UNIT 7  BASIC ELEMENTS OF CRIMINAL PROCEDURE CODE (CrPC)

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7.1  INTRODUCTION

The Code of Criminal Procedure is mainly an adjective law of Procedure. The purpose of the code is to provide machinery for prosecution, trial and punishment of offenders under the substantive criminal law, i.e., Indian Penal Code and other law passed by the State from time to time. The substantive law defines the rights, duties and liabilities of the persons. The rules of procedure as provided by the Code of Criminal Procedure are meant to regulate the procedure in the courts. The Code of Criminal Procedure, 1973 came into effect from April 01, 1974, (hereinafter known as the CrPC). The Important objectives of the Code of Criminal Procedure are: to provide an opportunity to the accused person to get a fair trial in accordance with the principles of natural justice and to make an effort to prevent delay in investigation and trial to ensure fair justice. Further, CrPC also provides a detailed scheme for working of various functionaries of the state to help and assist the administration of Criminal Justice in India.

7.2  OBJECTIVES

After reading this unit, you should be able to:

- study the basic principles of Criminal Procedure in India;
• explain basic legal terms under the Code of Criminal Procedure;
• explain the Constitution of Criminal Courts in India;
• examine the role of the police and other authorities in the investigation;
• study the rights of the accused person in a fair trial process; and
• examine the procedure in respect of investigation, trial and punishment.

7.3 SALIENT FEATURES OF THE CODE OF CRIMINAL PROCEDURE, 1973

The CrPC contains 484 Sections and XXXVII Chapters. The CrPC describes that all offences in Indian Penal Code 1860 shall be investigated, inquired into, tried unless it is otherwise dealt. However, CrPC does not affect any special law, local law or any special jurisdiction or power or procedure provided in any other law. Some of the basic features of CrPC are discussed below.

• **Organisation of Criminal Courts:** The CrPC provides a uniform set of criminal courts throughout the territory of India by conferring jurisdiction, powers and functions. The CrPC mandates separation of judiciary from the executive, which enables the state to work with independently and impartially without interference of any other organs of the State.

• **Fair Trial:** Under CrPC every person is entitled to fair trial and hearing by an independent and impartial Tribunal. The accused is presumed to be innocent, until the charges are proved. The accused has right to be represented by his counsel. Further, the accused has a right to cross-examine the witnesses of the opposite party.

• **Protection to the accused person:** Special provisions have been made to protect the interest of the accused person. The Supreme Court also gave some important guidelines with respect to the rights of the accused person in *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

• **Special Provision for the protection of the accused person:** Free legal aid provision is made if the accused person is poor and cannot afford the costs of the litigation. In petty cases the accused can even plead guilty by post and send the amount of fine specified in the summons to the court, therefore he need not appear before the court.

• **Judicial Magistrates are under the control of High Courts:** All Judicial Magistrates shall work under the control of High Courts of the respective states. The Judicial Magistrates in Metropolitan cities are named as Metropolitan Magistrates. The CrPC abolished the appointing of honorary Magistrates and Justices of peace.

• **Trial Procedure:** Procedure for trial of summary cases shall be the same as that for summons cases except where it is provided otherwise. The Court of Sessions also have been given power to exercise the revisional jurisdiction in addition to the High Courts. An appeal by the state against the order of the acquittal can be filed only after obtaining the leave of the High Court. In case of adjournments, costs may be awarded against the party seeking adjournment including the prosecution.
• **Duty of the Police:** If the police officer refuses to record information about commission of the crime the aggrieved person does have a right to send the information by post to the superintendent of the police.

Please answer the following Self Assessment Question.

<table>
<thead>
<tr>
<th>Self Assessment Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) a) All Judicial Magistrates shall work under.................................. of the respective State.</td>
</tr>
<tr>
<td>b) If the police refuses to record the information the accused person has a right to send the information by post to ..................</td>
</tr>
</tbody>
</table>

### 7.4 BASIC LEGAL TERMS

- **First Information Report (FIR):** FIR is an important document and evidence in criminal proceedings. The investigation proceeds on the basis of First Information Report in a court. Legally speaking, the information given to a police officer and reduced to writing as required by Section 154 of CrPC, is known as First Information.

