable with imprisonment of upto 2 years and fine upto Rs.2000. If the offence is repeated again by a person, then he can be punished with imprisonment for upto 5 years with fine upto Rs.5000.

Under **Section 293**, sale etc. of obscene objects to young persons under the age of 21 years is an offence punishable with imprisonment upto 3 years with fine upto Rs.2000. On again doing the same offence, a person can be punished with imprisonment upto 7 years with fine upto Rs.5000.

There is no provision in the Indian Penal Code specifically dealing with the indecent representation of women and probably, making use of this lacuna, a tendency started growing to represent women in a very indecent manner, particularly in advertisements and publications. This started affecting the morality of the society and had the effect of denigrating women. To curb such practices, the Parliament passed the **Indecent**

Representation of Women (Prohibition) Act 1986. Under this Act, indecent representation of women in any form by way of any advertisement, book, pamphlet, film, painting, photograph, etc. is an offence punishable with imprisonment of upto 2 years and fine upto Rs.2000. If the offence is repeated again by a person, then he can be punished with imprisonment for upto 5 years subject to minimum imprisonment upto 6 months, with fine upto Rs.1,00,000 subject to minimum fine of Rs.10,000. ('**Indecent representation of woman'** has been defined under the Act to mean the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals).

To prevent prostitution and protect the society from this menace, there is **Immoral Traffic (Prevention) Act 1956**.

31. What is the remedy available to a woman in case of sexual harassment ?

One of the fundamental duties of an Indian citizen (prescribed in Article 51A(e)) is to renounce practices derogatory to the dignity of women, yet we quite often find instances of acts targeted against the dignity and chastity of the women. Our criminal law system contains provisions to sternly deal with such practices.

Under **Section 354** of the Indian Penal Code, the intentional use of force against a woman without her consent which is likely to cause injury, fear or annoyance to her or making of any gesture which suggest that he is about to use such force, with the intention to outrage her modesty is an offence punishable with imprisonment upto 2 years or with fine or with both. Under **Section 509**, uttering any word or making any sound/gesture or exhibiting any object intending that it be seen/heard by a woman or intruding upon the privacy of that woman, the ultimate intention being to insult the modesty of that woman, is an offence punishable with simple imprisonment upto 1 year or with fine or with both. While, under section 354, physical contact with the lady is essential to constitute the offence, it is not essential to constitute an offence under section 509.

Any woman feeling aggrieved by any of the above acts can file a complaint either to the police or directly in the court of the Magistrate.

The offence of rape is the highest form of sexual harassment punishable under **Section 376** with upto life imprisonment or for upto 10 years subject

to minimum punishment of 7 years alongwith fine. Only for adequate and special reasons, the Court can award punishment of less than 7 years. Even an attempt to commit rape is an offence punishable with upto half the punishment provided for the offence of rape. The offence of rape has been time and again taken very seriously by the Supreme Court and the High Courts and public opinion currently is also in favour of awarding death penalty to the perpetrators of such heinous crime.

32. If a person has not committed an offence but only attempted to commit that offence, will he still be punished ? (Attempt)

There are generally 4 stages in the commission of any offence :

1. Contemplation or intention of the commission of the offence

2. Preparation

3. Attempt

4. actual commission of intended crime

The 'mere intention to commit a crime' is not punishable. However, law does take notice of an intention followed by some overt act of expression. For example, in Section 503 IPC, a person can be punished for criminal intimidation which is a mere expression of one's intention to inflict loss or pain on another.

'Preparation' consists in devising or arranging means or measures necessary for the commission of the crime. Generally, preparations to commit offences are not punishable. But in exceptional cases, mere preparation to commit the offence is punished because they rule out the possibility of an innocent intention. For example, heinous offences like TADA, Pota etc. As illustration, some of the acts which merely amounts to preparation and which are punishable are Sections 122,126,399,402, 233,234,235,256,257,242,243,259,266 of IPC.

'Attempt' is a direct movement towards the commission of the offence after the preparations are over. For example, if a man after having procured a loaded gun pursues his enemy, but fails to kill him or is arrested before he is able to complete the offence or fires without effect, in all these cases he is liable for an attempt to murder. But if he purchases and loads a gun with the evident intention of shooting his enemy, but makes no movement to use the weapon against his intended victim, he remains only at the stage of preparation and his act does not amount to an attempt. Law take serious notice of attempts and punishes them accordingly.

There are certain sections in IPC wherein the actual commission of the

offence as well as the attempt thereof are made punishable equally. These are Sections 121, 124, 124A, 125, 130, 131, 15, 153A, 161, 162, 163, 165, 196, 198, 200, 213, 239, 240, 241, 251, 385, 387, 389, 391, 397, 398 and 460.

There are certain sections wherein attempts are treated as separate offences and punished accordingly. These are Sections 307, 308, 309, 393. Section 309 i.e. attempt to commit suicide is unique in the sense that the completed offence itself is not punished as it can not be punished.

Then, there is residuary section i.e. section 511. Under Section 511 of the Indian Penal Code, even an attempt to commit an offence punishable with upto life imprisonment is itself an offence which is punishable with upto half of the maximum punishment prescribed for the main offence. That it why, you would find that mostly, at the time of registering the FIR, the police often involve Section 511 alongwith the sections of the main offence.

33. What is the power of the President of India or the Governor of a State to grant pardon to a person convicted of any offence?

The President of India and the Governor of a State in India enjoys, under the Constitution of India, very special powers relating to the criminal law. As we know, the Supreme Court is the highest court of law in India. However, the President and the Governor have the power to pardon any person who has been convicted by any court. This power can be exercised by them at any stage, it is not essential that the person must have exhausted the remedy of appeal upto the Supreme Court. That means, even if a person is convicted by the sessions court, he may move a mercy application to the President or Governor without prejudice to his right of filing an appeal to the High Court. However, a convicted person can not claim consideration of his mercy petition as a matter of right and it is the exclusive privilege of the President or Governor. There is no requirement of the convicted person moving a mercy application for the President or Governor to exercise this power. The President/Governor can exercise this power even suo motu on their own without any application from the convicted person in this regard.

In exercising power under these Articles, the President and Governor are not bound by technicalities of law, as is in the case of the Courts, and they proceed purely on humanitarian basis without being influenced by the judgment of the convicting Court. This power is not subject to any constitutional or judicial restraints. This power is intended to afford relief from undue harshness.

The pardoning power of the President is provided in **Article 72** of the Constitution of India :

72(1). The President shall have the power to grant pardons, reprieves, respites, or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force."

The pardoning power of the Governor is provided in **Article 161** of the Constitution of India :

" 161. The Governor of a State shall have the power to grant pardons, reprieves, respites, or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to the matter to which the executive power of the State extends."

For understanding the difference in the power of the President and the Governor, one has to first understand that there are certain subjects on which only the Central Government (through Parliament) can make laws. These subjects are contained in a list called the **Union List or List I**. There are certain subjects on which only the State Government (through the State Legislature) can make laws. These subjects are contained in a list called the **State List or List II**. There are certain subjects on which both the Central as well as the State Government can make laws. These subjects are contained in a list called the **Concurrent List or List III**. All these three lists are given in the 7th Schedule of the Constitution of India.

While the Governor can exercise his powers under Article 161 only in respect of the offences the subject matter of which forms part of the List

II, the President has wider powers and he can exercise power under Article 72 in respect of the offences the subject matter of which forms part of the List I and also in respect of punishment by the Court Martial and also in all cases of death sentence. Thus, the Governor can not suspend, remit or commute a sentence for an offence under sections 489A-D of the Indian Penal Code because these sections deal with the offences pertaining to the currency and bank notes and the subject matter of currency and bank notes is within the exclusive jurisdiction of the Central Government under Entries 36 and 93 of the List I.

Since the power under these two articles is residuary sovereign power, there is nothing to debar the President or the Governor to entertain another petition for pardon, commutation etc. once having rejected the same. There is nothing to debar them from reconsidering the relevant circumstances such as change in world opinion against capital punishment.

