Subject: Criminology

Production of Courseware

- Content for Post Graduate Courses

Module: Basic Principles of Code of Criminal Procedure
Quadrant I- Description of the Module

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Quadrant- II- E-Text

The legal framework in any given area is generally divided into two aspects; substantive law and procedural law. Substantive law refers primarily to the area of law which defines the rights and duties of individuals and contains the prescriptions and prohibitions of law. Procedural law on the other hand regulates the manner in which such rights and duties will be enforced through the legal mechanism. For example, the Indian Contract Act defines the rights and duties of individuals who have entered into a contract and the conditions of their enforcement. Thus, whether A has the right to enforce a contract which he has entered into with B will be decided in reference to the provisions of the Indian Contract Act. On the other hand, issues such as the place of the suit, the court where the suit needs to be filed, the procedure to be adopted by the court while hearing such a suit and other such matters are determined by the provisions of the Code of Civil Procedure.
In the area of criminal law, Indian Penal Code constitutes the substantive law and the Code of Criminal Procedure constitutes the procedural law. Consisting of 38 Chapters and more than 480 Sections, the Code of Criminal Procedure contains detailed provisions as to how the criminal law of the land is to be enforced. The following are some of the important issues covered by the Code of Criminal Procedure;

1. Detection of Crime
2. Arrest of Suspects
3. Search and Seizure
4. Investigation and Collection of Evidence
5. Conducting Trial
6. Imposition of Punishment
7. Provisions regarding Appeal, Review etc.

While it is not practically possible to encapsulate the details of the entire code, it is important to be mindful of the certain fundamental aspects on the basis of which the structure of the criminal procedure is built.

Classification of Offences

It is important to understand that the nature of rules and prescriptions applicable in a particular situation under Code of Criminal Procedure depends on the classification of the offence in question. There are three main categories of classification of offences under the Code of Criminal Procedure which determine the different rules which are applicable to different types of cases in relation to certain matters.

Cognizable and Non-Cognizable Offences

Cognizable offences refers to the list of offences so identified in the First Schedule of the Code of Criminal Procedure for which a police officer may arrest a person without warrant. Non-cognizable offences mean offences for which a police officer can arrest a person only with a warrant. For example, the offence of sedition is a cognizable offence whereas the offence of exerting undue influence at an election is a non-cognizable offence. Thus, when the offence is that of sedition, a police officer can arrest the accused without any warrant from any magistrate and also conduct investigation on the case without any authorisation from any magistrate. On the other hand, in case of the offence of exerting undue influence at an election, a police officer cannot as such arrest an accused without a warrant and would also require the authorisation from a judicial magistrate to conduct investigation.

It is important to remember that the distinction between cognizable and non-cognizable offences is not seemingly based on any generalised principle but on the basis of the identification listed in the First Schedule. However, a perusal of the offences listed as cognizable and non-cognizable indicates that the offences identified as non-cognizable are usually such offences which can be considered more as private wrongs where the initiative to pursue a criminal prosecution is left the discretion of the victim. In such cases, the victim can approach the court to make the police commence investigation on the case.

Bailable and Non-Bailable Offences

Bailable offences refer to the list of offences which are identified as a bailable offence in the First Schedule of the Code of Criminal Procedure or under any other law. In case of an offence identified as a bailable offence, when the accused person is arrested or detained without warrant, he/she has a right to be released on bail. In case of non-bailable offences, whether the arrested person will be granted bail or not is up to the discretion of the court.
Though there is no articulated general rule in this regard, generally more serious offences are categorised as non-bailable and less serious offences are categorised as bailable.

**Summons Cases and Warrant Cases**

Warrant cases refer to all such cases involving any offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. A summons case refers to any case which is not a warrant case. The purpose behind this classification is to determine the nature of trial procedure to be adopted in relation to the case in question. Under the Code of Criminal Procedure, separate trial procedures have been prescribed for warrant cases and summons cases. The trial procedure in relation to the warrant cases is more elaborate than in case of summons cases. The distinction between summons and warrant cases is also relevant in how the presence of the accused is secured by the court. In a summons case, once cognizance has been taken by the court, a summons is issued to the accused to secure his attendance in the court. On the other hand, in case of a warrants case, the attendance of the accused is secured by issuing a warrant of arrest.