- **Station House Officer or Officer-in-charge of a police station:** The Officer-in-charge of a police station is an important person in the investigation process. In his absence the police officer present at the station, who is the next in rank to him is called officer-in-charge.

- **Complaint:** Any allegation made orally or in writing to a Magistrate with a view to, his taking action under the CrPC. However, the police report does not come under complaint.

- **Bail:** Security for the appearance of the accused person on giving which is released from pending Trial or investigation. The main object of the bail is to release the accused from lawful custody. Bail is granted when the court is of the opinion that the accused person may not abscond and present in the court as and when required by the court.

- **Anticipatory Bail:** Bail granted before the accused is being arrested. If the accused feels that he is going to be arrested on false or baseless allegations he may apply for anticipatory bail.

- **Bailable Offence:** means an offence which is shown as bailable in the First Schedule of the CrPC or in any other law for the time being in force. And non-bailable offences means any other offence.

- **Warrant and Summons cases:** Warrant case means a case relating to an offence punishable with death sentence or imprisonment for life or imprisonment for a term exceeding 2 years. Summons case means a case relating to an offence, and not being a warrant case.

- **Cognizable and Non-cognizable offence:** An offence for which, a police officer may in accordance with the First schedule of the CrPC or under any other law for the time being in force, arrest with a warrant. Whereas in non-cognizable offence police officer has no authority to arrest without a warrant.

- **Inquiry, Investigation and inquest:** An inquiry in a trial is conducted by a Magistrate or a court, and investigation is conducted by a police officer or
any other person for collection of evidence, whereas an inquest (Investigation) is done by the police officer to ascertain the cause of death in a suicide, or suspicious death cases.

- **Police Station**: means any post or place declared generally or specially by the State Government, to be a police station and includes any local area specified by the state government for the purpose of CrPC.

- **Public Prosecutor**: A public prosecutor represents the State in whose name the prosecution is conducted. The public prosecutor must discharge his duties fairly, fearlessly and with full sense of responsibility. His duty is to assist the court in discovering the truth. According to CrPC public prosecutors, Additional Public prosecutors and Assistant public prosecutors may be appointed by the State and Central Governments as per the requirements of the High Court, Sessions Courts, and Magistrate Courts.

### 7.5 CONSTITUTION OF CRIMINAL COURTS — JURISDICTION AND POWERS

(Sections 6 to 40)

The Indian Constitution has provided an integrated and unified judicial system. Supreme Court and High Courts have been created as constitutional courts with jurisdiction, powers and functions. The Criminal Courts discharge their functions under the provisions of CrPC. The High Courts have been vested with power of superintendence over all Courts and Tribunals within the State concerned. The Code outlines detailed provisions for the constitution of Criminal Courts such as Court of Sessions, Judicial Magistrates of First Class, Metropolitan Magistrates for Metropolitan areas, Judicial Magistrates of Second Class and Executive Magistrates. The hierarchy of courts in India is seen as under:

**HIERARCHY OF COURTS IN INDIA**

- Supreme Court
- High Court
- Sessions Court/District Court
- Additional Sessions/District Courts
- Assistant Session Court
- Court of Senior Civil Judge
- Metropolitan Magistrate Court/Judicial
  - First Class Magistrate
  - Court of Junior Civil Judge
- Second Class Magistrate
Basic Elements of Criminal Procedure Code (CrPC)

Powers of the Courts: The High Court or Courts of Session, Judicial Magistrates, Metropolitan Magistrates and the Executive Magistrates are given a number of powers to try, punish and pass sentence. The CrPC also imposes duty on the police and members of the society to assist the Magistrates in prevention of crimes and arrest of persons. The following table shows the powers of the respective courts to grant punishment.

