PROCEDURAL LAW

CODE OF CIVIL PROCEDURE, 1908

LIST OF CONTENTS

D. Appeal, Reference, Review and Revision

a. Appeals from Original Decree (Sections 96 to 99A, Order XLI)
b. Appeals from Appellate Decrees (Sections 100 to 103, Order XLII)
c. General Provisions relating to Appeals
d. Reference to High Court (Section 113 and Order XLVI)
e. Review (Section 114 and Order XLVII)
f. Revision (Section 115)

CODE OF CRIMINAL PROCEDURE, 1973

LIST OF CONTENTS

A. Introduction

a. Object and Importance of Cr.P.C
b. Functionaries under the Cr.P.C
c. Basic Concepts: Bailable Offence, Non-Bailable Offence, Cognizable Offence, Non-cognizable Offence, Complaint, Charge, Police Report, Investigation, Inquiry and Trial, Summons Case, Warrant Case

B. Arrest, Bail and Pre-Trial Proceedings (Sections 41 to 105)

a. Arrest and Rights of an Arrested Person
b. Provision for Bail under the Code
c. Process to Compel Appearance of Person
d. Process to Compel Production of Things
e. Condition Requisites for Initiation of Proceeding
f. Complaint to Magistrate (Sections 200 to 203)
g. Commencement of Proceeding before Magistrate (Sections 204 to 210)

C. Trial Proceedings

a. Framing of Charges and Joinder of Charges Sections 211 to 224)
b. Jurisdiction of the Criminal Courts in Inquiries and Trials

c. Types of trials: Sessions Trial, Warrant Trial, Summons Trial, Summary Trial (Sections 225 to 265)

d. Judgement and Sentences under the Code

e. Submission of Death Sentences for Confirmation (Sections 366 to 371)

f. General Provisions as to Inquiries and Trial (Sections 300 to 327)

g. Execution, Suspension, Remission and Commutation of Sentences (Sections 413 to 435)

D. Miscellaneous

a. Appeals (Sections 372 to 394)

a. Reference and Revision (Sections 395 to 405)

b. Inherent Power of Court

c. Transfer of Criminal Cases

INTRODUCTION

A. DEFINITIONS

1. **DECREE:**

Section 2 (2) CPC

DECREE: It is defined u/s 2(2) of Civil Procedure Code, 1908. It means the ***formal expression*** of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matter in controversy in the suit.

"Preliminary and Final Decree":A decree may be either ***preliminary or final.*** A decree is ***preliminary*** when a further procedure has to be taken before the suit can be completely disposed off. When adjudication completely disposes of the suit such decree is ***final***. It may be noted that the term decree doesn't include the following:

a. Any adjudication from which an appeal lies as an appeal from an order or

b. Any order or decision of the dismissal of the suit for default.

"***Formal expression"*** means the recordation of the ruling of the Court on the matter presented before it, so far as the Court expressing it alludes to the fact that the same issue cannot be adjudicated by or before the Court again but only before a higher forum i.e. an appellate forum. A decree must be drawn separately after a judgment.

"Deemed Decrees": A deemed decree is one which, though not fulfilling the essential features of a decree as required by the Code has been expressly categorized as a decree by the legislature. The rejection of a plaint and the determination of questions of facts are deemed decrees.

Decisions which are decrees	**Decisions which are not decrees**
1. Order of abatement of suit. 2. Dismissal of appeal as time barred. 3. Dismissal of suit or appeal for want of evidence or proof. 4. Rejection of plaint for non-payment of court fees. 5. Granting or refusing to grant costs or installment. 6. Modification of scheme under section 92 of the code. 7. Order holding appeal not maintainable.	**Decision which are not decree.** 1. Dismissal of appeal for default. 2. Appointment of commissioner to take account. 3. Order of remand. 4. Order granting or refusing interim relief. 5. Return of plaint for presentation to proper court. 6. Dismissal of suit under order 23 rule 1. 7. Rejection of application for

8. Order holding that the right to sue does not survive. 9. Order holding that there is no cause of action. 10. Order refusing one of several reliefs.	condonation of delay. 8. Order holding an application to be maintainable. 9. Order refusing to set aside sale. 10. Order directing assessment of mesne profit.

2. JUDGMENT

Judgment: Defined u/s 2 (9) of the Civil Procedure Code. It means the statement given by the Judge on the grounds of a Decree or Order. Thus a judgment sets out the ground and the reason[1] for the Judge to have arrived at the decision. Judgment is the decision of a court of justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination. The judgment is the statement of the Court on the grounds for having arrived at a decision. A judgment must contain the following components:

a. A crisp statement of facts of the case;

b. The points or issues for determination;

c. The decision on such issues and finally;

d. The reasons for such a decision.

As the Supreme Court in ***Balraj Taneja* v. *Sunil Madan***[2]a judge cannot merely say suit decreed or suit dismissed. The whole process of reasoning has to be set out for deciding the case one way of the other. Even the small causes court needs to be intelligible.

[1] *Vidya Charan Shukla* v. *Khubchand Baghel,* AIR 1964 SC 1099.
[2] (1999) 8 SCC 396.

3. ORDER:

Order: Defined u/s 2 (14) of the Civil Procedure Code. It means the **formal expression of any** decision of the Civil Court which is not a decree. The starting point for an order need not always be a plaint, it may be an application or petition. Though being a formal expression, it follows that an order need notconclusively determine the rights of parties on any matter in dispute. However, it may relate to the matters in controversy.

4. FOREIGN COURT & FOREIGN JUDGMENT

Foreign Court: Section 2(5),CPC "Foreign Court" means a Court situated outside India and not established or continued by the authority of the Central Government[3];

Essential Ingredients to Qualify as Foreign Court

(a) Situated outside India
(b) It must not have established or continued by the State Government.
Eg. Privy Council was a foreign court.

Foreign Judgement: Section 2(6),CPC "**Foreign Judgment**" means the judgment of a foreign Court;

A judgment of a court which was a foreign court at the time of its pronouncement would not cease to be a foreign judgment due to acquisition of the territory by Union of India[4].

Mesne Profits: Section 2 (12) of the Civil Procedure Code,1908 has defined 'Mesne Profits' as thus: "*mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made but the person in wrongful possession*;

[3]*Lalji Raja & Sons* v. *Firm Hansraj Nathuram,* AIR 1971 SC 974.
[4]*Raj Rajendra Moloji Nar Singh* v. *Shankar Saran,* AIR 1962 SC 1737.

According to Section 2(12) a person becomes entitled to mesne profits only when he has right to obtain possession but another person whose occupation is unauthorized keeps him deprived of that possession. The main condition for passing mesne profits is unlawful possession of the occupant of the property. It is also known from this section that Mesne profits include interest on such profits. But, this definition explicitly excludes any profit earned due to improvement in the property made by the person in unlawful possession of such property.

Illustration no.1:-

A is in wrongful possession of B's house. He receives profits from such property. Such profits are known as 'Mesne Profits'. In this case, the profits actually received by A in wrongful possession of the property or the property which have been received from it, together with interest on such profits.

Illustration no. 2:-

A a trespassers, claims B's house and collects rents. This is Mesne Profits. He digs a bore-well in the land, constructs a group house and gives it for rent. The profits from well and newly constructed building are not Mesne Profits.

The Andhra Pradesh High Court in ***Mahant Narayana Dossajee Varu* v. *The Board Of Trustees***, it was held that under the express terms of the definition, mesne profits are profits received by a person in wrongful possession and they are made up of two items (i) profits received by him or might have been received by him with ordinary diligence and (i) interest on such profits. In ***Law of Damages & Compensation by Kameshwara Rao***, the learned author states that right to mesne profits presupposes a wrong whereas a right to rent proceeds on the basis that there is a contract. But there is an intermediate class of cases in which the possession though not wrongful in the beginning assumes a wrongful character when it is unauthorisedly retained and in such cases, the owner is not entitled to claim mesne profits but only the fair rent. (See *Union of India* v.*M/s Banwari Lal & Sons (P) Ltd*.)

Interest on mesne profits: Mesne profits includes interest on such profits and interest shall

be allowed when computing the mesne profits. The rate of interest payable is not fixed and it depends upon the discretion of the court subject to the limitation that it may not exceed 6% per annum. ***Sri Ramnik Vallabhdas Madhvani* v. *Taraben Pravin Lal Madhvani, (2004) 1 SCC 497; Lucy Kochuvareed* v. *P. Mariappa Gounder, AIR 1979 SC 1214; Gopal Krishna* v. *Meenakshi, AIR 1967 SC 155; Mahant Narayana* v. *Board of Trustee, AIR 1965 SC 1231; R.S.Madanappa* v. *Ramachandra, AIR 1965 SC 1812; Raja Bhupendra Narayan Singh Bahadur* v. *Maharaj Bahadur Singh, AIR 1952 SC 201.***

Affidavit: Affidavit under Section 139 of the CPC is a statement in writing, made before an officer of the court authorized to administer oaths. The person making the affidavits known as the deponent for he 'deposes' to the facts contained therein. For instance, interrogatories are answered by way of affidavit. Where a party is bound to disclose documents in answer to interrogatories, it is called affidavit of documents. A declaration of facts that have been reduced to writing and affirmed before an officer competent to administer oaths is an affidavit. Simply put, it is a declaration of facts drawn up in first person and states facts alone and not inference. An affidavit must contain only such facts that are known to the deponent or such information that he believes to be correct. Rule 3 of Order 19, CPC provides that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided the grounds for the same are state. Usually, a fact has to be proved by oral evidence as affidavits are not included in definition of evidence under Section 3 of IEA but a court may order that any fact may be proved by affidavit[5]. The court may do so of its own motion or on application of any party. The court may also, at the instance of either party, order attendance of the deponent for his cross-examination, unless he is exempted from personal appearance in Court. Affidavits are not included within the purview of the definition of "evidence" as has been given in Section 3 of the Evidence Act, and the same can be used as "evidence" only if, for sufficient reasons, the Court passes an order under Order XIX of the Code of Civil Procedure, 1908[6]. It is generally unsatisfactory to record a finding involving grave consequences with respect to a person, on the basis of affidavits and documents alone,

[5] *Savitramma* v. *Cecil Naronha,* AIR 1988 SC 1987.
[6] *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra & Ors.* (2013) 4 SCC 465.

without asking that person to submit to cross-examination[7]. Where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon[8]. Such view, stands fully affirmed particularly, in view of the amended provisions of Order XVIII, Rules 4 & 5 Code of Civil Procedure.

Plaint and Written Statement

Plaint (Order VII; Rule 1 to 17 read with Section 26 of CPC)

Order VII

Rule 1 to 8	Particulars in a plaint
Rule 10 to 10 B	Provides for return of plaint and appearance of parties;
Rule 11 to 13	Rejection of plaint
Rule 14 to 17	Relating to production of documents

A plaint is a statement of claim, a document by presentation of which the suit is instituted. The object is to state the grounds upon which the assistance of the court is sought by the plaintiff. Every plaint should contain: (**Rules 1-8**).

(a) **Name of the Court:** The name of the court in which the suit is brought;
(b) **Memo of Parties:** The name, description and place of residence on plaintiff as well as the defendant;
(c) **Statements of Special conditions:** If the plaintiff or defendant are minor or of unsound mind;
(d) **Cause of Action[9]:** The facts constituting the cause of action and when it arose;
(e) **Jurisdiction:** The fact showing that the court has jurisdiction;

[7] *Needle Industries (India) Ltd. and Ors.* v. *N.I.N.I.H. Ltd. & Ors.* AIR 1981 SC 1298.
[8] *Standard Chartered Bank* v. *Andhra Bank Financial Services Ltd. & Ors.* (2006) 6 SCC 94.
[9] *Cooke* v. *Gill* (1823)8 107 CP 107 at page 116.

(f) **Value of the Subject Matter:** A statement of the value of the subject-matter of the suit for the purpose of jurisdiction and court fees;

(g) **Relief:** The reliefs claimed by the plaintiff;

(h) **Suit if filed in Representative Capacity:** Facts showing plaintiff's valid interest in the subject matter, interests and liabilities of the defendant;

(i) **Set off:** Where the plaintiff has set-off a portion of his claim, the amount allowed or not or relinquished;

(j) **Amount:** Precise amount claimed if the suit is for recovery of money;

(k) **Immovable Property:** If the suit is for immovable property, sufficient description of the same;

(l) **Limitation:** Where the suit is time-barred, the grounds for the same.

