

CHAPTER 7**THE CODE OF CRIMINAL PROCEDURE, 1973**

Q: Explain the meaning of following terms under Code of Criminal Procedure, 1973

Offence

Section 2(n) of the Cr.P.C. defines the word "offence" to mean any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871. An elaborate definition of the term "offence" has been given under Section 40 of the I.P.C. which states that "offence" denotes a thing made punishable by the Code. An offence is what the legislature classes as punishable. *Mens Rea* a bad intention or guilt is an essential ingredient in every offence.

Mens rea

Mens rea means a guilty mind. The fundamental principle of penal liability is embodied in the maxim *actus non facit ream nisi mens sit rea*. The act itself does not constitute guilt unless done with a guilty intent. Thus, unless an act is done with a guilty intention, it will not be criminally punishable. The general rule to be stated is "there must be a mind at fault before there can be a crime". *Mens rea* is a subjective matter. Thus *mens rea* is an essential ingredient in every criminal offence. The motive is not an intention. Intention involves foresight or knowledge of the probable or likely consequences of an injury. In short, *mens rea* is the state of mind which accompanies and directs the conduct resulting in the *actus reus*.

Bailable Offence and Non-bailable Offence

A "bailable offence" means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force. "Non-bailable" offence means any other offence. [Section 2(a)]

Cognizable Offence and Non-cognizable Offence

According to Section 2(c) of Cr.P.C., "Cognizable offence" means an offence in which, a police officer may arrest a person without warrant. Culpable homicide, murder, dacoity abetting mutiny, counterfeiting coins is some instances of cognizable offences. As is evident from the aforesaid examples of cognizable offences, the magnitude of the offence is grave and the punishment provided is quite heavy. The police cannot afford to wait to obtain a warrant of arrest from the court because there is every possibility that the offender may escape by the time a warrant is obtained or temper with a material evidence. Therefore, he may be arrested without a warrant.

According to Section 2(l) of Cr.P.C., "Non-cognizable offence" means an offence in which, a police officer has no authority to arrest without warrant. Thus, a non-cognizable offence needs special authority to arrest by the police officer. The instances of "Non-cognizable offence" are undue influence at an election, simple hurt, false claim at Court of law etc. the

gravity in "Non-cognizable offence" is not that serious as in that of "cognizable offences". The injury caused to the society is comparatively small. The criminal proceedings in case of such offence commence after a complaint has been lodged by the aggrieved party

Note: Non-cognizable offences are usually bailable while cognizable offences are generally non-bailable.

Complaint

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include a police report. [Section 2(d)]. However, a report made by the 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 making the report as a complainant. In general a complaint into an offence can be filed by any person except in cases of offences relating to marriage, defamation and offences.

A complaint in a criminal case is what a plaint is in a civil case. The requisites of a complaint are:

- (i) an oral or a written allegation;
- (ii) some person known or unknown has committed an offence;
- (iii) it must be made to a magistrate; and
- (iv) it must be made with the object that he should take action.

There is no particular format of a complaint. Police report is expressly excluded from the definition of complaint but the explanation to Section 2(d) makes it clear that such report shall be deemed to be a complaint where after investigation it discloses commission of a non-cognizable offence. Police report means a report forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173.

Bail

It means the release of the accused from the custody of the officers of law and entrusting him to the private custody of persons who are sureties to produce the accused to answer the charge at the stipulated time or date.

Anticipatory bail

An "*anticipatory bail*" is granted by the High Court or a Court of Session, to a person who apprehends arrest for having committed a non-bailable offence, but has not yet been arrested (Section 438). An opportunity of hearing must be given to the opposite party before granting anticipatory bail (*State of Assam v. R.K. Krishna Kumar* AIR 1998 SC 144).

Under Section 438, provisions have been made for a person who has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he

may apply to the High Court or the Court of Session for a direction and that Court may if it thinks fit direct that in the event of such arrest, the person shall be released on bail on such conditions which the Court may include in such directions.

Inquiry

It means every inquiry other than a trial, conducted under this Code by a Magistrate or Court. [Section 2(g)]. It carries the following three features:

- the inquiry is different from a trial in criminal matters;
- inquiry is wider than trial;
- it stops when trial begins.

Investigation

It includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. [Section 2(h)]

Trial

'Trial' starts when formal charges have been framed against the accused and proceedings ended with either conviction or acquittal by a competent court.

