

Introduction

The object of Criminal Procedure Code is to provide machinery for the punishment of offenders against the substantive Criminal law.

In layman's language, the Criminal Procedure Code lays (CrPC) the rules for conduct of proceedings against any person who has committed an offence under any Criminal law, whether it is I.P.C or other Criminal law.

TYPES OF OFFENCES COVERED

All such offences are covered by Criminal Procedure Code (CrPC), which are mentioned in Indian Penal Code. For example Murder, Theft, Kidnapping, Rape, Forgery, etc.

The legal meaning and whether an act will constitute a criminal offence or not is provided in the I.P.C. The Procedure of initiating proceeding/Prosecution for a criminal offence is provided in Criminal Procedure Code (CrPC). CrPC provides the manner and place, where investigation inquiry and trial of an offence shall take place.

CLASSIFICATION OF OFFENCES

Depending on the nature and gravity of an offence's if they can be classified under any of the following heads:

1. Bailable and non-bailable offence
2. Cognizable and non-cognizable offence.
3. Compoundable and non compoundable offence

BAILABLE OFFENCE AND NON-BAILABLE OFFENCE

A bailable offence is one, in which, bail is a matter of right, and non bailable offence is one, in which granting of bail is discretion of the court.

BAILABLE OFFENCE

1. In case of bailable offence, the grant of bail is a matter of right. It may be either given by a police officer who is having the custody of Accused or by the court.
2. The accused may be released on bail, on executing a bond, known as "bail bond", with or without furnishing sureties.
3. The "bail Bond" may contain certain terms and conditions, such as:
 - i. The accused will not leave the territorial jurisdiction of the state without permission of court or police officer.
 - ii. The Accused shall give his presence before police officer every time; he is required to do so.
 - iii. The Accused will not tamper with any evidence whatsoever, considered by police in the investigation.
4. The court is empowered to refuse bail to an accused person even if the offence is bailable, where the person granted bail fails to comply with the conditions of the bail bond.

EXAMPLES OF BAILABLE OFFENCE

Although even in case of bailable offence, the bail may be refused, if credit of the accused is doubtful. However following are some offences which are classified as "Bailable offence" by the code itself:

1. Being a member of an unlawful Assembly
2. Rioting, armed with deadly weapon
3. Public servant disobeying a direction of the law with intent to cause injury to any person.
4. Wearing Garb or carrying token used by public servant with fraudulent intents.
5. Bribery in relation to elections.
6. False statement in connection with elections.
7. Refusing oath when duly required to take oath by a public servant.
8. Obstructing public Servant in discharge of his public functions.
9. Giving or fabricating false evidence in a judicial proceeding.
10. Selling any food or drink as food and drink, knowing the same to be noxious.

11. Causing a disturbance to an assembly engaged in religious worship.

NON BAILABLE OFFENCE

1. A non-bailable offence is one in which the grant of Bail is not a matter of right. Here the Accused will have to apply to the court, and it will be the discretion of the court to grant Bail or not.
2. Again, the court may require the accused to execute a "Bail-Bond with some stringent conditions.
3. The court may generally refuse the Bail, if:
 - i. "Bail Bond" has not been duly executed , or
 - ii. if the offence committed is one, which imposes punishment of death or Life imprisonment, such as "Murder " or "Rape" or
 - iii. The accused has attempted to abscond, and his credentials are doubtful.
4. The application for bail shall be filed before the Magistrate, who is conducting the trial.

The application after being filed is usually listed on the next day. On such day, the application will be heard, and the police shall also present the accused in court. The magistrate may pass such orders, as he thinks fit.

5. If the bail is granted, the accused will have to execute a "Bail Bond".
6. On execution of bail-bond the accused is out of prison only on such terms and conditions, as contained in the "Bail-Bond".
7. The amount of every bond, i.e. the security shall be reasonable, and no excessive (sec 440)
8. If, at any point of time, the terms and conditions of bail are not fulfilled, the "Bond" shall be forfeited.
9. The application for Bail shall be made in the form, prescribed and the designation of judge / Magistrate should be clearly mentioned.
10. The application shall also contain an undertaking, that the accused shall fulfill all the conditions as contained in the Bail- Bond.