(m) **Grounds for limitation**

(n) **The interest and liability** of the defendant in the subject matter.

Rejection of Plaint (Order 7 Rule 11 CPC)

The plaint shall be rejected in the following cases

(a)Where it does not disclose a cause of action – If the plaintiff does not disclose facts that give the plaintiff right to seek relief against defendant, the facts that are necessary to prove the damage caused to plaintiff10. The power to reject plaint on this ground shall be exercised only if the court comes to the conclusion that even if all the allegations set out in the plaint are proved, the plaintiff would not be entitled to any relief. In that case, the court will reject the plaint without issuing the summons to the defendants.The clever drafting would not insert cause of action in the plaint11.

(b) **Where the relief claimed is undervalued** and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so, the plaint would be rejected;

[10] *Abdulla Bin Ali* v, *Galappa*, (1985) 2 SCC 5.
[11] *ITC* v. *Debt Recovery Appellate Tribunal,* (1998) 2 SCC 70.

(c) **Where the plaint is insufficiently stamped:** Sometimes the relief claimed is properly valued but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so – If the plaint is insufficient stamp under court fees act and the plaintiff fails to supply the plaint with correct stamp value.

(d) **Where the suit appears from the statement in the plaint to be barred by any law**; Example when the plaint filed looks like to be barred by any statue and gives no right to plaintiff to file the suit and liable to rejected if the court accepts the plaint is barred by law.

(e) **Where it is not filed in duplicate** – In any suit a duplicate copy of the plaint has to be filed and when a duplicate copy of plaint is not filed, it is liable to be dismissed.

(f) **Where the suit is barred by law**– Where the plaint from standpoint of any law seems barred by any law, the court may reject the petition. The law for the purpose includes both statutory law and law as adjudicated by the court. For instance, where the suit is against the government and the notice required under section 80 has not been given, the plaint would be rejected under section 80 of the Code.

Provided that, the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

In *Kuldeep Singh Pathania vs. Bikram Singh Jarya (case citation)*: – Court held has held that for an Application under Order VII Rule 11 (a) of Code of Civil Procedure, only the pleadings of the plaintiff can be looked into and neither the Written Statement nor averments can be considered for enquiry.

Written Statement (Order VIII)

The code does not define the word "written statement". Ordinarily, it signifies reply[12] to the plaint. If the defendant, in his written statement denies the issues stated in plaint, the denial must be specific. The jurisdiction is based on the claims made in the plaint and not on the defense in written statement. A Written Statement made by the defendant or his representative, is the pleading of the defendant whereas he deals with every material fact alleged by the plaintiff. New facts are also added, if there are any from the side of the respondent. When there are more than one respondents, a common statement is drafted and signed by all of them. However if it is filed by one respondent, doesn't bind the rest of them. The defendant should produce a written statement within 30 days from date of service of summons on him. It can be extended upto 90 days[13], depending on the jurisdiction. Respondents are also bound to produce all the necessary documents in support of his defence, or claim for setoff or counterclaim, which are in his possession.

IMPORTANT CONCEPTS

1. Res Sub-Judice (Section 10)

"NoCourt shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court".

Explanation-*The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.*

[12]*Food Corporation of India* v. *Yadav Engineer & Contractor* (1982) 2 SCC 499 at page 509.
[13]*Kailash* v. *Nankhu*, (2005) 4 SCC 480.

The rule applies to the trial of the suit and not the institution of the suit. As the heading of the section says 'stay of suit', means no court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue with the previously instituted suit between the same parties and the court before which the previously instituted suit is pending is competent to grant the relief sought. The purpose of the section is to bring finality in the judgment and to avoid the contradictory/concurrent decisions by the two different court. As there is a very good possibility that in case when matter is simultaneously being decided by different courts of concurrent jurisdiction, the courts may come up with different decisions and then it will be very difficult to finalize which decisions to be abided by.

Section 10 however, does not take away the power of the court to examine the merits of the matter.[14]

Res judicata (Section 11)

Res Judicata is a phrase, which has been evolved from a Latin maxim, which stand for 'the thing that has been judged meaning there by that the issue before the court has already been decided by another court, between the same parties. It is the **rule of conclusiveness of a judgment** as to point decided either of fact or of law or of fact and law in every subsequent suit between the parties. Res Judicata as a concept is applicable both in case of Civil as well as Criminal legal system.

Once a final judgment has been announced in a lawsuit, the subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one, they would apply the Res Judicata doctrine 'to preserve the effect of the first judgment'. The doctrine of ***res judicata*** is well explained in the simplest possible manner by Das Gupta J. in ***Satyadhyan Ghoshal* v. *Deorjin Debi*[15]*:***

> *"The principle of res judicata is based on the need of giving finality to a judicial decision. What it says is once a res judicata, it shall not be adjudged again. Primarily it*

[14] *Pukhraj D. Jain* v. *G. GopalKrishna*, (2004) 7 SCC 25.
[15] AIR 1960 SC 941.

applies as between past litigation and future litigation. When a matter whether on question of fact or law, has been decided between two parties in one suit or proceeding and the decision, has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to the higher court or because the appeal was dismissed or no appeal lies, neither party will be allowed in future suit or proceeding between the same parties to canvass the matter again. ”

Explanation I:

The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II:

For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III:

The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV:

Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V:

Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI:

Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII:

The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII:

An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res Judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit in which such issue has been subsequently raised.

DOCTRINE OF RES JUDICATA IS BASED ON THREE LEGAL MAXIMS

(a) ***Nemo debet bis vexari pro una et eadem causa*** *(no man should be vexed twice for the same cause);*

(b) Interest reipublicae ut sit finis litium (*it is in the interest of the State that there should be an end to a litigation****); and***

(c) Res judicata pro veritate occipitur (*a judicial decision must be accepted as correct****)***

Illustration

(a) A files a petition in a High Court under article 226 of the Constitution for reinstatement in service and consequential benefits contending that an order of dismissal passed against him is illegal. The petition is dismissed. A cannot file fresh petition in the Supreme Court under

Article under 32 of the Constitution nor can institute a suit in a civil court as such petition or suit would be barred by res judicata.

(b) A, a partnership firm, filed a suit against B to recover Rs. 50,000/-. The suit was dismissed on the ground that it was not maintainable since the partnership was not registered a required by the provisions of the Indian Partnership Act, 1932. The firm was thereafter registered and a fresh suit was filed against B on the same cause of action. The suit was not barred by res judicata.

Restitution

The expression "***restitution***" has not been defined in the Code but its an act of restoring a thing to its proper owner. Restitution ordinarily means restoring anything which is unjustly taken from another. The doctrine of restitution essentially provides that on reversal of a decree an obligation is cast upon the party who has received an unjust benefit under such erroneous decree to make restitution to the party who has lost the same.The obligation starts immediately when the decree in question gets reversed and the party who suffered a loss must be put in the same position as he was in before the decree was passed.

Section 144 deals with restitution and provides that apart from passing such order for restitution, the court may also pass an order for damages, *mesne* profits, compensation, etc. This section is however not exhaustive as the power of the court to grant restitution is inherent and the same can be exercised whenever justice so demands[16]. This provision ought to be construed liberally as it is merely a rule of procedure which has been enacted to provide for speedy trial.

Restitution can be granted not only against the party but also his representatives but not against a surety. Restitution is to be granted by the court which passed such order or decree, which includes the court of first instance (where the decree has been reversed/varied by the appellate court or has been set aside) or where the court of first instance has ceased to exist or ceased to have jurisdiction, such court in which if the suit would have been instituted for the first time, such court would have had the jurisdiction to try the suit.

[16]*Kavita Trehan* v. *Balsara Hygiene Product Ltd.* (1994) 5 SCC 380.

If the application for restitution has been decided on merits, it shall operate as *res judicata.* The period of limitation for the same is 12 years starting from the date of the appellate decree or order as per Art 136 of the Limitation Act.The determination of a question as to restitution under Section 144 has been declared as being a decree under S.2(2) and is thus subject to appeal. Section 144(2) further provides that no separate suit shall be instituted for the purpose of obtaining restitution where the same could have been instituted under this section.

Who can apply for restitution?

(a) Party to decree or order varied or reversed.

(b) A trespasser cannot apply for restitution.

148A. Right to lodge a caveat.

The term "Caveat" is not defined under the Code and was added by way of 1976 Amendment Act. The word caveat means beware. Its caution or warning given by a party to the court not to take action or grant any relief to the applicant without notice or intimation being given to the party lodging the caveat and interested in objecting to such relief. The person lodging the caveat is called "**Caveator**". Where a caveat has been lodged, the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be, made. Where, after a caveat has been lodged, any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.Where a caveat has been lodged under sub-section, such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in has been made before the expiry of the said period. No form of Caveat has been specified in CPC. The caveat only lies where the Caveator is required to be heard before any order is made on the application filed or proposed to be filed.

Inherent Powers of Court

Section 148 to 153 B of the Code deals with inherent powers of the courts.Section 148 and 149 of the code provides for enlargement of time while section 151 provides for inherent powers. The inherent powers saved by Section 151 of the Code are not over the substantive rights, which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders.

Inherent Powers

(a) court can recall its own order;
(b) can set aside *ex parte* order;
(c) Can add, delete or transpose any party to a suit;
(d) Can set aside illegal orders or orders without jurisdiction;
(e) Can take notice of subsequent events;
(f) Can hold trial in camera;
(g) Can prohibit excessive publications of its events;
(h) Can extend time for payment of court fees;
(i) Can expunge remarks against judges;
(j) Can restore the suit and re-hear on merits.

Illustration

A files a suit against B for Rs 10,000/- in court X. The court passes a decree for Rs 10,000/- as prayed. The decree can be amended under this section.

INITIAL STEPS IN SUIT

JURISDICTION AND PLACE OF SUING (Section 15 to 22**)**

Section 15 to 20 of the Code regulates the forum for institution of suits. Section 15 **(*pecuniary jurisdiction*)** requires the plaintiff to file the suit in court of lowest grade.Its a rule of procedure and does not affect jurisdiction of the court. Section 16 to 18 deals with suits relating to immovable property.

(a) Recovery of immovable property;

(b) Partition of immovable property;

(c) Foreclosure, sale, redemption in case of mortgage of or charge upon immoveable property;

(d) Suits for determination of any other right to or interest in immovable property;

(e) Suits for tort of immovable property.

These suits are filed in local limits of jurisdiction of courts where the property is situated. If the property is located in multiple jurisdiction, then the filing as per section 17 of the code. Section 19 applies to compensation to wrong person or to moveable property. Section 20 is **residuary section** covering what is not covered by any other section. Section 22 of the Code provides for **transfer of a suit**.

"The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred". In Ganga Bai v. Vijai Kumar AIR 1974 SC 1126 para 15 , it has been held as follows:

"There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.

Jurisdiction

- Jurisdiction can neither be conferred by consent nor can be taken away. If the court has no inherent jurisdiction then neither acquiescence nor waiver cannot estoppel can create it.
- It is well settled that for deciding the jurisdiction of a civil court, the averments in plaint is material. In ***Abdullah Bin Ali* v. *Golappa***[17] where the plaintiff filed a suit for in the civil court for declaration of the title and for possession and mesne profits, treating the defendants as trespassers. The defendant contested on the ground of jurisdiction as

[17] (1985) 2 SCC 427.

he said he was tenant.

Pecuniary Jurisdiction: Pecuniary jurisdiction sets the pecuniary limits on the jurisdiction of a court.Every court is deemed to have a certain monetary limit of which it can entertain cases and decide. Districts courts, High courts etc. are given certain monetary limit and can entertain cases the valuation of which falls within their pecuniary jurisdiction. With changing time and scenario, the threshold pecuniary limits may also be changed. In the month of May 2018 an ordinance to widen the pecuniary jurisdiction of commercial courts was notified.

Territorial Jurisdiction: Jurisdiction is the circle or area in which a party has power to do something. Territorial jurisdiction is the territorial limit in which the law is applicable or the court has power to decide upon. Thus, the district court doesn't have the power to adjudicate its power beyond a particular district. The High Court has jurisdiction over the whole state and the apex court can entertain any suite in the territory of India. According to section 15 suit is to be instituted before the Court of lowest grade. By virtue of Section 16 suit in respect of immovable property may be instituted before the court within whose territorial jurisdiction the property is situate. For such suits, place where cause of action arises or where defendant resides etc. is wholly irrelevant

Subject Matter Jurisdiction: This means that certain courts are precluded from entertaining suits of particular nature. For example, a criminal court cannot deal with a case related to civil suit. Thus, a small cause court can try only such suits as a suit for money due on account of an oral loan or under a bond or promissory note, a suit for price of work done, etc., but it has no jurisdiction to try suits for specific performance of contracts for a dissolution of partnership. When the court has no jurisdiction over the subject matter of the suit it cannot decide any question on merits. It can simply decide the question of jurisdiction and coming to the conclusion that it had no jurisdiction over the matter had to return the plaint.

