UNIT 2 PRINCIPLES OF CRIMINAL JURISPRUDENCE

Content

2.0 OBJECTIVES

By the end of this Unit, you will be able to:

- understand the constitutional mandate on criminal justice system;
- explore the meaning of evidence, confession and dying; and
- explain the basic elements and processes of criminal procedure.

2.1 INTRODUCTION

The Constitution of India is the basic law of the land. It designs the structure, powers and functions of the state and rights and duties of its citizens. In fact, it is a document having a special sanctity which sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of those organs.

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 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.

2.2 CONSTITUTIONAL MANDATE AND CRIMINAL JUSTICE SYSTEM

Principles of natural justice are a constitutional mandate. The term natural justice may be equated with procedural fairness, or fair play in action. It is concerned with procedure and it seeks to ensure that the procedure must be just, fair and reasonable. It may be regarded as the counter part of American "Due Process", which intended to prevent mis-carriage of justice.

Articles 20, 21 and 22 of the Indian Constitution guarantee very important natural rights of persons, accused persons and arrested persons. These three articles are the basis for growth and development of jurisprudence in criminal administration of justice.

I. **RIGHTS OF THE ACCUSED PERSON:** Article 20 guarantees three important rights to the accused person. They are explained as follows:

- **Protection against Ex-post Facto Laws***:* Ex-post facto law is a law that has retrospective effect to past acts. For ex., a law is passed today declaring an act an offence by prescribing a punishment. If the same law and the same punishment is applied for yesterday's act (retrospectively) it is called ex-post facto law. The Indian Constitution prohibits ex-post facto laws. We can understand this concept under Article 20 (1) which reads as "No person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence". The intention and purpose of this provision is to enable the state to pass criminal law and punish the accused with prospective effect.

- **Protection Against Double Jeopardy**: The expression Double Jeopardy means punishing a person twice for the same offence. This is against the principles of common law which says that no one shall be put twice in peril for the same offence. Article 20(2) of the Indian Constitution states that " No person shall be prosecuted and punished for the same offence more than once".

- **Freedom from Self Incrimination** : The expression self incrimination means conveying information based upon personal knowledge of the person or giving information involving himself to be the prime part taken in the offence. Freedom from self incrimination means no person shall be compelled to give evidence against himself. This is also called as rule against testimonial compulsion. Criminal Justice system requires free and fair trial. This right is guaranteed to the accused under Article 20(3) which states that "No person accused of any offence shall be compelled to be a witness against himself".

II. **PROTECTION OF LIFE AND PERSONAL LIBERTY:** Liberty is the root of civilized living. The term liberty has been derived from the Latin word '*liber*' which means freedom. In this sense, liberty is often said to consist in

fulfilling one's own desire. But liberty is presumed to have three forms: the personal or civil liberty of an individual, the political liberty of the citizens and the economic liberty of the working class. Article 21 of the Indian Constitution guarantees life and personal liberty which reads as: "No person shall be deprived of life or personal liberty except according to the procedure established by the law." According to the Constitution preservation of human life is of paramount importance.

- **Right to Life and Indian Courts:** Justice P.N. Bhagawati in *Francis Corolie Mullin* case observed that, " the question which arises is whether the right to life is limited only to protection of limb or faculty, or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head, facilities for reading, writing and expressing oneself in diverse form, freely moving about and mixing and co-mingling with fellow human beings." Therefore, the expression is not confined to mere freedom from bodily restraint and that liberty under law extended to the full range of the conduct which the individual is free to pursue.
- **Right to Privacy :** In R.Rajagopal v State of Tamil Nadu ((1994) 6 SCC 632) popularly know as Auto Shankar Case, the Supreme Court has expressly held that the right to privacy or the right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. One can not publish any thing concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right of the person concerned and would be liable in an action for damages.
- **Right to Legal Aid :** In M.H.Hoskot v State of Maharashtra (AIR 1978 SC 1548) the supreme Court laid down that right to free legal aid at the cost of the State to an accused, who could not afford legal services for reasons of poverty, indigence or incommunicado situation, is part of fair, just and reasonable procedure implicit in Art.21. Free legal aid to the indigent has been declared to be a State's duty and not government charity.
- **Right to Speedy Trial:** In Hussainiara Khatoon v Home Secretary (AIR 1979 SC 1360), Supreme Court held that any procedure would be reasonable, only when it ensures reasonable and quick trial. Reasonable expeditious trial in an integral and essential part of the fundamental rights to life and personal liberty in Article 21.
- **Right Against Solitary Confinement:** In Sunil Batra v Delhi Administration, the court observed that by imposing solitary confinement there is a total deprivation of comraderie (friendship) amongst co-prisoners coming and talking and being talked to: It would offend Article 21 of the Constitution. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed, would be violative of Article 21, unless the curtailment has backing of the law.