**Pre-Trial Procedures**

The Code of Criminal Procedure contains various important procedures which can generally be characterised as ‘Pre-Trial Procedures’. Pre-Trial procedures refer to the set of procedures which regulate the circumstances prior to the stage of trial. These procedures primarily cover the issues such as detection of crime, arrest of the suspected criminals, investigation of the crime, collection of evidence in relation to the crime etc. We will be focussing on three important aspect of pre-trial procedures;

1. Arrest
2. Search and Seizure
3. Interrogation during Investigation

Effecting the arrest of a suspected offender is one of the most important powers which is vested with the police. It is also one of the most controversial aspects of the police action as it results in direct loss of personal liberty.

A police officer can arrest an individual either with a warrant or without a warrant. When the matter concerns a non-cognizable offence, a police officer cannot arrest a suspect without a written warrant of arrest from a magistrate. A warrant of arrest can be issued even
in a cognizable case if the police has not arrested the accused.\(^\text{11}\) A police officer can effect an arrest even without a warrant when the arrested person is actually concerned or reasonably suspected to be concerned in a cognizable offence.\(^\text{12}\) Section 41 of the Code of Criminal Procedure also provides some further grounds where a police officer can arrest a person without a warrant.

The Code of Criminal Procedure provides a variety of safeguards to protect the rights of an arrested person. As getting arrested is an immediate and direct denial of the right of personal liberty of the arrested person, the Supreme Court in a catena of cases\(^\text{13}\) has also laid down detailed guidelines in relation to the rights of the arrested persons. Some important rights of the arrested person are as following:

1. Right to be informed of the grounds of arrest
2. Right to be informed of the right to bail
3. Right to be produced before a magistrate without delay
4. Right of not being detained for more than 24 hours without the permission of a judicial magistrate
5. Right to consult a legal practitioners
6. Right to be informed of his right to free legal aid in case of indigent person
7. Right to have one friend or relative be informed about his arrest and the place of his detention
8. The right to have a memo of arrest attested by at least one witness who may be either a family member of the arrested person or a respectable person of the locality from where the arrest is made
9. The right to undergo a medical examination within 48 hours of the arrest

For collection of evidence, the police is authorised to search and seize things and documents. The police can conduct a search either with a warrant or without a warrant. A search warrant operates as a licence for the police to search any place either generally or for specific things. As conducting a search involves invasion of privacy, the courts are expected exercise care while issuing search warrants.\(^\text{14}\) Section 93 of the Code of Criminal Procedure deal with the various grounds on the basis of which a court may be justified to issue a search warrant. Section 165 authorises a senior investigating police officer to conduct a search without warrant if during the investigation, there is no time to obtain a search warrant.

It is important to take note that there are certain general rules which would be applicable in relation to a search whether it is with or without a warrant. The search is supposed to made in the presence of at least two independent and respectable inhabitants of the locality in which the place to be searched is situated. The occupant of the place being searched has the right to attend the search. The person making the search is required to make a list of all the things seized and the places where such things were found and have the same signed by the witnesses.

For collection of evidence, the investigating officer is empowers under section 161 to orally examine any person supposed to be acquainted with the facts and circumstances of the case. It is important to note that an accused is also covered under the expression of ‘any person acquainted with the facts and circumstances of the case’ and thus is liable to answer the questions put to him by the investigating officer.\(^\text{15}\) However, a person being so examined is not bound to answer such questions the answers to which would have a tendency to expose him to a criminal charge, penalty or forfeiture.\(^\text{16}\) Though the investigating officer can reduce into writing the statements made to him, the person making the statement is ought not to sign such document.\(^\text{17}\) This provision is made to ensure that the person being examined is not put to harassment by the investigating officer. It is important to note that any statement made to the investigating officer under section 161 can be used only for limited
purposes. Under section 162, a statement made by a person under section 161 can be used to contradict his testimony when he is called as a prosecution witness. It is important to note that when such a person is called as a defence witness, his previous statement under section 161 cannot be used to contradict him. The investigating officer, under section 163 is duty bound not to offer any kind of inducement, threat of promise while examining a person under section 161.