OBJECTION AS TO JURISDICTION

Objection as to local jurisdiction of a court can be waived and this principle has been

recognized by Section 21 of the Code.

BAR OF SUIT

Section 21 A inserted by way of Amendment Act of 1976, that no substantive suit can be filed to set aside a decree passed by a court on an objection as to place of suing.

INSTITUTION OF SUITS
(ORDER I, II AND III OF CPC)

ORDER I : PARTIES TO SUITS

Order I deals with parties to a suit. It contains who may be joined as parties to suit by way of- addition, deletion, substitution, joinder, misjoinder and non-joinder of parties and objection to mis joinder and non joinder. The court has power to order separate trial where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient. The provision for joinder of parties provided in Order I Rule 1 is meant to avoid multiplicity of proceedings and unnecessary expenses.

Illustrations

A enters into an agreement jointly with B and C to sell 100 tins of oil. A thereafter refuses to deliver the goods. Here both B and C have right to recover damages from A. The said right arises out of same transaction. Therefore they may file a suit jointly.

Section 9 provides for Misjoinder and nonjoinder according to it no suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it Provided that nothing in this rule shall apply to nonjoinder of a necessary party.

Section 13 provides that all objections on the ground of non- joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or

before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

REPRESENTATIVE SUITS

As a general rule, all persons interested in a suit ought to be joined as parties to it, so that matters involved in them may be finally adjudicated upon as the fresh litigations over the same matters may be avoided. Order I Rule 8 is an exception to general rule. Order 1 Rule 8 of the CPC requires all members to have common interest in the subject matter. Order 1 Rule 8 is an enabling provision and does not compel anyone to file a suit on behalf of other, if he has a right by himself.

ORDER II: FRAME OF THE SUIT

Every suit must include the whole of the Plaintiff's claim in respect of the cause of action and as far as practicable, all the matters in dispute between the parties be disposed off finally. Order 2 Rule 2 says that every suit in respect of the cause of action which he had omitted or intentionally omitted.

ORDER III : RECOGNIZED AGENTS AND PLEADERS Appearances, etc., may be in person, by recognized agent or by pleader. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be on his behalf.

The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a)persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the

appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

The process served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment. Every such appointment shall be filed in Court and shall, for the purposes deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.As authorizing service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred. Any process served on the pleader who has been duly appointed to act in Court for any party] or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if same had been given to or served on the party in person.Besides the recognized agents described, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

AMENDMENT OF PLEADINGS

A plaint is the first document that initiates the pleading and thus, a lawsuit.The Court may at any stage of the proceedings allow both the parties to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court

comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Ultimately, the courts exist for doing justice and they are empowered to grant amendments of pleadings in the larger interest of doing full and complete justice to parties The Rule confers a very wide discretion on courts in the matter of amendment of pleadings. As a general rule, leave to amend will be granted so as to enable the real question in issue between parties to be raised in pleadings, where the amendment will occasion no injury to the opposite party and can be sufficiently compensated for by costs or other terms to be imposed by the order.

Therefore the main points to be considered before a party is allowed to amend his pleading are: firstly, whether the amendment is necessary for determination of the real question in controversy; and secondly, can the amendment be allowed without injustice to the other side. Thus, it has been held that where amendment is sought to avoid multiplicity of suits, or where the parties in the plaint are wrongly described, or where some properties are omitted from the plaint by inadvertence, the amendment should be allowed.

In ***Ganga Bai* v. *Vijay Kumar***[18], the Supreme Court has rightly observed:"*The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court*". Leave to amend will be refused if it introduces a totally different, new and inconsistent case or changes the fundamental character of the suit or defence.

JUDGMENT V/S DECREE V/S ORDER

[18]1974 AIR 1126.

Decisions given by court of law are either decree or orders or Judgments. A Judgment is given in consequence of a decree and is pronounced by the court after hearing the case and can either be declaratory or executory. There are differences between order, decree and Judgment.

- Section 2(2) for decree
- Section 2(14) for order
- Section 2(9) for Judgment
- Order 20 Rule 1 to 6 for Decree and Judgment

Essentials of Decree:

Following are the essentials of a decree.

(1) The decree must have been expressed in a suit. Every suit is commenced by a plaint and where there is no civil suit there is no decree. Some proceedings commenced by an application are statutory suits that the decision is a decree.

(2) The decision must have been expressed on the rights of the parties with regard to all or any of the matters in controversy in the suit.

(3) The decision must be one which conclusively determines rights of the parties. Parties refer to persons, who are on the record as plaintiff and defendant.

(4) Regarding all or any of The Matter in Controversy: The adjudication determines the rights of parties must be with regard to all or any of the matter in controversy. It reference to the subject matter of the suit in dispute and the decision of the court may be with regard to even one matter in controversy.

(5) Conclusively Determines: The expression implies that the decision must be one which is complete and final as regards the court which passed it. The decree may conclusively determine the rights of parties although it does not completely dispose of the suit.

(6) Formal Expression: There must be formal expression of the suit adjudication. It should be precise and specify the relief granted or other determination of the suit and names and description of the parties.

Kinds of Decree: Decree may be classified into two kinds.

Declaratory Decree: It is not capable of execution. It merely declares the rights of the parties.
Executory Decree: Such decree is executed and enforceable by the court of Law.

Classes of Decree:

Following are the different classes of decree as contemplated by Sec 2(2) of C.P.C.

Preliminary Decree: A preliminary decree declares rights and obligations of the parties leaving further matters to be determined in subsequent proceedings and it is conclusive in nature.
Final Decree: A final decree is one which completely disposes of the suit so far as the court passing it is concerned.
Partly Preliminary and Partly Final Decree: A decree may be of such a kind which is final in part and partly preliminary.

Example: In a suit for recovery of possession of immovable property and rent the part of the decree, which directs delivery of possession of property is final, but the part directing an inquiry as to rent or profit is preliminary.

Section 2(2) declares that order rejecting a plaint is a decree, though there is no adjudication of the rights of the parties but by fiction of law, it is classed as decree.Determination of questions under certain provisions of C.P.C: By virtue of Sec 2(2) all orders made u/s 144 and u/r 60, 98, 99, 101 and 103 of order 21 are decrees.

Decrees do not include the Following:

By virtue of Section 2 (2), decree shall not include the following.

Appellate Orders: An adjudication, from which an appeal lies, as an appeal from an order, is not a decree. Example: Questions to be determined by the executing courts u/s 47 are orders. Dismissal

in Default: Order of dismissal of suit in default of appearance of non-prosecution is not decree. I.e. orders passed under order 9 or 17 of C.P.C.

Definition of Order u/s 2(14) of C.P.C: Order means the formal expression of any decision of a Civil Courts which is not a decree.

Essentials of Order:

(a) The expression, "decision" refers to judicial determination of facts in accordance with evidence.
(b) By Civil Court: Decision must be one of Civil Court and not of the administrative tribunal.
(c) Decision given by court must be formally expressed i.e. it must be in writing, precise and the language must be deliberate, so that the execution would be possible.
(d) The definition of order specifically excludes the decree from its ambit and as such any adjudication of court which is decree, cannot be an order at the same time.

Classes of Order:

Following are the two Kinds of order.

·Final Order
·Interlocutory Order

JUDGEMENT

Essentials of Judgment:

(a) A Judgment means the judicial decision of the court or Judge.
(b) It is only after the judge has reduced his decision into writing that a Judgment comes into existence. An oral pronouncement is not a Judgment.
(c) Every statement of judge will not be a Judgment but will be only if such decisions can result in a decree or an order. Findings recorded by trial court without referring to any evidence of the parties and without discussing its legal effect after conscious application

of mind would not withstand test of the word judgment as defined in section 2(a) of C.P.C.

Difference between Decree and Order

Following are the differences between Decree and Order.

NATURE	Every decree is and order, but every order is not a decree.
APPEAL	Ordinarily appeal lies from every decree, but order are appealable only, if provided by sec 104 read with order 43.
SECOND APPEAL	A second appeal may lie against decree, but a second appeal shall not lie against an order passed in appeal.
DETERMINATION OF RIGHTS	Decree conclusively determines the rights of the parties, but order does not necessarily conclusively determine the rights of the parties.
CLASSES	Decree is of five classes as provided u/s 2(2), while order may be of final or interlocutory.
	Decree cannot be emerged into an order, but every order in a case can be merge into a decree.

Difference between Decree, Order and Judgment

1.**Execution:** It is the decree or order which is capable of execution and not the Judgment.

2.**Form:** Decree and order always follow the Judgment while the Judgment contains the grounds of both decree and order.

3.**Superiority**: Judgment is superior in form and if decree or order is not in accordance with it, they may be altered.

4. **Appeal:** It is the decree or orders which is appealable and not the judgment.

5. **Kinds:** Decree and order has different kinds but that is not a case with the judgment.

ORDER IX : APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Parties to appear on day fixed in the summons for defendant to appear and answer on the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Courthouse in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed. Plaintiff may bring fresh suit or Court may restore suit to file. Dismissal of suit where plaintiff after summons returned unserved, fails for one mouth to apply for fresh summons. Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of one month from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that-

(a) he has failed after using his best endeavors to discover the residence of the defendant, who has not been served, or

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the time,

in which case the Court may extend the time for making such application for such period as it thinks fit.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit. Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then- When summons duly served- if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard *ex parte*; When summons not duly served- if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

When summons served but not in due time- if it is proved that the summons was served on the defendant, but not in sufficient time to enable him, to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing. appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed to his appearance.

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. No order shall be made under this rule unless notice of the application has been served on the opposite party.

Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit

to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants. Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively who do not appear.

Setting aside decree *ex parte* against defendant

In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit: Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may he set aside as against all or any of the other defendants also: Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.Explanation.-Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of an any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.

- No decree to be set aside without notice to opposite party

INTERIM ORDERS

ORDER XXVI : COMMISSIONS

Section 75 to 78 deal with powers of the court to issue commissions and detailed provision are contained in Order 26 of the Code. Cases in which Court may issue commission:

(a) to examine witness (Section 76-78; Order 26, Rule 1-8);

(b) to make local investigations (Order 26, Rule 9-10)

(c) to adjust accounts (Order 26, Rule 11-12);

(d) to make partition (Order 26, Rule 13-14);

(e) to hold investigation(Order 26, Rule 10A);

(f) to conduct sale(Order 26, Rule 10C);

(g)to perform ministerial act ((Order 26, Rule 10B);

Order 26 Rule 15 provides that the court may if it thinks fit, order the party requiring the commission to deposit necessary expenses within a fixed period. The report of local commissioner is a prima facie evidence and it cannot be rejected except on sufficient grounds[19].

INTERPLEADER SUIT

An interpleader suit is one in which the real controversy/dispute is not between the plaintiff and the defendant, but is rather between the defendants only, who inter-plead against each other. The hallmark of an interpleader suit is the fact that, in an interpleader suit, the plaintiff is not really interested in the subject-matter of the suit. The primary and the foremost object of an interpleader suit are to have the claims of rival defendants adjudicated, for, in an interpleader suit, there must

[19] Tushar Kanti vs. Savitri Devi (1996) 10 SCC 96

be some debt, or, some money, or, other property in dispute between the defendants only. The plaintiff in an interpleader suit must be in a position of impartiality/ non-arbitrariness.Section 88 of the Code of Civil Procedure, 1908, states that, where two or more persons claim adversely to one another some debt, sum of money or other property (moveable or immoveable) from another person, who in fact does not claim any interest in that sum of money or property except the cost or charges incurred by him in instituting an interpleader suit and/or safeguarding the property and is ready and willing to pay or deliver the sum of money or property to the rightful claimant, then, such another person can file an interpleader suit. The pre-condition for filing an interpleader suit is that- on the date of institution of an interpleader suit there must be no suit pending in which the rights of the rival claimants can be properly decided. An order dismissing an interpleader suit is appealable.