<table>
<thead>
<tr>
<th>Name of the Court</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>Any punishment</td>
</tr>
<tr>
<td>High Court</td>
<td>Any punishment</td>
</tr>
<tr>
<td>Sessions and District Judge</td>
<td>Death sentence, life imprisonment (to be ratified by HC) and fine</td>
</tr>
<tr>
<td>Additional Session Judge</td>
<td>Death sentence, life imprisonment (to be ratified by HC) and fine</td>
</tr>
<tr>
<td>Assistant Session Judge</td>
<td>Ten years imprisonment and fine</td>
</tr>
<tr>
<td>Chief Judicial Magistrate</td>
<td>Seven years imprisonment and fine</td>
</tr>
<tr>
<td>Additional Chief Judicial Magistrate</td>
<td>Seven years imprisonment and fine</td>
</tr>
<tr>
<td>Chief Metropolitan Magistrate</td>
<td>Seven years imprisonment and fine</td>
</tr>
<tr>
<td>Addl Chief Metropolitan Magistrate</td>
<td>Seven years imprisonment and fine</td>
</tr>
<tr>
<td>Judicial Magistrate First Class</td>
<td>Three years imprisonment and fine</td>
</tr>
<tr>
<td>Metropolitan Magistrate</td>
<td>Three years imprisonment and fine upto Rs.5000/-</td>
</tr>
<tr>
<td>Judicial Magistrate Second Class</td>
<td>One year imprisonment and fine upto Rs.1000/-</td>
</tr>
<tr>
<td>Special Judicial Magistrate</td>
<td>One year imprisonment and fine upto Rs.1000/-</td>
</tr>
</tbody>
</table>

HIERARCHY OF EXECUTIVE MAGISTRATES

District Magistrate (Collector)
Additional District Magistrate (J.C.)
Sub-Divisional Magistrate (RDO)
Executive Magistrate (MRO)

7.6 ARREST OF PERSONS (SECTIONS 41-60)

Arrest means deprivation of a person’s freedom by legal authority. Arrest may be by touch or confining the body of a person and if he resists, the police can also use all means of legal force to effect the arrest. Technically, speaking arrest is a form of state constraint applied to a person, during which the person is placed under detention, is imprisoned and is deprived of his right to move freely. Arrest can be made with or without warrant. Article 21 of Indian Constitution speaks that, “No person shall be deprived of personal liberty except according to the procedure established by law”. Therefore, the State, Courts and Police should
take every care with regard to arrest of a person. The rights of the arrested person under the Constitution, CrPC and other laws have been mentioned hereafter:

- Right to be informed the grounds of arrest.
- Right to be defended by a lawyer of his own choice.
- Right to be produced before a Magistrate.
- No detention beyond 24 hours without the authority of law.
- Right to know about the charges and see the contents of the warrant.
- Right to Medical examination in deserving cases.
- Right to have a woman police if the arrested person is a women.
- Duty of the police to follow the guidelines given by the supreme Court in D.K.Basu’s case.

**Power of the police to arrest a person without warrant**: The police officer may arrest a person without an order from a Magistrate under the following circumstances:

- A person concerned in any cognizable offence.
- A person is in the process of house-braking.
- A person is in possession of stolen property.
- A person who obstructs a police officer in the discharge of his duties.
- A person who is declared as deserter from armed forces.
- A person who commits non-cognizable offence in the presence of police and refuses to give his name and address.

**Power of a private individual to arrest the accused**: The law permits even a private person to arrest the accused, if the accused commits any non-bailable and cognizable offence in his presence. He shall without any delay make over such person to a police officer, in such cases the police officer can re-arrest him.

**Power of the Magistrate to arrest**: The Judicial Magistrate and the Executive Magistrate are empowered to arrest a person or authorise any person to arrest the accused in the following circumstances:

- Any offence committed in his presence.
- Any person against whom the warrant can be issued.

### Self Assessment Question

2) What does “arrest” mean?

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The procedure is laid down in CrPC to compel the attendance of the persons including the accused and witnesses by issuing of summons, arrest warrant or in case of absconding, declaring such person as proclaimed offender and attaching his properties.

- **Summons and How to serve:** Summons are issued for the purpose of appearance or for production of document or thing. Every summon issued by a court shall be in writing, in duplicate, signed by the presiding officer of the court and shall bear the seal of the court. Every summon should be served by a police officer personally on the person summoned by delivering a copy of summons after taking a signature on the duplicate copy, when a person summoned is not present such summons may be served on some adult member of the family. In case of a corporate body it may be served to the secretary, local manager or to the principal officer of the corporation. In case the above mentioned persons are not available for serving of summons the copy of the summon shall be affixed to the out door of the house in which the person summoned ordinarily resides. Where the person is summoned is a government servant summons could be served through his employer.

