



# **RK JUDICIAL ACADEMY**

## **Institute for Judicial Services Exam**

### **Hyderabad**

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**TELANGANA -JUNIOR CIVIL JUDGE**

**MOCK TEST-09**

**MAINS EXAMINATION**

**TIME: 3:00 HRS**

**MARKS:100**

**Instructions:**

- 1) Attempt all the questions compulsorily
- 2) All questions carry Equal Marks
- 3) Write the answers as orders of the questions
- 4) Strict your answer to the Question only
- 5) Write your Answers in 300 words only

### **QUESTION & ANSWER KEY PAPER**

**1.A. When Can the Police Arrest a Person Without a Warrant?**

Under the **Criminal Procedure Code, 1973**, the police can arrest a person without a warrant in specific circumstances provided under **Section 41** of the CrPC.

**Key Circumstances for Arrest without a Warrant:**

**1. Cognizable Offence (Section 41(1)):**

- If a person has committed a cognizable offence (e.g., murder, theft), the police can arrest without a warrant. A **cognizable offence** is one where the police can initiate an investigation without a court's permission, such as serious crimes.

**2. Reasonable Suspicion (Section 41(1)(b)):**

- If there is credible information or reasonable suspicion that the person has committed an offence that is punishable with an imprisonment of 7 years or more.

**3. Preventing the Commission of an Offence (Section 151):**

- The police can arrest without a warrant to prevent a cognizable offence from being committed, especially when there is a reasonable suspicion of an offence likely to cause a breach of peace.
4. **Habitual Offenders (Section 110):**
    - If the police have information that a person is a habitual offender, involved in organized crime, or a person declared as a proclaimed offender.
  5. **Obstruction of Duty (Section 42):**
    - If a person obstructs a police officer in performing his duty or refuses to provide his name and residence when asked.
  6. **Bailable and Non-Bailable Offences (Section 41A):**
    - For bailable offences, the police can issue a notice to the person to appear before them, instead of arresting them outright.

#### Case Law:

- **Joginder Kumar v. State of UP (1994):**
  - The Supreme Court laid down guidelines for arrest, emphasizing that no arrest should be made merely because it is lawful. Arrest should only occur if it is justified in the circumstances of the case.
- **DK Basu v. State of West Bengal (1997):**
  - The Court held that arrest without proper reason violates Article 21 of the Constitution (Right to Life and Personal Liberty) and issued guidelines for proper procedure in arresting and detaining individuals.

#### B. Under What Circumstances May a Search Warrant Be Issued by a Court?

A search warrant can be issued by a Magistrate under the **Criminal Procedure Code, 1973**, mainly under **Sections 93 to 98**.

#### Circumstances for Issuing a Search Warrant:

1. **If Document or Property is Concealed (Section 93(1)(a)):**
  - A search warrant may be issued if the court has reason to believe that any person to whom a summons or order to produce any document or property has been issued is likely to evade compliance by concealing the property or document.
2. **For General Search (Section 93(1)(c)):**
  - A search warrant can be issued if the court deems that a general search of a place is required for documents or other things necessary for investigation.
3. **When an Offence Involves a Crime Scene (Section 97):**



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- If the court suspects that a kidnapped or abducted person is confined in a location, a search warrant can be issued for their recovery.

#### **4. Search for Counterfeit Coins, Stamps, etc. (Section 98):**

- The Magistrate may issue a warrant to search for and seize counterfeit coins, stamps, currency notes, and other fraudulent items.

#### **Case Law:**

- **State of Maharashtra v. Natwarlal Damodardas Soni (1980):**

- The Supreme Court held that search warrants should only be issued when absolutely necessary, and their execution must be reasonable and within the confines of the law.

#### **C. What is F.I.R., and How is it Recorded? Discuss its Admissibility as Evidence.**

##### **F.I.R. (First Information Report):**

An **F.I.R.** is the **first report** of information regarding the commission of a cognizable offence, made to the police. It forms the foundation of the investigation process and is covered under **Section 154 of the CrPC.**

##### **How is it Recorded?**

#### **1. Oral or Written Information (Section 154(1)):**

- If the information is given orally, it should be written down by the police officer and read over to the informant. If given in writing, it must be signed by the informant.

#### **2. Recording Procedure (Section 154(2)):**

- After recording the F.I.R., a copy of it is provided to the informant free of cost.

#### **3. Refusal to Record:**

- If a police officer refuses to record the F.I.R., the informant can approach the Superintendent of Police or a Magistrate under **Section 154(3)** and **Section 156(3)**, who can direct the police to investigate.

##### **Admissibility of F.I.R. as Evidence:**

- **Substantive Evidence:**

- The F.I.R. is **not** substantive evidence as it cannot prove the facts of a case by itself. It is merely the information regarding the offence.
- **Corroborative Value:**
  - It can be used to **corroborate** the testimony of the informant under **Section 157 of the Indian Evidence Act, 1872.**
- **Contradictions:**
  - It can also be used to **contradict** the informant's statements in court under **Section 145 of the Evidence Act.**

#### Case Law:

- **Lalita Kumari v. Govt. of Uttar Pradesh (2013):**
  - The Supreme Court held that registration of an F.I.R. is mandatory if the information discloses a cognizable offence. It emphasized the duty of the police to register an F.I.R. promptly.
- **Hasib v. State of Bihar (1972):**
  - The Court held that while the F.I.R. is not substantive evidence, it is important for corroboration and contradiction of the information recorded at the earliest point.