Arrest and Attachment before Arrest (Order XXXVIII)

Order XXXIX deals with the arrest before judgement and the grounds on which such can be made when at any stage of the suit on the satisfaction of the court either by affidavit or otherwise exists two situations. Firstly, that the defendant, with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him has absconded or left the local limits of the jurisdiction of the court or, is about to leave or abscond the local limits of the jurisdiction of the court or has disposed off or removed from the local limits of the jurisdiction of the court his property or any part thereof. Secondly, when the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution on any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance.

SUMMARY SUIT

APPLICABILITY: It is applicable to all suits and upon bills of exchange, hundies and promissory notes or the ones in which a Plaintiff seeks only to recover a debt or liquidated demand in money payable on a written contract, an enactment, where the sum to be recovered is

a fixed sum of money or in nature of any debt except penalty, a guarantee - in respect of a debt or liquidated demand.

Order 37 CPC is one of the best provisions in the hands of a proposed Plaintiff, wanting to institute a Civil Suit. Broadly it states as under:

Rule 1, Sub-Rule 2 makes it applicable to all suits upon bills of exchange, hundies and promissory notes or the ones in which a Plaintiff seeks only to recover a debt or liquidated demand in money payable on a written contract, an enactment, where the sum to be recovered is a fixed sum of money or in nature of any debt except penalty, a guarantee - in respect of a debt or liquidated demand.

Procedure for Filing the Summary Suit

A summary suit is instituted by presenting a plaint in the court.

Specific averment20-Suit to contain among others, a specific averment that the Suit is filed under this Order and no relief which does not fall within the ambit of this Rule is claimed.

Appearance of Defendant: Under Order 37, the procedure for appearance of Defendant is within 10 days from the service of the summons on him.

Summons for Judgment: After entering appearance, the Plaintiff serves on the Defendant summons for judgment within ten days from the date of service supported by an Affidavit; verifying the cause of action, amount claimed and that in his belief there is no defense to the suit.

Leave to Defend: Rule 2(6) states that in case the Defendant does not apply for a leave to defend, (a) the Plaintiff shall be entitled to judgment immediately or (b) the Court may direct the Defendant to give such security as it may deem fit. Rule 2(5) further states that the Defendant may within 10 days from service of such summons for judgment by Affidavit or otherwise disclose such facts as may be deemed sufficient to entitle him to defend, apply for leave to defend and it may be granted to him unconditionally or upon such terms as may appear to the

[20] Rule 2 requires an Order 37.

Court to be just. Further, the proviso indicates that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed do not indicate a substantial defense or that the defense is frivolous or vexatious. When the defendant appears, he is required to enter his appearance within 10 days of receipt of summons. On default of his appearance it is assumed that he has admitted the allegations made in the plaint and the plaintiff gets entitled to a final order granting him the sum as mentioned in the plaint along with interest at the specified date and costs if the Court thinks it appropriate. (Rule 2). Where the defendant enters an appearance, the plaintiff is required to serve on him the summons for judgment in Form no. "4A) accompanied with an affidavit verifying the cause of action and the amount which is claimed in the plaint, and a statement to the effect that there is no defense to the suit. The Court shall not refuse permission to the defendant to defend the suit unless it believes that the disclosure by the defendant does not show that he has any substantial defense to raise or that it is frivolous. Also, where the defendant admits part of the amount claimed by the plaintiff, then the court shall permit the defendant to defend only, when such admitted amount is deposited by the defendant in the court.

A summary suit is instituted by presenting a plaint in the court. Broadly it states:

a. It is applicable to all suits and upon bills of exchange, hundies and promissory notes or the ones in which a Plaintiff seeks only to recover a debt or liquidated demand in money payable on a written contract, an enactment, where the sum to be recovered is a fixed sum of money or in nature of any debt except penalty, a guarantee - in respect of a debt or liquidated demand.
b. Rule 2 requires an Order 37 Suit to contain among others, a specific averment that the Suit is filed under this Order and no relief which does not fall within the ambit of this Rule is claimed. Under Order 37, the procedure for appearance of Defendant is within 10 days from the service of the summons on him. After entering appearance, the Plaintiff serves on the Defendant summons for judgment within ten days from the date of service supported by an Affidavit; verifying the cause of action, amount claimed and that in his belief there is no defense to the suit.
c. Rule 2(6) states that in case the Defendant does not apply for a leave to defend, (a) the Plaintiff shall be entitled to judgment immediately or (b) the Court may direct the Defendant to give such security as it may deem fit.

d. Rule 2(5) further states that the Defendant may within 10 days from service of such summons for judgment by Affidavit or otherwise disclose such facts as may be deemed sufficient to entitle him to defend, apply for leave to defend and it may be granted to him unconditionally or upon such terms as may appear to the Court to be just. Further, the proviso indicates that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed do not indicate a substantial defense or that the defense is frivolous or vexatious.
e. When the defendant appears, he is required to enter his appearance within 10 days of receipt of summons. On default of his appearance it is assumed that he has admitted the allegations made in the plaint and the plaintiff gets entitled to a final order granting him the sum as mentioned in the plaint along with interest at the specified date and costs if the Court thinks it appropriate. (Rule 2)
f. Where the defendant enters an appearance, the plaintiff is required to serve on him the summons for judgment in Form no. "4A) accompanied with an affidavit verifying the cause of action and the amount which is claimed in the plaint, and a statement to the effect that there is no defense to the suit.
g. Then, the defendant may apply for leave to defend the suit within 10 days from the date of service of summons, disclosing by way of an affidavit, such facts which he believes to be sufficient to entitle him of the right to defend himself.
h. The Court shall not refuse permission to the defendant to defend the suit unless it believes that the disclosure by the defendant does not show that he has any substantial defense to raise or that it is frivolous.
i. Also, where the defendant admits part of the amount claimed by the plaintiff, then the court shall permit the defendant to defend only, when such admitted amount is deposited by the defendant in the court.

SUITS BY INDIGENT PERSONS

A person is an indigent person,-

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.
Where the plaintiff sued in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.
Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.If presented agent, Court may order applicant to be examined by commission be examined by a commission in the manner in which the examination of an absent witness may be taken.
The Court shall reject an application for permission to sue as an indigent person-

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not an indigent persons, or

(c) where he has, within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person:

Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person, or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter, or

(f) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.

Where the application is granted, the suit proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee [or fees payable for service of process] in respect of any petition, appointment of a pleader or other proceeding connected with the suit. The Court may, on the application of the defendant, or of the Government pleader, of which seven days clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn-
(a) if he is guilty of vexatious or improper conduct in the course of the suit;
(b) if it appears that his means are such that he ought not to continue to sue as an indigent person; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interested in such subject-matter.

Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person; such amount shall be recoverable by the State Government any party order by the decree to pay the same and shall be a first charge on the subject-matter of the suit. Where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismissed,-

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service or to present copies of the plaint or concise statement, or

(b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person.

Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person shall be recoverable by the State Government from the estate of the deceased plaintiff.

Refusal to allow applicant to sue as indigent person to bar subsequent application of like nature. An order refusing to allow the applicant top sue as indigent person shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right; Provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow, the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as an indigent person.

APPEAL, REFERENCE, REVISION

APPEAL

Any person who feels aggrieved by any decree or order of court can prefer an appeal in a superior court may prefer an appeal in a superior court, if the appeal is provided against any decree or order or may prefer review or revision to a High Court. Section 96 to 112 and Orders 41-45. First

Appeals: Section 96 to 99A, 107 Order 41. Second Appeal: Section 100-103, 107-108 and Order 42. Appeals from Orders: Section 104-108 and Order 43. Appeals by Indigent persons Order 42. Appeal to Supreme Court under Order 45. There is no definition of the word "appeal" in any statute. It can be defined as the judicial examination by a higher Court of a decision of an inferior Court. It is a legal proceeding by which a case is brought before a higher court for review of the decision of a lower court. Appeal is a process of re-examination by a higher court of the judgment, or the order or the decision made by a lower court in a suit or in a case. Appeal is the right of entering a superior court and invoking its aid and interposition to redress the error of the court below. It is a proceeding taken before a superior court for reversing or modifying the decision of an inferior court on ground of error. It is not an inherent or natural right[21]. An appeal is a continuation of suit[22].

REVISION

Section 115 of the Code empowers the High Court to entertain a revision. Revision is an act of examining again in order to remove any defect or grant relief against irregular or improper exercise or non-exercise of jurisdiction by a lower court. Revision is like re-working and re-writing. This jurisdiction is known as revisional jurisdiction. Section 115 of the CPC authorizes the High Court to satisfy itself on three matters:

a. That the order of the subordinate court is within jurisdiction;
b. That the case is one in which the court ought to exercise jurisdiction;
c. That in exercising jurisdiction the court has not acted illegally;

Revision means the action of revising, especially critical or careful examination or perusal with a view to correcting or improving. In Civil Procedure Code ("**CPC"**), the provisions relating to appeal are contained in Sections 96 to 112, while provisions relating to revision are contained in Section 115.

- Appeal is generally a legal right of a party, but revision depends on the discretion of the Court, due to which it cannot be claimed as a matter of right.
- In case of appeal, the appellant is heard by the court. But, it is not necessary in the case of a revision and the person filing the revision may not be formally heard.

[21] *Ganga Bai* v. *Vijay Kumar*, (1974) 2 SCC 393.
[22] *Garikpati Veeraya* v. *N. Subhaiya Chaudhary*, AIR 1957 SC 540.

- Under the Civil Procedure Code, an appeal lies to a superior court (which may not necessary be a High Court), while a revision application lies only to the High Court (under Section 115 of the Code).
- Appeal is required to be filed by a party to the proceedings, but revision can also be exercised *suo motu* by the higher court having the power of revision.
- Generally, revision is exercised against those orders which are not appealable.
- Generally, appeal involves rehearing on question of law as well as on facts of the case, whereas revision generally involves hearing only the question of law and this is not considered a rehearing.
- An appeal is considered to be a continuation of the original proceeding whereas revision is not the continuation of the original proceeding.

It is pertinent to point out that in the case of Hari Shanker v. Rao Girdhari Lal Chowdhury, AIR 1963 SC 698 : 1962 Supp (1) SCR 933, the Supreme Court highlighted the distinction between appeal and revision as under:

"The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior court so that it may satisfy itself that a particular case has been decided according to law."
Likewise, in Lachhman Dass v. Santokh Singh, (1995) 4 SCC 201, the Supreme Court held as under:

> *"…an appeal is a continuation of a suit or proceedings wherein the entire proceedings are again left open for consideration by the appellate authorities which has the power to review the entire evidence subject, of course, to the prescribed statutory limitations. But in the case of revision whatever powers the revisional authority may have, it has no power to reassess and re-appreciate the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision."*

In the case of ***State of Kerala* v. *K.M. Charia Abdullah & Co.*, (1965) 1 SCR 601, 604 : AIR 1965 SC 1585**, the Supreme Court observed as under:

"When the legislature confers a right of appeal in one case and a discretionary remedy of revision in another, it must be deemed to have created two jurisdictions different in scope and content. When it introduced the familiar concepts of appeal and revision, it is also reasonable to assume that the well-known distinction between these two jurisdictions was also accepted by the legislature. There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the Appellate Authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision."

REFERENCE

- Section 113 of the CPC empowers the subordinate court to state a case and refer the same to the High Court for reference.
- The right of reference however is conditions prescribed by Order 46 Rule 1 and unless they are fulfilled High Court cannot entertain a reference from a subordinate court.
- Only court can apply on application of the party or *suo moto* for the reference.
- As a rule cost of reference is the cost in the cause.

INJUNCTION

Section 94(c) and (e) of the Code of Civil Procedure,1908 contains provisions under which the Court may in order to prevent the ends of justice from being defeated to grant a temporary injunction or make such other interlocutory orders as may appears to the Court to be just and convenient. The procedure for seeking temporary injunction has been provided under O. 39 of the Code of Civil Procedure. However, an injunction being discretionary equitable relief cannot be granted when equally efficacious relief is obtainable in any other usual mode or proceeding.

Object of Temporary Injunction :

The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. ***Gujarat Bottling Co. Ltd.* v. *Coca Cola Company*,1995(5) SCC 545.**

Ingredients

It is well settled that for grant of temporary injunction three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss. In ***Dalpat Kumar* v. *Prahlad Singh*, AIR 1993 SC 276**, Hon'ble Apex Court explained these three factors as follows:-

[i] There is a serious disputed question to be tried in the court and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant.

[ii] The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at trial and

[iii] That the comparative hardship on mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it.