One has to understand the difference between the various terms used in these articles :

'*Pardon*' means amnesty.

'*Reprieve*' means suspending a sentence. For example, suspending the sentence of an accused during pendency of an appeal.

'*Commute*' means to convert the sentence from one form to another. For example, converting sentence of death into sentence of life imprisonment.

'*Remitting* a sentence' means exempting the accused from undergoing the sentence or any part of it notwithstanding the decision of the Court imposing the sentence.

The effect of granting pardon is to absolve the person not only from the penal consequences of the offence but also from civil disqualifications, such as loss of office following from his conviction. However, a suspension or remission of the sentence does not have the latter effect. Pardon has the effect of acquittal of the accused whereas in case of remission, only the punishment is removed but the conviction is maintained.

The power of pardon can be exercised by the President or Governor at any stage, including the pendency of an appeal before the Supreme court and the Court would be debarred from hearing the appeal if a full pardon is granted by the President/Governor during pendency of an appeal. However, this is not so in case the President/Governor has issued order only for suspending or remitting the sentence. The power to suspend a sentence is subject to the Rules made by the Supreme Court in exercise

of its powers under Article 142, in respect of cases pending before it, in appeal. Thus, if the President/Governor has merely suspended the sentence on the ground that the convict intended to file an appeal before the Supreme Court, the order of the President/Governor would cease to operate as soon as the convict files his petition for special leave to appeal. It would then be for the Supreme Court to pass such orders as it think fit as to whether the petitioner should, pending the disposal of his petition, be granted bail or should surrender to his sentence or the like.

In the famous case of *Nanavati vs State of Bombay* reported in *AIR 1961 SC 122*, the accused Mr. Nanavati was held guilty of murder of his wife. He had taken the plea that he did so in the fit of grave and sudden provocation on seeing his wife in compromising position with another man, due to which he lost his power of self control and shot his wife. He was sentenced to death. His conviction was upheld upto the stage of Supreme Court. There was large public outcry. Ultimately, he was pardoned by the then President of India.

34. What are the circumstances in which even the Govt. can also remit or commute or suspend the sentence of a convict ?

The power to suspend, remit or commute the sentence of a person is also enjoyed by the Government by virtue of provisions of Sections 432 and 433 of the Code of Criminal Procedure. However, the power of pardon is not available to the Government.

The Government can suspend the execution of sentence of the offender or remit the whole or part of his punishment, at any time, with or without conditions. If the suspension or remission of sentence is done on conditions, the said conditions should be acceptable to the offender.

On receipt of an application for suspension or remission of sentence, the Govt. can, if it so desires, seek the opinion of the Judge of the convicting court and may also require him to send the certified copy of the court record alongwith his written opinion. However, the Govt. is not bound by such opinion.

The Govt. can cancel the suspension or remission if any condition, on which such suspension or remission was granted, is not fulfilled by the concerned person. On such cancellation, the person concerned is liable to be arrested by a police officer without warrant and sent to jail to undergo the unexpired potion of his sentence.

To file a petition for suspension or remission of sentence in case of a

male person above the age of 18 years, it is mandatory that he should be in jail and the petition should be filed through the jail superintendent (if he is personally filing the same). If the petition is filed by some other person on this behalf, it should contain a declaration that he is in jail.

The Govt. can also commute (i.e. convert or lessen) the sentence of a person without his consent. However, if the accused is sentenced to life imprisonment in case of an offence the maximum punishment for which is death or if his death sentence is commuted to life imprisonment, he is bound to serve minimum 14 years imprisonment. The parallel provisions are contained in Sections 54 and 55 of IPC.

The power under Sections 432-433 can be exercised either by the Central Govt. or the State Govt., depending upon the case. For example, if the offence relates to any matter in the List I, the Central Govt. exercises this power. In other cases, the Govt. of the State in which the offender is sentenced exercises this power.

If the offence is one which was investigated by the CBI or any other agency of the Central Govt. or which involve misappropriation/destruction/ damage to any property of the Central Govt. or which was committed by a Central Govt. employee while acting in discharge of his official duty, then the State Govt. is bound to consult the Central Govt. before exercising powers under Sections 432-433.

35. What are the circumstances in which a person despite being convicted (i.e. held guilty) can be released by the Court?

The Court under certain circumstances, instead of sentencing to punishment an offender who has been convicted for committing certain offences, can release him. These circumstances are provided in Section 360 Cr.P.C. and almost same provisions reproduced in the **Probation of Offenders Act 1958**.

Under Section 3 of the said Act, if a person is convicted for committing any offence punishable with imprisonment of upto 2 years under the Indian Penal Code (IPC) or any other law or an offence under Sections 379, 380, 381, 404 or 420 of IPC, and he has not been previously convicted, the court convicting him can release him after due **admonition** if the court is of the opinion that have regard to the circumstances of the case (including the nature of the offence and the character of the offender), it is expedient to do so.

Under Section 4, if a person is convicted for committing any offence which is not punishable with death or life imprisonment, the court

convicting him can release him on his executing a bond for a period of upto 3 years (with or without sureties) to appear and undergo sentence when called upon and in the meantime to keep the peace and be of good behaviour, if the court is of the opinion that have regard to the circumstances of the case (including the nature of the offence and the character of the offender), it is expedient to do so. This is called the release on **probation of good conduct**. However, the court can not release an offender on probation of good conduct unless it is satisfied that the offender resides or would be available within its jurisdiction during the period mentioned in the bond.

Before releasing an offender under this Section, the court is bound to take onto consideration the report, if any, of the concerned probation officer in relation to the case.

The court may pass a further order, if it of the opinion that it is expedient to do so in the interests of the offender and the public, directing that the offender shall remain under the supervision of a probation officer named in the order for a period of upto 1 year. Conditions can be imposed in this **supervision order** which are deemed necessary for the due supervision of the offender. If a supervision order is made, the court is bound to require the offender to execute another bond to comply with the conditions mentioned in the supervision order. The intention behind imposing these conditions is to prevent repetition of the same offence or commission of other offences by the offender. The conditions of any bond can be varied by the court on application by the probation officer.

If the offender fails to comply with any of the conditions of the bonds, the court may issue his arrest warrant or may issue summons to him and his sureties to appear before the court on the specified day. After hearing the case, if the court is satisfied that the offender has failed to observe any of the conditions of the bonds executed by him, then the court can forthwith sentence him to original imprisonment. If the failure is for the first time, the court may impose a penalty of upto Rs.50/- instead of sentencing him to imprisonment.

While releasing an offender under Section 3 or Section 4, the court may make further order directing the offender to pay reasonable compensation for the loss or injury caused to the victim and also reasonable costs of the proceedings.

If the offence is punishable with any imprisonment (but not life imprisonment) and the convicted person is under 21 years of age, then he must invariably be released on admonition or probation unless there are

reasons to be recorded having regard to the nature of the offence and the character of the offender.

A person dealt with under Section 3 or section 4 does not suffer any disqualification which is attached to a conviction for an offence under any law.

wherever the word 'may' or 'can' is there in any law, it should always be understood that it is discretionary and not mandatory. On the other hand, the word 'shall' or 'should' always mean mandatory or compulsory.

36. What is the law relating to the children?

The law related to the children can be categorised into 'offences by the children' and 'offences against the children'. In legal parlance, children are referred to as juveniles, that is, any boy below the age of 16 years or any girl of below the age of 18 years.

Offences by children

Nothing is an offence which is done by a child under 7 years of age (Section 82 Indian Penal Code). Thus, even if murder has been committed by a child below 7 years, it is no offence in the eyes of law.

If the child is above 7 years of age but less than 12 years of age and has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct at the time of commission of the act, then such an act is not an offence in the eyes of law (as per Section 83 Indian Penal Code).

