

# E Lectures.

9<sup>th</sup> Semester (Code of Criminal Procedure)

## Unit –I :-

### Definitions (Section 2)

(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; and "**non-bailable offence**" means any other offence;

(Note: the 1<sup>st</sup> schedule enshrined in the Code is a ready reference which depicts the section, nature of the offence, whether it is cognizable or non cognizable, bailable or non bailable, and in what court such an offence has to be tried)

(b) "**charge**" includes any head of charge when the charge contains more heads than one;

(Note: this definition adopts the view as taken in Queen Empress Vs Appa Subhana Mendre (ILR 8 Bom. 200). To make it more understandable we can refer to Reily Vs R<sub>2</sub> ( ILR 28 Cal 434(437) in which the charge was defined as "a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. The notes given under section 211 to 217 which relates to the charge be also examined"

(c) "**cognizable offence**" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(d)"**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 does not include a police report.

*Explanation.-* A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

(Note:- the meaning of the word complaint is common parlance is a grievance. A harmonious reading of the provisions of section 2(d) and 2(r)[ ie police report] of the code would indicate that a police report of non cognizable offence after investigation would be deemed to be a complaint and the police officer making such a report be deemed to be complainant(lajpat rai Vs state; 1983 Cr L J 888). Thus according to language of 'Municipal council Vs Prabhu Narain(1969 RLW 24) the complaint means the allegations made to a magistrate with a view to his taking action under law, that a person has committed an offence and a complainant , therefore is the person who makes an allegation in form of a complaint to the magistrate. It must also be noted that as per ' Bhimappa Basapa Vs Laxman S. Samagounda(AIR 1970 S.C 1155) the word complaint has a wide meaning and includes even an oral allegation. No form is prescribed which the complaint must take. All that is necessary is that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the magistrate to take action). Further in order that it may be treated as a complaint it should contain allegations that a person known or unknown has committed an offence and action be taken against him. Therefore an application if it contains the requisite allegations can also be treated as a complaint. We can sum up that the basic ingredients of a complaint are that 1.it must be made to a magistrate,2. It must be made with a view to

his taking the action under the code 3. It must contain an allegation that some person whether known or unknown has committed an offence and 4. It must not be the report of a police officer.

(e) "**High Court**" means, -

- (i) in relation to any State, the High Court for that State;
- (ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;
- (iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(f) "**India**" means the territories to which this Code extends;

(g) "**inquiry**" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(Note- by the very definition a clear line has been drawn between inquiry and trial, the later not defined by the code and has to be understood with reference to the context in which it occurs. In this regard the Honble Supreme Court has interpreted the word inquiry in VC Shukla Vs State through CBI(AIR 1980 SC 962) in which inquiry and trial have been qualified. As mentioned in 'State of UP Vs Lakshmi Brahman AIR 1983 SC 439) the supreme court has held that from the time the accused appears or is produced before the magistrate with the police report under section 170 and the magistrate proceeds to enquire whether under section 207 has been complied with and then proceeds to commit the accused to the court of sessions, the proceedings before the magistrate would be an enquiry as contemplated by section 2(g).

(h) "**investigation**" 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 authorized by a Magistrate in this behalf;

(Note:- It is the duty of a police officer to investigate in a comprehensive manner and thoroughly. Investigations in a cognizable offence by a police officer commences on the information received by an officer in charge of a police station relating to the commission of a cognizable offence or if such officer has reason to suspect the commission of a cognizable offence. As per 'HN Rishbud Vs State of Delhi (AIR 1955 SC 196), under the code investigation consists generally of the following steps 1. Proceeding on the spot, 2. Ascertainment of the facts and circumstances of the case, 3. discovery and arrest of the suspected offender, 4. Collection of evidence relating to the commission of the offence which may consist of the examination of various persons including the accused and reduction of their statements into writing if the officer thinks fit, the search of the places or seizure of things considered necessary for the investigation and to be produced at the trial and 5. Formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial and if so taking necessary steps for the same by filing of a charge sheet under sec 173.

(i) "**judicial proceeding**" includes any proceeding in the course of which evidence is or may be legally taken on oath;

(Note:- In earlier definitions by the courts the term judicial proceeding was defined 'nothing more or less than a step taken by the court in the course of the administration of justice, in connection with the pending cases'. In Mayne's criminal law of India we find it to be defined as 'any step in the lawful administration of justice, in which evidence may be legally

recorded for the decision of a matter in issue in the case or of any question necessary for the decision or final disposal of such matter'. The judicial proceedings include any proceeding in the course of which evidence is or may be legally taken on oath. The test whether a proceeding is judicial that were approved by the Supreme Court in Bharat Bank Case( AIR 1950 SCR 459) is following.1. the presentation of the case by each of the parties to the dispute,2. Ascertainment of the facts by the evidence adduced by the parties if the question is purely of facts,3. The submission by the parties of legal arguments to ascertain a question of law and 4.a decision disposing of the matter.