#### D. Law Relating to Misjoinder of Charges

Under the **Criminal Procedure Code, 1973**, the rules relating to the **joinder and misjoinder of charges** are covered in **Sections 218 to 223.**

##### General Rule (Section 218):

- Every distinct offence should be charged separately in a different charge, and each charge should be tried separately. This ensures clarity in the trial of each offence.

##### Exceptions (Section 219 to 223):

However, certain exceptions allow **joinder of charges**, such as:

1. **Same Transaction (Section 220(1)):**
  - Multiple offences committed in the course of the same transaction may be charged and tried together.
2. **Similar Nature of Offences (Section 219):**
  - If the offences are of the same kind, committed within a span of 12 months, the accused may be tried together for a maximum of three such offences.
3. **Acts Forming the Same Offence (Section 220):**
  - When multiple acts together constitute the same offence, they may be tried jointly.



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#### **4. Persons Involved in the Same Offence (Section 223):**

- Accused persons can be charged and tried together if they are alleged to have participated in the same offence.

#### **Misjoinder of Charges:**

A **misjoinder of charges** occurs when offences or persons are improperly joined in one trial, violating the principles under Sections 218 to 223. However, **Section 464** of the CrPC provides that a trial is not vitiated merely due to a misjoinder of charges unless it results in a failure of justice.

#### **Case Law:**

- **State of Andhra Pradesh v. Cheemalapati Ganeswara Rao (1964):**
  - The Supreme Court clarified that improper joinder of charges does not necessarily lead to quashing of the trial unless it causes serious prejudice to the accused.
- **Chandrika Prasad v. State of Bihar (1971):**
  - It was held that a trial would not be set aside merely because of the misjoinder of charges unless it can be shown that such joinder caused confusion or injustice.

#### **2.A. What is 'Charge'? What Are the Essential Particulars of a Charge? Discuss the Effect of Error in a Charge.**

#### **What is a Charge?**

A **charge** is a formal accusation framed by the court, specifying the offence(s) that an accused person is alleged to have committed. It informs the accused of the exact nature of the offence, allowing them to prepare a proper defense. The concept of a charge is governed by **Sections 211 to 224** of the **Criminal Procedure Code (CrPC), 1973**.

#### **Essential Particulars of a Charge:**

According to **Section 211** of the CrPC, every charge must contain:

1. **Specific Offence:** The charge should specify the offence that the accused is charged with.
2. **Legal Provisions:** The charge must mention the specific section of the law under which the accused is charged.
3. **Particulars of the Offence:** Time, place, and nature of the alleged offence must be mentioned clearly.
4. **Details of the Victim:** If the offence is against a particular individual (e.g., in murder or theft cases), the charge should identify the victim.
5. **Mode of Commission (if necessary):** If the nature of the offence necessitates such details, the mode of commission should be included (e.g., use of a weapon in assault).

#### **Effect of Error in a Charge:**

Under **Sections 215 and 464** of the CrPC, errors in the charge do not automatically invalidate a trial unless they result in a **failure of justice**.

- **Section 215:** Mere technical errors in framing the charge (e.g., incorrect legal provision) do not vitiate the proceedings unless the accused is materially prejudiced.
- **Section 464:** If no substantial injustice is caused, a finding or sentence will not be reversed due to errors in the charge.

#### **Case Law:**

- **Willie (William) Slaney v. State of Madhya Pradesh (1956):** The Supreme Court held that an error or omission in framing the charge would not vitiate the trial unless it has caused a failure of justice. The focus should be on whether the accused has been prejudiced by the error.
- **K. Prema S. Rao v. Yadla Srinivasa Rao (2003):** It was held that an omission in the charge does not affect the trial unless the accused was misled or prejudiced by it.

#### **B. Describe the Procedure to Be Followed in Sessions Trial.**

A **Sessions trial** is a trial for serious offences, tried in a Sessions Court, governed by **Sections 225 to 237** of the CrPC. The procedure followed is outlined in **Chapter XVIII** of the CrPC.

#### **Procedure for Sessions Trial:**

1. **Filing of the Charge Sheet:**
  - The case is committed to the **Court of Session** by a Magistrate after the investigation, and the charge sheet (final report) is filed under **Section 209**.
2. **Opening of the Prosecution (Section 226):**
  - The Public Prosecutor opens the case by stating the charges and providing the court with the evidence that they intend to rely upon.



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### 3. Framing of Charges (Section 228):

- The judge considers whether there is sufficient ground for proceeding against the accused. If yes, the charge is framed and explained to the accused, who can plead guilty or not guilty.

### 4. Recording of Evidence (Sections 230-231):

- After the charges are framed, the prosecution presents its evidence, including witnesses and documents. The accused has the right to cross-examine prosecution witnesses.

### 5. Examination of the Accused (Section 313):

- The court questions the accused to explain the circumstances and evidence against him. This is done without the accused being put under oath.

### 6. Defense Evidence (Section 233):

- The accused is allowed to present evidence and witnesses in his defense.

### 7. Arguments and Judgement (Sections 234-235):

- After hearing both parties, the court pronounces its judgment. If the accused is convicted, a separate hearing for sentencing may be conducted.

### 8. Sentencing (Section 235(2)):

- If convicted, the accused is given the opportunity to present arguments on the sentence before it is pronounced.