- **Warrant of arrest and How to Issue:** An arrest warrant is a written order issued by a judge or other proper judicial officer, upon probable cause, directing the police to arrest a particular person. Where a person has been concerned in a non-cognizable offence he cannot (except in certain cases) be arrested without a warrant. Every warrant of arrest issued by a court should be in writing and must contain the signature of the preceding officer, name of the person who is to execute, name of the person to be arrested and seal of the court. Every warrant shall remain in force until it is cancelled by the court or until it is executed. Court may in its discretion make an endorsement on warrant for the release of the person after executing a bond with sufficient sureties. Every warrant issued by any Magistrate in India may be executed in any place in India or it may be forwarded for execution outside its jurisdiction to any Executive Magistrate or District Superintendent of police or Commissioner of police within the local limits of whose jurisdiction it is to be executed.

- **Proclamation of Offender and the attachment of properties:** Where a person against whom a warrant has been issued has been absconding or is concealing himself so that such warrant cannot be executed, court may be publish a written notice requiring him to appear at specified place and at specified time not less than 30 days from the date of publishing such proclamation. After issuing of such proclamation if he fails to comply and has been avoiding his arrest the court may issue an order for the attachment of the properties of the person absconding. The purpose and the object are to compel the appearance of the person.

- **Warrant in lieu of summons:** when any person who is bound by any bond to appear before the court, does not appear, the presiding officer may issue a warrant directing that such person be arrested and produced before him.
7.8 PROCESS OF PRODUCTION OF THINGS  
(SECTIONS 91-105)

The court needs certain documents, materials and things because they are necessary as evidences. This can be secured by issue of summons or by search warrants.

- When will a search warrant be issued?

A search warrant is a written order to a police officer or any other person a competent authority such as a Magistrate or Court for search of any places either generally or for specified things or documents or persons wrongfully detained. According to CrPC, a search warrant can be issued in the following circumstances:

- Where the court has reason to believe that the person summoned to produce a document or thing will not produce it
- Relevant document not known to the court and is in possession of any person
- Where a general inspection or search is necessary
- Search of a place suspected, which contains stolen property or forged documents
- Search for persons wrongfully confined
- Power to compel restoration of unlawful detention of women or female child
- Search for publications forfeited to government
- Search of a place without warrant conducted in presence of Magistrate
- Search by a police officer without any warrant and police officer has power to conduct search in the limits of others jurisdiction
- Forms and duration of search warrants is explained
- When a warrant is directed to a police officer he may endorse to another police officer

The police officer should ensure that search should be conducted fairly by following the procedure established by law.

- Search by police without warrant: The CrPC authorises the police officer to search certain things, documents without warrant if it is necessary for fair investigation by following procedure:
  - In-charge police officer may conduct a search or he may authorise it to subordinate in writing.
  - Search may be for things and documents which is necessary for investigation “No general search” is permitted.
  - Police officer must have reasonable grounds about search of specific things.
  - Police officer must record in writing for what search he is proceeding in case of non-recording, of reasons, search will become illegal.
  - Police Officer must send a copy of findings of search to the nearest Magistrate.
Basic Elements of Criminal Procedure Code (CrPC)

- Search must be made in the presence of two independent and respectable inhabitants of the locality.
- Police officer must prepare a list of things seized
- Police officer must give a copy of search to the occupant
- Witnesses must accompany to search
- Nominee of the accused is permitted to be present during search
- In non-compliance of the above said procedure states above violators will be liable to pay damages
- Sec 102 of CrPC authorises a police officer to seize any incriminating things other than those specified things for which the search is made. He may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence.

Process to Compel Production of Things in Court by Issuing

<table>
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<tr>
<th>Summons (Sections 91-92)</th>
<th>Search Warrant (Sections 93-96)</th>
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Issue of Process to Compel

| Search of a Person Wrongfully Confined (Section 97) | Restoration of Abducted Femal (Section 98) |

7.9 SECURITY FOR KEEPING THE PEACE, MAINTENANCE OF PUBLIC TRANQUILITY AND PREVENTIVE ACTION

Sections 106 to 124 provide provisions for taking preventive measures against persons who are a danger to the public by reason of the commissions of some offences. Here the Executive Magistrate has jurisdiction to deal with habitual offenders and take security measure for their good behaviour. Habitual offender means a person who is by habit a robber, house breaker, thief, or forger or by habit receiver of stolen property knowingly, habitually protects or harbours thieves or aids in the concealment or disposal of stolen property or habitually commits or abets the commission of extortion, cheating, kidnapping, abduction or habitually commits or attempt to commits or abets offence under any of the laws for the time being in force.