(j)"**local jurisdiction**", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code;

(k)"**metropolitan area**" means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;

(l)"**non-cognizable offence**" means an offence for which, and "**non-cognizable case**" means a case in which, a police officer has no authority to arrest without warrant;

(m)"**notification**" means a notification published in the Official Gazette;

(n)"**offence**" means 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( 1 of 1871);

(Note:- the definition applies to any act or omission punishable by any law for the time being in force. Therefore to constitute an offence there must be a positive allegation that offence has been committed by the person accused of the offence and that such an

offence is cause of an act or omission which is made punishable by law. As per 'MLSethi Vs RPKapur AIR 1967 SC 528, an offence is constituted as soon as it is found that the acts which constitute that offence have been committed by the person accused of the offence. It remains an offence whether it is triable by the court or not. If a law prescribes punishment for that offence, the fact that the trial of that offence can only be taken up by courts after certain specified conditions are fulfilled does not make that offence any less an offence'

(o) "**officer in charge of a police station**" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;

(p) "**place**" includes a house, building, tent, vehicle and vessel;

(q) "**pleader**", when used with reference to any proceeding in any Court, means a person authorized by or under any law for the time being in force, to practice in such Court, and includes any other person appointed with the permission of the Court to act in such proceeding;

( r ) " **police report**" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(Note:- As mentioned in Babu Ram Agarwalla Vs State 1976 Cal HN 864, this definition makes it clear that the expression 'Police Report' throughout the code would refer to the final report under sub section 2 of section 173 of the code in cognizable cases and also in non cognizable cases where the investigation is undertaken under the order of the magistrate under section 155(2) of the code)

(s)"**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 in this behalf;

(t)"**prescribed**" means prescribed by rules made under this Code;

(u)"**Public Prosecutor**" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

(Note:- section 24 of the code has detailed out the provisions regarding the public prosecutors. As we further find mention in the 'State of Rajasthan Vs Pukh Raj 1965 2 CrLJ 677, AIR 1965 Raj 196, public prosecutors are of four catagories 1. Appointed by the central government for conduct of any proceedings in the High Court, 2. Appointed by the state government for conducting any proceedings in the High Court, 3. Public and additional public prosecutors appointed by the state government for every district and 4. Special public prosecutors appointed by the central or state government for a particular case or class of cases).

(v)"**sub-division**" means a sub-division of a district;

(w)"**summons-case**" means a case relating to an offence, and not being a warrant-case;

(x)"**warrant-case**" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(Note:- It is the quantum of punishment that distinguishes a warrant case from a summons case. The distinction does not depend upon whether a summons or warrants shall be issues in

the first instance. Nor is the question whether the police may or may not arrest without warrant- cognizable or non cognizable, any bearing upon the distinction between summons and warrant case. Chapter XX lays down the distinct procedure to be followed in the trial of summons cases and chapter XIX has the procedure of warrant cases.)

(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

## 2. Constitution of the criminal courts –Powers and Functions ( section 06 to 31)

Administration of justice is the most important function of the state. For this purpose our constitution has set up a hierarchy of courts. The Supreme Court is the apex body, followed by state High Courts which have been created by the constitution of India, and their jurisdiction and powers are well defined in the constitution itself. Apart from the Supreme Court and High Courts, the criminal courts have been described in the Criminal Procedure Code, 1973. In fact the entire chapter II and III of the code is dedicated to the formation and the powers of the criminal courts and the necessary hierarchy which is indispensable for the logical functioning of the justice delivery system. It is an enabling mechanism that gives the authority for the formation of the courts. Being among one of the 3 foundational pillars of the democracy the scheme was originally laid down by the British. In the present times the essence and co ordinate functioning of the Indian courts has been a cherished features of judiciary and its basic reason

the way its courts of justice have been formulated. Let us first examine the bare act and its language.

**SECTION 6: Classes of Criminal Courts:-** Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-

- (i) Courts of Session ;
- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class ; and
- (iv) Executive Magistrates.

(Note:- the word court is attributed and has acquired the meaning of either a place where justice is administered and a person or persons who administer justice. The various commentaries on the subject tell us that 'in order to be a court the person or persons who may be said to constitute it must be entrusted with judicial functions. Judicial function means the function of deciding litigated questions according to law-deciding them not arbitrarily but on evidence and according to certain rules of procedure which ensure that the person, who is called upon to decide them, acts with fairness and impartiality. Equally true is the fact that a court cannot function properly unless it is armed with certain powers. Thus a court must not only be charged with the judicial functions but also invested with judicial powers. Another aspect of a court is that it exercises jurisdiction over person by reason of sanction of law and not merely by reason of voluntary submission to such jurisdiction. The term criminal court is not defined in the court but the code of criminal procedure ,act 25 of 1861 defined it as denoting every judge or magistrate lawfully exercising jurisdiction in criminal cases whether for the decision of such cases in the first instance or an appeal or for commitment to any other court or officer.)