**Fair Trial**

The criminal procedure is oriented to ensure that in trying to punish a person for the crimes he might have committed, we cannot afford to sacrifice the reasonable rights of the accused to have his case judged fairly and justly. Towards this end, the Code of Criminal Procedure incorporates within its scheme several elements of through which a fair trial can be assured.

**Adversary System**

The adversary system of adjudication is based on affording an equal and fair opportunity to both the contesting parties to present the merits of their case before the court. The court in such a scenario operates as an unbiased umpire which decides as to which party has proved his case as per the requirements of law. The adversary system is supposed to provide and equal opportunity to both the parties to present their case but in a country like India with widespread illiteracy and poverty, this tenet of equality is often reduced to a mere theoretical abstraction. It is for this reason that in India the adversary system is not adopted in its theoretical extreme and provisions have been made for facilitating legal aid to indigent persona at State costs. In fact the right to free legal aid services has been recognised as an inherent and important part of the right to life guaranteed under section 21 of the Constitution of India.

**Public Hearings**

In order to ensure that judges adjudicating a case do no function out of personal prejudices or whimsical biases, conducting the trial openly operates an important instrumentality. An open and public hearing ensures a minimum objectivity and fairness in the proceedings. It is towards this end that section 327 of the Code of Criminal Procedure mandates that the place where the court shall be held will be an open court generally accessible to public subject to such reasonable restrictions which the court may consider necessary.

**Impartial Judge**

In order to ensure fairness in the trial, it is important to ensure that the judge adjudicating the matter should not have a conflict of interest. This requirement is expressed in the maxim nemo debet esse judex in propria causa which mandates that no man ought to be a judge in his own case. This maxim has been given statutory recognition in the form of section 479 of the Code of Criminal Procedure which prescribes that a judge or magistrate shall not try or commit for trial any case in which he is a party of in which he is personally interested except with the permission of the higher appellate court. It also prescribes that a judge shall not hear an appeal from any judgement passed by himself. The High Court has been empowered under section 407 to order for an offence be inquired into or tried by any other court when it feels that a fair and impartial inquiry or trial cannot be held in the court currently dealing with the matter.

**Presumption of Innocence and Burden of Proof**
Another essential aspect of a fair trial under the adversarial system of adjudication is the proposition that the accused is presumed to be innocent until proven guilty. Thus, the burden to prove that the accused is guilty of the alleged crimes is positively on the prosecution and unless the prosecution has discharged the burden, the court cannot return a verdict of guilty regardless of the nature of evidence produced by the defence. Throughout the trial, that is a constant burden on the prosecution which must be discharged by proving the guilty of the accused beyond reasonable doubt.

Rights of the Accused

The essence of fair trial is to enable the accused to present his case in a proper manner. In order ensure that the accused gets a fair chance to defend the allegations against him, the Code of Criminal Procedure recognises certain rights which are available to the accused during the trial.

The right to know of the details of the accusations levelled against him is essential for the accused to prepare his defence. Thus, the Code of Criminal Procedure in through several provisions guarantees to the accused the right to be properly informed of the allegations which have been levelled against him. When the offences that the accused is alleged to have committed are serious in nature, the court has the duty to frame the charges in writing and then also to explain the charges to the accused.

The accused also has the right to be present throughout the trial so that that he can comprehend the case of the prosecution. Though no specific provision can be located in the Code of Criminal Procedure which specifically states this right of the accused, the same is implied by other specific provisions which empower the courts to dispense with the presence of the accused in some situations. The existence of such provisions in the form of section 205, 273 and 317 mean that other than under those provisions, the court cannot stop the accused from being present throughout the trial.

Section 273 of the Code of Criminal Procedure mandates that unless otherwise provided, all evidence in a trial or in any other proceeding ought to be taken in the presence of the accused. If the personal attendance of the accused has been dispensed with, then the evidence must be taken in the presence of his pleader. When evidence is taken in contravention of section 273 violates the very basic tenet of a fair trial. When the evidence is taken in a language not understood by the accused and he happens to be present in the court in person, then he is entitled to the benefit of having the evidence be interpreted in a language he understands.