Prima facie case

Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily {*Prakash Singh*v.*State of Haryana* 2002 (4) Civil L.J. 71 (P.H.) }

Balance of Convenience

To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it.

Irreparable loss

There are many injuries incapable of being repaired but a court of equity does not regard them as 'irreparable'. Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Sometime the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury. A temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction (*Agricultural Produce Market Committee*v. *Girdharbhai Ramjibhai Chhaniyara* – AIR 1997 SC 2674)

Ad-Interim Injunctions

Ad-interim injunctions only reflects that court either passed order ex-parte or even if the defendant is present, he was not heard fully for want of pleading etc. In ***Morgan Stanley Mutual Fund* v. *Kartick Das* – (1994) 4 SCC 225,** it was observed as follows:-

- Where irreparable or extremely serious injury will be caused to the applicant, ex-parte order can be passed;
- The court shall examine the time when the plaintiff got notice of the act complained;
- If the plaintiff has acquiesced to the conduct of the respondent then ex-parte temporary injunction shall not be passed;
- The applicant shall be acting in utmost good faith; and
- Such an order shall be for a temporary period.

Status-quo

Status-quo and injunction are not identical, however, primary purpose of injunction is to preserve the matter in status-quo. Therefore, status-quo should not be granted where there is no prima facie case (*Nagorao* v. *Nagpur Improvement Trust*, AIR 2001 Bombay, 402). Generally, when

Court orders for status-quo, Court should specify the context in which or condition subject to which, such status quo direction is issued.

Cases where Injunction cannot be granted

An injunction cannot be granted to-

(a) restrain any person from prosecuting a judicial proceeding at the institution of the suit, in which injunction is sought, unless restraint is necessary to prevent multiplicity of proceeding.

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that, from which injunction is sought.

(c) to restrain any person from applying to any legislative body,

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter,

(e) to prevent the breach of a contract the performance of which could not be specifically enforced.

(f) to prevent on the ground of nuisance, and act of which it is not reasonably clear that it will be a nuisance.

(g) to prevent a continuing breach in which the plaintiff has acquiesced,

(h) when equally efficacious relief can be certainly be obtained by any other usual mode of proceeding except in case of breach of trust,

(I) when conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

(j) when the plaintiff has no personal interest in the matter.

CODE OF CRIMINAL PROCEDURE, 1973

INTRODUCTION

- Object and importance of the CrPC
- Functionaries under the CrPC
- Basic Concepts

Object and Importance of Criminal Procedure Code, 1973

The CRPC is an adjective law of procedure. The purpose of Code is to provide framework for trial, punishment and prosecution. The substantive law defines the rights, duties and liabilities of persons. The CRPC came into effect on April 1, 1974. The CRPC contains 484 sections and 37 chapters. CRPC does not affect any special law, local laws. CRPC provides the series of uniform courts throughout the territory of India. The CRPC provides for separation of judiciary from executive. Under CRPC, every person is entitled to free trial for hearing by an independent tribunal. CRPC lays down that all judicial magistrates work under the control of the High Court.

Functionaries under Cr.P.C

Police is not a functionary under the Code. It is governed by a separate Act- Indian Police Act, 1961. However, it provides for Public Prosecutor, Assistant Public Prosecutor as state counsels for trials. A crime is a wrong not only against an individual but is also against the society and state. It is because of this reason that the state, which represents the collective of people, participates in the criminal trial of an accused, specially if the crime is of cognizable nature. As per section 2(u), Public Prosecutor means any person appointed under Section 24 and includes any person acting under the directions of the public prosecutor. The public prosecutor has a practice experience of more than 7 years. Assistant Public Prosecutor is appointed under Section 25. As per Section 303, any person accused of an offence before a Criminal Court has a right to be defended by a pleader of his choice. Such pleaders are not in regular employment of the state and a paid remuneration by the accused person. Since, a qualified legal practitioner on behalf of the accused is essential for ensuring a fair trial, Section 304 provides that if the accused does not have means to hire a pleader, the court shall assign a pleader for him at state's expense.

Basic Concepts

1. **Bailable and Non-Bailable:** The Code has classified all offences into Bailable and non-bailable offences. According to Section 2 (a) of the Code, the "bailable offence" means an offence which is listed in the First schedule as bailable or which is bailable under any other law in force. However, it can be generally said that all bailable offences with imprisonment for more than 3 years are considered as non bailable. If a person accused of bailable offence is arrested without warrant he may be released on bail but if the offence

is non bailable then the person need not be released on bail as the same is not a matter of right.

2. Cognizable vs Non Cognizable Offence

BASIS FOR COMPARISON	**COGNIZABLE**	**NON COGNIZABLE**
MEANING	Police can take cognizance of crime on its own.	Police has no authority to arrest a person on its own.
ARREST	Can arrest without warrant	Arrest cannot be done without warrant.
APPROVAL OF COURT	Approval not required	Requires approval of the court for initiating investigation.
OFFENCE	Heinous	Less heinous
ILLUSTRATIONS	rape , murder	Forgery, cheating, assault, defamation
PETITION	FIR and complaint	Complaint only

3. Complaint: Complaint consist of petition to the magistrate of the allegations that crime has taken place. It has no prescribed format and it is made to Metropolitan Magistrate. The complaint does not include a police report. A police report also forms a complaint if after enquiry it forms a non cognizable report.

4. Charge: The prosecutor files the charge sheet containing the charges.Section 211-214 contains the content of a valid charge:

(a) It must contain the offence with which accused is charged.

(b) If the law gives any specific name to the offence it must be described by that name only.

(c) The law and section both needs to be mentioned.

(d) It has to be in writing.

(e) It must be in language of the court.

(f) It must state the place of offence and against whom it was committed.

(g) In describing the charge, the words used should be in tune with their meaning in law.

The form in which charge is to be framed is set out in Form No. 32 of the second schedule. A charge should be particular in its scope and particular of details. No finding sentence or order will be become invalid simply for reason that no charge was framed.

4. Police Report: The police report under Section 173 will contain the facts and conclusions drawn by police. Section 173, Cr.P.C. places a mandatory duty upon the Investigating Officer to place all detailed materials, both oral and documentary, before the Magistrate, so that he may consider the same and decide for himself whether it is a fit case for taking cognizance or not.

6. Investigation: Investigation consist of all the proceeding under CrPC for collection of evidence and includes proceeding to the spot and ascertaining the facts and circumstances of the case.

7. Inquiry: "Inquiry" according to the Code includes every inquiry other than a trial conducted under this Code, by a Magistrate or court. It relates to proceedings of Magistrates prior to trial. [Section 2 (g)].

ARREST, BAIL AND PRE-TRIAL PROCEEDINGS

- Arrest and rights of an arrested person.
- Provision for Bail under the Code.
- Process to compel appearance under the Code.
- Process to compel production of things under the Code.
- Conditions requisites for Initiation of Proceedings.

- Complaint to Magistrate.
- Commencement of Proceeding before Magistrate.

Arrest: There are two methods to secure attendance of the accused during the trial- either by procuring his attendance before his trial by way of either issuance of summon or warrant. A magistrate taking cognizance of an offence can issue a warrant for address. A warrant of arrest is a written order issued and signed by a magistrate and addressed to a police officer or some other person specifically named. Every warrant of arrest is issued by the court under the Code in writing, signed by the presiding officer of the court and shall bear the seal of the court. Every such warrant remains in force until the court that issues it cancels it or until it is executed. When a person against whom the warrant is issued is arrested, he shall be made over with warrant to the nearest police station who will cause him to be taken to the Magistrate having jurisdiction over the case.

Why arrest a person?

1. Arrest may not be necessary for securing the attendance but also for preventive measures-ex- convict, habitual offender and person committing a cognizable offence.
2. Arrest may be necessary to obtain the correct name and address of the person for obtaining name and address of the person committing non cognizable offence (Section 42).
3. A person obstructing the police officers discharge his duties is liable to arrest such person;
4. A person trying to escape the lawful custody can be arrested.

Rights of an Arrested Person

1. Right to Silence: The Justice Malimath Committee in its report was of the opinion that right to silence is very much needed in societies where anyone can be arbitrarily held guilty of any charge. As per the law of evidence, any statement or confession made to a police officer is not admissible in a court of law. Right to silence is mainly concerned about confession. The breaking of silence by the accused can be before a magistrate but should be voluntary and without any duress or inducement. As per Article 20(3) of Constitution of India guarantees every person has been given a right against self-incrimination, it states that any person who has been accused of any offence, shall not be compelled to be a witness against himself. The same was again reiterated by a decision of Supreme Court in the case of Nandini Satpathy v. P.L.Dani; wherein it was held that no one can forcibly extract statements from the accused and that the accused has the right to keep silent during the course of interrogation (investigation). The Supreme Court again in the year 2010, held that narco-analysis, brain mapping and lie detector test are in violation of Article 20(3) of the Constitution of India.

2. Right To Know The Grounds of Arrest: As per Section 50(1) of Cr.P.C., every person who is being arrested by any police officer, without any warrant, is entitled to know the full particulars of offence for which he is being arrested, and that the police officer is duty bound to tell the accused such particulars and cannot deny it. As per Section 55 of Cr.P.C., when any person is being arrested by any police officer, who is deputed by a senior police officer, then such subordinate officer shall before making such arrest, notify the person to be arrested the substance of the written order given by the senior police officer specifying the offence or other cause for which the arrest is to be made. If this provision is not complied with, then the arrest would be rendered illegal. If the person is being arrested under a warrant, then as per Section 75 of Cr.P.C, any person who is executing search warrant must notify the person to be arrested, the particulars of such warrant, or even show such warrant if needed. If the substance of the warrant is not notified, the arrest would be unlawful. The Constitution of India also confers this right as one of the fundamental rights. Article 22(2) of the constitution provides that “no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.”

3. Information Regarding The Right To Be Released On Bail : Any person who is to be arrested without a warrant and is not accused of a non-bailable offence has to be informed by the police officer that he is entitled to be released on bail on payment of the surety amount. This helps persons who are arrested for bailable offences and are not aware of their right to be released on bail.

4. Right To Be Taken Before A Magistrate Without Delay: Irrespective of the fact, that whether the arrest was made with or without a warrant, the person who is making such arrest has to bring the arrested person before a judicial officer without any unnecessary delay. Further, the arrested person has to be confined in police station only and nowhere else, before taking him to the Magistrate. Section 56 of Cr.P.C. states that-

"Person arrested to be taken before Magistrate or officer in charge of police station- A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station".

Section 76 of Cr.P.C. states that-

"Person arrested to be brought before Court without delay- The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person".

Further, it has been mentioned in the proviso of Section 76 that such delay shall not exceed 24 hours in any case. While calculating the time period of 24 hours, the time necessary for the journey is to be excluded. The same has been enumerated in the Constitution as a Fundamental Right under Article 22(2). This right has been created with a view to eliminate the possibility of police officials from extracting confessions or compelling a person to give information. If the

police officials fails to produce an arrested person before a magistrate within 24 hours of the arrest, the police officials shall be held guilty of wrongful detention.

6. Right To A Fair Trial: The Constitution under Article 14 guarantees the right to equality before the law. The Code of Criminal Procedure also provides that for a trial to be fair, it must be an open court trial. In some exceptional cases the trial may be held in camera.

7. Right To A Speedy Trial by the Constitution of India: The SC in the Hussainara Khatoon case has made it mandatory that the investigation in the trial must be conducted "as expeditiously as possible." In cases, wherein the maximum punishment that can be imposed is 2 years, once the accused is arrested, the investigation for the trial has to be completed within the period of six months or stopped on receiving an order from the Magistrate, unless the Magistrate receives and accepts, with his reasons in writing, that there is cause to extend the investigation.

8. Right To Consult A Legal Practitioner: Every person who is arrested has a right to consult a legal practitioner of his own choice. This has been enshrined as a fundamental right in Article 22(1) of the Constitution of India, which cannot be denied in any case. Section 50(3) of the Code also lays down that the person against whom proceedings are initiated has a right to be defended by a pleader of his choice. This starts begins as soon as the person is arrested. The consultation with the lawyer may be in the presence of police officer but not within his hearing.

9. Rights Of Free Legal Aid: The Supreme Court in the case of in ***Khatri(II) v. the State of Bihar*** has held that the state is under a constitutional obligation (implicit in Article 21) to provide free legal aid to an indigent accused person as is implicit in Article 21 of the Constitution . This right does not come into picture only at the time of trial but exists at the time when the accused is produced the first time before the magistrate, as also when remanded from time to time. The Supreme Court further states that failure on the part of the state to inform the accused of this right will vitiate the whole process of trial. Therefore, a duty is imposed on all magistrates and courts to inform the indigent accused of his right to get free legal aid.