## **SECTION 7 & 8**

Territorial divisions. (1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts : Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district. (2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts. (3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions. (4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section.

### **Metropolitan areas.**

The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code. (2) As from the commencement of this Code, each of the Presidency towns of Bombay, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub-section (1) to be a metropolitan area. (3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million. (4) Where, after an area has been declared, or deemed to have been

declared to be, a metropolitan area, the population of such area falls below one million, such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place. (5)Where the State Government reduces or alters, under subsection (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place. Explanation.-In this section, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

**SECTION 9 -Court of Session.** (1) The State Government shall establish a Court of Session for every sessions division. (2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court. (3)The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session. (4)The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct. (5)Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent

application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application. (6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein. Explanation.-For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.

#### **SECTION 10. Subordination of Assistant Sessions Judges..**

(1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction. (2) The Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges. (3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and

every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

### **SECTION 11. Courts of Judicial Magistrates.**

. (1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify: 1\*[Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.] (2) The presiding officers of such Courts shall be appointed by the High Court. (3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court .

### **SECTION 12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate,etc.**

(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate. (Note) Since the Chief Judicial Magistrate is heading the Magistracy of the particular district, therefore ordinarily a senior Magistrate is assigned the job of Chief Judicial Magistrate. (2)The High Court may appoint any

Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct. (3)(a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires. (b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

### **SECTION 13. Special Judicial Magistrates**

. (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate 1\*[of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area] : Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify. (2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct. 2\* [(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of

a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

#### **SECTION 14. Local jurisdiction of Judicial Magistrates.**

(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code : [Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.]

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district. [(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond 'the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.]

#### **SECTION 15. Subordination of Judicial Magistrates.**

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge ; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate. (2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of

business among the Judicial Magistrates subordinate to him.

### **SECTION 16. Courts of Metropolitan Magistrates.**

(1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify. (2) The presiding officers of such Courts shall be appointed by the High Court. (3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.

### **SECTION 17. Chief Metropolitan Magistrates and Additional Chief Metropolitan Magistrates.**

(1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.

(2) The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

### **SECTION 18. Special Metropolitan Magistrates.**

(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases in any metropolitan area within its local jurisdiction :

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify. (2) Such Magistrates shall be called Special Metropolitan Magistrates and

shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.  
2\* [(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers, of a Judicial Magistrate of the first class.]

### **SECTION 19. Subordination of Metropolitan Magistrates.**

(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate. (2) The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate. (3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

### **SECTION 20. Executive Magistrates.**

(1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate. (2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have [such] of the powers of a District Magistrate under this Code or under any other law for the time being in force [as may be directed by the State Government]. (3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the

executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate. (4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate. (5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

#### **SECTION 21. Special Executive Magistrates.**

The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

#### **SECTION 22. Local jurisdiction of Executive Magistrates.**

(1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code (2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

#### **SECTION 23. Subordination of Executive Magistrates**

(1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and

every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a subdivision shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate. (2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an additional District Magistrate.

#### **SECTION 24. Public Prosecutors.**

(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be. (2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area. (3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district. (4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district. (5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district his name appears in

the panel of names prepared by the District Magistrate under sub-section (4). (6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4). (7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years. (8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor. (9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.]

## **SECTION 25. Assistant Public Prosecutors.**

(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in

the Courts of Magistrates. [(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.] (2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor (3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case; Provided that a police officer shall not be so appointed- (a) if he has taken any part in the investigation into the offence with respect to which the accused being prosecuted; or (b) if he is below the rank of Inspector.

(Note:- As per the sohni's commentary on the code of criminal procedure it has been reported that 'the counsel for the prosecution has not accurately conceived his duty, which is to be an assistant to the court in furtherance of justice, and not to act as counsel for any particular person or party. He should not by statement aggravate the case against the prisoners or keep back a witness, because the evidence may weaken the case for prosecution. His only object should be to aid the court in discovering truth. A public prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for, or grasping at, conviction.)