- **Right Against Hand Cuffing :** Hand cuffing has been held to be *prima facie* in human and therefore unreasonable, over harsh and at the first flush, arbitrary." It has been held to be unwarranted and violative of Article 21. The court thus directed the Union of India to issue appropriate guidelines in this regard (Aeltemesh Rein v Union of India, AIR 1988 SC 1768).

- **Right Against In-human Treatment:** The Constitution is against the use of third degree methods by Police. According to Justice Krishna Iyar, human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials.

- **Right Against Delayed Execution:** In Triveni Ben v State of Gujrat, the Supreme Court held that undue delay in execution of death sentence will entitle the condemned prisoner to approach the court for conversion of death sentence into life imprisonment, but before conversion the court will examine the nature of the delay and the circumstances of the case.

- **Compensation in Fake Encounters:** In People's Union of Civil Liberties v Union of India, the supreme Court, held that killing of persons in fake encounter was a clear violation of right to life guaranteed under Article 21 of the Constitution. In this case the court awarded rupees one lakhs as compensation for the dependents of the deceased.

- **Compensation to Rape Victims:** In Delhi Domestic Working Women's Forum v Union of India, the supreme court examined a public litigation case. According to the facts of this case, 4 domestic women servants were raped by 7 army persons in a running train while travelling by the Muri Express from Ranchi to Delhi. The Supreme court laid down some guidelines for trial of such rape cases. But in another case where the Bangladesh women was a rape victim, the court directed the state to pay 10 lakhs compensation to that victim.

III. **SAFE GUARDS AGAINST ARBITRARY ARREST AND DETENTION:** Article 22 guarantees the following safeguards against arrest or detention made under the ordinary law relating to the commission of offences. They are discussed as under:

- **Right to be Informed of Grounds of Arrest**: Article 22(1) requires that any person who is arrested should be informed the grounds of arrest. The object is to enable the person arrested to know as to why and under what offence he has been arrested. It is to afford the earliest opportunity to remove any mistake or mis-apprehension or mis-understanding in the mind of the authority making the arrest. The grounds for the arrest are to be informed to enable the detenue to prepare for his defence and to move the court of law for a Writ of *heabus corpus* or for bail.

- **Right to be Defended by a Lawyer of his own Choice**: Article 22(1) further guarantees to the arrested person to consult a legal practitioner of his choice. This right belongs to the arrested person not only at pre-trial stage but also at the trial before the court. Supreme Court in a number of cases held that it is the constitutional right of every

accused person under article 21, who is unable to engage a lawyer and secure legal service an account of reasons such as indigence or incommunicado situation, to have free legal services at state's expenses.

- **Right to be Produced before a Magistrate**: Article 22(2) provides that "every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate." The right to be produced before the nearest Magistrate is guaranteed with a view to avoid any miscarriage of justice. It is with the object to correct and approve the executive action of arresting person(police). It has been held that the magistrate must apply his judicial mind to determine whether the arrest is regular or legal and in accordance with the law. The Magistrate therefore, while authorizing the extension of arrest must not act mechanically. He has to judicially scrutinize circumstances and if satisfied can order the detention of the accused in police custody.