Judicial Proceeding

It includes any proceeding in the course of which evidence is or may be legally taken on oath. The term judicial proceeding includes inquiry and trial but not investigation. [Section 2(i)]

Pleader

'Pleader' as per Section 2(q) of the Criminal Procedure Code, 1973 means a person authorised by or under any law for the time being in force, to practise in such Court and includes any other person appointed with the permission of the Court to act in such proceeding. It is an inclusive definition and a non-legal person appointed with the permission of the Court will also be included.

Public Prosecutor

According to Section 2(u) of the Criminal Procedure Code, 1973, a "public prosecutor" means any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor. Public prosecutor, though an executive officer is, in a larger sense, also an officer of the Court and he is bound to assist the Court with his fair views and fair exercise of his functions.

Summons and Warrant Cases

"Summons case" means a case relating to an offence and not being a warrant case. [Section 2(w)] A "Warrant case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. [Section 2(x)] Those cases which are punishable with imprisonment for two years or less are summons cases, the rest are all warrant cases.

Q: What are the various classes of criminal courts? Discuss their powers under Code of Criminal Procedure, 1973

Following are the different classes of criminal courts:

1. High Courts;
2. Courts of Session;
3. Judicial Magistrates of the first class, and, in any metropolitan area; Metropolitan Magistrates;
4. Judicial Magistrates of the second class; and
5. Executive Magistrates.

The Supreme Court is also vested with some criminal powers. Article 134 confers *appellate* jurisdiction on the Supreme Court in regard to criminal matters from a High Court in certain cases.

Power of the Court to pass sentences under Code of Criminal Procedure, 1973

High Court

High Court may pass any sentence authorized by law.

Sessions Judge / Additional Sessions Judge

A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law, but any sentence of death passed by any such judge shall be subject to confirmation by the High Court.

Assistant Sessions Judge

An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

Chief Judicial Magistrate / Chief Metropolitan Magistrate

The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

Magistrate of the First class / Metropolitan Magistrate

A Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years or of a fine not exceeding five thousand rupees, or of both.

Magistrate of the Second class

A Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.

Q: What are the provisions in relation to sentence of imprisonment in default of fine under Code of Criminal Procedure, 1973?

Sentence of imprisonment in default of fine

Where a fine is imposed on an accused and it is not paid, the law provides that he can be imprisoned for a term in addition to a substantive imprisonment awarded to him, if any. Section 30 defines the limits of Magistrate's powers to award imprisonment in default of payment of fine. It provides that the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law provided that the term:

- (i) is not in excess of the powers of the Magistrate; and
- (ii) where imprisonment has been awarded as part of the substantive sentence, it **should not exceed 1/4th of the term of imprisonment** which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Q: How can arrest be effected by the police? When can police arrest a person without a warrant? Can a private person cause arrest without warrant??

Arrest of Persons (Section 41)

The word "arrest" when used in its ordinary and natural sense means the apprehension or restraint or the deprivation of one's personal liberty to go where he pleases. The word "arrest" consists of taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge and preventing the commission of a criminal offence.

Section 41 enumerates different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. These include:

- a) who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
- b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking; or
- c) who has been proclaimed as an offender either under this Code or by order of the State Government; or
- d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

- g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- h) who being a released convict, commits a breach of any rule, relating to notification of residence or change of or absence from residence; or
- i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other causes for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Arrest on refusal to give name and residence (Section 42)

If any person who is accused of committing a non-cognizable offence does not give his name, residence or gives a name and residence which the police officer feels to be false, he may be taken into custody. However, such person cannot be detained beyond 24 hours if his true name and address cannot be ascertained or fails to execute a bond or furnish sufficient sureties. In that event he shall be forwarded to the nearest Magistrate having jurisdiction.

Arrest by a private person

A private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence or who is a proclaimed offender (*Section 43*).

Arrest by Magistrate

Under Section 44, the Magistrate has been given power to arrest a person who has committed an offence in his presence and also commit him to custody. The Magistrate has power to arrest a person for which he is competent and has also been authorised to issue a warrant.

However, Section 45 protects members of Armed Forces from arrest where they do something in discharge of their official duties. They could be arrested only after obtaining the consent of the Central Government.

Arrest how made

- Section 46 sets out the manner in which an arrest is to be made. The Section authorizes a police officer or other person making an arrest to actually touch or confine the body of the person to be arrested and such police officer or other person may use all necessary means to effect the arrest if there is forcible resistance.