#### Case Law:

- **State of Maharashtra v. Sukhdeo Singh (1992):** The Supreme Court emphasized that compliance with the procedure prescribed in the CrPC for sessions trials is essential to ensure a fair trial and justice.
- **Bachan Singh v. State of Punjab (1980):** This case laid down guidelines for sentencing, particularly in death penalty cases, where the judge is required to consider both mitigating and aggravating circumstances before sentencing.

#### C. Write Notes on Compounding of Offences.

What is Compounding of Offences?

**Compounding** of offences means reaching a compromise between the victim and the accused, where the victim agrees not to pursue the case in exchange for compensation or other terms. It leads to the **withdrawal of charges** against the accused.

The concept is governed by **Section 320** of the CrPC, which lists offences that are compoundable.

#### **Types of Compoundable Offences:**

##### **1. Without Court Permission (Section 320(1)):**

- Offences that can be compounded without the permission of the court (e.g., defamation, criminal trespass, simple hurt).

##### **2. With Court Permission (Section 320(2)):**

- Certain offences can only be compounded with the court's permission (e.g., assault, theft, cheating).

#### **Non-Compoundable Offences:**

- Serious offences, such as murder, rape, and dacoity, are not compoundable due to their impact on society. Public interest is paramount in such cases.

#### **Legal Effect of Compounding:**

- Once an offence is compounded, it is equivalent to an acquittal, and no further legal action can be taken against the accused regarding that offence.

#### **Case Law:**

- **Gian Singh v. State of Punjab (2012):** The Supreme Court held that the power of compounding must be exercised judiciously, particularly in cases affecting the community at large. It emphasized that serious offences against the public order should not be compromised.
- **B.S. Joshi v. State of Haryana (2003):** The Supreme Court ruled that even in non-compoundable offences, the High Court can quash proceedings under **Section 482 of the CrPC** if it serves the ends of justice, especially in matrimonial disputes.

#### **D. Write Notes on Withdrawal from Prosecution.**

##### **What is Withdrawal from Prosecution?**

**Withdrawal from prosecution** refers to the act of the Public Prosecutor, with the consent of the court, withdrawing a criminal case against the accused. It is governed by **Section 321** of the CrPC.

##### **Conditions for Withdrawal:**

###### **1. Consent of the Court:**



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- The Public Prosecutor cannot unilaterally withdraw the case. The court must assess whether the withdrawal is in the public interest and whether it serves the ends of justice.

### 2. At Any Stage:

- Withdrawal can be sought at any stage of the case, from after the investigation to the conclusion of the trial.

### 3. Public Interest Consideration:

- The prosecution may withdraw to prevent unnecessary harassment or if continuing the prosecution would not serve any purpose.

#### Procedure:

- The Public Prosecutor must file an application before the court, giving valid reasons for withdrawal. The court then evaluates the reasons and either grants or denies permission based on the merits of the case.

#### Judicial Guidelines:

The Supreme Court in various judgments has laid down guidelines for withdrawal from prosecution, emphasizing that it should not be used to shield politically powerful accused or for any extraneous considerations.

#### Case Law:

- **Sheonandan Paswan v. State of Bihar (1987)**: The Supreme Court held that withdrawal from prosecution should be in good faith and in the public interest. The court must ensure that the withdrawal is not arbitrary or intended to benefit a particular person.
- **Rajender Kumar Jain v. State through Special Police Establishment (1980)**: The Court emphasized that withdrawal should not be a routine matter and the prosecution must provide substantial reasons showing why continuing the trial is not in the public interest.

### 3. A. When Can Bail Be Granted to a Person Accused of a Non-Bailable Offence?

A **non-bailable offence** refers to an offence where bail is **not a matter of right** and is usually granted at the discretion of the court. These offences are serious in nature and carry heavier penalties.

**Relevant Provisions:**

- **Section 437 of the CrPC:** Provides the conditions under which bail may be granted for non-bailable offences.
- **Section 439 of the CrPC:** Provides special powers to the **High Court** and **Sessions Court** to grant bail in non-bailable cases.

**Circumstances for Granting Bail in Non-Bailable Offences (Section 437):****1. Not Punishable with Death or Life Imprisonment:**

- If the offence is not punishable by death or life imprisonment, the court may grant bail.

**2. No Prima Facie Case:**

- If the court does not find sufficient grounds to believe that the accused has committed the offence, bail can be granted.

**3. Special Grounds:**

- If the accused is under 16 years of age, a woman, sick, or infirm, the court can grant bail even if the offence is severe.

**4. Previous Conviction:**

- If the accused has previously been convicted of an offence punishable with death, life imprisonment, or imprisonment of seven years or more, bail will not be granted unless there are special reasons.

**5. Bail at the Stage of Investigation:**

- During the investigation or inquiry, if the accused is in custody and there is no immediate justification for keeping them in custody, the court may grant bail.

**Conditions Imposed by the Court:**

While granting bail, the court can impose conditions to ensure the presence of the accused during the trial, including but not limited to restrictions on movement, surety bonds, and periodic reporting to the police.

**Case Law:**

- **Gudikanti Narasimhulu v. Public Prosecutor (1978):** The Supreme Court held that bail is a matter of judicial discretion, and such discretion should be exercised judiciously and not arbitrarily.
- **P. Chidambaram v. Directorate of Enforcement (2019):** The Supreme Court reiterated that bail in non-bailable offences should be granted only after considering the seriousness of the allegations, the potential for the accused to abscond, and the impact on the investigation.