10. Right To Be Examined By A Medical Practitioner: Section 54 of Cr.P.C:-

"Examination of arrested person by medical practitioner at the request of the arrested person- When a person who is arrested, whether on a charge or otherwise, 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 by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice."

D.K. Basu v. State of W.B, 1997 1 SCC 416: The Supreme Court in this case issued some guidelines which were required to be mandatorily followed in all cases of arrest or detention. The following are some of the important ones-

1. The person who is going to arrest any accused should bear accurate, visible, and clear identification along with their name tags with their designation.
2. The police officer who is arresting the arrestee must prepare a memo of arrest, and it should be attested by at least one person who may either be a family member of the arrestee or any other respectable person in the locality. The memo must contain the date and time of arrest and must also be countersigned by the arrestee.
3. If the person who has signed the memo of arrest is not a family member, relative or friend of the arrestee, then the arrestee is entitled to have one friend or relative being informed about his arrest as soon as possible.
4. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
5. Entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
6. The police officer should, on the request of arrestee, record at the time of his arrest major and minor injuries, if any, present on arrestee's body, after subjecting the arrestee to an examination. The "Inspection Memo" must be signed both by the

arrestee and the police official making such arrest, and one copy of that memo must be provided to the arrestee.

7. Copies of all the documents including the memo of arrest, referred to above, should be sent to illaqa Magistrate for his record.
8. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
9. The court also ordered that in every district and state headquarters, a police control room should be established, wherein every arrest which is being made must be reported by the police officer making such arrest within 12 hours of such arrest, and it should be displayed on a conspicuous notice board.

The Court also emphasized failure to fulfill the given requirements would render the concerned officer liable for contempt of court along with departmental actions, and such proceedings can be initiated in any High Court having the territorial jurisdiction over the matter.

PROVISION OF BAIL UNDER THE CODE

There is no definition of bail in the Code, although the terms "**bailable offence**" and "**non-bailable offence**" have been defined. (section 2 (a)). "Bail" has been defined in the Law Lexicon as security for the appearance of the accused person on giving which he is released pending trial or investigation ***Govind Prasad* v. *State of West Bengal,* 1975 Cri LJ 1249.**

The Code of Criminal Procedure, 1973 contains elaborate provisions relating to bails. Section 436 provides for the release on bail of a person accused of a bailable offense. When any person other than a person accused of a non- bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance. However, where a person has failed to comply with the conditions of the bail- bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court

or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

By Criminal Procedure (Amendment) Act, 2005 sub-section (1) Section 436 was amended to make a mandatory provision that if the arrested person is accused of a bailable offense is an indigent and cannot furnish surety, the courts shall release him on his execution of a bond without sureties. Legislature by Criminal Procedure (Amendment) Act, 2005 inserted Section 436A which lays down the maximum period for which an under trial prisoner can be detained.

Provisions, as to bail in case of non-bailable offence, is laid down in Section 437 of the code. This section gives the Court or a police officer power to release an accused on bail in a non-bailable case, unless there appear reasonable grounds that the accused has been guilty of an offence punishable with death or with imprisonment for life. But
(1) a person under the age of sixteen years
(2) a woman; or
(3) a sick or infirm person
may be released on bail even if the offence charged is punishable with death or imprisonment for life.

Anticipatory bail means bail in anticipation of an arrest. Any person who apprehends arrest under a non-bailable offence in India can apply for Anticipatory Bail under the provisions of section 438 of The Code of Criminal Procedure, 1973. It is basically bail before arrest. A person arrested cannot seek Anticipatory Bail, he would have to move for a regular bail. The words anticipatory bail is neither found in section 438. When a court grants anticipatory bail, what it does is to make an order that in the event of arrest, the person shall be released on bail.

In the landmark ***Gurbaksh Singh Sibbia case,*** the apex court opined that "*It is conceptualized on the idea of protecting personal liberty guaranteed under the Constitution of India*". This said, it is a discretionary power and is not a matter of right. The court would use the discretion according to the facts and circumstances of the case and under stipulated guidelines.

SECTION	NATURE OF BAIL	OFFENCE	COMPETENT AUTHORITY
436	Regular	**Bailable** Bail is a matter of right.	Subordinate court/police
437	Regular	**Non- Bailable** Bail is discretion	Subordinate court/police
438	Anticipatory	**Non-Bailable** Bail is discretion	Subordinate court/High Court
439	Regular	**Bailable/ Non-Bailable**	Subordinate court/High Court

Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be. Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition. If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge. For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency of fitness.

PROCESS TO COMPEL APPEARANCE AND THING UNDER THE CODE

Process is defined as any means which is used by court to compel appearance of a defendant before it. Following are the modes to compel appearance of a person by issuing:

- Summons
- Warrant of Arrest
- Proclamation for Person Absconding

Summon is a legal document issued from the office of court of Justice calling upon the person to whom it is directed to attend before a Judge or officer of court. When a legal action is taken against a person or when any person is required to appear in the court as a witness in a proceeding, summons are served to call such person and also to ensure that he is present on the given date of the proceedings. Every summon issued by the court under Section 61 of The Code of Criminal Procedure,1973 shall be:

- In writing
- In duplicate form
- Signed and sealed by the presiding officer of the court

It should mention the time and place of the rule directed and shall bear the seal of the court.Following persons can serve the summons as per Section 62 of The Code of Criminal Procedure,1973:

- Police Officer
- By an officer, subject to such rules as the State Govt. may prescribe.

The court may allow summons to be served personally by delivering or tendering to him one of the duplicates of the summons if any request is made by complainant or accused. Every person on whom summons is served shall sign a receipt on the back of the other duplicate as per required by the serving Officer. If service cannot be done as per Section 62, 63 and 64 the Serving Officer shall affix one of the duplicates of the summons to some conspicuous part of house or homestead where the person summoned resides ordinarily. After that Court will make such enquiries as it thinks fit upon which it may either declare that summons has been duly served or will order fresh service in a manner as it considers proper. Where a summons is to be served outside the local limits of jurisdiction of the court issuing it, service has to be affected by sending it in duplicate to the Magistrate within whose jurisdiction the person summoned resides.

As per Section 68 of The Code of Criminal Procedure,1973 the Officer who served the summons outside local jurisdiction needs to submit an affidavit regarding the fact that the summon was served if he is himself not present in the Court at the time of hearing. And also duplicate of summons endorsed as per manner provided under Section 62 or Section 64 will be admissible as evidence by the person to whom it was delivered or tendered. The affidavit may be attached to the duplicate of the summons and has to be returned to the Court.

Service of Summons to Witness by Post: According to Section 69 of The Code of Criminal Procedure,1973 Court directs a copy of summons which has to be served by registered post addressing to the witness at the place where he ordinarily resides or carries on his business or personally works for gain. Then witness has to sign an acknowledgement or endorsement has to be made by a postal employee that witness refused to take delivery of summons has been received. On this Court may declare summons has been duly served.

Warrant: It is the second method of securing attendance of a person by means of a warrant of arrest. The warrant is an order addressed to a certain person directing him to arrest the accused and to produce him before the court. It is executed by a Magistrate on good and legal ground only. Section 70 of The Code gives the essentials of a warrant of arrest. In order to be valid a warrant must fulfil the following requisites:

- It must be in writing;
- It must be signed by the presiding officer;
- It must bear the name and designation of the police officer or other person who is to execute it;
- It must give full particulars of the person to be arrested so as to identify him clearly;
- It must specify the offences charged; and
- It must be scaled.

Every warrant shall remain in force until it is cancelled by the court which issued it or until it is executed. A warrant of arrest does not become invalid on the expiry of the date fixed for return of the warrant.

Bailable Warrant: Section 71 of The Code of Criminal Procedure,1973 deals with bailable warrant and lays down that a warrant may contain a direction of the court that if the person to be arrested executes a bond with sufficient sureties for his attendance before the court at a specified time, the serving officer shall take such security and release him from custody. Such a bailable warrant shall also include the number of sureties, the bond amount and the time period during which the arrested person is supposed to attend the court and the officer to whom warrant is directed shall forward the bond to the court.

According to Section 72 of The Code of Criminal Procedure,1973- The warrants are to be directed to the following persons:

- To one or more Police Officer
- If no police officer is immediately available than the court may direct it to any other person or persons.

When warrant is directed to more officers or persons instead of one than it may be executed by all or by any one of them or more of them. The Following are the important contents of the warrant :

- Name of court
- Name of police officer
- Offence
- Place where offence has committed
- Seal of the court
- Signed by the presiding officer
- Name and Address of the accused

According to Section 74 a warrant can be executed by a Police Officer to whom it has been directed or may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom warrant was directed or endorsed. Section 75 deals with notification of the substance of the warrant and mandates every police officer (or any other officer) to notify the substance of the warrant to the person whom he or she is arresting. Failure on the officer's part would give the person sought to be arrested, the right of private defence and consequently any resistance offered by such person will not be punishable.

Section 76 stipulates that the person arrested must be brought before the Court(subject to provisions of Section 71 as to security) without unnecessary delay. As per the proviso it is clear that the delay, unless caused by extraneous circumstances, cannot be more than twenty-four hours from the place of arrest to the Magistrate's Court.

The provisions of Section 78 provides adequate safeguards to a person to be arrested so that he is not arrested without having a proper authority and applied his mind as to the legality of the warrant and authorized the arrest outside the jurisdiction of the Court which had issued the warrant. Such warrant is forwarded to the local authorities under whose jurisdiction it is to be executed instead of directing the warrant to a police officer.

Where a warrant under this section is issued, it should bear the name and description of the particular person intended to be arrested; otherwise it will not be a valid warrant.

It is obligatory for the issuing Court to forward warrant as well as substance of the information against the person to be arrested and also documents, if any. This will enable the Court to decide whether bail may or may not be granted before whom such person is produced.

Section 80 of The Code of Criminal Procedure,1973 states that the person shall be arrested and shall be taken to the Court who issued the warrant if the Court is within 30 kilometers of the place of arrest. Otherwise, the person shall be taken to the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was done or unless security has been taken under Section 71, then he has to be taken before such Magistrate or District Superintendent or Commissioner.

Section 81 of The Code of Criminal Procedure,1973 lays down the procedure to be followed by the Executing Magistrate before whom person arrested under a warrant is produced. It also states that once the arrested person is produced before the Magistrate, the Magistrate shall grant a bail to a person who is arrested for a bailable offence provided that the person is ready to provide the security. If the person is arrested for a non-bailable offence then the Magistrate may grant bail based on documents of the case.

Proclaimed Offender: If any Court has reason to believe that any person against whom a warrant of arrest has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation. Where a proclamation published is in respect of a person accused of certain specified heinous offences and such person fails to appear at the specified place and time required by the proclamation may pronounce him a 'Proclaimed Offender' under Section 82 of The Code of Criminal Procedure,1973. The Court may pronounce an absconder as a proclaimed offender if he is accused of any of the following offences:

- Murder; Culpable homicide not amounting to murder
- Kidnapping or abducting in order to murder; Kidnapping or abducting in order to subject person to grievous hurt, slavery etc.
- Committing theft after making preparation for death, hurt or restraint in order to commit the theft;
- Committing robbery or attempting to do so; Causing hurt in committing robbery; Committing dacoity/ dacoity with murder; Committing robbery/dacoity with attempt to cause death or grievous hurt;
- Attempting to commit robbery/dacoity when armed with deadly weapon; Preparing to commit or assembling to commit dacoity; Belonging to a gang of dacoits,
- Causing mischief by fire or explosive substance with intent to destroy house, etc.
- Committing house-trespass in order to commit offence punishable with death; Causing grievous hurt/death while committing lurking house-trespass or house-breaking; Being member of group that causes grievous hurt/death while committing lurking house-trespass or house-breaking by night.

Procedure of Proclamation are as follows:

- It shall be read publicly in conspicuous place of the town or village where such person resides ordinarily;
- It shall be affixed to some conspicuous part of the house or homestead where such person ordinarily resides or to some conspicuous place of such town or village.

- A copy shall also be affixed to some conspicuous part of the Court-house.
- Court can also direct if it thinks fit, a copy of Proclamation to be published in a daily newspaper circulating in the place where that person resides ordinarily.