- **No Detention beyond 24 hours**: Article 22(2) further mandates that the arrested person shall not be detained in custody beyond 24 hours without the authority of a Magistrate. It means that if the police fail to produce the arrested person before the nearest Magistrate within 24 hours, the said detention shall be deemed to be illegal. However, the safeguard guaranteed under article 22 is subject to some exceptions provided under the Constitution.

2.3 MEANING AND CLASSIFICATION OF EVIDENCE

The word evidence is derived from the Latin word *evidare* which means to show clearly, to make clearly and to discover clearly. In general parlance, evidence means collection of facts produced by the parties either orally or in the written form before the court of law to prove the existence or non-existence of disputed facts. In legal sense, evidence means and includes: 1. All statements made by the witnesses and permitted by the court as oral evidence, and 2. All documents produced by the parties for inspection of the court are known as documentary evidence.

Oral Evidence: Personal acknowledgement of facts by words, verbal statements, visible representation, gestures or signs or any other means which can be communicated to the court.

Documentary Evidence: Any matter expressed or described upon any substance by means of letters, figures or marks for the purpose of recording is called document. Electronic records like floppy, CD, memory stick also come under the definition of document. When a document is called for the inspection of the court it is known as documentary evidence.

Primary Evidence: When the original document is produced before the court of law for its inspection, it is called primary evidence.

Secondary Evidence: If the law permits the parties to produce the copies of the original in place of primary evidence it is known as secondary evidence.

Direct Evidence: When the fact is directly attested by witnesses, things or documents is called as direct evidence.

Circumstantial Evidence: It means information dealing with related surroundings or circumstances. It is an evidence of circumstances or situations leading to the happening of the principal fact.

Hearsay Evidence: Any information received by a person with the help of others and not through his direct senses is called hearsay evidence.

Basic Principles of Relevance of Facts in Criminal Justice System :

Motive: Motive means a psychological fact that moves a person to do an act in a particular way. In criminal law m*ens rea* (intention) is an important fact to establish the guilt of an accused person. On the other hand, there is always a question as to why an offence is committed by the accused?. What are the motivating factors leading to commission of such offence. This is very important if the case is going to be decided purely on the basis of circumstantial evidence and granting sentence or imposing fine.

Preparation: There are four stages of crime namely intention, preparation, attempt and commission of an act. Preparation is the stage to design the plan and execute it. Evidence which shows that the accused made preparation to commit a crime is relevant and admissible.

Conduct: Conduct means what a person thinks of himself and behaves. Conduct is an external behaviour of a person. There is nexus between the conduct of the accused and the crime committed. Conduct like avoiding arrest, resistance to arrest, escape from the custody, running away from the scene of offence, etc. amounts to the conduct of the accused and is quite relevant in criminal proceedings.

Identification Parade: The evidence of Identification parade proceedings conducted for the purpose of establishing the identity of accused is relevant evidence at the time of trial of the accused person. The object of conducting Identification Parade is to test the truthfulness of the witnesses and his capability to identify an unknown person whom he has seen only once. When the accused person is arrested on the basis of physical features given by the eyewitness, police arrange the test identification parade. Test Identification parade is conducted in presence of Judicial Magistrate and the police have to leave the scene to ensure the free and fair conduct of identification parade. Arrested person will be placed between the other persons who have same physical characters of accused as far as possible. Then the Magistrate calls the eyewitness to identify the accused person, whom he had seen while committing the crime. If the eyewitness identifies the accused, he picks up the person whom he had seen while committing the crime. The Magistrate records to that effect and he completes the proceedings. The eyewitness who has identified the accused will be produced in court at the time of trial to identify the accused person again.

Conspiracy: When two persons agree to do an illegal act or an act which is not illegal but by illegal means, such agreement is called a criminal conspiracy. The general principle is that no person can be made liable for the acts of other. But in a criminal conspiracy persons who take part in conspiracy are deemed to be mutual agents for the purpose of commission of an offence. Here anything said, done or written by one partner shall be binding on all other partners as important evidence in the court of law.

Check Your Progress I

Note: Use the space provided for your answer.

1. Explain the rights of accused person according to Indian constitution.

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2. Classify various types of evidences.