PROCEDURE ONCE BAIL IS GRANTED

1. When the bail has been granted the accused shall, execute a "Bail-Bond", and furnish sureties, and security for amount as required.
2. When the bond has been duly executed, the accused shall be released, and if he is in prison, then an order of Release shall be issued to the officer in charge.
3. If the accused is charged for two separate offences, then, he shall have to execute and satisfy Bail Bond for both of them.

WHEN BAIL MAY BE REVOKED OR BAIL BOND BE FORFEITED

Following are the instances, when a bail may be revoked, or Bail Bond is forfeited:

1. Where, the accused fails to fulfill or commits, breach of any terms and conditions of the bond.
2. Where the accused, fails to furnish the required number of sureties or fails to deposit the security amount
3. Where, the sureties accepted at the time of bail, or turn out afterwards to be insufficient, fraud or have been accepted under mistake.
4. Where any of the sureties to the bail bond, applies to the magistrate for his own discharge
5. Where one of the original surety dies or becomes insolvent, and if accused fails to bring another surety.

In all these cases, the magistrate or court has power to remand the accused to prison, until fresh bond and fresh terms are executed.

APPEAL FROM FORFEITURE OF BOND

1. Where, a bond has been forfeited, or bail has been cancelled, an appeal can be made against such an order.
2. Where an order has been made by a magistrate an appeal shall lie to a sessions judge or
3. Where an order has been made by a court of sessions then appeal shall lie to the same court, where ordinarily-- appeal would lie against session's judge.

COGNIZABLE AND NON COGNIZABLE OFFENCE

Offences can also be classified on the basis of "Cognizable offence", and "Non-cognizable" offence. In brief the difference between these two is

Cognizable offences: An offence, where a police officer can arrest without a warrant.

Non-cognizable offences: An offence, where a police officer can arrest only with a warrant.

COGNIZABLE OFFENCE

1. Cognizable offences are those where a police officer can arrest without warrant.
2. And such cases, after arrest has been made, the accused will be produced before a magistrate, and he may require the police officer to investigate the matter.
3. After investigation, if the case is made out, i.e. charge sheet filed goes against accused, the magistrate can order for arrest.
4. During the pendency of trial, bail application can be moved before the concerned magistrate.
5. Cognizable offences are both bailable, and non-bailable.

EXAMPLES OF COGNIZABLE OFFENCES ARE

1. Offences of waging or attempting to wage war, or abetting the waging of war against the government of India.
2. Wearing the dress or carrying any token used by a soldier, sailor or airman with intent that it may be believed that he is such a soldier, sailor or airman.
3. Rioting armed with deadly weapon.
4. Hiring, engaging or employing person to take part in an unlawful assembly or taking part in self.
5. Being or expecting to be a public servant, and taking, and taking a gratification other than legal remuneration in respect of an official act.
6. Public servant obtaining any valuable things, without consideration, from a person concerned in any proceeding or business transacted by such public servant.
7. Counterfeiting, or performing any part of the process of counterfeiting Indian coin.
8. Having possession of a counterfeit government stamp.
9. Making or selling false weights or measures for fraudulent use.
10. Negligently doing any act known to be likely to spread infection of any disease dangerous to life.
11. Causing a disturbance to an assembly engaged in religious worships.

NON- COGNIZABLE OFFENCE

1. Non cognizable offences are those, where a police officer cannot arrest without a warrant.
2. In such offences for arrest, all the steps have to be followed like
 - i. Filing of complaint/F.I.R.
 - ii. Investigation
 - iii. Charge sheet,
 - iv. Charge sheet to be filed in court
 - v. Trial
 - vi. Final order of arrest if case has been made out.