If any offence (bailable or non-bailable) is committed by a juvenile (i.e. any boy below the age of 16 years or any girl of below the age of 18 years), then such a child is entitled to the benefits of **Juvenile Justice Act 1986** and he or she can not be sent to jail under any circumstances. Under section 21 of the said Act, he may be allowed to go home after advice or admonition, or he may be released on his executing a bond for keeping good behaviour for period ranging up to 3 years, or he may be sent to special home, or may be released under the supervision of some person appointed by the Competent Authority, etc.

When any person accused of a bailable or non-bailable offence is arrested, the police officer or the Magistrate, if it appears to them, that the person is a juvenile, has to forward him/her to the Competent Authority (Juvenile Court, Juvenile Welfare Board etc.) at the earliest. Then the Competent Authority hold an enquiry as to the age of the person. It is the age of the person on the date when he first appear or brought before the Competent

Authority, which is relevant. If on that day, he/she is less than 16/18 years, he/she is entitled to the benefits of the Act. Pending enquiry by the Competent Authority, such a person is entitled to bail. If the Competent Authority is of the view that he may again get exposed to criminal activities, it may send him to an observation home. *[Arnit Das vs State of Bihar IV (2000) SLT 465]*

A juvenile and a person not a juvenile can not be tried together.

Offences against children

If any person, having the actual charge/control of a juvenile,

- assaults, adandons, exposes or willfully neglect the juvenile or

- causes/procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile unnecessary mental or physical suffering,

shall be punishable with imprisonment for a term which may extend to 6 months, or with fine, or with both. (Section 41, Juvenile Justice Act)

If a person forces a juvenile to indulge in begging or forces him to consume liquor or drug, he may be punished with up to 3 years imprisonment, besides fine. If a person employs a juvenile and withhold his earnings or uses such earnings for his own purpose, such person also is liable for punishment up to 3 years alongwith fine. This Act is now replaced by *Juvenile Justice (Care and Protection of Children) Act 2000.*

37. What action I can take against police or any other public officer if they harass me ?

You can do all or any of the following :

(1) file a criminal writ petition in the High Court

(2) file a criminal complaint in Magistrate Court if you can show the action/inaction of the officer falling in any of the offences

(3) make a complaint to vigilance wing of concerned deptt. and/or his higher authorities, who would take appropriate action against him under their department rules

(4) make a complaint to the Govt. under Public Sevants (Inquiries) Act 1850.

(5) make a complaint to Central Vigilance Commission or Public Grievance Commission

(6) send a complaint to Human Rights Commission, Chief Justice of

Supreme Court and Chief Justice of concerned High Court

(7) file a suit for compensation against him in the civil court

(Note:kindly also see Notes 12 & 13 in Chapter 3 'Other information')

38. If I have given surety for some accused in Court and he runs away or does not appear in court, what is the worst that can happen to me ?

Suretyship is a sort of contract between the surety and the State whereby the surety notionally takes the custody of the accused and undertakes to produce the accused before the court on each date of hearing. If you as surety fails to perform your part, then the surety bond executed by you is forfeited and you are called upon to pay the amount specified in the surety bond. Thus, the maximum that can happen to you is that you can be forced to pay into court the amount mentined in surety bond signed by you, you can not be sent to jail for such failure to produce the accused.

It is open to the surety to apply for his discharge at any time before the condition of the bond has been broken.

If the surety produces the accused before the Magistrate and requests for discharge from suretyship, the Magistrate has no option but to discharge him from suretyship without reference to or hearing the accused.

However, ***if the surety is not in a position to produce the accused***, then

(1) the Magistrate first issue warrant of arrest against the accused before discharging the surety.

(a) If the accused is brought under arrest or appears in obedience to such warrant, the surety's request is allowed and he is discharged.

(i) If the accused furnish fresh surety, then the order of bail remains.

(ii) If the accused is unable to furnish fresh surety, then his bail is cancelled and his bail bond is forfeited and is asked to pay the amount mentioned in his bail bond.

(2) the Court on being satisfied that the surety bond has been contravened can pass the order of forfeiture of the surety bond. Before forfeiting the bond, no show cause notice is required to be issued. After forfeiting the bond, the court issue a show cause notice to the surety asking the surety to pay the penalty (max. penalty is the amount specified in surety bond) or to show cause as to why he should not pay the penalty. No order of penalty can be passed under S.446(1) before issueing such a notice. If the surety satisfactorily explains the reason for non-appearance of the accused, then in spite of forfeiture of the bond the court may remit the whole amount

of penalty. The fact that the surety is poor and that the accused had subsequently been arrested may be a good ground for remitting part of the penalty.

39. What is done when the Investigation of a case is to be carried out in a foreign country ?

As a general rule, investigations within India are conducted by our police officers. Sometimes, during the course of investigation by local police authorities, it becomes necessary to conduct a part of the investigation e.g. interrogation of a witness/suspect/accused, verification of some facts, etc. in a foreign country, particularly keeping in view the importance of the case, its complicated nature, gravity of the offence, etc. For this purpose, a police officer or a team of police officers is required to be sent to the concerned foreign country. However, Indian police officers have no police powers in any foreign country. Any police action by an Indian police officer on a foreign land would amount to interference with the sovereignty of that country unless some required formalities have been observed.

When it is considered necessary to send any investigator's mission abroad, a message is sent to the Interpol Wing of the CBI so that a request to the **N**ational **C**entral **B**ureau (NCB) of the country concerned can be made for permission by their competent authorities. In such cases, a note incorporating the relevant facts of the case along with the points on which investigation is required to be conducted in a foreign country is usually sent to the **Interpol Wing of CBI.** If any person is required to be interrogated, a questionnaire is also sent. The mission does not start before the requested NCB has informed that the competent authorities have granted permission. However, some countries do allow exceptions to this rule e.g. in urgent cases, but even in such exceptional cases, the NCB of the requested country is at least informed that investigators are going to be sent to that country. Before sending a mission abroad for investigation, following information is usually furnished to the Interpol Wing of the CBI:

(a) Information about the date and duration of the Mission

(b) Information about the Investigator(s) in the mission

(c) names and ranks of the investigators and the language they use

(d) Information about the penal offence to which the mission relates

(e) Any other facts which might lead to legal or practical problems in the requested country, like bringing of some special item or some

suspect etc.

The following points should be borne in mind while sending a request to the Interpol Wing for causing investigation abroad :

(a) The note/questionnaire/points for investigation should be sent in triplicate.

(b) If the investigation is required to be conducted in more than one foreign country, there should be a separate set of questionnaire/points for investigation for each country.

(c) A separate questionnaire should be prepared for each witness unless all the witnesses are required to be examined on the same points.

(d) The note/questionnaire/points for investigation should be quite clear and specific.

(e) The question should be brief and should be narrowed down as far as possible.

(f) The material should be carefully examined and scrutinized by the Superintendents of Police concerned to ensure that only relevant material is incorporated in the note and to ensure correctness of the facts and figures.

(Note : Kindly see the chapter on Interpol also.)

40. What is the law in India enabling the courts to issue letters of request (letters of rogatory) to the authorities in foreign countries to take evidence in relation to cases pending in India ?

The procedure for carrying out investigation in a country or place outside India and also to provide similar assistance to Court or authority outside India for carrying out investigation in India, has been prescribed in **Section 166-A and Section 166-B of the Code of Criminal Procedure, 1973** (which were inserted by way of an amendment w.e.f. 19.2.1990).

As per these sections, a request can be sent by an Indian Court in which a case is pending to a foreign court/ Judge requesting the testimony of a witness residing within the jurisdiction of that foreign court. The statement of the witness can then formally be taken by the foreign court and transmitted to the issuing Indian court. Such a request or formal communication is also called **Letter of Rogatory**. Similar procedure is available when such request has come from a foreign court.