Sections 129-148 deal with maintenance of public order and tranquility. A Number of powers are given to the Executive Magistrate and Police Officers to maintain peace and tranquility by preventing unlawful assembly, public nuisance, apprehension of danger and disputes in respect of immovable property.
Sections 149-153 empower a police officer to take necessary steps to prevent commission of cognizable offence, prevention of injury to public property and inspection of weights and measures.

7.10 INVESTIGATION (SECTIONS 154-176)

- **POLICE INVESTIGATION:** The police officer or any person authorised by the Magistrate has power to investigate and collect evidences under CrPC on the following subjects:
  - Proceeding to the place of offence.
  - Ascertaining of facts and circumstances of the case.
  - Discovery of material and arrest of specified offender.
  - Collection of evidence by examining various persons and search of places and seizure of things.
- **FIR:** FIR is an important document and evidence in criminal proceedings. The investigation proceeds on the basis of First Information in court. Legally speaking the information given to a police officer and reduced to writing as required by Section 154 of CrPC, is known as First Information. Legal aspects of FIR are mentioned below:
  - Any person can give information of cognizable offence to police.
  - Information has to be given to a police officer having jurisdiction.
  - Police officer must reduce such information into writing.
  - Police officer must take the signature of the informant.
  - Recorded information must be read over to the person informed.
  - Police officer must make entry in the general diary about such information.
  - Police officer must give a copy of FIR to informant.
  - Police officer must send FIR to the Magistrate under Section 157 of the Code (procedure of investigation).
  - If a police officer refuses to record the information, the aggrieved person may send a copy by post to the superintendent of police under Section 154(3) of the Code.
- **Examination of witness by police:** A police officer may examine the person who is acquainted with the facts of the case at the time of investigation and reduce the statement made by such person into writing. This is known as statement under Section 161 CrPC.
- **Recording of the Statement of Confession:** Section 164 of CrPC provides provision for recording the confessions by a competent Magistrate. The rules relating to recording of confessional statement are mentioned below:
  - It must be recorded by the Judicial Magistrate. If an Executive Magistrate is records such statement, it can’t be used as evidence.
  - It can be recorded in the course of investigation or at anytime afterwards, but before commencement of inquiry or Trial.
Basic Elements of Criminal Procedure Code (CrPC)

- Judicial Magistrate must give warning to the accused person before recording of such confessional statement. The warning is, “you are not bound to make a statement, if you give, it will be used against you”.
- The object of this warning is to protect the rights of accused person guaranteed under Article 20(3) of the Constitution of India, which provides that no person accused of an offence shall be compelled to be witness against himself.
- Magistrate must disclose his identity.
- If the recording is postponed he must give fresh warning to the accused person.
- Magistrate must have reason to believe that the confession is voluntary and if it is not voluntary he should not record such statement.
- Magistrate must give sufficient time to the accused person to think.
- If any injuries are found on the accused person Magistrate must enquire about them.
- If the accused is in handcuffs, the Magistrate must order for the removal of such handcuffs.
- If the accused refuses to make a confessional statement, he must send him to judicial custody and not to police custody.
- Magistrate may ask reasons why he wants to make a confessional statement.
- Magistrate must put questions to the accused person to ascertain his voluntariness.
- It must be recorded only when it is made by his own will.
- Magistrate must see the mental condition of the accused person and satisfy the voluntariness.
- If accused knows to write, Magistrate can ask him to write.
- Magistrate must explain to the accused about his right to consult lawyer as provided under Article 22(1) of the Constitution of India.
- No oath is administered at the time of recording of such statement.
- Magistrate must record such statement in open court.
- If the case is of different jurisdiction, he must send a copy of recorded statement to the Magistrate who tries the case.
- The Magistrate recording confessional statement is also required to follow the procedure laid down under the Criminal Rules of Practice and Circular Orders issued by the concerned High Court.