EXAMPLES OF NON-COGNIZABLE OFFENCES ARE

Following are some examples of non-cognizable offences.

1. Owner or occupier of land not giving information of riot etc.
2. A public servant disobeying a direction of the law with intent to cause injury to any person.
3. A public servant unlawfully engaging in trade.
4. Bribery during elections.
5. Making any false statement in connection with an election.
6. Absconding to avoid service of summons or other proceeding from a public servant, like where summons or notice require attendance in person etc, in a court of justice.
7. Refusing to take oath when duly required taking oath by a public servant.

8. Obstructing public servant in discharge of his public functions.
9. Giving or fabricating false evidence in a judicial proceeding.
10. False claim in a court of justice.
11. Fraudulent use of false instrument for weighting.
12. Selling any food or drink as food and drink knowing the same to be noxious.
13. Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.
14. Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person, who gave the provocation.
15. Buying or disposing of any person as a slave.
16. Dishonest misappropriation of movable property, or converting it to one's own use.

COMPOUNDABLE AND NON COMPOUNDABLE OFFENCES

Criminal offences can also be classified as compoundable and non-compoundable offences.

COMOUNDABLE OFFENCES

Compoundable offences are those offences where, the complainant (one who has filed the case, i.e. the victim), enter into a compromise, and agrees to have the charges dropped against the accused. However such a compromise, should be a "**Bonafide**," and not for any consideration to which the complainant is not entitled to.

Application for compounding the offence shall be made before the same court before which the trial is proceeding. Once an offence has been compounded it shall have the same effect, as if, the accused has been acquitted of the charges.

The code of criminal procedure lays down, i.e. bifurcated, the offences, which are compoundable, and which are non-compoundable.

EXAMPLES OF COMPOUNABLE OFFENCES:

1. Uttering words etc, with deliberate intent to wound the religious feelings of any person causing hurt.
2. Criminal or house trespass
3. Criminal breach of contract of service.
4. Printing or engraving matters, knowing it to be defamatory.
5. There are some offences, which although are compoundable, but, they can be compounded only with the permission of the court.
6. These offences should be compounded before trial begins.
7. Also where accused has already been convicted, and an appeal is pending, permission of the court is required for compounding of such offences.
8. The reason for seeking permission of the court, is that these offences are grievous in nature, and are bad example in society

EXAMPLE OF COMPOUNDABLE OFFENCES (WHERE PERMISSION OF COURT IS REQUIRED)

1. Voluntarily causing hurt by dangerous weapons or means.
2. Causing grievous hurt by doing on act so rashly and negligently as to endanger human life or the personal safety of others.
3. Wrongfully confining a person for three days or more.
4. Assault or criminal force to woman with intent to outrage per modesty.
5. Dishonest misappropriation of property.
6. Criminal breach of trust by a cannier--- wharfinger-- etc, where the value of the property does not exceed two hundred and fifty rupees.
7. Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.
8. Fraudulent execution of deed of transfer containing false statement of consideration.
9. Mischief by killing or maiming cattle etc of any value of fifty rupees or upwards.
10. Counterfeiting a trade or property mark used by another.
11. Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a

woman or intruding upon the privacy of a woman.

NON COMPOUNDABLE OFFENCES

There are some offences, which cannot be compounded. They can only be quashed. The reason for this is, because the nature of offence is so grave and criminal, that the Accused cannot be allowed to go scot-free. Here, in these types of cases generally, it is the "state", i.e. police, who has filed the case, and hence the question of complainant entering into compromise does not arise.

All those offences, which are not mentioned in the list under section (320) of CrPC, are non-compoundable offences.