Ministry of Home Affairs, Govt. of India has notified the procedure for sending such requests from India vide S.O. 444(E) which reads as under

"In pursuance of subsection (2) of section 166A of the code of Criminal

Procedure, 1973 (2 of 1974), the Central Government hereby specify that a letter of request from any Criminal Court in India referred to in such-section (1) of that section shall be sent to the Interpol Wing, Central Bureau of Investigation, Government of India, New Delhi-110003, for transmission to the concerned country or place outside India through the diplomatic channel."

Similarly, the Ministry of Home Affairs has notified the procedure for dealing with the requests for assistance received from abroad vide S.O. 445(E) as under :

"In pursuance of subsection (2) of section 166B of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby directs that all evidence taken or collected under subsection (1) of that section or authenticated copies thereof or the thing, so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Ministry of Home Affairs, Government of India, New Delhi- 110001, for transmission to a Court or authority in a country or place outside India through the diplomatic channel."

Ministry of Home Affairs vide O.M. No. VI-25013/53/90-GPA-II dated 6/8th November 1990 has laid down that the following work is required to be handled by the Ministry of Home Affairs, GPA-II Desk in consultation with the Director CBI and Joint Director, Interpol Wing, CBI:

(a) receipt of evidence from a court or authority in a foreign country in response to the letter of request sent by a court or authority in a foreign country under section 166-A, and its despatch to the concerned Court in India;

(b) receipt of request from a court or authority in a foreign country under subsection 1) of Section 166-B, and after scrutiny thereof by the Interpol Wing of the CBI forwarding the same for taking appropriate action to the Magistrate or Police Officer, as the case may be; and

(c) receipt of all evidence taken or collected by the Magistrate or the Police Officer, as the case may be, under subsection (2) of section 166B and its despatch to court or authority in the foreign country from whom the request was received through the diplomatic channel.

All correspondence in this regard may be addressed to the Joint Secretary (CS), in the Ministry of Home Affairs/GPA-II Desk, Ministry of Home Affairs.

41. Is prior clearance of Central Govt. required before making a

request to the Indian court for issueing Letter Rogatory to a foreign court ?

Department of Personnel and Training have issued instructions that no request for issuance of a letter of request to any court will be made without prior clearance of the Central Govt. as certain difficulties were experienced in connection with execution of letter of request for investigation abroad and since the process involves matters relating to foreign policy, bilateral diplomatic relations, the procedure laid down in the requested foreign country to handle such requests, assurance for reciprocity, crime scenario at the international level and certain other relevant factors which may need prompt guidance and assistance from the Govt. It is also an expensive and time consuming exercise. It is, therefore, imperative that a reference to the Central Government be made to obtain this clearance whenever it is found that such an assistance is needed under section 166-A of the Cr.P.C.

A reference to **Interpol Wing** may be made to ascertain the name of the competent authority in the requested country and also the requirements of the law of the requested foreign country to take up such requests, the language in which such requests are to be translated along with the documents accompanying the request and whether we have any legal mutual assistance treaty, agreement, MOU, or arrangement with the requested foreign country and the requirements thereof. Some countries have the requirement of obtaining an undertaking by the Government of India to assure reciprocity. The principle of dual criminality is relevant in most of the foreign countries and it has to be ensured that this requirement is duly attended to.

A request to the Court of Competent jurisdiction may be made in the light of above information to issue a Letter of Request to the concerned Competent Judicial Authority in the requested country. This request should provide brief facts of the case, particulars of the witnesses to be examined, details of the documents to be collected, the evidence to be collected and the relevance of the same to the investigation of the case, the justification for investigation abroad to collect the said evidence and should indicate whether the requirements of the requested state have been complied with.

42. What happens when letter rogatory is issued by an Indian court to a foreign court ?

In case the Court in India decides to issue the Letter of Request as prayed, the same is issued by the Court and is addressed to the competent judicial authority of the requested country and contain material showing the

competence and jurisdiction of the issuing Indian court, identity particulars and brief facts of the case, names of the accused against whom the investigation is directed, relevant legal provisions and their description, punishment prescribed, etc. The relevant extracts of the legal provisions are usually enclosed for perusal and reference of the requested competent judicial authority in the requested country. The request clearly spell out the assistance sought. When requesting for statement of the witnesses, a detailed questionnaire is also enclosed for each witness separately to enable the requested judicial authority to record the evidence. Identity, particulars of each of the witnesses to be examined are also mentioned clearly with full address. When the assistance is sought to collect or prove any document, the requirements are clearly spelt out and a copy of the relevant enactment is also enclosed.

The letter of request after it is issued is sent to the Interpol Wing of CBI, New Delhi for transmission to the requested authority through diplomatic channels.

In certain countries viz, USA, their law requires that a notice has to be given to the accused while collecting evidence during investigation and the evidence collected without observing their procedure may not be allowed to be entered against the accused in that country. However, there is no such requirement under the criminal procedure law of our country and, therefore, it is not necessary to give such a notice while executing a request for such assistance from this country which would delay the process without any ensuring benefit.

[Issued vide MHA Letter No. VI.25013/53/90.GPA.II dated 3.7.1996]

43. Which are the countries with which India has Mutual Legal Assistance Treaties ?

India has Mutual Legal Assistance Agreements/Treaties in Criminal matters with following 6 countries :

1. U.K. (Agreement concerning the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds of and instrument of crime (including currency transfers & terrorist funds).
2. Canada
3. France -do-
4. Russia -do-
5. Kyrgyzstan -do-
6. Kazakhstan -do-

44. What is extradition ?

Extradition may be briefly described as the surrender of an alleged or convicted criminal by one State to another. More precisely, extradition may be defined as the process by which one State upon the request of another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State. Recently, the efforts for extradition of famous Indian music director Nadeem from U.K. and extradition of noted criminal Abu Salem and his accomplice Monika Bedi from Portugal has been in the news.

45. What is the law in India regarding extradition of criminals from foreign countries to India and from India to foreign countries ?

In India, the extradition of a fugitive from India to a foreign country or vice-versa is governed by the provisions of *Indian Extradition Act, 1962*. The basis of extradition could be a treaty between India and a foreign country. Under section 3 of this Act, a notification could be issued by the Government of India extending the provisions of the Act to the country/ countries notified.

Suppose, some criminal has committed an offence in India and has ran away to Italy. Then, the concerned police in India through diplomatic channels can request the Govt. of Italy to hand over the said criminal. However, such a request can be made by the Indian police only if

(a) India has an extradition treaty/arrangement with Italy, and

(b) The offence in question is an extraditable offence

Information regarding the fugitive criminals wanted in foreign countries is received by India directly from the concerned country or through the General Secretariat of the Interpol in the form of red notices. The Interpol Wing of the Central Bureau of Investigation immediately passes it on to the concerned police organizations. The red notices received from the General Secretariat are circulated to all the State Police authorities and immigration authorities.

The question arises that what action, if any, can be taken by the Police on receipt of an information regarding a fugitive criminal wanted in a foreign country and believed to be hiding in India. In this connection the following provisions of law are relevant :

A. Action can be taken under the **Indian Extradition Act 1962**. This

act provides procedure for the arrest and extradition of fugitive criminals under certain conditions.

B. Action can also be taken under **Section 41 (1) (g) of the Cr.P.C**. which authorizes the police to arrest a fugitive criminal without a warrant if the following two conditions are fulfilled:

(a) the person is 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, could have been punishable as an offence.

(b) If he is under any law relating to extradition or otherwise liable to be apprehended or detained in custody in India.

In view of the above it is clear that action to arrest a fugitive criminal wanted in a foreign country can be taken only in respect of those requesting countries who have extradition treaties/arrangements with India. In other cases, the police can only keep a discreet surveillance over the movements of the fugitive criminals keeping the Interpol Wing informed.

In case the fugitive criminal is an Indian national, action can also be taken under section 188 Cr.P.C. as if the offence has been committed at any place in India at which he may be found. The trial of such a fugitive criminal can only take place with the previous sanction of the Central Government.