Inquest by Police: when the officer-in-charge of a police station receives the information that a person has committed suicide or has been killed by other person or by an animal or by suspicion that some other person has committed an offence, he shall immediately give information thereof to the nearest Executive Magistrate to empower to hold inquest, shall proceed to the place where the body of such deceased person is. When a person dies in the custody of the police it is the duty of the Judicial Magistrate to conduct inquest.
Self Assessment Question

3) a) A police officer may examine the person who is acquainted with the facts. (   )
b) Magistrate need not give sufficient time to the accused while recording the confession. (   )
c) Judicial Magistrate may conduct inquest if a person dies in police custody. (   )

7.11 INITIATING AND COMMENCEMENT OF PROCEEDINGS (SECTIONS 190-210)

Any Magistrate of First Class or Second class may take cognizance of any offence upon the receiving of the complaint or upon a police report or upon his knowledge that such offence has been committed.

- **Cognizance by Magistrate:** The term taking cognizance means any judicial action permitted by the court taken with a view to eventual prosecution preliminarily for the commencement of inquiry or Trial. It does not involve any formal action or indeed action of any kind, but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. The First Class Judicial Magistrate may take the cognizance on the following circumstance: cognizance upon receiving a private complaint, cognizance upon receiving a police report, cognizance upon the information from his own sources and cognizance upon the information received from other sources.

  If in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceedings and the case appears to be a summons case he shall issue summons for attendance of the accused or if it is a warrant case, he may issues warrant or if he thinks fit summons may be issued. If a proceeding is instituted upon a complaint made in writing, every summons or warrant shall be accompanied by a copy of such complaint. If that case is triable by the Magistrate he can proceed.

- **Commitment of Case:** In cases where it appears that the offence is one triable exclusively by the court of Session, the Magistrate need not, before committing the accused, make any elaborate preliminary inquiry except in case of private complaint, but he shall committed that the accused to the Sessions Court, send the records of the case along with the documents and articles which are to be produced in evidence. He may grant bail or remand to custody, as is prescribed under CrPC.

7.12 CHARGE

Charge serves the purpose of notice or intimation to the accused person. It draws up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of a Trial. In a criminal Trial the charge is the foundation of the accusation and every care must be taken to frame it properly. Sections 211 to 224 of the Code under Chapter XVII deal with form of charges and joinder of charges.
Every charge shall state the offence with which the accused is charged, by referring specific name of the offence, contents which constituted offence, section of law and it shall be written in the language of the court. If the accused, has been previously convicted, details of such conviction must be mentioned in charge. The essential features of the charge can be understood from the following points:

- It includes any head of charge.
- Charge is framed by courts only in warrant cases and not in summons cases.
- Charge should be certain and specific.
- Court has power to alter the charge.
- Basic rule laid down is, for every distinct offence there shall be separate charge and every charges shall be tried separately.

**Form of Charge:** The charge must include the below information:

- Charge must state the offence.
- Name of offence committed in Indian Penal Code or in any other Act.
- Name of offence or definition of offence in case of no name to it.
- Section of law he was charged with.
- It must be in writing.
- Details of previous convictions, if any.
- Time and place of alleged offence.
- In Criminal Breach of Trust, Dishonest Misappropriation details of gross sum.
- Breach of trust can be tried, at one trial when such offences are committed in space of 12 months. Relaxation available only to criminal breach of trust or dishonest misappropriation.
- In case of alteration of charges procedure to be followed as per the Code.
- Alteration can be done at any time but before judgment is pronounced.
- Court may frame charges in summons cases.
- After alteration of charges, court explains about it to the accused and he can also direct for new trial or he can proceed.
- Whenever charge is being altered, allow the prosecutor or accused to re-examine or re-summon witnesses.
7.13 TRIAL AND JUDGMENT

The CrPC has adopted four modes of trials, such as Trial before a Court of Session, Trial of Warrant cases, Trial of Summons cases and Summary Trials.