The accused also has the right to cross-examine the witnesses produced by the prosecution and a denial of this right vitiates the idea of fair trial. As we have observed earlier, the burden to produce evidence is on the prosecution and the defence is not under any obligation to produce evidence of the innocence of the accused. However, if the accused intends to produce evidence in order to support his claim of innocence, he cannot be denied that right. It is also important that the court delivers a reasoned decision summarising the arguments and evidences of both the parties.

One of the most important elements of the concept of fair trial is the doctrine of autrefois acquit and autrefois convict. As per the prescriptions of this doctrine, once a person is either convicted or acquitted of any offence, he cannot be tried for the same offence again and he also cannot be tried for another offence based on the same facts as the earlier trial. This doctrine is incorporated in section 300 of the Code of Criminal Procedure. The important of
this doctrine can be understood from the fact that the same has been given the status of a fundamental right under Article 20 (2) of the Constitution of India. Putting the person on another trial for the same offence where he has already been acquitted or convicted would constitute undue harassment.

Undergoing a criminal trial is an arduous experience and if the experience is a unnecessarily prolonged one, it would result in significant stress and harassment for the accused. It is for this reason that the accused also has the right to an expeditious trial. An unreasonably long trial cannot be considered a fair trial as it puts undue pressure on the accused. This right has been recognised as a part of the right to life under Article 21 of the Constitution of India.31

Summary
1. In the area of criminal law, Indian Penal Code constitutes the substantive law and the Code of Criminal Procedure constitutes the procedural law. Consisting of 38 Chapters and more than 480 Sections, the Code of Criminal Procedure contains detailed provisions as to how the criminal law of the land is to be enforced.
2. It is important to understand that the nature of rules and prescriptions applicable in a particular situation under Code of Criminal Procedure depends on the classification of the offence in question. There are three main categories of classification of offences under the Code of Criminal Procedure which determine the different rules which are applicable to different types of cases in relation to certain matters.
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9. The criminal procedure is oriented to ensure that in trying to punish a person for the crimes he might have committed, we cannot afford to sacrifice the reasonable rights of the accused to have his case judged fairly and justly. Towards this end, the Code of Criminal Procedure incorporates within its scheme several elements of through which a fair trial can be assured such as adoption of adversary system, public hearings, impartial judges, presumption of innocence, rights of the accused etc.

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1 Section 2 (c) Cr.PC
2 Section 2 (l) Cr.PC
3 Section 156 (1) Cr.PC
4 Lectures on Criminal Procedure, R.V. Kelker, Eastern Book Company, 2004, 4
5 Kelker 5
6 Section 2 (a) Cr.PC
7 Section 2 (x) Cr.PC
8 Section 2 (w)
9 Kelker 5
10 Kelker 5
11 Section 204 and 87 of Cr.PC
12 Section 41 (1) (a)
14 Stephen v Chandramohan 1988 Cri LJ 308 (Ker HC)
15 Nandini Satpathy v P.L. Dani (1978) 2 SCC 424
16 Section 161 (2)
17 Section 162 (1)
18 Kelker 66
19 Kelker 140
20 Kelker 140
21 Hussainara Khatoon (IV) v State of Bihar (1980) 1 SCC 98
22 Kehar Singh v State (Delhi) (1988) 3 SCC 609
23 Kali Ram v State of H.P. (1973) 2 SCC 808
24 Section 228, 240, 246 and 251 of the Code of Criminal Procedure
25 Kelker 146
26 State v Anant Singh 1972 Cri LJ 1327
27 Section 279, Cr.PC
28 Sukanraj v State of Rajasthan AIR 1967 Raj 267
29 T.N. Jannardhanan Pillai v State 1992 Cri LJ 436
30 Mukhtiar Singh v State of Punjab 1995 SCC (Cri) 296
31 Hussainara Khatoon (IV) v State of Bihar (1980) 1 SCC 98