46. What is the procedure for seeking the extradition of a criminal from a foreign country ?

The Central Bureau of Investigation vide its Circular No. IP-3/1/96/5982 dated 19th November, 1996 has laid down the following general procedure to be followed for seeking the extradition of a fugitive offender :

A. For considering extradition of a fugitive offender from foreign State a request should be made through diplomatic channels. The request should normally be accompanied with the following documents:

1. Facts of the case.
2. Copy of FIR
3. Copy of charge sheet, if already filed in the Court.
4. Warrant of arrest.
5. Nationality, identity and address of the accused including his photograph.

6. Evidence/statement of witnesses in support of the request for the purpose of establishing that a prima facie case is made out against the fugitive criminal.
7. Copy of the relevant provisions under which the accused is charged along with the provisions indicating that the prosecution is not barred by time including a brief statement of the relevant laws indicating the maximum sentence prescribed for the offence for which the accused is charged or convicted.
8. Proclamation by court, if any.
9. If the accused is already convicted, then the copy of the relevant judgement of the court.
10. Relevant provisions of the Extradition Treaty under which the offences which are alleged to have been committed by the accused fall.

B. The request should be supported by a self-contained affidavit containing the facts of the case and referring at the appropriate places the statements of witnesses and other documentary evidence, existence of the warrant issued against the fugitive criminals, establishing their identity; provisions of the law invoked, etc., etc., so that a prima facie case is made out against the fugitive criminals. This affidavit usually should be sworn by a senior officer in charge of the case. The affidavit should also include:

(i) Paragraph 1 of the affidavit should indicate the basis/capacity in which the affidavit was executed.

(ii) The statement of witnesses of the requesting State etc. should be admissible under the law. Accordingly, the affidavit should indicate that the statement of witnesses/confessional statements are admissible in that State.

(iii) The affidavit should indicate that the law in question was enforced at the time of commission of offences and it is still in force including the penalty provisions.

(iv) The affidavit should also indicate that the prosecution for the offences for which the accused is charged are not barred by time.

(v) The affidavit should also indicate that the accused if extradition to the requesting State is granted, will be tried in that State for only those offences for which his extradition is being sought or for any other lesser offence disclosed by the facts proved for the purposes of securing his extradition.

(vi) The affidavit should indicate the probable address of the fugitives in the requesting State. If any, and also establish the identity of the fugitive persons whose extradition is being sought. Photographs of the accused, their finger prints, etc. may be given for this purpose.

(vii) The statement of witnesses etc. should be sworn statements.

(viii) All the documents should be properly attested/authenticated by the competent authority.

C. The complete extradition request should be properly stitched/bound and sealed which the official sell of the requesting State. The extradition request is usually required to be made in quadruplicate.

The extradition request should be forwarded to Joint Secretary(CPV), Ministry of External Affairs, Patiala House, New Delhi who then forwards it to the appropriate authority in the concerned foreign country.

47. Which are the countries with which India has extradition treaty ?

India has Extradition Treaty in operation with following countries :

1. Nepal	2. Belgium	3. Canada
4. Netherlands	5. U.A.E	6. U.K
7. France	8. U.S.A	9. Switzerland
10. Bhutan	11. Hong Kong	

48. Which are the countries with which India has extradition arrangements?

India has Extradition arrangements with following 8 countries :

1. Sweden	2. Tanzania	3. Australia
4. Singapore	5. Sri Lanka	6. Fiji
7. Papua New Guinea	8. Thailand	

49. What is done when foreigners are arrested in India ?

On various occasions, foreigners are arrested in India for violation of existing laws particularly concerning customs, narcotics drugs, etc. A foreigner may be arrested in India for committing a trivial offence e.g. staying in India beyond the period of visa endorsed in his passport or possession of a few grams of narcotics drugs but at the same time, he may also be a dangerous criminal wanted in a foreign country for having committed any heinous offence and traveling or staying in India on the strength of a forged passport or he may be a habitual offender or a member

of an international drug smuggling syndicate which the authorities effecting the arrest may not be aware. Therefore, whenever a foreigner is arrested in India, a report should immediately be sent to the Interpol Wing with a view to check the true identity of the foreigner and his criminal antecedents, if any.

The arrest report of the foreigner should contain the following details:

- Correct name of the foreigner arrested.
- Nationality
- Date and place of birth.
- Parentage.
- Residential address abroad.
- Number, date and place of issue of the passport.
- Photograph and fingerprints, in triplicate.
- Details of the case including the date of arrest, nature of offence committed, etc.

The above mentioned personal particulars of the foreigner arrested can be easily and correctly obtained from the passport in his possession. In case a foreigner is not in possession of a passport, he should be thoroughly interrogated to obtain these particulars. In almost all the American and European countries, the date and place of birth of a person is essential to check his antecedents from the computerized data. The date and place of birth of a foreigner should, therefore, always be furnished. Since the photograph and fingerprints are required to be sent to foreign NCBs, these should be of high quality so as to enable the General Secretariat and the foreign NCBs to conduct a proper check from their records.

In order to complete the police information about a foreigner at national as well as international level, the results of judicial proceedings including the date of conviction, name of the court, details of charge (s) proved and sentence awarded by Indian court should be immediately furnished as soon as the trial is over. In case, a fine is imposed, it should be mentioned whether the fine has been paid by the accused or not.

On various occasions, notices/requests are received from the Interpol for arrest of a person in India. Such requests are processed in the Interpol Wing and the police authorities concerned are requested to locate and arrest the wanted person only when the arrest is permissible under our law. In such cases arrest should only be made if it has clearly been requested for by the Interpol Wing and is otherwise legal under our law.

Arrest should not be made merely at the request of the Interpol or a foreign NCB. It is, however, not so in case of a foreigner who has violated any law of our land, when the normal process of legal formalities will have to be observed.

50. What happens when Indians are arrested in foreign countries ?

The Interpol Wing, CBI receives arrest reports along with photographs and fingerprints of Indian nationals from foreign NCBs. When such references are received, the fingerprints are sent to the National Crime Records Bureau for record and checking of pervious convictions, if any. Simultaneously, the concerned local police authorities are requested to cause enquiries about the true identity and antecedents of the Indian nationals arrested abroad. Such enquiries should be caused promptly and a report sent to the Interpol Wing, CBI for onward transmission to the General Secretariat and the NCBs concerned. The report should include all relevant information about true identities and antecedents of such persons and any other information which may be required by the foreign NCBs.

The remedy available to the arrested Indians is to contest/challenge their arrest in the court of the country where they are arrested. In addition, they can also contact the Embassy/consulate of India in the said foreign country for helping them out.

(Note : Kindly see the chapter on Interpol also.)

3

OTHER INFORMATION

1. Where can I find the decisions delivered by the High Court and the Supreme Court ?

The decisions and judgments of the Courts are reported in various books/ journals called 'reports'. Only the decisions of the High Courts and of the Supreme Court are reported. The decisions of the District Courts and the Subordinate Courts are not reported, as these are not binding. The decision of the High Court is binding on the District and Subordinate Courts and the decisions of the Supreme Court are binding upon all the Courts.(though some publishers report decisions of consumer courts, ITAT, STAT etc. also)

The decisions of the Supreme Court are reported in various reports/journals such as AIR (All India Reporter), SCC (Supreme Court Cases), SLT (Supreme Law Times), AD (Apex Decisions), etc.

The decisions of all the High Courts are reported in AIR, All India High Court Cases, etc. Several Journals only report the decisions of a particular High Court like DLT (Delhi Law Times), DRJ (Delhi Reported Judgments) report the decisions of Delhi High Court only.

Nowadays, these decisions are also available on computers on CD-ROM and also through internet on subscription basis, by companies like Grand Jurix, Manupatra, etc. The select judgments of the Supreme Court and of certain High Courts can also be accessed via internet by logging on to the websites of the respective courts.