- The Section does not give a right to cause the death of a person who is not accused of an offence punishable with death sentence or life imprisonment.
- Section 48 authorizes a police officer to pursue the offender in to any place in India for the purpose of effecting his arrest without warrant. Ordinarily, a police officer is not at liberty to go outside India and to arrest an offender without a warrant, but if he can arrest an offender without warrant who escapes into any place in India, he can be pursued and arrested by him without warrant.
- Persons arrested are to be taken before the Magistrate or officer-in-charge of a police station without unnecessary delay and produce the arrested person before the Magistrate within 24 hours.
- When a person is arrested without a warrant, he can be kept into custody for a period not exceeding 24 hours, and before the expiry of that period he is to be produced before the nearest Magistrate, who can under Section 167 order his detention for a term not exceeding 15 days, or he can be taken to a Magistrate, under whose jurisdiction he is to be tried, and such Magistrate can remand him to custody for a term which may exceed 15 days but not more than 60 days.
- Officers in-charge of the concerned police stations shall report to the Magistrate the cases of all persons arrested without warrant, within the limits of their respective police stations whether such persons have been admitted to bail or otherwise. (Section 58)
- A person arrested by a police officer shall be discharged only on his own bond or on bail or under the special order of a Magistrate, (Section 59).
- If a person in lawful custody escapes or is rescued, the person, from whose custody he escaped or was rescued, is empowered to pursue and arrest him in any place in India and although the person making such arrest is not acting under a warrant and is not a police officer having authority to arrest, nevertheless, the provisions of Section 47 are applicable which stipulates provisions relating to search of a place entered by the person sought to be arrested.

Q: Discuss the procedure for issuance of summons and warrant of arrest under Cr.P.C?

SUMMONS (Section 61)

- A summon is issued either **for appearance** or **for producing a document or thing** which may be **issued to an accused person or witness**. Every summons **issued by the Court** shall be in **writing**, in **duplicate**, **signed by the Presiding Officer** of such Court or by such officer as is authorized by the High Court and shall **bear the seal of the Court** (Section 61).
- The summons should be clear and specific in its terms as to the title of the Court, the place at which, the day and time of the day when, the attendance of the person summoned is required.

Service of summons

- The summons shall be served by a police officer or by an officer of the Court or other public servant (Section 62).
- In case the service cannot be effected by the exercise of due diligence, the serving officer can perform substituted service by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which person summoned ordinarily resides, and thereupon the Court may either declare that the summons has been duly served or order fresh service, as it considers proper (Section 65).
- The service of summons on a **corporation** may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the Chief Officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.
- When personal service of summons cannot be effected, the extended service can be secured by leaving one of the duplicates with some adult male member of his family residing with him who may also be asked to sign the receipt for that. A servant is not a member of the family within the meaning of Section 64.
- In the case of a **Government Servant**, the duplicate copy of the summons shall be sent to the head of the office by the Court and such head shall thereupon cause the summons to be served and shall return it to the Court under his signature with the endorsement. Such signature shall be evidence of due service. (Section 66)

WARRANT OF ARREST (Section 70)

Every warrant of arrest issued by a Court under Cr.P.C. shall be in writing, signed by the presiding officer of such Court, and shall bear the seal of the Court. Such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed. (Section 70)

The requisites of a warrant are as follows:

1. It must be in writing.
2. It must bear the name and designation of the person who is to execute it;
3. It must give full name and description of the person to be arrested;
4. It must state the offence charged;
5. It must be signed by the presiding officer; and
6. It must be sealed.

Under Section 76, the police officer or other person executing the warrant of arrest shall bring the person arrested before the Court without unnecessary delay provided that such delay shall not in any case exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Q: Discuss the procedure for search and seizure of persons and of things under Cr.P.C?

PROCLAMATION AND ATTACHMENT

Where a warrant remains unexecuted, the Cr.P.C. provides for two remedies:

1. **issuing a proclamation** (Section 82); and
2. **attachment and sale** of property (Section 83).

If a Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, the 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. (Section 82)

While issuing proclamation, the Magistrate must record to his satisfaction that the accused has absconded or is concealing himself. The object of attaching property is not to punish him but to compel his appearance.

SEARCH WARRANT

According to Section 93, a search warrant can be issued only in the following cases:

1. where the Court has reason to believe that a person summoned to produce any document or other thing will not produce it;
2. where such document or thing is not known to the Court to be in the possession of any person; or
3. where a general inspection or search is necessary. However, a search warrant may be general or restricted in its scope as to any place or part thereof.

But such warrant shall not be issued for searching a document, parcel or other thing in the custody of the postal or telegraph authority, by a magistrate other than a District Magistrate or Chief Judicial Magistrate.