The primary responsibility for securing the arrest of a proclaimed offender rests with the police of the station in which he is a resident. A Proclaimed Offender may, however, be arrested by any police officer without any order from a Magistrate and without a warrant. Any private person may arrest a Proclaimed Offender and hand him over without unnecessary delay to a police officer or to the nearest police station.

Whoever fails to appear at the specified place and the specified time as required by a proclamation by the Court is punishable with imprisonment for a term which may extend to 3 years or with fine or with both, and Where a declaration has been made by the Court pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to 7 years and shall also be liable to fine. s. 174-A Indian Penal Code. The Court issuing a proclamation may order the attachment of any property whether movable or immovable, or both belonging to the proclaimed person in order to compel his appearance before the Court under Section 83 of The Code of Criminal Procedure,1973. The Court will record it's reasons in writing.

Section 87 of The Code of Criminal Procedure,1973 empowers a Court to issue warrant in lieu of, or in addition to, summons. It provides: `A court is empowered in any case by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

- When Court sees reason to believe that person has been absconding or will not obey the summons then it will issue such summons either before or after but before the time fixed for his appearance.
- And if such person fails to appear and the summons is proved to have been duly served in time to admit his appearing and no reasonable excuse is offered for such failure.

Section 88 of The Code of Criminal Procedure,1973 empowers the Court to take bond for appearance. It lays down when an officer is present in a Court who is empowered to issue a

summons or warrant for arrest and appearance of any person. Such Officer is empowered to require such person to execute a bond with or without sureties for his appearance in such Court or any other Court where the case may be transferred for trial. Section 89 of The Code of Criminal Procedure,1973 states that when any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him. Section 89 has reference to the case of a person who is bound by a bond to appear in the court. It provides for a warrant only in case the person does not appear at the time when he is bound by the bond to appear; but it does not apply to a case where prior to the time for appearance, arrest by warrant is sought to be effected.

Pre-Trial Proceedings: The Code classifies all offences into summon or warrant case. Therefore, the procedure depends on the trial category of case. In summon case, summon is issued to the accused at first instance while in warrant case, warrant is issued. The cases in which the court is empowered to issue summons has power to issue warrant as well subject to certain conditions being fulfilled. Every summon is served by the Police officer or by the person prescribed by the State Government.

Initiation of Criminal Proceedings: Magistrate may proceed against an accused on the basis of a complaint of facts; or an information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed (section 190 CrPC). The criminal investigation process and prosecution mechanism in India, can be started in any of the following manner:

1. On complaint /reporting /knowledge of the commission of a cognizable offence, any police officer, even without the orders of a Magistrate, can investigate the cognizable case. [Section 156 (1) of the CrPC]
2. In case of failure or inaction of a police officer to investigate a cognizable offence, a criminal complaint can be filed before a Magistrate under Section 190 of CrPC, for taking cognizance of such offence, and on such complaint, the Magistrate himself can take cognizance of the case and do the enquiry, or in the alternative under Section 156 (3) of the CrPC, order Police to register an F.I.R and investigate the offence.

3. In case of non-cognizable offence, Police is not obliged to investigate, and the judicial process can be started by filing a criminal complaint before the competent court, under Section 190 of the CrPC.

It would be appropriate to describe, in brief, as to what a "complaint" is and what a "police report" is. Complaint is an allegation made to a magistrate with an intent that an action be taken against the offender. Complaint may be made orally or in writing. It does not include a police report. [section (2(d) CrPC]. Explanation to section 2(d) says that a report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

The explanation to section 2(d) should be read with section 155 of the Code. According to the section 155 a police officer cannot investigate into a non- cognizable offence without the order of the Magistrate. The information of the non-cognizable offence is entered into the Diary Book. When any police officer produces copy of the entry of diary regarding commission of non-cognizable offence and obtains permission of the Magistrate to investigate into the offence and submits report to the Magistrate that report disclosing after investigation the commission of a non-cognizable offence is referred to by the section 2(d) of CrPC to be deemed as complaint.

Complaint to Magistrate: According to the definition of section 2(d) of CrPC, the following are essential ingredients of a complaint:-

- It needs merely to be an oral or written allegation. So it need not be in any particular prescribed form. A telegram or a letter addressing to the Magistrate and containing that some person has committed an offence is sufficient to constitute a complaint.
- The complaint should contain a fact that some person, known or unknown, has committed an offence.
- It should be made to a Magistrate. Hence a report by the police or CBI to the Hon'ble High Court is not a complaint.
- The allegation must be made with a view to the Magistrate's taking action according to the CrPC. This taking action is not an administrative action.

- It is not compulsory that name of the accused should be mentioned.

In the case of *Sunil* v. *State of W.B.* [(1965) I CriLJ 630], Hon'ble High Court of Calcutta held that a protest petition challenging a report of enquiry or a final report of the police is a complaint. It must, however, contain all necessary facts which constitute an offence.

In the case of Mohd. Yousuf v. Smt. Afaq Jahan [Appeal (crl.) 2 of 2006], Hon'ble Supreme Court of India held that there is no particular format for a complaint. Nomenclature is also inconsequential. It has also been held in that case that a petition addressed to the Magistrate containing an allegation that an offence has been committed and ending with a prayer that the culprit be suitably dealt with is a complaint. It is not necessary to cite or quote particular section of the IPC or any statute defining or providing the offence.

When police submits a report, after investigating into a matter, that the investigation has disclosed commission of a cognizable offence, such report is called a police report. [Section 2(r) CrPC. However, when police submits a report, to the effect that investigation has disclosed commission of a non-cognizable offence such report is treated as a complaint and the police officer making the same is treated as a complainant section 2(d) of CrPC. Whenever police submits a report, after investigating into a matter, that investigation has disclosed commission of no offence at all, such report is generally called a final report.

TRIAL PROCEEDINGS

- Framing of Charge and Joinder of Charge.
- Jurisdiction of the Criminal Courts in Inquiries and Trials.
- Types of Trials.
- Judgment and Sentences under the Code.
- Submission of Sentences for Confirmation.
- General Provision as to Inquiries and Trials.
- Execution, Suspension, Remission and Commutation.

FRAMING OF CHARGE

If after perusal of the records and after hearing the parties, the court is of the opinion, that the offence has been committed, then it may proceed to frame the charge and transfer the case which is not exclusively triable by Court of Session to Chief Judicial Magistrate or Judicial Magistrate of First Class or Judicial Magistrate of Second Class. The framing of the charge is not a mere formality, but a judicial act to be performed by the Sessions Judge after applying his judicial mind to the consideration as to whether there is any ground for presuming that the accused had committed the Offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into, the materials brought on record by the prosecution has to be accepted as true at that stage. According to Section 228(2) of the Code of Criminal Procedure, where the judge frames any charge in writing against the accused when exclusively triable by the Court, the charge shall be read and explained to the accused and the accused shall be asked—whether he pleads guilty of the offence charged or claims to be tried.

Section 226 of the Code obliges the prosecution to describe the charge brought against the accused and to state by what evidence the guilt of the accused would be proved. The Next provisions enjoins on the Session Judge to decide whether there is sufficient ground to proceed against the accused. In so deciding the Judge has to consider-

(1) the record of the case and

(2) the documents produced therewith.

He has then to hear the submissions of the accused as well as the prosecution on the limited question whether there is sufficient ground to proceed.

TYPES OF TRIAL

Sec 190 of the CrPC specifically empowers a Magistrate to take cognizance of a case). It is the exclusive power of the Magistrate under Section 204 of the CrPC to refer or reject a case from entering the stage of trial. ‘Trial’ is the judicial adjudication of a person’s guilt or innocence. Under the CrPC, criminal trials have been categorized into four divisions having different procedures, called:

(a) Sec 225-237 deal with warrant cases by a court of Session.

(b) Sec 238-250 deal with warrant cases by magistrates.

(c) Sections 251-259 provides procedure for trial of summons cases by magistrates.

(d) Sections 260-265 make provisions relating to summary trials.

WARRANT CASE	**SUMMON CASES**	**SESSIONS CASE**	**SUMMARY TRIAL**
A warrant case relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The CrPC provides for two types of procedure for the trial of warrant cases triable by a magistrate, viz., those instituted upon a police report and those instituted upon complaint or on own information of magistrate.	*A summons case consists of all cases relating to offences punishable with imprisonment not exceeding two years.* *In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice", to the accused when the person appears in pursuance to the summons. The court has the power to convert a summons*	*In respect of offences punishable with death, life imprisonment or imprisonment for a term exceeding seven years, the trial is conducted in a Sessions court after being committed or forwarded to the court by a magistrate.*	*The high court may empower magistrates of first class to try certain offences in a summary way.* *Second class magistrates can summarily try an offence only if punishable only with a fine or imprisonment for a term not exceeding six months. In a summary trial, no sentence of imprisonment for a term exceeding three months can be passed in any conviction. The particulars of the*

	case into a warrant case, if the magistrate thinks that it is in the interest of justice.		*summary trial are entered in the record of the court. In every case tried summarily in which the accused does not plead guilty, the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.*
In respect of cases instituted on police report, it provides for the magistrate to discharge the accused upon consideration of the police report and documents sent with it. In respect of the cases instituted otherwise than on police report, the magistrate hears the prosecution and takes the evidence. If there is no case, the	*In warrant case if the Magistrate finds that the charge against the accused is groundless, he has power to discharge the accused by recording reasons. If the Magistrate has reason to believe that there is ground to proceed further, he then frame charges against accused which is read and explained and*	*In case of offence exclusively triable by a court of Session, the Magistrate may take cognizance if such an offence and commit the case to the court of Session for trial. A court of Session cannot directly take cognizance of offence triable by it. On appearance by the accused before Sessions Court, the Judge hears the*	*Summary and trial procedure:-Summary trial is a short-cut procedure of regular trial. Since risk is involved in short cut procedure, senior and experienced judicial officers are empowered to try certain petty cases. Though some offences under this summary trial procedure involved are warrant cases, but the*

accused is discharged. If the accused is not discharged, the magistrate holds regular trial after framing the charge, etc.	*thereafter asks accused whether he pleads guilty of offence or not. If the accused pleads guilty, the Magistrate may convict the accused and proceed further to question the accused about quantum of sentence. Thereafter awards sentence. If the accused pleads to be tried, the magistrate proceeds to examine the witnesses of prosecution, hearing of prosecution and examination of accused under Section 313(1)(b) CrPC follows. The accused shall also be called upon to enter defence and produce his witnesses if any.*	*public prosecutor regarding the case. If the Judge considers that there is no sufficient ground to proceed with, he can discharge the accused, otherwise he proceeds to frame charge and examines the accused about the charge. If the accused pleads guilty the judge convicts the accused and the question quantum of sentence and award sentence by way of judgment. If the accused wishes to be tried the Judge shall fix dates for examination of prosecution witnesses and shall hear prosecution arguments and then call upon accused personally to explain any circumstances*	*involvement of punishment in summary trial being only three months imprisonment, summons case procedure is followed at the trial. In this summary trial, the Magistrate shall record substance if evidence and a judgment of brief statement of reasons for the finding follows if the accused does not plead guilty. [2]*

		against him in evidence. If no case is made-out, the Judge shall record order of acquittal. If the Judge does not think it fit to acquit the accused, he shall thereupon ask the accused to enter on his defence. Accused can also file written statement explaining the circumstances of his involvement in the case. On hearing prosecution and accused, the Judge shall give a judgment. In case the accused is convicted, he shall be heard about quantum of sentence. Thereupon award of sentence follows. *Examination of Court Witnesses:-The court has power to examine any person, at any*	

		stage, as court witness in the ends of Justice.	
	Summons procedure:- In summons case, the accused is issued summons to appear or brought before the Magistrate. Then particulars of offence are stated and if the accused pleads guilty, he is convicted or otherwise trial follows. It shall not be necessary to frame charges in summons case		

Section 210 of the Code has introduced a new procedure to be followed when there is both a complaint case and police investigation in respect of the same offence. It provides that, in such a case, the Magistrate must stay all the proceedings in respect of the inquiry or trial in the complaint case, and call for a report on the matter from the Police Officer who is conducting the investigation. If a Report is made by the investigating Police Officer, and on such a Report, cognizance of any offence is taken by the Magistrate; the Magistrate must try the complaint case and the case arising out of the Police Report, as if both the cases were instituted on a Police Report. If, however, the Police Report does not relate to the accused in the complaint case or if the Magistrate does not take cognizance of any offence on the Police Report, he must proceed with the inquiry or trial stayed by him (as above) as per the provisions of the Code.