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2.4 CONFESSIONS

The word confession is a biblical term which denotes accepting one's own sins to the heavenly father. In criminal justice system confession means to admit a fault or crime. This is acknowledgement of one's own guilt. In fact it is self harming statement in criminal cases. E.g.: *A* is charged with murder of *B*. Here *A* makes a statement that he committed the murder. This admission of crime amounts to confession. The statement of confession may be recorded by any person except the police. When confession is made to magistrate, it is called formal statement of confession having a good evidentiary value. The reason is that under section 164 Cr.P.C. the magistrate shall take every care and caution while recording the confession statement. The evidentiary value of confession statement depends upon its veracity. The legal aspects of confession can be explained as follows:

- No person accused of an offence shall be compelled to give a witness against himself. Otherwise it amounts to testimonial compulsion.
- Confession should be made voluntarily. If it is made by inducement, threat or promise it is not relevant.
- Confession made to the police officer shall not be proved against the accused person.
- Confession made under the custody of police shall not be established against the accused.
- Confession made by one accused person is also relevant against the co-accused provided the confession should make both the parties liable.

Exceptions:

- If any inducement, threat or promise is made to record the confession, by a person other than police, in such case in the opinion of court, if such inducement, threat or promise has been fully removed then it is relevant.

- When a confession is made under the promise of secrecy is relevant.
- When confession is made under deception or under the state of drunk is relevant.
- When any fact is discovered in consequence of information received from the accused person while he is in the custody of police, so much of such information whether it amounts to confession or not as relates distantly to the facts thereby discovered, may be proved.

Magistrate's Duty in Recording Confession:

- He shall explain that accused person need not make or be bound by his confession.
- He shall not record the statement unless he satisfies that the statement seems to be voluntarily.
- If a person is not willing to make the confession the magistrate is not supposed to handover the person to the police custody.
- The magistrate shall write a footnote that the statement of confession is recorded and read in the presence of the accused person.
- If the magistrate has no power to take up that case, the recorded confession shall be forwarded to the concerned judge for inquiry and trial.

2.5 DYING DECLARATION

A dying declaration is called *leterm mortem* which means the words said before death. Statement of a dead person before his death explaining the cause of death or any circumstances leading to cause his death is a dying declaration. In a number of homicide or suicide cases dying declaration is of vital evidence. Some times it is *prima facie* evidence and some times it is corroborative evidence. The reason for admissibility of dying declaration is on the presumption that no person shall lie on his death bed. In English law dying declaration is admissible only in criminal cases, where as in India it is admissible in both civil and criminal cases, provided the death comes into question. Before taking the dying declaration as an admissible evidence the following conditions are to be satisfied.

1. The declarant must have died.
2. The cause of his death must be in question.
3. The declarant must explain the cause of his death or circumstances which resulted in his death.
4. The declaration must be a complete statement.
5. The person making the statement must be in sound mind.

The courts in India evolved certain principles and made some propositions for effective use of dying declarations as evidences. Some of the propositions are as under:

- Dying declaration may be the sole basis of conviction depending upon the circumstances it is recorded.

- Dying declaration may be made to any person like magistrate, police, doctor or relatives of injured person. But if it is recorded by magistrate, it will have a greater evidentiary value.
- The dying declaration must be recorded in the exact words used by the declarant to avoid possibility of several interpretations.
- If the dying declaration is recorded immediately after the occurrence of an incident i.e., causing of injuries, it can avoid the influence of the other members of the family in making of the statement.
- The declarant must have an opportunity to identify the accused person by giving particulars like name, address, physical features, relationship, etc.
- When there are several dying declarations made to different persons, they must be identical and similar in respect of substantive part of the declaration.
- Incomplete dying declarations are not allowed as evidences.
- If it is proved that a portion of dying declaration is false evidence then the other part of dying declaration has no meaning in admission.
- Dying declaration should be made in a fit state of mind. There is no prescribed form for making a dying declaration. Therefore, it may be oral or in written form.