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#### **B. Explain the Circumstances in Which a Wife Is Entitled to Claim Maintenance from Her Husband Under the Code of Criminal Procedure.**

A wife is entitled to claim **maintenance** from her husband under **Section 125 of the CrPC**. This provision serves to prevent vagrancy and destitution of women who are unable to maintain themselves after separation or neglect by their husbands.

#### **Circumstances for Claiming Maintenance:**

##### **1. Neglect or Refusal to Maintain:**

- If the husband neglects or refuses to maintain his wife, she can claim maintenance.

##### **2. Inability to Maintain Herself:**

- The wife must show that she is unable to maintain herself, i.e., she lacks sufficient means to live independently.

##### **3. Divorce:**

- A divorced wife, who has not remarried and is unable to maintain herself, can also claim maintenance.

##### **4. Separated Wife:**

- Even if the wife lives separately, she is entitled to maintenance if the separation is justified (e.g., cruelty or desertion by the husband).

##### **5. No Justifiable Cause for Living Apart:**

- If the wife is living separately without a just cause, she may not be entitled to maintenance. However, justified reasons include cruelty, adultery, or desertion by the husband.

#### **Quantum of Maintenance:**

- The quantum of maintenance depends on the husband's financial capacity, lifestyle, and the reasonable requirements of the wife.

#### **Recent Amendment:**

The 2001 amendment to **Section 125** clarified that a wife includes a woman who has been divorced or who has obtained a divorce but has not remarried, ensuring that even divorced women receive protection.

**Case Law:**

- **Mohd. Ahmed Khan v. Shah Bano Begum (1985):** The Supreme Court held that even Muslim women are entitled to maintenance under Section 125, regardless of personal laws, ensuring that no woman is left destitute.
- **Chaturbhuj v. Sita Bai (2008):** The Court clarified that the expression "unable to maintain herself" does not mean the wife should be absolutely destitute. Even if she has some means of income, she can still claim maintenance if it is insufficient for her to maintain a standard of living similar to that of her husband.

**C. Can a Court of Additional Sessions Judge Take Direct Cognizance of an Offence? If So, Under What Provision of Law?**

An **Additional Sessions Judge** generally **cannot take direct cognizance** of an offence. The power to take cognizance is typically vested in Magistrates under **Section 190** of the CrPC. However, once a case is **committed to the Sessions Court by a Magistrate**, the Additional Sessions Judge can conduct the trial.

**Relevant Provision:**

- **Section 193 of the CrPC:** Specifies that no Sessions Court can take cognizance of an offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate.

**Exceptions and Special Powers:**

The Sessions Judge and the Additional Sessions Judge can only try cases that have been committed to them by a **Magistrate** under **Section 209** of the CrPC, following the filing of a charge sheet or police report. However, under certain special laws (e.g., NDPS Act), direct cognizance can sometimes be taken by a Sessions Court.

**Case Law:**

- **Ranjit Singh v. State of Punjab (1998):** The Supreme Court held that an Additional Sessions Judge cannot take direct cognizance of any offence unless it has been committed to him by a Magistrate. This maintains the proper hierarchy of jurisdiction.
- **M. L. Sethi v. R. P. Kapur (1967):** The Court observed that the committal procedure is mandatory, and only after the case is committed can the Sessions Court proceed to try the case.

**D. Can a Person Be Convicted of an Offence Not Specified in the Charge?**

The general rule is that a person **cannot be convicted of an offence not specified in the charge**. However, there are exceptions under certain provisions of the CrPC where a person may be convicted of an offence different from or lesser than the one mentioned in the charge.



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#### **Relevant Provisions:**

##### **1. Section 221 of the CrPC:**

- If the evidence establishes that the accused committed an offence **not included in the charge but related to the same facts**, the court may convict the accused of such offence. For example, if the charge is murder, and evidence establishes culpable homicide not amounting to murder, the court can convict for the lesser offence.

##### **2. Section 222 of the CrPC:**

- Allows a conviction for a **minor offence** even if the charge is for a **graver offence**. For example, if the charge is of **grievous hurt**, but the evidence only proves **simple hurt**, the accused can be convicted of the minor offence of simple hurt.

##### **3. Section 464 of the CrPC:**

- States that a conviction is not invalid merely due to a defect in the charge, provided no failure of justice has occurred. If the accused has not been misled or prejudiced in preparing his defense, conviction on a related or minor charge is permissible.

#### **Case Law:**

- **Willie (William) Slaney v. State of Madhya Pradesh (1956):** The Supreme Court clarified that a conviction for an offence not specified in the charge is permissible if it does not prejudice the accused and there is no failure of justice.
- **K. Prema S. Rao v. Yadla Srinivasa Rao (2003):** The Supreme Court upheld the conviction for an offence that was not mentioned in the original charge as the evidence showed that a lesser offence was committed, and no prejudice was caused to the accused.

#### **4.A. What Do You Understand by “Plea Bargaining”? State the Procedure for Initiating “Plea Bargain” in Courts.**

##### **Understanding Plea Bargaining:**

**Plea bargaining** is a legal process where the accused agrees to plead guilty to a lesser charge or for a reduced sentence in exchange for the withdrawal of more serious charges or

concessions from the prosecution. The objective is to reduce the time and expense of a full trial, help decongest prisons, and provide quick justice.