However, as per **The Indian Law Reports Act 1875**, the Court is not bound to hear or rely on just any judgment of High Court cited by the parties. Only the judgments which have been reported in the Reports published under the authority of the State Government concerned are binding upon the Courts.

2. What is a 'Cause List' ?

A cause list is the list of cases to be taken up by a court on a given day. On

a given day, each court may have about 50-100 cases. All these cases are arranged in serial numbers in this list. These cases are taken up in the courts as per this list. The serial number of a case in the list in common parlance is called the 'item number'. This list helps the litigant to find out as to when his matter will be taken up. In the High Courts and the Supreme Court, generally a case is called by its item number, unlike in the district courts where the case is usually called by its title (like Ram Kumar versus Shyam Lal).

The cause list of the Supreme Court and of majority of the High Courts can be seen in advance nowadays on the internet by logging on the website **www.causelists.nic.in.**

3. What are the various statutory bodies of advocates ?

Each profession is governed by a separate law/Act. The advocates throughout India are governed by the Advocates Act 1961. The supreme body of the advocates under this Act is the Bar Council of India followed by a separate Bar Council for each State. Any law graduate becomes entitled to practice in courts only after he enrolls himself with the Bar Council of the State where he practice. In practice, an advocate appear and argue in any court in India, though as per law, he can appear and argue only in the courts of the State where he is enrolled. All matters of discipline and professional ethics are controlled and administered by the State Bar Councils.

There are various courts within a State. For the purpose of common benefit and interest, the advocates practicing in these courts associate themselves in the form of associations. However, these associations do not have statutory status and are merely private bodies, mostly registered under the Societies Registration Act. For example, advocates practicing in Delhi High Court have formed Delhi High Court Bar Association, those practicing in district courts at Tees Hazari in Delhi have formed Delhi Bar Association, those practicing in district courts at Patiala House in Delhi have formed New Delhi Bar Association, so on and so forth. There is no bar on an advocate becoming member of more than one Association. It is not mandatory for an advocate to become member of any such Association either.

4. How to identify a senior advocate ?

The Advocates Act 1961 governs the profession of advocates. Based on the ability, knowledge, experience, expertise and standing at the bar, an advocate is designated as Senior advocate by the High Court or the

Supreme Court, as the case may be, depending upon the court in which he is practicing. It is an honour and distinction conferred by the Court in recognition of the ability and standing of the concerned advocate. Section 23 of the Advocates Act provides for right of pre audience for senior advocates among others. However, in practice, there is no fixed criteria for designation of an advocate as senior advocate. One would find an advocate of even 40 years designated as Senior Advocate but an experienced advocate of even 60 years not designated as senior advocate despite applying by him.

The type of dress to be worn by the advocates is prescribed in Chapter IV under Section 49(1)(gg) of the Advocates Act. It does not make any distinction between the dress of an advocate and a senior advocate. However, by convention and tradition which is being continued from the British days, the Senior Advocates wear a somewhat different dress. They wear Queens Council gowns having overflowing arms, embroidery and frills, which is different and distinct from the normal gown worn by all other advocates. Also, they wear a short jacket/coat decorated with frills and fineries in comparison to a simple coat worn by all other advocates. Recently, a petition challenging the practice of wearing of different gown and coat by the senior advocates as discriminatory and violative of Article 14 of the Constitution was turned down by the Delhi High Court in the case of *J.R.Prashar vs Bar Council of India* reported in *99(2002) DLT 441*.

5. Who is 'Amicus Curie' ?

'Amicus curie' is a French phrase meaning 'friend of the court'. When a person is present in person and is unable to plead its case properly, then the court can appoint any person, usually any advocate present at that time in that court, as the advocate to represent the person in question. This is done to assist the court for the better and proper adjudication of the matter in controversy and such a practice is in line with the constitutional provision that every person has a right to be defended by a legal practitioner. Such an advocate is then referred to as amicus curie. He is paid a notional amount as fee by the Govt. or by the Legal Aid or by the Bar Association concerned, by the order of the court, as token of appreciation for his services. The concept of amicus curie is mostly prevalent in the Supreme Court, the High Courts and the National Consumer Disputes Redressal Commission.

6. What is the meaning of 'Life Imprisonment'?

Various types of punishments are provided in the Indian Penal Code and other Acts dealing with criminal liability. The various types of punishments which can be awarded under the IPC are prescribed in Section 53 thereof

(a) Death

(b) Life imprisonment

(c) Imprisonment – simple or rigorous (i.e. with hard labour)

(d) Forfeiture of property

(e) Fine

The imprisonment can be for any number of years/months/days, depending upon the nature and gravity of the offence. (incidentally, the minimum punishment can even be -to sit in the court and remain in court's custody 'till rising of the court', as indicated in Section 418 CrPC). The maximum punishment is the death sentence. The second maximum punishment is the Life Imprisonment.

There has been different opinion as to what is the tenure of a life imprisonment. Some jail manuals prescribe it as for 14 years. But, the Courts have held that the jail manuals can not override the provisions of the IPC. **Section 57** of IPC is in following terms :

" Fractions of terms of punishment : In calculating fractions of terms of imprisonment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years".

Section 55 IPC authorize the Government to commute punishment for a term not exceeding 14 years in every case in which sentence of life imprisonment "shall have been" passed.

The confusion was cleared up and true interpretation was laid by the Judicial committee of the Privy Council in the case of *Pandit Kishori Lal vs King Emperor AIR 1945 PC 64* which was subsequently approved in *G.V.Godse vs State of Maharashtra AIR 1961 SC 600* wherein the court observed : *" under Section 57 IPC, a person transported for life would be treated as a person sentenced to rigorous imprisonment for life".*

In *State of Madhya Pradesh vs Ratan Singh AIR 1976 SC 1552* a question arose whether sentence for life as defined in section 57 can be limited for a period of 20 years and does the govt. has a discretion to remit and commute sentence as under section 432 Cr.P.C. The court held that the prisoner who has been sentenced for life can not be released after 20 years as provided under various jail manuals and Prison Act 1894 as they can not supercede the statutory provisions of the IPC. **A sentence for life means sentence for convict's whole natural life** i.e. the person has to spend his whole life in the prison unless the Govt. choses to exercise its discretion under relevant provisions of IPC or Cr.P.C.Thus, he can be released earlier also by the Govt., by exercising its powers under Section 432 of the Cr.P.C., after considering his good behaviour and attitude while

in the jail.

7. What is the law relating to jails in India ?

The law relating to the jails in India is contained in **The Prisons Act 1894** and the rules framed thereunder. The different State Governments have framed their own rules (called Jail Manual) under Section 59 of the Prisons Act 1894 which govern the working and administration of jails in their respective States. The Jail Manual which is very exhaustive and is infact followed by most of the jails in India is the **Punjab Jail Manual**. This Manual interalia deals with Jail Superintendent, Inspector General, Medical officer, Jail officers, visitors, guarding of prisoners, entry and exit of prisoners in the jail, belongings of the prisoners, release of prisoners, classification and accommodation of prisoners, discipline in jail, daily routine of prisoners, offences committed inside prison, facilities to prisoners, employment of prisoners, death in jail, female and child prisoners, procedure in case of prisoners condemned to death, etc. etc.

8. Why a person is always hanged in case of death penalty ? What is the procedure laid down for executing death sentence by hanging ?

The Code of Criminal Procedure provides in Section 354 as to what should be the language and contents of judgment in a criminal case. The Code makes it necessary under Section 354(5) that in cases where the accused is sentenced to death, the sentence be executed by hanging the accused by neck till he is dead. The Section 354(5) is reproduced herein below :

" When any person is sentenced to death, the sentence shall direct that he be hanged by neck till he is dead".

As can be seen, the section uses the word 'shall' and thus it is mandatory for all courts in India to provide for the execution of death sentence by hanging the person by neck till he is dead.