2.6 COMPETENCY OF WITNESSES

A very important question is who is the competent witness to be testified. According to the law of evidence every person is a competent witness unless he is disqualified by the judge on certain reasons. A judge may disqualify a person as a witness on the ground of his extreme old age or tender age or decease to the mind or body etc. A child, lunatic, blind persons, deaf and dumb person are also considered as competent witnesses. In civil and criminal proceedings, wife and husband are competent witnesses against other. However, there are certain persons who shall not be compelled to give witness before the court of law. They are as under:

- No judge or magistrate shall be compelled to answer questions as to his own conduct or anything which came to his knowledge in court except under the special orders of superior courts.
- No person who is or has been married shall be compelled nor permitted to disclose any communication made to him during marriage by the person to whom he is or has been married. This privilege is intended to ensure matrimonial harmony which is available even after dissolution of marriage. However, when there is a dispute between wife and husband this privilege may not be available.
- No witness shall be permitted to give evidence from the unpublished records relating to the affairs of the state without the consent of the head of the department.
- No magistrate or police officer can be compelled to say as to where & how he got information in relation to the commission of offence.

- No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by its disclosure.
- No barrister, attorney, pleader, *vakil*, his clerks or servants & interpreters whose employment has ceased, shall be permitted to disclose any communication made to him by the client. In the same manner the advise given by him to his client is also protected.
- No person taking legal advice shall be compelled to disclose to the court any confidential communication between him & his legal professional advisor.
- No witness, who is not a party to the suit, shall be compelled to produce his title deeds to any property.
- No one shall be compelled to produce any document which is in his possession. But if he consents to the production of document it can be produced by him.
- Witness will not be excused from answering the questions on the ground the answers will incriminate him.

Examination of Witnesses

In a suit of proceedings, the court issues the summons to the witnesses for appearance before it. The trial commences when the parties are present with their advocates and witnesses. The court orders for commencement of the trial and proceedings. When a person comes as a witness his name, age, address, occupation and other relevant personal information will be recorded on oath in the witness box. The answers given by the witnesses are recorded by the court. In civil cases, there are two parties known as plaintiff and defendant. In criminal cases, they are called as complainant/prosecution and accused/defence.

In civil cases, the advocate for the plaintiff explains the fact and introduces evidences in support of his claim. In criminal cases, prosecution explains the charges against the accused persons and introduces the evidences to prove the charges. In criminal cases the accused person is presumed to be innocent therefore the burden of proof lies on the prosecution. There are three stages of examination of witnesses under the law of evidence. They are: examination-in-chief, cross examination and re-examination.

Examination-in chief: Examination of party or parties or witness by their own advocate is called examination-in-chief. The object of this examination is to give the party a chance to place the facts before the court and explain all facts which needs proof. There are three rules regarding the examination-in-chief. They are: a) the question in examination in chief must be related to facts-in-issue or relevant fact, b) no leading question can be asked, and c) the witness can give evidence only relating to facts but not of law.

Cross examination: After completion of examination-in-chief the witness will be cross examined by the advocate of the opposite party. This stage is known as cross examination. The cross examination as an opportunity is available to the opposite party to elicit or extract the truth from the witnesses. It is a very important stage and process to test the correctness of the witness. Naturally, there are four objectives to be fulfilled by cross examination. They are: a) to extract the truth, b) to destroy the witness of the

opposite party, c) to weaken opposite party's witness, and d) to establish that his witness is correct.

Re-examination: After the witness is cross examined by the opposite party, the party who calls him may examine him again. This is known as re-examination. Re-examination cannot be done as a matter of right, but only with the persmission of the court. The very purpose of re-examination is to remove any doubt which arose in cross examination and enable the witness to clarify any contradiction.

General rules of examination of witnesses:

- Witness shall not be compelled to give witness against himself.
- Unreasonable questions cannot be asked.
- Whether the question is proper or improper shall be decided by the court.
- Questions intending to corroborate the facts may be asked.
- Indecent and scandalous questions may not be asked unless it is an issue.
- Questions intended to insult or annoy shall not be asked.
- Questions contradicting the witness or test his veracity may be asked.
- Leading questions (suggested answer in the question) should not be asked in examination-in-chief, if it is objected by other side.
- The witness may be cross examined as to his previous written statement.
- Witness may be allowed to refresh his memory with the help of any document.
- In cross examination the credit of the accused may be impeached by putting question to prove that he is inconsistent in his statements.