**Plea bargaining** was introduced into Indian criminal jurisprudence through **Chapter XXI-A of the Criminal Procedure Code (CrPC)** by the **Criminal Law (Amendment) Act, 2005**. It applies to certain categories of offences and offers an alternative dispute resolution mechanism in criminal cases.

#### **Conditions for Plea Bargaining (Section 265-A):**

##### **1. Eligibility:**

- The accused must be charged with an offence that is **punishable with imprisonment for less than seven years**.
- Plea bargaining is not allowed for offences affecting the **socio-economic conditions of the country** or for offences against **women and children** under 14 years of age.

##### **2. Exclusion of Certain Offences:**

- Offences affecting the national interest, socio-economic offences, and serious crimes such as rape, murder, and terrorism are excluded from plea bargaining.

#### **Procedure for Initiating Plea Bargain (Sections 265-B to 265-E):**

##### **1. Application by the Accused (Section 265-B):**

- The process is initiated by the **accused**, who must submit an application to the court where the trial is pending. The application must include a sworn affidavit stating that the plea is made voluntarily and that the accused has not been previously convicted for a similar offence.

##### **2. Notice to the Prosecution:**

- Upon receiving the application, the court issues a **notice to the public prosecutor** or the complainant, and both parties are summoned to appear before the court.

##### **3. Examination by the Court:**

- The court examines the accused **in camera** (i.e., privately) to ensure that the plea bargaining application is made voluntarily, without any coercion or undue influence.

##### **4. Mutual Settlement (Section 265-C):**

- A **mutually satisfactory disposition** is worked out between the prosecution, the accused, and the victim (if applicable). This can involve compensation to the victim or a reduction in charges.

##### **5. Report of Settlement (Section 265-D):**



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- Once a mutually satisfactory agreement is reached, the court records the settlement and issues a report confirming the terms.

### 6. Judgment Based on Plea Bargaining (Section 265-E):

- The court delivers its judgment based on the plea agreement. The sentence awarded cannot exceed half of the maximum punishment prescribed for the offence. The court may also direct compensation to the victim.

### 7. No Appeal (Section 265-G):

- The judgment delivered under plea bargaining is final, and no appeal lies against such a judgment except to challenge its legality on certain limited grounds.

### Advantages of Plea Bargaining:

- Reduces the burden on courts.
- Provides swift justice.
- Relieves accused from prolonged detention and the stress of a full trial.
- Helps reduce overcrowding in prisons.

### Case Law:

- **Thippaswamy v. State of Karnataka (1983)**: The Supreme Court of India held that the accused must be fully aware of the implications of the plea and must voluntarily opt for it without any coercion.
- **Kachhia Patel Shantilal Koderlal v. State of Gujarat (1980)**: Before the formal introduction of plea bargaining in India, the Supreme Court had raised concerns about its misuse and emphasized that it should only be allowed in limited, suitable cases where justice would not be compromised.

### B. "Person Once Convicted or Acquitted, Cannot Be Tried Again on the Same Facts for the Same Offence". Elucidate.

This principle is derived from the doctrine of **double jeopardy**, which ensures that an individual cannot be tried or punished more than once for the same offence. The legal maxim associated with this is "**nemo debet bis vexari pro eadem causa**," meaning no one should be vexed twice for the same cause. In Indian law, this is codified in **Section 300 of the CrPC** and **Article 20(2) of the Constitution of India**.

### Double Jeopardy and Section 300 of the CrPC:

- **Section 300(1)** of the CrPC provides that if a person has been tried by a court of competent jurisdiction and either **convicted or acquitted** of an offence, they cannot be tried again for the same offence based on the same facts.
- **Exception:**
  - **Section 300(4)** allows retrial if a competent court sets aside the conviction or acquittal in an appeal or revision and orders a retrial.
  - A retrial is also permitted if a person was acquitted due to some technical error, fraud, or corruption, as per **Section 300(2)**.

### Double Jeopardy and Article 20(2) of the Indian Constitution:

- **Article 20(2)** guarantees protection from double punishment, stating that no person shall be prosecuted and punished for the same offence more than once. This offers **constitutional protection** against double jeopardy in criminal cases.

### Elements for the Application of Double Jeopardy:

1. **Same Offence:**
  - The subsequent trial must involve the same offence as the previous trial. If the facts give rise to different charges, the doctrine of double jeopardy does not apply.
2. **Previous Conviction or Acquittal:**
  - The earlier trial must have resulted in either a **conviction or acquittal** by a court of competent jurisdiction. Mere discharge or dismissal of charges does not invoke the protection.
3. **Trial by a Court of Competent Jurisdiction:**
  - The trial must have been conducted by a court that had the authority to try the case. A conviction or acquittal by a court lacking jurisdiction does not bar a second trial.

### Exceptions to the Rule:

- **Section 300(2):** If the first trial was based on a technical or procedural flaw, or if the court was not competent, a second trial can be initiated after correction of the issue.
- **Distinct Offences:** A person may still be tried for a **distinct offence** that arises from the same facts. For instance, a person acquitted of **culpable homicide not amounting to murder** can still be tried for **causing hurt**, provided the charges are distinct.