The procedure for executing the death sentence by hanging is laid down in Rules 872 and 873 of the Punjab Jail Manual which contains the rules framed under the Prisons Act 1894 and which are followed by almost all States. The said Rules are reproduced as under :

872. Time of executions. Procedure to be adopted.

(1) Executions shall take place at the following hours :

November to February	*...*	*8 A.M.*
March, April, September and October	*...*	*7 A.M.*
May to August	*...*	*6 A.M.*

(2) The Superintendent and Deputy Superintendent will visit the condemned prisoner in his cell a few minutes before the hour fixed for execution. The Superintendent shall then first identify the prisoner as the person named in the warrant and read over a translation of the warrant in vernacular to the prisoner. Any other documents requiring attestation by the prisoner, such as his Will shall thereafter be signed and attested in the presence of the Superintendent. The Superintendent will then proceed to the scaffold, the prisoner remaining in his cell. In the presence of the Deputy Superintendent, the hands of the convict will next be pinioned behind his back and his leg irons (if any) struck off.

(3) The prisoner shall now be marched to the scaffold under the charge of the Deputy Superintendent and guarded by a head warder and six warders; two proceeding in front, two behind and one holding either arm.

(4) On the arrival of the prisoner at the scaffold where the Superintendent, Magistrate and Medical Officer have already taken their places, the Superintendent shall inform the Magistrate that he has identified the prisoner and read that warrant over to him in vernacular. The prisoner shall then be made over to the executioner.

(5) The criminal shall now mount the scaffold and shall be placed directly under the beam to which the rope is attached, the warders still holding him by the arms.

(6) The executioner shall next strap his legs together, place the cap over his head and face and adjust the rope tightly round his neck, the noose being 1 ½ inches to the right or left of the middle line and free from the flap of the cap.

(7) The warders holding the condemned man's arms shall now withdraw and at a signal from the Superintendent, the executioner shall draw the bolt.

873. Body to remain suspended half an hour. Return of warrant.

(1) The body shall remain suspended half an hour and shall not be taken down till the Medical Officer declares life extinct.

(2) The Superintendent shall return the warrant of execution with an endorsement to the effect that the sentence has been carried out.

This Manual also contains rules as to the diameter of the rope, the custody and testing of rope, fitness of hangman etc. etc.

9. What is parole ?

The condition of the prisoners is controlled by the Jail Manuals of the jails in which they are kept. 'Parole' is a term which finds mention in the jail manuals and not in any Act. Parole means the temporary release of a prisoner for a few days to meet some urgent pressing problem of the prisoner. While bail is applicable in case of the accused lodged in jail during the pendency of their case in the court, parole is applicable where the accused has been convicted by the court and he is serving the sentence of imprisonment in the prison. The jail manuals generally prescribe the situations when a prisoner can be granted parole. Parole is generally granted to a prisoner when a member of his family has died or is seriously ill or he himself is seriously ill or on the ground of his marriage or the marriage of his close relative or for any other sufficient cause. Ordinarily, the period during which the prisoner is out of jail on parole is counted towards the total period of imprisonment undergone by him unless the rules, instructions or the terms of grant of parole prescribe otherwise. The grant of parole is generally an administrative action and is usually granted by the Government.

10. What are Lok Adalats ?

Lok Adalats are the special type of courts which have been constituted for the purpose of effecting compromise or settlement between the parties to a case. The Lok Adalats are constituted and are dealt with under Chapter VI and VII of the **Legal Services Authorities Act 1987**. However, the Lok Adalat can settle/entertain only those cases which are compoundable. It has no jurisdiction to entertain any case or matter relating to an offence not compoundable under any law. Generally, the petty cases are settled through Lok Adalats so as to reduce the burden on the regular courts and to provide speedy relief to the litigants.

If the case is pending before the regular court and one of the parties make an application to the court for referring the case to the Lok Adalat on the ground that there are chances of settlement and that it would serve no purpose by continuing with the case, the court, if satisfied that the matter is compoundable, refer the matter to the Lok Adalat for settlement and disposal. Even both the parties can also make a joint application/prayer. If the matter is not sorted out amicably in the Lok Adalat, then the party can revive the case before the regular court on the ground that there is no possibility of settlement.

In Delhi, in case of petty criminal offences, the Lok Adalats are currently held on Saturday/Sunday in the Tis Hazari courts complex. For this, a schedule is announced by the CMM / District Judge. For cases related to electricity, there is permanent lok adalat functioning in Vikas Bhawan, near Minto Road, New Delhi. For cases relating to accidents claims, the lok adalats are being held by the insurance companies to settle the claims. For cases relating to telephone deptt., the lok adalat is being held by MTNL periodically.

For poor people who can not afford the cost of litigation, the Authorities under the Act have constitutued Legal Aid centers in all States where the poor litigants can avail legal services free of cost on applying in the prescribed performa.

11. Do the politicians enjoy any privilege in respect of offences committed by them ?

The politicians, just like any other person, are liable to be punished for the offences committed by them. In addition, they are also liable to be punished under the *Prevention of Corruption Act 1988* for acts of bribery and corruption.

However, the politicians enjoy certain immunity from any proceeding in respect of anything said or done by them in the Parliament or Legislature. For anything said or done outside the Parliament or Legislature, they would be liable just like an ordinary person.

Under *Article 105*, the MP (Members of Parliament) enjoy certain privileges and immunities. There is freedom of speech in the House, of course subject to other provisions of the Constitution and to the rules and standing orders regulating the procedure of the Parliament. No case can be filed against an MP in any court for anything said or any vote given by him in Parliament.

Under *Article 194*, the MLA (Members of Legislative Assembly) in the State enjoy certain privileges and immunities. There is freedom of speech in the Assembly/Legislature, of course subject to other provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislature. No case can be filed against an MLA in any court for anything said or any vote given by him in the Legislature.

It was held by the 5 Judge Constitution Bench of the Supreme Court (majority view of 3 judges)) in ***P.V.Narsimha Rao vs State AIR 1998 SC 2120*** (also called JMM Bribery case) that :

- M.P. is covered within the definition of Section 2(c) (viii) of the

Prevention of Corruption Act.

- MP can be prosecuted. In his case, before filing the charge sheet, the permission can be obtained from the Chairman Rajya Sabha or the Speaker Lok Sabha, as the case may be. (However, the minority view i.e. the view of other 2 judges was that MP can not be prosecuted under sections 7, 10, 11 or 13 of the said Act for want of sanctioning authority. Under Section 197 CrPC, prior sanction is required for prosecution of judges and public servants)

- MP enjoy immunity from prosecution for an offence of bribery committed in relation to anything said or any vote given by him in Parliament, by virtue of Art. 105(2) of the Constitution. (However, minority view was that such interpretation would be repugnant to healthy functioning of parliamentary democracy and would be subversive of the rule of law, which is also an essential feature of the Basic structure of the Constitution).

'Public servant' is defined under IPC (Section 21) as well as under Prevention of Corruption Act (section 2 (c) (viii). However, the definition under the said Act is more wider than in IPC. In section 21 IPC, the emphasis is on 'employment' while in the said Act, the emphasis is on 'performance of 'public duty'. This has enlarged the scope of 'public servant' so as to include MP, MLA, etc.

However, President and the Governors enjoy total protection from criminal proceedings. Under *Article 361*, the President of India and the Governor of a State can not be arrested or imprisoned nor any criminal proceeding can be instituted or continued against them, in any court, during the term of their office. However for any act done by them in their personal capacity whether before or after they became president/governor, civil proceedings can be instituted against them during the term of their office by giving 2 months notice in writing. The President or Governors are not answerable to any court for the exercise and performance of powers and duties of their office or for any act done or purporting to be done by them in the exercise and performance of those powers and duties.

12. Can a person file petition directly in the High Court or in the Supreme Court if he is harassed or tortured by Government functionaries ?