Q: Explain the provisions relating to security for keeping the peace and for good behaviour under Code of Criminal Procedure, 1973?

Security for keeping the peace on conviction

As per Section 106(1) of the Code, when a Court of Session or Court of a Magistrate of first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

The offences specified under Section 106(2) are as follows:

- a) any offence punishable under Chapter VIII of the India Penal Code 1860.
- b) any offence which consists of or includes, assault or using criminal force or committing mischief;

- c) any offence of criminal intimidation;
- d) any other offence which caused, or was intended or known to be likely to cause a breach of the peace.

However, if the conviction is set-aside on appeal or otherwise, the bond so executed shall become void. (Section 106)

Security for keeping the peace in other cases

As per Section 107, when Executive Magistrate receives information that any person is likely to:

- a) commit a breach of peace; or
- b) disturb the public tranquillity; or
- c) do any wrongful act that may probably occasion a breach of the peace; or disturb the public tranquillity;

he may require such person to show cause why he should not be ordered to execute a bond for

keeping the peace for a period not exceeding one year as the Magistrate deem fit.

Q: Explain the provisions relating to maintenance of public order and tranquillity under Code of Criminal Procedure, 1973?

Maintenance of public order and tranquillity

1. **Dispersal of unlawful assembly**

- a) Any **Executive Magistrate** or officer in-charge of a police station or, in the absence of such officer-in-charge, any other officer not below the rank of sub-inspector may command any unlawful assembly or any assembly of **5 or more persons** likely to cause a disturbance of the public peace, to disperse and it shall be thereupon the duty of the members of such assembly to disperse accordingly.
- b) If any such assembly does not disperse or conducts itself in a manner as to show a determination not to disperse, any **Executive Magistrate** or police officer referred to above may proceed to disperse such assembly by force and may require the assistance of any male person not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly and if necessary arresting and confining the persons who form part of it, in order to disperse such assembly. (Section 129)
- c) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be **dispersed by the armed forces** and to arrest and confine such persons in order to disperse the assembly or to have them punished.

2. Public nuisances

Conditional order for removal of nuisance

Section 133 lays down the following public nuisances which can be proceeded against:

1. the unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
2. carrying on any trade or occupation, or keeping of any goods or merchandise, injurious to the health of the community; or
3. the construction of any building or the disposal of any substance, as is likely to cause conflagration or explosion; etc.
4. the building, tent or structure near a public place.
5. the dangerous animal requiring destroying, confining or disposal.

Power to issue order in urgent cases of nuisance or apprehended danger

As per Section 144 of the Code, where in the opinion of District Magistrate, Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government, there is sufficient ground for proceeding under this Section and immediate prevention or speedy remedy is desirable, the Magistrate may by a written order stating the material facts of the case and served in the manner provided by Section 134:

- direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent or tends to prevent, obstruction, annoyance of injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray.

An order under this Section may be passed **ex-parte** in cases of emergency or in cases where the circumstances do not admit of the serving of notice in due time upon the person against whom the order is directed. An order under this Section can remain in force for **two months**, and may be extended further for a **period not exceeding six months** by the State Government if it considers necessary.

Q: Explain the provisions relating to preventive action of police under Code of Criminal Procedure, 1973?

Provisions relating to preventive action of police under Code of Criminal Procedure, 1973 are stated hereunder:

- Section 149 authorizes a police officer to prevent the commission of any cognizable offence. If the police officer receives the information of a design to commit such an offence, he can communicate such information to his superior police officer and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence. The police officer may arrest the person without orders from Magistrate and without a warrant if the commission of such offence cannot be otherwise prevented.
- The arrested person can be detained in custody only for 24 hours unless his further detention is required under any other provisions of this Code or of any other law. (Sections 150 and 151)

- Section 152 authorizes a police officer to prevent injury to public property.
- *Inspection of weights and measures* - Any officer incharge of the police station may without a warrant enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false, and if he finds in such place any false weights, measures or instruments he may seize the same and shall give information of such seizure to a Magistrate having jurisdiction. (Section 153)

Q: Explain the provisions relating to procedure for investigation and search by the police under Code of Criminal Procedure, 1973?

Information in cognizable cases

1. First Information Report (FIR)

As per Section 154 of the Code, every information relating to the commission of a **cognizable offence**, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant. Every such information shall be signed by the person giving it and the substance thereof shall be entered in a book kept by such officer in such form as may be prescribed by the State Government in this behalf. Such information given to a police officer and reduced to writing is known as First Information Report (FIR).