Modes of Trials

<table>
<thead>
<tr>
<th>Warrant Cases</th>
<th>Summons Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trial Before Court of Sessions</td>
<td>Trial of Warrant Cases (which are more serious offences in nature)</td>
</tr>
<tr>
<td></td>
<td>Trial of Summons Cases</td>
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</tbody>
</table>

For the purposes of determining the nature of Trial in all criminal cases in the first instance they are divided into two categories. Those relating to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years which are called as Warrant cases. The other criminal cases which are relatively less serious in nature are termed as Summons cases. The general procedure of trial of warrant and summons cases are discussed below:

When the accused is brought before the court the case is opened by the public prosecutor on behalf of the state who reads out the charges against the accused person. After hearing the case from the public prosecutor and defence if the judge considers that there is no ground for prosecution, he shall discharge the accused. In case a prima facie evidence against the accused is proved, the general procedure is followed in criminal trial is as under:

1) **Framing of Charge:** It means explaining the charge levelled against the accused to him and the sentence/punishment prescribed under the law for the same. The accused is asked whether he pleads guilty to the charge or wants to be tried. Normally the accused claims to be tried and the further procedure are followed.

2) **Recording of Evidence:** It is a very important part of criminal trial. A lot depends upon what is recorded in the form of evidence and the evidence recorded during this stage will form a part of Trial and will be the important record for the appellant Court, even if the matter reaches the Highest Court of Land i.e Supreme Court of India. There are mainly two sub-stages from the prosecution and defence side. (a) Examination in chief of Complainant and Witnesses of Prosecution: The complainant/victim comes and gives testimony regarding the facts of the case and puts up his/her case. He may bring many other witnesses/eye witnesses to make his case strong. (b) Cross Examination of the same by Defence: What is recorded during the examination in chief is subject to the cross examination by the accused or his attorney. The contradiction and improvements and other lacuna may
help the accused in getting acquittal. So it is a very important stage of the trial.

3) **Recording of Statement of Accused:** The accused is given an opportunity at this stage to put up his case and discard the evidence. He is also entitled to say anything on oath but it is subject to cross examination by the prosecution. He can also submit a list of documents and witnesses in support of his case.

4) **Defence Evidence:** Like prosecution, the defence is also given a complete chance to put up it’s case. The accused can examine himself and also his defence witnesses at this stage, which is again subject to cross-examination by the prosecution.

5) **Arguments of Prosecution and Defence:** After the evidence by the prosecution and defence is closed, the matter is kept for arguments. Both sides make arguments on important points. The prosecution tries to show that it has proved the case beyond reasonable doubt, while the defence tries to prove that the prosecution has failed to bring home the guilt of the accused and also points out the lacuna/loopholes in the prosecution case. These arguments can be done orally or can be submitted in writing.

6) **Judgment:** This is the last step involved in the criminal trial. Once the judgment is pronounced, the Judge cannot review his own judgment except for some clerical mistakes. The judge appreciates the evidence before it and pronounces the judgment. It may result in conviction or acquittal of the accused. The criminal courts have power to pass any sentence authorised by law. According to the Section 53 of the Indian Penal Code the following punishments can be awarded by the respective criminal courts. They are Death Sentence, Imprisonment for life, imprisonment for specified period, forfeiture of the property and fine.

### 7.14 SUMMARY

The above discussion outlines the basic elements of the criminal procedure in India. Further, it deals with organisation, functioning and administration of criminal courts and other important functionaries under the Code of Criminal Procedure, 1973. It is true that CrPC has under gone to certain drastic changes from British regime to modern day. These changes are made with a view to liberalise the colonial administration of criminal justice. In brief we can say that the whole scheme of Code of Criminal Procedure is based on three important considerations:

- An accused person should get a fare trial in accordance with the accepted principles of natural justice.
- Every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to the society; and
- The procedure should not be complicated and should, to the at most extent possible, ensure faire deal to the poorer sections of the community.

The above vision will be accomplished if all the functionaries of the state work with co-ordination, commitment and integrity.
7.15 TERMINAL QUESTIONS

1) Distinguish between warrant and summon cases.
2) What is an FIR?
3) What is the meaning of Charge?
4) What is summary Trial?

7.16 ANSWERS AND HINTS

Self Assessment Questions
1) A) High Court B) superintendent of the police
2) Arrest means deprivation of a person’s freedom by legal authority
3) A) True B)False C) True

Terminal Questions
1) Refer to Section 7.4
2) Refer to Section 7.4 and 7.10
3) Refer to Section 7.12
4) Refer to Section 7.13

7.17 REFERENCES AND SUGGESTED READINGS

4) Ratanlas & Dhirajlal, The Code Of Criminal Procedure (2008), Lexisnexis Butterworths wadhwa Nagpur, New Delhi