Yes. Such a right is granted by the Constitution of India. The Constitution guarantees certain rights to the people of India (even to foreigners in some cases). These rights are enlisted in Part III of the Constitution

comprising Articles 12 to 35.

If any of these rights are violated by any person or authority including the Government, then the aggrieved person can file a **writ petition** under **Article 226** of the Constitution of India in the concerned High Court for the enforcement of these rights. Such a writ petition before the High Court can be filed not only in respect of violation of fundamental rights, but also in respect of violation or breach of any right. If an order, rule or law is passed or any action/omission is done by any Government machinery which is contrary to the underlying spirit of the Constitution, the High Courts can struck down such an order, rule or law.

Similarly, a writ petition under **Article 32** of the Constitution can be filed directly in the Supreme Court for the enforcement of the fundamental rights.

In the case of violation of any of the provisions of the Code of Criminal Procedure 1973 (Cr.P.C.) or when there is no other remedy available for getting justice as far as the criminal law is concerned, any one can approach the High Court by filing a petition under **Section 482 of the Cr.P.C**.

13. Where and how should I complain against Govt. servants and public authorities ?

Generally, each Govt. department or Institution or Organisation has a vigilance deptt. of its own. In case you are aggrieved by the act or omission of any of their officers, you can make a complaint to the **vigilance deptt.** of the concerned organisation. In case you have to make a complaint regarding corruption by some officer, you can get in touch with the **Crime Branch** or **anti-corruption branch** of the State Police. In addition to this, you can also make complaint to the Central Bureau of Investigation (**CBI**) or the Central Vigilance Commission (**CVC**), if your case falls within the power of the said organizations.

In certain States, **Public Grievance Commission** have been established wherein people can file their complaint regarding corruption etc. in respect of the State Govt. employees. In Delhi, this Commission is at Vikas Bhawan and it entertain complaints against various govt. authorities of Delhi including the Delhi Police. However, there is a set proforma and procedure to lodge the complaint. The complaint has to be in triplicate and has to be supported by an affidavit and the complainant has to appear personally. In Delhi, one can also make a complaint to the Lt. Governor by calling at his Complaint Cell at tel. no. 22945000. A complaint against a public servant regarding misconduct can also be given in writing on

oath to the appropriate Government under the **Public Servants (Inquiries) Act 1850**.

There are proposals to bring into force Right to Information Act in various States and also at the Central level which would empower the people to seek information/report/follow up action on their correspondence in the different departments by paying a nominal fees. Delhi has taken the lead in this direction by enacting **Delhi Right to Information Act 2001**. By making an application to the competent authority in writing in the prescribed form accompanied with a fees of Rs.50, you can seek information or material relating to the affairs of the National Capital Territory of Delhi. You can also inspect the documents, records, works and can take the notes, extracts and certified copies of the documents. However, in case of seeking information relating to tender documents, bids, quotations, business contracts, the prescribed fees is Rs.500/-. If the authority fails to furnish the information asked for, within a maximum period of 30 days, it is liable to pay a penalty of Rs.50/- per day for the delayed period, subject to a maximum of Rs.500/-. However, the authority is not bound to provide information on certain serious matters specified in Section 6. The Central Govt. has recently enacted a similar Act i.e. **Freedom of Information Act 2002** (5 of 2003) wherein information relating to any public authority (excluding certain specified intelligence and security organisations) can be obtained.

In case you are aggrieved regarding the violation of the human rights of anybody, you can make a complaint to the **National Human Rights Commission** or the Human Rights Commission in your State which have been established under the *Protection of Human Rights Act 1993*. 'Human rights' have been defined in the said Act to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the International Covenants (international covenants on civil, political, economic, social and cultural rights adopted by the General Assembly of the United Nations on 16th December 1966) and enforceable by courts in India.

If case the act or omission of the officer falls within any of the offences prescribed in the Indian Penal Code or in any other Act/law/enactment, you can also file a **criminal complaint** in the court of the Magistrate of the first class (Metropolitan Magistrate in Delhi) under Section 190 of the Code of Criminal Procedure 1973. The procedure on filing of such complaint is governed by Chapter 15 of the said Code.

If you have no other remedy or if your above efforts have failed to bring

about any positive result, you can file a **writ petition** either in the High Court (under Article 226 of the Constitution of India) or in the Supreme Court (under Article 32, but only if your fundamental rights have been affected).

In addition, there are **C.C.S.(CCA) Rules** 1965 including Conduct Rules which govern the service conditions of the Govt. officers and provide departmental penalties for them for acts of misconduct and other such acts.

14. What is Gazette? What is its authority? What is contained in it? From where, I can procure the Gazette ?

Gazette is the official document of the Govt. which contains the orders, notifications, circulars etc. issued by the Govt./parliament/other authorities etc. from time to time. For the matters related to Centre (List I of Constitution), the notifications etc. are published in the Gazette of India. For matter related to State (List II of the Constitution), the notifications etc. are published in the Gazette of the respective State. Any law, after it is passed by the Parliament and after being signed by the President of India, is required to be published in the Gazette of India for it to become enforceable. Any law does not become an enforceable law until it is published in the Gazette. Same is the case with the State Gazette.

The earliest Act related to Gazette in India is **Act No. XXXI of 1863** which brought into existence the **Gazette of India**. It received the assent of the Governor General on 16th December 1863.

There are many parts of **Gazette of India**. The Parts further are divided into Sections. The subjects dealt with under various Parts and Sections thereof are as under:

PART I

Section 1 : Notifications relating to Non-Statutory Rules, Regulations, Orders & Resolutions issued by the Ministeries of the Govt. of India (other than the Ministry of Defence) and by the Supreme Court.

Section 2 : Notifications regarding Appointments, Promotions, Leave etc. of Govt. Officers issued by the Ministry of Defence and by the Supreme Court.

Section 3 : Notifications relating to Resolutions and Non-Statutory Orders issued by the Ministry of Defence

Section 4 : Notifications regarding Appointments, Promotions, Leave etc. of Govt. Officers issued by the Ministry of Defence.

PART II

Section 1 : Acts, Ordinances and Regulations

Section 1A : Authoritative taxts in Hindi language of Acts, Ordinances and Regulations

Section 2 : Bills and Reports of the Select Committee on Bills

Section 3(i) : General Statutory Rules (including Orders, Bye laws etc. of general character) issued by the Ministries of the Govt. of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories)

Section 3(ii) : Statutory Orders and Notifications issued by the Ministries of the Govt. of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories)

Section 3(iii) : Authoritative texts in Hindi (other than such texts, published in Section 3 or Section 4 of the Gazette of India of General Statutory Rules & Statutory Orders (including Bye-Laws of a general character) issued by the Ministries of the Govt. of India (including the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories)

Section IV : Statutory Rules and Orders issued by the Ministry of Defence

PART III

Section 1 : Notifications issued by the High Courts, the Comptroller and Auditor General, Union Public Service Commission, the Indian Govt. Railways & by Attached and Subordinate Offices of the Govt. of India

Section 2 : Notifications and Notices issued by the Patent Office, relating to Patents and Designs

Section 3 : Notifications issued by or under the authority of Chief Commissioners

Section 4 : Miscellaneous notifications including Notifications, Orders, Advertisements and Notices issued by Statutory Bodies

PART IV : Advertisements and Notices issued by Private Individuals and Private Bodies.

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Part I : Notifications regarding Appointments, Promotion, Leaves etc. of Government Officers of the Govt. of the National Capital Territory of Delhi

Part II (1) : Notifications and Orders on Judicial and Magesterial matters, reproduction of High Coury Notifications and statutory notifications of the Election of India and other Election notifications

Part II(2) : Notices of the Circuit Civil and Criminal Courts

Part III : Notifications of statutory local bodies

Part IV : Notifications of the Departments of the National Capital Territory of Delhi Administration other than Notifications included in Part-I

Part V (2) : Notices and other matters published by Head Offices of the Delhi Administration and miscellaneous matters not included.