2. Refusal to record FIR by an officer incharge of a police station

Any person aggrieved by a refusal on the part of an officer incharge of a police station to record the information may send the substance of such information in writing and by post to the **Superintendent of Police** concerned who if satisfied that such information discloses the commission of a cognizable offence shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him. A copy of FIR shall be given to the informant free of cost.

Information as to non-cognizable cases and investigation of such cases

As per Section 155 of the Code, when information is given to an officer-in-charge of a police station of the commission within the limits of such station of a **non-cognizable offence**, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe and refer the informant to the Magistrate.

Police officer's powers to investigate non-cognizable case

The police officer is **not authorized** to investigate a non-cognizable case without the order of Magistrate having power to try such cases, and on receiving the order, the police officer may exercise the same powers in respect of investigation as he may exercise in a cognizable case.

Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. [Section 155(4)]

Police officer's powers to investigate cognizable case

- In case of a cognizable offence the police officer may conduct investigations without the order of a Magistrate.
- Investigation includes all proceedings under the Code for the collection of evidence by the police officer or by any person who is authorized by the Magistrate in this behalf.
- Any Magistrate empowered may order such investigation as above mentioned.
- Sections 160 and 161 authorise a police officer making an investigation to require the attendance of and may examine orally any person who appears to be acquainted with the facts and circumstances of the case. (*Section 156*)

Search by police officer

This Section authorizes general search if the police officer has reason to believe that anything necessary for the purpose of an investigations may be found. The officer acting under this sub-section must record in writing his reasons for making of a search. But, the illegality of search will not affect the validity of the articles or in any way vitiate the recovery of the articles and the subsequent trial. (Section 165)

Whenever any person is arrested or detained in custody and it appears that the investigation cannot be completed within the period of twenty four hours as laid down in Section 57 and that there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or other competent investigation officer shall promptly transmit to the nearest judicial Magistrate a copy of the entries in the diary relating to the case, and shall forward the accused to such Magistrate at the same time (required to be mentioned day by day under Section 172). The Magistrate may then authorize the detention of the accused in custody for a term not exceeding of fifteen days. (Section 167) Every investigation must be completed without undue delay. On completion of investigation, the competent police officer under the Code shall forward a police report with the prescribed details to a Magistrate empowered to take cognizance of the offence and send along with the report all documents or relevant extracts on which the prosecution intends to rely. (Section 173)

Q: When can the magistrate take cognizance of an offence under Code of Criminal Procedure, 1973?

Section 190 relates to cognizance of offences by Magistrates. The Court can take cognizance of an offence only when conditions requisite for initiation of proceedings before it are fulfilled otherwise the Court does not obtain jurisdiction to try the offence (*Mohd. Safi*, AIR 1966 SC 69).

Any Magistrate of first class and of the second class specially empowered may take cognizance of an offence upon:

1. receiving a complaint of facts constituting such offence;
2. a police report of such facts;
3. information received from any person other than a police officer;
4. his own knowledge that such offence has been committed.

When a Magistrate takes cognizance of an offence upon information received from any person other than a police officer or upon his own knowledge then the accused is informed that he is entitled to have the case inquired into or tried by another Magistrate and if the accused objects to further proceedings before the Magistrate taking cognizance, the case is transferred to other Magistrate as is specified by the Chief Judicial Magistrate. (Section 191)

Every charge under this Code shall state the offence with which the accused is charged specifying the law and the name of the offence, particulars of time and place of the alleged offence (Sections 211 and 212). For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately (Section 218). If more than one offence is committed by the same person in one series of acts so connected together as to form the same transaction, he may be charged with and tried at one trial for every such offence (Section 220). Persons accused of the same offence, committed in the course of the same transaction, or abetment of such offence may be charged jointly and tried together.

A person who has once been tried by a Court of competent jurisdiction for an offence and is convicted or acquitted of such offence shall while such conviction or acquittal remains in force not be liable to be tried again for the same offence, nor on the same facts for any other offence A person discharged under Section 258 (i.e. a summons-case where there is judgement of acquittal by a Judicial Magistrate) shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which such Court is subordinate.