### Case Law:



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- **Kalawati v. State of Himachal Pradesh (1953):** The Supreme Court interpreted the principle of double jeopardy under **Article 20(2)**. It held that the doctrine of double jeopardy applies only when the person has already been prosecuted and **punished** for the same offence, not just prosecuted.
- **S.A. Venkataraman v. Union of India (1954):** The Supreme Court held that protection under **Article 20(2)** is available only when the person has been **prosecuted and punished** for the same offence in a previous trial. Mere departmental proceedings or inquiries do not amount to prosecution and punishment.
- **Maqbool Hussain v. State of Bombay (1953):** The Supreme Court held that proceedings before customs authorities do not amount to a prosecution for the purposes of Article 20(2), and hence, the person can be prosecuted in a criminal court for the same offence.

### Difference Between Section 300 and Article 20(2):

- **Article 20(2)** deals specifically with prosecution and punishment for the same offence under criminal law. It applies only when both prosecution and punishment are involved.
- **Section 300 of the CrPC** has a broader scope and applies even to situations where a person has been acquitted or convicted, and it also extends to proceedings in India after trial abroad.

### 5.A. What Is the Mode of Delivery of a Judgment? Can a Court Alter a Judgment After It Has Been Delivered?

#### Mode of Delivery of a Judgment:

The **delivery of judgment** refers to the formal process by which a court pronounces its decision after the conclusion of a trial. The Criminal Procedure Code (CrPC), 1973, outlines the method for delivering judgments.

#### Relevant Provisions:

##### 1. Section 353 of the CrPC:

- This section mandates that **judgment** must be delivered **in open court** by the presiding officer of the court. The judgment is read out, either in full or in a summarized form.

- If the judgment contains an order of **acquittal**, it must be communicated clearly to the accused.
- 2. **Language of the Judgment:**
  - The judgment must be written in a language understood by the court, and in cases where the accused is not proficient in that language, a **translation** must be provided.
- 3. **Signed and Dated Judgment:**
  - The judgment must be **signed and dated** by the judge at the time of delivery. Once signed, the judgment is considered complete.
- 4. **Pronouncement of Judgment in Absence of Accused:**
  - Section 353(6) provides that if the accused is **absent** when the judgment is pronounced, it can still be pronounced in their absence, provided the judgment does not involve a sentence of death or life imprisonment.

### **Can a Court Alter a Judgment After It Has Been Delivered?**

Once a judgment has been pronounced and signed, the court has **limited powers** to alter or modify it. **Section 362 of the CrPC** lays down the rule regarding the alteration of judgments.

#### **Relevant Provisions:**

1. **Section 362 of the CrPC:**
  - This section explicitly states that once a judgment or final order has been signed by the court, **it cannot be altered or reviewed**, except for correcting **clerical or arithmetical errors**.
  - The rationale behind this section is to ensure the finality of judgments and prevent endless litigation or reconsideration.
2. **Exception – Clerical/Arithmetical Errors:**
  - The court has the authority to correct mistakes of a clerical or arithmetical nature under **Section 362**. These are minor errors, such as a miscalculation of fines or typographical errors, that do not affect the substance of the judgment.

#### **Case Law:**

- **Hari Singh Mann v. Harbhajan Singh Bajwa (2001):**
  - The Supreme Court held that once a judgment is signed, the court becomes **functus officio**, meaning it loses jurisdiction to alter its judgment. The only exception is for **clerical errors**.
- **State of Punjab v. Davinder Pal Singh Bhullar (2011):**
  - The Court reiterated that **Section 362** provides a strict bar on altering or reviewing a judgment after it has been signed. Even the inherent powers of the



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court under **Section 482 of the CrPC** cannot be invoked to review or modify a judgment after it is delivered.

- **Smt. Sooraj Devi v. Pyare Lal (1981):**
  - The Court clarified that clerical or arithmetical errors do not include mistakes that affect the substantive rights of the parties. Such errors can be corrected, but the core findings of the judgment cannot be altered.

### Conclusion:

Once a judgment is delivered in open court and signed, it becomes **final and conclusive**, with the only permissible alteration being the correction of minor clerical or arithmetical errors. This principle ensures that judgments have finality and are not subject to continuous revision.

### B. Whether Appeal Is a Right Under Natural Law or a Creation of State?

An **appeal** is a legal mechanism that allows a party to seek a review of a court's decision by a higher authority. The right to appeal is not inherent in natural law but is a **statutory right** created and regulated by law.

#### Appeal as a Statutory Right:

1. **No Inherent Right to Appeal:**
  - **Appeal is not a right granted by natural law.** It is not an automatic right that exists in all cases of adjudication. Instead, it is a **creature of statute**, meaning it only exists where a law explicitly provides for it.
2. **Statutory Basis for Appeal:**
  - The right to appeal is governed by the **Criminal Procedure Code (CrPC)** and other specific statutes, such as the **Constitution** or special laws. For example:
    - **Section 372 of the CrPC** states that no appeal shall lie from any judgment or order unless specifically provided by law.
    - **Sections 374 to 379** of the CrPC outline the circumstances under which appeals can be made from convictions and acquittals, as well as from other specific orders of the courts.

#### Types of Appeals in Criminal Cases:

### 1. Appeal from Conviction:

- **Section 374 of the CrPC** provides that an appeal can be made against a **conviction** passed by a lower court. This right varies depending on the sentence:
  - If the sentence is **death or life imprisonment**, an appeal lies directly to the **High Court**.
  - For lesser sentences, appeals can be made to the **Sessions Court** or the High Court, depending on the original trial court.