## **SECTION 26 Courts by which offences are triable.**

Subject to the other provisions of this Code.-

(a) any offence under the Indian Penal Code(45 of 1860) may be tried by –

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other Court by which such offence is shown in the First Schedule to be triable;

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by-

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

(Note:- as has been mentioned in the preceding notes that the judicial functioning needs judicial powers to be conferred upon the courts so that it can exercise its functions and implement its directions and thus this section is also an enabling provision. This section prescribes the criminal courts by which the offences under the Indian penal code or the other laws are triable. As per the clause a of the section the high court and the sessions court have concurrent jurisdiction to try any offence under the Penal Code. Judicial Magistrates have been conferred jurisdiction to try such offences only as are shown triable by them in the First Schedule. A reference to this schedule would show that there are certain offences under the penal code which are triable exclusively by a court of sessions even though some of them are not punishable with death or imprisonment for life. No magistrate has been vested with the jurisdiction to try any of these offences. The jurisdiction of every criminal court is derived from statute, either from the statute that created the court or one which defines the offence.)

## **SECTION 27. Jurisdiction in the case of juveniles.-**

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, (60 of 1960) or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

## **SECTION 28. Sentences which High Courts and Sessions Judges may pass.-**

(1) A High Court may pass any sentence authorized by law.

(2) 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.

(3) 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.

(Note:-sentences are the most important aspect of a trial as it is the final outcome of the trial and most of the time it is essentially attached with public faith in the judiciary and their sense of security and peace. So it has become the foundational feature of the powers as vested in the courts. But at the same time certain

guidelines are to be kept in mind while delivering the sentences. As has been laid down in Dulla Vs State AIR 1958 All 198, some guidelines have to be adhered to like a. the twin objects of the punishment are to prevent a person who has committed a crime from repeating it and to prevent others from committing similar crimes. Thus the sentence must aim to achieve both these goals b.the prevalence of a particular crime in a particular area or during a particular period should also be taken into account. One's political, sentimental, or religious conceptions should strictly be disregarded. The court must bear in mind the necessity of proportion between an offence and the penalty. The maximum penalty provided for any offence is meant for only the worst cases. c. no sentence should ever appear to be vindictive. An excess sentence defeats its own objective and tends to further undermine the respect for the law. d. first/and or youthful offenders invariably be treated leniently. On the other hand a person who has taken to a life of crime or who has refused to take a lesson from his previous convictions should be meted out sever punishment. e. a deterrent sentence is wholly justifiable when the offence is the result of deliberation and pre planning, is committed for the sake of personal gain at the expense of innocent, is a menace to the safety, health or moral well being of the community.)

## **SECTION 29.Sentences which Magistrates may pass.-**

(1) 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.

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

(3) The Court of 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.

(3) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class

### **SECTION 30. Sentence of imprisonment in default of fine.-**

(1) 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-

(a) is not in excess of the powers of the Magistrate under section 29;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth 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.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29.

### **SECTION 31. Sentence in cases of conviction of several offences at one trial.-**

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code, (45 of 1860) sentence him for such

offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

**Provided that-**

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

**SECTION 177. Ordinary place of inquiry and trial.-**

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

**SECTION 178. Place of inquiry or trial.-**

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas.

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

### **SECTION 179. Offence triable where act is done or consequence ensues.-**

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

(Note:- the section confers jurisdiction on- a) the court within whose jurisdiction anything was done, by the reason of which a person is accused of the commission of the offence and b) the court within whose jurisdiction limits any consequence ensued by reason of which the person is accused of the commission of an offence. The expression 'by the reason of which' governs both the clauses, ie anything which has been done and any consequence which has ensued. If the offence is complete in itself by the reason of the act having been done and the consequence is a mere result of it, not essential for the completion of the offence, this section will not apply.)

### **SECTION 180. Place of trial where act is an offence by reason of relation to other offence.-**

When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned

offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

### **SECTION 181. Place of trial in case of certain offences.-**

(1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

## **SECTION 182. Offences committed by letters, etc.-**

(1) Any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage.

## **SECTION 183. Offence committed on journey or voyage.-**

When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage

## **SECTION 184. Place of trial for offences triable together.- Where-**

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or

(b) the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of

the provisions of section 223, the offences may be inquired into or tried by any Court competent to inquire into or try and of the offences.

**SECTION 185. Power to order cases to be tried in different sessions divisions.**

Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division : Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force.

**SECTION 186. High Court to decide, in case of doubt, district where inquiry or trial shall take place.**

Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided- (a) if the Courts are subordinate to the same High Court, by that High Court; (b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first and thereupon all other proceedings in respect of that offence shall be discontinued.

**SECTION 187. Power to issue summons or warrant for offence committed beyond local jurisdiction.**

(1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the

time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner. hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond With or without sureties for his appearance before the Magistrate having such jurisdiction. (2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

### **SECTION 188. Offence committed outside India.**

When an offence is committed outside India- (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found : Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

### **SECTION 189. Receipt of evidence relating to offences committed outside India.**

When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188, the Central Government may, if it thinks fit, direct that

copies of depositions made or exhibits produced before a judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions exhibits relate.