HOW IS A CRIMINAL PROCEEDING INITIATED

For every different type of Criminal proceeding a separate procedure is involved. However in general, a brief procedure, as to how a criminal case commences, is as follows:

COMPLAINT (154)

1. The first step for initiation of any Criminal case is the complaint.
2. The victim is called a complainant, and complainant should lodge his complaint to the police station of that area, where the offence has been committed, or where he resides. A complaint can be on behalf of the victim also.
3. Generally, the complaint should be lodged within 24 hour of the commission of offence. However, the limitation time is different for some offences.

THIS COMPLAINT CAN BE TREATED AS F.I.R BY THE POLICE OFFICER I.E. FIRST INFORMATION REPORT ON RECEIPT OF INFORMATION (155).

1. On receipt of such information, the concerned police officer shall record the information in writing and the person giving information shall sign it.

IN CASE OF NON COGNIZABLE OFFENCE

1. In case of receipt of information pertaining to Non-Cognizable offence the police officer will have to take permission of the Magistrate.
2. The Magistrate may either quash the information or grant power to investigate.
3. On receipt of orders to investigate from the Magistrate, the police officer shall start the investigation.

IN CASE OF COGNIZABLE OFFENCE

In case of information received, in any cognizable offence, the Police officer shall/can start the investigation without any permission/order from the Magistrate.

INVESTIGATION

1. The investigation in respect of cognizable offence and order to investigate in non-cognizable offence shall commence on the same line.

The only difference is that, in case of cognizable offence, the police officer can arrest without warrant, during investigation. In case of non-Cognizable offence, the police officer will have to apply for warrant from Magistrate, for making any arrest.

2. Even in respect of cognizable offence, the police officer shall send a report to the Magistrate.
3. During the course of investigation the Police Officer may acquire any other person, to appear, and be examined as witness.
4. Any such statements made by the witness, including the complainant, shall be recorded in writing.
5. Such statements, which are recorded, should not be signed by the person making a statement, and such statements, shall only be used for the purpose of further investigation.

6. Also, these statements can be used as evidence, in trial, only with the permission of the magistrate.
7. While the statement is being recorded, the police officer shall not cause any threat inducement or any promise, to the witness.
8. A metropolitan Magistrate or a judicial magistrate can also record any confession or statement of any witness, during the course of trial.

SEARCH AND PRODUCTION OF DOCUMENTS

1. If, the police officer believes that, some search has to be made, during investigation, he is authorised to do so.
2. He can also issue, an order to the person, to produce any relevant documents.
3. If, during search, the police officer is of the opinion that, any one might cause or refuse to search a place or property, then the police officer can obtain a search warrant from the magistrate of that area.
4. On conducting the search if police officer finds some things useful for the trial or
5. Further investigation, then police officer can take such Articles in his possession

ARREST DURING INVESTIGATION

1. Where, the Accused is arrested by the police officer, during investigation; he shall have to be produced before a Magistrate within 24 hours.
2. Where, the period of investigation extends beyond, 24 hours, and the investigation has revealed sufficient grounds against the accused, then if he is still in the custody, the concerned police officer shall produce the accused before the Magistrate along with copy of the entries made in diary during investigation.
3. The Magistrate may either order for release of the Accused till investigation or order for further detention.
4. In case of further detention, the Accused shall have to be brought before the Magistrate every fifteen days.

DURING SUCH DETENTION PERIOD, THE ACCUSED CAN APPLY FOR BAIL.

1. If during or after investigation, the police officer comes to a finding, that there is not sufficient evidence to produce the accused before Magistrate, then such accused shall be released on executing a bond.
2. However, if required by Magistrate he will have to appear on such date and time as directed.
3. On the other hand, if police officer comes to a finding that the case is fit for trial, he shall forward the accused under custody to the Magistrate, to take cognizance.

ON COMPLETION OF INVESTIGATION

TRIAL

1. On receipt of the police report, the Magistrate shall take cognizance of the case, and proceedings shall be initiated.

SUMMONS

1. If, the Accused is already under custody, then he shall be produced before the Magistrate on the date of hearing.
2. If, he is not in custody, then summons shall be issued to him, to appear before the Magistrate.
3. If required, summons shall also be issued to any witness to appear on the date fixed for hearing.