### 2. Appeal from Acquittal:

- **Section 378 of the CrPC** allows for an appeal against an acquittal. This appeal can be filed by the **State Government** or the **complainant** with the permission of the court.

### 3. No Appeal in Certain Cases:

- **Section 375** bars appeals when the accused has pleaded guilty and been convicted by the lower court, except to challenge the legality or extent of the sentence.

### 4. Appeal in Special Circumstances:

- Appeals can also be filed against **orders** such as **refusal of bail** or **interlocutory orders**, provided specific statutory provisions exist.

### Appeal in the Context of Natural Law:

Natural law, which refers to a system of justice based on moral and inherent rights, does not provide for appeals. The concept of **natural justice** emphasizes fairness, the right to be heard, and a fair trial, but the **right to appeal** arises only through positive law, i.e., law created by the state or governing body.

### Judicial Interpretation of Appeals as a Statutory Right:

- **Durga Shankar Mehta v. Raghuraj Singh (1954):**
  - The Supreme Court observed that the right of appeal is not a natural or inherent right but a **creature of statute**. Unless a statute provides for an appeal, no such right exists.
- **State of Haryana v. Nirmal Singh (2000):**
  - The Court held that the right of appeal cannot be claimed unless it is conferred by the statute. The appellate court has no jurisdiction to entertain an appeal that is not permitted by law.
- **Subramanian Swamy v. Raju (2014):**



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- The Supreme Court emphasized that appeals are purely **statutory rights**. It affirmed that such rights are limited by the scope of the statute and must be invoked within the framework prescribed by law.

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## 7. A. How Many Kinds of Magistrates Are in Your State? What Are Their Powers?

In India, the Criminal Procedure Code (CrPC) classifies **Magistrates** into several categories, each with distinct roles, jurisdiction, and powers. The structure of Magistrates is uniform across states, including your state, under the CrPC.

### Types of Magistrates:

The CrPC outlines the following types of Magistrates:

#### 1. Judicial Magistrates:

- These are magistrates appointed by the **High Court** in each state, and they act under the supervision of the Sessions Court.
- **Judicial Magistrates** are further classified into:
  - **Chief Judicial Magistrates (CJM):** They exercise all the powers of a **Judicial Magistrate of First Class** and also have certain administrative functions.
  - **Judicial Magistrates of First Class (JMFC):** These magistrates handle most criminal cases at the district level.



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- **Judicial Magistrates of Second Class (JM Second Class):** These magistrates handle less serious offences.

#### **2. Metropolitan Magistrates:**

- In cities with a population exceeding one million, the magistrates are called **Metropolitan Magistrates**. They have similar powers to **Judicial Magistrates of the First Class**, but operate within metropolitan areas.
- The **Chief Metropolitan Magistrate (CMM)** heads the metropolitan magistracy and has the powers equivalent to the Chief Judicial Magistrate.

#### **3. Executive Magistrates:**

- These magistrates are appointed by the **State Government**, and their role is more administrative and executive in nature, with limited judicial functions. They are responsible for enforcing law and order.
- **District Magistrates (DM):** These magistrates have significant administrative authority and handle preventive actions and public nuisance cases.
- **Additional District Magistrates (ADM):** They assist the District Magistrate in their duties.
- **Sub-Divisional Magistrates (SDM):** They are responsible for maintaining peace and order in their respective sub-divisions.
- **Executive Magistrates:** They assist the District Magistrate and SDM and handle matters related to public order and security.

#### **Powers of Magistrates:**

##### **1. Judicial Magistrates:**

- **Chief Judicial Magistrates (CJM):**
  - Have jurisdiction to impose **any sentence** except the **death penalty, life imprisonment, or imprisonment exceeding seven years**. They supervise the work of other judicial magistrates in their district.
  - Can conduct preliminary inquiries in cases that are triable by a Sessions Court (CrPC Section 209).
- **Judicial Magistrates of First Class (JMFC):**

- Have the power to impose a sentence of **imprisonment up to three years, a fine up to ₹10,000**, or both (CrPC Section 29).
  - Handle criminal cases involving theft, assault, and defamation.
  - **Judicial Magistrates of Second Class (JM Second Class):**
    - Have the power to impose a sentence of **imprisonment up to one year, a fine up to ₹5,000**, or both.
    - Handle minor offences like petty theft and disorderly conduct.
2. **Metropolitan Magistrates:**
- Similar to **Judicial Magistrates of First Class**, Metropolitan Magistrates can impose sentences of **up to three years of imprisonment** and a **fine of ₹10,000**. They have jurisdiction over all criminal cases within their metropolitan area.
3. **Executive Magistrates:**
- **District Magistrates (DM):**
    - Are empowered under **Section 144 of CrPC** to issue orders in urgent cases of nuisance or apprehended danger to public peace.
    - Handle preventive actions under **Chapter VIII of the CrPC**, including requiring individuals to execute bonds for good behavior or maintaining peace.
  - **Sub-Divisional Magistrates (SDM):**
    - Have powers under **Section 107, 109, and 110 of CrPC** to prevent disturbances to public peace and security.
    - Can impose fines and imprisonment for failure to comply with preventive orders.
  - **Executive Magistrates:**
    - Have limited judicial powers and mostly handle cases related to public order, such as **Section 133 of CrPC** (removal of public nuisance).