Check Your Progress II

Note: Use the space provided for your answer.

1. What is the difference between confession and dying declaration?

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2. Discuss the three stages of examination of cirtnesses.

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2.7 BASIC ELEMENTS OF CRIMINAL PROCEDURE CODE

- **Organization of Criminal Courts:** The Cr.P.C provides a uniform set of criminal courts throughout the territory of India by conferring jurisdiction, powers and functions. The Cr.P.C mandates separation of judiciary from the executive, which enables the state to work independently and impartially without interference of any other organs of the State.
- **Fair Trial:** Under Cr.P.C. 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 vs. 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 Cr.P.C 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.

2.8 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 Cr.P.C 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 Cr.P.C. 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 from 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 Cr.P.C or in any other law for the time being in force. 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 Cr.P.C 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 Cr.P.C.
- **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 Cr.P.C 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.

2.9 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 Cr.P.C 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.

NAME OF THE COURT	PUNISHMENT
Supreme Court	Any punishment
High Court	Any punishment
Sessions & District Judge	Death sentence, life imprisonment (to be ratified by HC) and fine
Additional session Judge	Death sentence, life imprisonment (to be ratified by HC) and fine
Assistant Session Judge	Ten years imprisonment and fine
Chief Judicial Magistrate	Seven years imprisonment and fine
Additional Chief Judicial Magistrate	Seven years imprisonment and fine
Chief Metropolitan Magistrate	Seven years imprisonment and fine
Additional Chief Metropolitan Magistrate	Seven years imprisonment and fine
Judicial Magistrate First class	Three years imprisonment and fine
Metropolitan Magistrate	Three years imprisonment and fine upto Rs.5000/-
Judicial Magistrate second class	One year imprisonment and fine upto Rs.1000/-
Special judicial Magistrate	One year imprisonment and fine upto Rs.1000/-

2.10 ARREST OF PERSONS

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, Cr.P.C. and other laws have been mentioned hereafter :

- Right to be informed of 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 with out 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-breaking.
- 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 hand 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 authorize 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

2.11 PROCESS OF PRODUCTION OF PERSON

The procedure is laid down in Cr.P.C. 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 to the person summoned by delivering a copy of summons after taking a signature on the duplicate copy. Then 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 canceled 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 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.

When will a search warrant be issued?

A search warrant is a written order to a police officer or any other person by 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 Cr.P.C., 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 Cr.P.C. authorizes 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 authorize 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.
- 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 stated above violators will be liable to pay damages.
- Sec 102 of Cr.P.C. authorizes 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.

2.12 LET US SUM UP

The Indian Constitution not only provide for the structure of governance but also provides for requirements of diversified social values. A Constitution can perform many functions in a modern state. One of these tasks is to serve as a deposit for a cluster of a society’s fundamental political values. Despite so many odds, the Indian Constitution has successfully sowed seeds of socio-economic revolution. The Judiciary has also contributed a lot for development of constitutional jurisprudence by exhibiting its active role in interpretation and enforcement of the Constitution. A social change, which is indispensable to realize the dreams of the founding fathers of Indian constitution, has been successful to some extent due to employment of the theory of implied rights with directives which have been conjunctively read with fundamental rights.

The basic principles of law of evidence pertinent to criminal administration of justice have been fully discussed in this unit. The importance of confessions, dying declarations, expert’s opinion, relevancy of character, burden of proof in criminal

cases, various stages of examination of witnesses have been discussed with appropriate examples. The whole exercise in this unit is to make the student to study the important principles of law of evidence and application of the text to the context.

Check Your Progress III

Note: Use the space provided for your answer

1. What is FIR?

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2. Explain the powers of various courts to grant punishment.

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3. Discuss the process of production of person in court.

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2.13 FURTHER READINGS AND REFERENCES

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