DATE OF HEARING

1. On the date of hearing, the police officer/report shall be represented by "Public Prosecutor". He shall present his case on the basis of investigation and police report. On that day the accused may be heard or given some time to set up his defence.

EVIDENCE

1. All the material collected by Police officer during investigation shall also be produced.
2. On the dates fixed for evidence, the witnesses will be examined and cross-examined.
3. Both, the public prosecutor and the accused shall have right to produce their own witnesses, and material things.

FINAL ORDER

1. On the date fixed for final hearing, the Magistrate shall pass the order after considering, the evidence produced, and having heard the parties.
2. The order passed may either acquit or convict the accused.
3. With this final order, the criminal trial comes to an end.

CRIMINAL PROCEDURE CODE 1973

CRIMINAL PROCEEDINGS IN CASES OF PERSON INVOLVED IN OFFENCES RELATING TO NARCOTIC DRUGS

Narcotic drugs or Psychotropic substances mean the following;

1. Ganja
2. Opium
3. Co Ca Leaf
4. Cocaine and etc.

Any person who is not authorised by central Government or who uses any of such drugs for any purpose other than medical or scientific purpose, will be committing a criminal offence, under " Narcotic Drugs & Psycho tropic substances Act, 1985".

Any offence committed in relation to Narcotic Drugs, is "Cognizable", i.e. Police officer can arrest without warrant, and is also "Non-bailable", in cases, where the term of punishment exceeds 5 years of more.

HOW ARE PROCEEDINGS CONDUCTED

Following persons can issue a search or arrest warrant, where there is a suspicion or complaint or information that narcotic drugs are being dealt in:

1. A metropolitan or Ist or IInd Class Magistrate
2. Police officer
3. Officer of Revenue, drugs control excise department.
4. On the search being conducted, if any person is found in illegal possession of narcotic drugs, he can be arrested there and then.
5. Every such person arrested shall be forwarded to a Magistrate or police officer, who issued a warrant.

DEVIATION FROM CRIMINAL PROCEDURE CODE: (36 A of Narcotic Drugs & Phsy sub. Act, 85)

Generally, a Magistrate, can order a detention of accused for more than 15 days, if investigation is not completed within 24 hours. However in relation to Narcotic Drugs, the procedure is bit different. It is as follows:

1. If the Magistrate is a judicial Magistrate he can only remand for a period of 15 days, and
2. If the Magistrate is an executive Magistrate, he can remand only for a period of 7 days.
3. However if the Magistrate wants to remand on accused for a period of more days than above, then he will have to forward such person (accused) before the "special court"
4. Also where the Magistrate, considers the detention unnecessary he will still have to forward such accused before the "Special court".
5. A "Special court", will have all the powers to conduct the criminal trial, which the Magistrate has, under the CrPC.
6. A "Special court", can also take direct cognizance of an offence, without being committed to if for trial, on

perusal of a police report, or complaint made by concerned officer.

BAIL AND BONDS

1. For all such offences relating to Narcotic Drugs, the Bail Application can be applied only before the special court trying the offence.
2. Provisions and Rules of Bail as contained in CrPC will apply similarly before special court also.

POWER OF SPECIAL COURT

1. A "Special Court" is established by the Government for different areas, for conduction trial, relating to Narcotic Drugs.
2. The special court shall consist of a single judge, who is either a "session Judge" or "Additional Sessions Judge".
3. The Special court will have all the power of Magistrate as granted by Code of Criminal Code, and will be treated as "Court of Sessions".

APPEAL AND REVISION

Any appeal or revision, arising from an order of "special court" will lie before "HIGH COURT".

BAIL APPLICATION DIRECTORY FILED IN HIGH COURT

However a bail application, can still be filed directly for the first time in High court for any proceedings conducted by " Special Courts", in case of urgency