The judgement in every trial in any Criminal Court of original jurisdiction shall be pronounced by the presiding officer by delivering or reading out the whole of the judgement or the operative part of the judgement in open Court. (Section 353) Every judgement should be written in the language of the Court and should contain the point or points for determination, the decision thereon and the reasons for the decision. It should specify the offence and the Section of Indian Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced (Section 354). Except as otherwise specified in the Code, no court when it has signed its judgement or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error (Section 362). A copy of the judgement and also if so desired a certified copy are to be given to the accused free of cost. (Section 363)

Q: What are the provisions in relation to limitation for taking cognizance of offences under Code of Criminal Procedure, 1973?

In general, **there is no limitation of time in filling complaints under the Code of Criminal Procedure, 1973 ('Code')**. Chapter XXXVI has been introduced in the Code prescribing limitation period for taking cognizance of certain offences. (Sections 467 to 473)

No Court shall take cognizance of an offence after the expiry of the period of limitation mentioned below:

- a) **6 months**, if the offence is **punishable with fine only**.
- b) **1 year**, if the offence is **punishable with imprisonment for a term not exceeding 1 year**; and
- c) **3 years**, if the offence is **punishable with imprisonment for a term exceeding 1 year but not exceeding 3 years**.

Commencement of the period of limitation

The period in relation to an offender commences:

- on the date of the offence;
- if the commission of the offence was not known to the person aggrieved or to the police officer, the first day on which either such offence comes to the knowledge of such person or to any police officer, whichever is earlier;
- where the identity of the offender is not known, the first day on which such identity becomes known either to the person aggrieved or the police officer whichever is earlier. (Section 469)

The object of Section 468 is to prescribe the period of limitation and the Court is enjoined not to take cognizance of an offence after the expiry of such period of limitation. The object is to prevent the parties from filing the case after a long time so that the material evidence may not vanish. Section 469 fixes the day from which the period of limitation should begin to run.

Section 470 provides provisions for exclusion of time in certain cases. These are as under:

- a) the period during which another prosecution was diligently prosecuted;
- b) the period of the continuance of the stay order or injunction granted against the institution of prosecution;
- c) where notice of prosecution has been given, the period of notice;
- d) where previous sanction or consent for the institution of any prosecution is necessary, the period required for obtaining such consent or sanction including the date of application for obtaining the sanction and the date of the receipt of the order;
- e) the period during which the offender is absent from India or from territory outside India under Central Govt. Administration; and
- f) period when the offender is absconding or concealing himself. (Section 470)

If limitation expires on a day when the Court is closed, cognizance can be taken on the day the Court re-opens. (Section 471)

Continuing offence — In the case of a continuing offence, a fresh period of limitation begins to run at every moment during which the offence continues. (Section 472)

Extension of period of limitation — The Court may take cognizance of an offence after the expiry of the period of limitation if it is satisfied that

- (i) the delay is properly explained or
- (ii) it is necessary to do so in the interests of justice. (Section 473)

Q: Write a short note on: Summary trial

Summary trial means the "speedy disposal" of cases. By summary cases is meant a case which can be tried and disposed of at once. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding two years. The object of summary trial is to ensure speedy trial of some minor offences by dispensing with formalities of delay in proceedings.

Section 260(1) of the Criminal Procedure Code sets out the provisions for summary trials. It says:

- a) any Chief Judicial Magistrate;
- b) any Metropolitan Magistrate;
- c) any Magistrate of the First class who is specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:
 - (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
 - (ii) theft where the value of the property stolen does not exceed Rs. 2000;
 - (iii) receiving or retaining stolen property, where the value of such property, does not exceed Rs. 2000;
 - (iv) assisting in the concealment or disposal of stolen property where the value of such property does not exceed Rs. 2000;
 - (v) insult with intent to provoke a breach of the peace;
 - (vi) abetment of any of the foregoing offences;
 - (vii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
 - (viii) any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871.

Summary trial is a speedy trial by dispensing with formalities or delay in proceedings. In all the above cause, if the person is found guilty after the summary trial, he can be awarded a **maximum of three month's imprisonment**. In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgement containing a brief statement of the reason for the finding. The concerned Magistrate must sign such record and judgement.

Record in summary trials

The Magistrate shall enter in the prescribed form the following particulars in every case tried summarily:

- (1) the serial number of the case;
- (2) the date of the commission of the offence;
- (3) the date of the report or complaint;
- (4) the name of the complainant (if any);
- (5) the name, parentage and residence of the accused;
- (6) the offence complained of and the offence proved, and the value of the property in respect of which the offence has been committed
- (7) the plea of the accused and his examination if any;
- (8) the findings;
- (9) the sentence or other final order;
- (10) the date on which proceedings terminated.

The register containing the particulars mentioned above forms the record in a summary trial.