JUDGEMENT AND SENTENCES UNDER THE CODE

Judgment is written in the language of the court. It shall contain points of determination, reasons for the decision. It shall state the section of the IPC under which the accused is convicted and the punishment that he has to undergo. The cases in which the punishment is death- the judgment shall cite special reasons. The judgment in every trial court of original jurisdiction shall be pronounced immediately after termination of the trial and the sum and substance of the judgment be explained. The pronouncement of the judgment will happen in open court or may be after some subsequent time but the notice of the same to the parties or their pleaders has to be issued. The accused if in custody may be brought up at the time of pronouncement of the judgment. The judgment does not become invalid due to absence of any party from the court. The judgment is pronounced in the following ways:

(a) Delivering the whole judgment;
(b) Reading out the whole judgment;
(c) By reading out the operative part of the judgment and by explaining the substance of the judgment in the language of the accused or pleader.

When accused is given imprisonment, the copy of judgment is given free of cost immediately after pronouncement.

The punishment is not as per whims and fancies of the judge but follows the principle of proportionality in prescribing liability and according to culpability. For example, a murder committed due to deep seated mutual and personal rivalry may not call for imposition of death sentence. The main purpose of the sentence broadly stated is that the accused must realize that he has committed an act that law does not permit and is harmful to society at large and as to his own future. There is a greater emphasis that life imprisonment for a murder should be a rule and the capital punishment should be the exception[23]. The punishment under IPC is- simple, rigorous and fine. The capital punishment is also included under IPC. When a person is sentenced to death, then as per section 354 (5) of the IPC the judgment shall state that he be hanged till death by

[23] *Bachann Singh case*, (1980) 2SCC 684.

neck till dead. A scheme for victim compensation under section 357A CRPC is the recent amendment to compensate the victim.

EXECUTION OF SENTENCE

SENTENCES	EXECUTION
Death Sentence	The death sentence awarded by Court of Session is sent for confirmation to the High Court for confirmation. (Section 413)
Death Sentence to a pregnant women	The death sentence of a pregnant women is commuted to the life sentence. (Section 416)
Place of Imprisonment	Unless provided by law in force, state government can direct the place for confinement of the accused (Section 417(1)).
Prisoner to be confined to Jail	The warrant should be lodged with the Jailor (Section 420)
Warrant for levy of fine	Will be issued if the fine is part of sentence either of realization of the same by attachment and sale of the moveable property of the accused or by way or realization of arrears of land revenue from movable or immovable property.

Issuance of Warrant for Execution of Sentence or fine	It is done by the judge or magistrate or by officer in successor who has passed the sentence.

Commutation of Sentence: The appropriate Government may, without the consent of the person sentenced commute:

1. a sentence of death, for any other punishment provided by the Indian Penal Code;
2. a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
3. a sentence of rigorous imprisonment for simple imprisonment for any term to which that person might have been sentenced, or for fine;
4. a sentence of simple imprisonment, for fine.

MISCELLANEOUS

APPEALS

The term "appeal" has not been defined in the code.An appeal is a method of correction of manly error or solution of human frailty. Article 25 of the Constitution Of India guarantees life and liberty to every citizen, small or big, rich or poor, as one of the Fundamental Rights. It is therefore, necessary that a person aggrieved by an order of the court of the first instance may be able to challenge it by preferring an appeal. Chapter XXXIX (Section 372 – 394 of Cr.PC)- deals with the appeals. A right of Appeal is not a natural or inherent right. It is a statutory right and must be governed by the statute which grants it. Section 372 provides, no appeal lies except otherwise provided by the Code or by any other law for the time being in force. Under Articles 132, 134 and 136 of the Constitution of India, it may be possible to present an appeal to the Supreme Court against the order of acquittal passed by the High Court.

Section 373 – Applies to appeal from:

1. Orders requiring security for keeping peace or good behavior and
2. Against order refusing to accept or rejecting to accept or rejecting a surety under section 121.

The appeal lies to Court of Session, except, of course, in cases where under sub-s. (2) or (4) of S. 122, the proceedings are already laid before the Session Judge.

Section 374: Appeals from Convictions

Conviction on Trial By	**Appeal to**
High Court	Supreme Court
Session Judge or Additional Sessions Judge for a sentence of more than 7 years	High Court

While disposing of appeals from the sentences of the Sessions Court under this Section, the High Court should specify the reasons for rejection of appeal and should not reject it summarily. This will enable the Supreme Court to know the view of the High Court, in case the appellant moves the Supreme Court in appeal. An appeal from an order of acquittal must be filed within the period of limitation prescribed by Article 114 of the Schedule of the Limitation Act, 1963. For the extension of the period of limitation, and for exclusion of time in computing the period of limitation, Sections 5 and 12 of the Limitation Act, 1963 would be useful.

Section 375 and 376 bar appeals in certain cases, though a provision of Revision is maintainable. Thus no appeal shall lie-

- Where a High Court passes a sentence of imprisonment not exceeding six months or fine not exceeding one thousand rupees or both;
- Where a Court of Session or a Metropolitan Magistrate passes a sentence of imprisonment not exceeding three months or fine not exceeding two hundred rupees or both;
- Where a Magistrate of the First Class passes a sentence of fine not exceeding one hundred rupees; or

- Where in a summary case, a Magistrate passes a sentence of fine not exceeding two hundred rupees.

APPEAL FOR ENHANCEMENT OF SENTENCE

Section 377 confers right on the Government to file an appeal against the inadequacy of sentence awarded by any court other than a High court. If the sentence appears to be manifestly inadequate resulting in failure of justice, the appellate court can interfere with it and can enhance the sentence. But at the same time, the high court can also exercise its revisional jurisdiction, suo motto call for the record and enhance the sentence in appropriate cases after giving an opportunity to the accused.The appellate court must pass a speaking order for enhancing the sentence. An appeal under Section 377 must be filed by the State within a period of 60 days and the contention of the State that it was under a mistaken belief that period of limitation is ninety days would be no excuse for condonation of the delay.

APPEAL IN CASE OF ACQUITTAL

Under Articles 132, 134 and 136 of the Constitution of India, it may be possible to present an appeal to the Supreme Court against the order of acquittal passed by the High Court. An appeal from an order of acquittal must be filed within the period of limitation prescribed by Article 114 of the Schedule of the Limitation Act, 1963. For the extension of the period of limitation, and for exclusion of time in computing the period of limitation, Sections 5 and 12 of the Limitation Act, 1963 would be useful. Appeal against an order of acquittal is an extraordinary remedy. In exercising this power the High Court should give proper weight and consideration to "Very substantial and compelling reasons.

The Appellate Court must always give proper weight and consideration to the findings of the trial court. If two reasonable views can be reached – one that leads to acquittal, the other to conviction – the High Court's/appellate courts must rule in favour of the accused.

SECTION 379 – APPEAL AGAINST CONVICTION BY HIGH COURT IN CERTAIN CASES

Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

An appeal to would lie to the Supreme Court as a matter of right when High Court, on appeal,

1. Reversed an order of Acquittal of an accused person and
2. Convicted and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more.

In other cases appeal can be filed, if the High Court certifies that the case is a fit one for appeal to the Supreme Court. Only grave injustice manifest on record can induce the Supreme Court to interfere with the concurrent finding of guilt of Courts below. The Court would be slow in reversing the finding entered by the High Court unless there is a perverse and erroneous appreciation of evidence. If the High Court, for acquitting the accused has given certain tenable reasons, the Supreme Court would not be justified in interfering with such acquittal.The word "acquittal" doesn't mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offense.

SECTION 380- SPECIAL RIGHT OF APPEAL IN CERTAIN CASES

Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such person, all or any of the persons convicted at such trial shall have a right of appeal.

SECTION 383 – APPEAL FROM JAIL

Where a convict is in jail and intends to challenge his conviction, he can file an appeal from jail by presenting it to the officer in charge of the jail. It is the duty of the jail officer to forward such appeal to an appropriate court. No Jail Appeal can be dismissed without affording the reasonable opportunity to the appellate court of being heard.

POWERS OF APPELLATE COURT

Section 386 Of the Code specifies powers of the appellate court. It provides that after pursuing the record and after hearing the parties, the court may dismiss the appeal, allow the appeal or pass any other order that may appear to it be just and proper.

It includes appeal –

- Against Acquittal
- Against conviction
- For enhancement of sentence
- From other orders

Clause (d) of section 386 applies to all orders other than that of conviction, or of acquittal, or for enhancement of sentence. The power which the appellate court possess is of alteration or reversal of the order of the lower court. According to Section 386(e) of the Code, the appellate Court may make any amendment or any consequential or incidental order that may be just or proper.

REFERENCE AND REVISION

Where any Court is satisfied that a case pending before it involves a question as to the validity of any:

(a) Act,

(b) Ordinance or

(c) Regulation or

(d) of any provision contained in an Act, Ordinance or Regulation,

the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court under Reference.

Under section 395 of the CRPC, if any court is satisfied as to validity of any Act or ordinance or regulation and disposal of same is necessary for disposal of the case. As per Section 395(3) of the Code of Criminal Procedure, any Court making a reference to the High Court under Section 395 may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

The High Court or any Sessions Judge may call under revision for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the

purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

INHERENT POWERS OF COURT

The inherent powers cannot be invoked in respect of any matter covered by the specific provision of the Code. It cannot be also be invoked if its exercise would be inconsistent with any specific provision of this Code. It is important to note that it is only High Court which has been vested with inherent powers. The purpose of inherent jurisdiction is to prevent abuse of process of law to secure ends of justice. The word "process" has a very general meaning to include anything done by the court. The framers of the Code did not prescribes which all cases would be covered in the abuse, it is for the court to see when to exercise the process[24]. The Supreme Court of India has reiterated in ***Pepsi Food Ltd.* v. *Special Judicial Magistrate***[25] that " *The powers conferred to the High Court under article 226 and 227 of the Constitution and under 482 CrPC have no limit but more the power, more the cases and caution is to be exercised while invoking the power.*"

The illustrative list of the cases[26] as enumerated by the Supreme Court of India for exercise of the inherent powers is:

(a) Where the allegations in the FIR or complaint even if taken at their face value do not prima facie constitute any offence against the accused.

(b) Where the allegations in the FIR or any other materials do not constitute a cognisable offence justifying the investigation by the police under section 156 (1) of the Code except under the order of the Magistrate within the purview of the Section 155 (2).

[24] *State of Orissa* v. *Saroj Kumar Sahoo*, (2006) 2 SCC (Crim) 272.
[25] (1998) 5 SCC 749.
[26] *State of Haryana* v. *Bhajan Lal*, 1992 SCC (Cri) 426.

(c) Where the allegations in the FIR/complaint do not constitute any cognizable offence but a non cognizable offence to which no investigation is permitted by the police without the order of the magistrate under section 155 (2).

(d) Where the uncontroverted allegations in the FIR/Complaint and the evidence collected there on do not disclose any commission of offence.

(e) Where the allegations are so absurd or inherently improbable on the basis of which no inherent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(f) Where there is an express legal bar engrafted in any of the provisions of the Code or the Statute concerned (under which the proceeding is instituted) to the institution and continuance of the proceedings and or where there is a specific provision in the code or in the statute concerned, providing efficacious redress for the governance of the aggrieved party.

(g) Where the criminal proceeding is manifestly attended with a *malifide* or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite hum due to a private and personal vengeance.

Relief under section 482 of the Code is not barred by any limitation since the power is conferred to secure the ends of the justice. Further it has been categorically declared by the Supreme Court that subordinate courts do not have inherent powers.[27]

TRANSFER OF CRIMINAL CASES

CRPC has provided for transfer of criminal cases under Section 406 CRPC. For exercising power under section 406 CRPC, either Attorney General of India or Advocate General of India

[27] *A.S Guarya* v. *S.N. Thakur,* (1986) 2 SCC 709.

or party interested can approach the Supreme Court of India. In ***Abdul Nazeer Madani v. State of Tamil Nadu***[28]***:***

(a) The purpose of criminal trial is to dispense fair and impartial justice, uninfluenced by extraneous conditions;

(b) The apprehension that the party will not get fair and impartial trial should be real.

(c) Convenience of parties can be a real ground for transfer of case;

(d) Speedy trial can also be ground for transfer of case;

- Surbhi Aggarwal
(Founder & CEO, School of Legal Education)

Thankyou

[28] AIR 2008 SC P 2293.