**Case Laws:**

- **Sanjay Suri v. Delhi Administration (1988):** The Supreme Court discussed the distinction between **Judicial** and **Executive Magistrates**, highlighting that Executive Magistrates have more of an administrative role and cannot try criminal cases unless expressly permitted by law.
- **Union of India v. Madan Lal (1998):** It was emphasized that **Judicial Magistrates** have the exclusive power to conduct trials, while **Executive Magistrates** handle preventive and administrative actions.



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#### **B. Who Is a Public Prosecutor? Can He Withdraw a Criminal Case?**

##### **Who Is a Public Prosecutor?**

A **Public Prosecutor (PP)** is an officer of the court responsible for representing the **State or Government** in criminal cases. The role of a Public Prosecutor is crucial in ensuring the fair administration of justice by prosecuting accused individuals and presenting the case for the State.

##### **Legal Framework for Public Prosecutors:**

The appointment and powers of Public Prosecutors are governed by **Sections 24 and 25** of the **Criminal Procedure Code (CrPC)**.

##### **1. Appointment:**

- The **State Government** appoints Public Prosecutors for districts and Sessions Courts.
- For the **High Court**, the **Central Government** may appoint a **Public Prosecutor**.
- **Assistant Public Prosecutors (APPs)** assist the Public Prosecutor in the lower courts.

##### **2. Functions:**

- The Public Prosecutor represents the **State** in criminal cases and ensures that prosecutions are conducted fairly and impartially.
- They present evidence, examine witnesses, and argue on behalf of the State.

##### **Can a Public Prosecutor Withdraw a Criminal Case?**

Yes, a Public Prosecutor can withdraw from a case, but this is subject to judicial scrutiny. **Section 321 of the CrPC** grants the Public Prosecutor the power to withdraw a criminal case, either before or after the charge is framed, but **with the consent of the court**.

##### **Key Aspects of Section 321:**

##### **1. Consent of the Court:**

- The Public Prosecutor must seek the **consent of the court** to withdraw the case. The court has the discretion to allow or disallow the withdrawal based on the merits of the application.

## 2. Public Interest:

- The withdrawal must be done in the **interest of justice** or **public interest**. It cannot be arbitrary or influenced by political considerations.

## 3. Before or After Framing of Charges:

- The case can be withdrawn **before framing of charges** or **after framing of charges**, but the stage at which the withdrawal occurs will impact the application process.
- If the case is withdrawn **before the charge is framed**, it leads to the discharge of the accused.
- If the case is withdrawn **after charges are framed**, it results in the **acquittal** of the accused.

## 4. Judicial Scrutiny:

- Courts have to carefully scrutinize the Public Prosecutor's application to ensure that the withdrawal is not influenced by extraneous considerations and that it serves the **ends of justice**.

### Case Law:

- **Sheonandan Paswan v. State of Bihar (1987):**

- The Supreme Court emphasized that the power to withdraw under **Section 321** should be used in a manner that ensures fairness to both the accused and society. The Public Prosecutor's discretion is subject to the control and supervision of the court, which must assess whether the withdrawal is in the **public interest**.

- **State of Kerala v. K. Ajith (2021):**

- The Supreme Court ruled that while the Public Prosecutor has the power to withdraw from prosecution, the court must be convinced that the withdrawal is not influenced by **political motivations** or other improper considerations. The **public interest** must be the primary factor guiding such decisions.

- **Abdul Karim v. State of Karnataka (2001):**

- In this case, the Supreme Court held that the court's consent under **Section 321** is mandatory, and the Public Prosecutor must apply their mind independently before deciding to withdraw from prosecution.

### Role of the Court in Approving Withdrawal:



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- The court must ensure that the withdrawal serves **justice** and is not influenced by extraneous factors like **political interference** or **ulterior motives**.
- Withdrawal is often appropriate in cases where continued prosecution would be **futile** or **counterproductive** (for example, in cases involving political compromise or after peace settlements).

#### 8. A. Under What Circumstances Does a Person Become Vicariously Liable for the Act of Others?

**Vicarious liability** in criminal law refers to situations where a person is held responsible for the criminal acts of another due to a specific relationship between the parties, even if the person being held liable did not directly commit the act. This doctrine is generally more common in **civil law** but does have applications in **criminal law** under certain circumstances, particularly when a principal-agent or employer-employee relationship exists, or where a person aids, abets, or conspires in the commission of an offence.

#### Circumstances for Vicarious Liability in Criminal Law:

##### 1. Principal-Agent Relationship:

- A person may be vicariously liable for the acts of an agent or employee if the act was committed within the scope of their authority or employment.
- **Section 149 of the Indian Penal Code (IPC)**: This section deals with liability in cases of **unlawful assembly**. If an offence is committed by any member of an unlawful assembly in furtherance of the common object, every member of that assembly can be held vicariously liable.

**Example:** In the case of **Masalti v. State of Uttar Pradesh (1964)**, the Supreme Court held that each member of an unlawful assembly would be vicariously liable if an offence is committed in furtherance of the common object of the assembly.

##### 2. Employer-Employee Relationship:

- An employer can be held criminally liable for the acts of an employee if the crime was committed during the course of employment and in furtherance of the employer's business.

**Case Law:** **State of Maharashtra v. M.H. George (1965)**: In this case, the employer was held liable under **Section 135 of the Customs Act, 1962**, for the smuggling activities

conducted by his employees, as the act was committed in furtherance of the employer's business.

### 3. Aiding, Abetting, or Conspiring:

- Under **Section 107 of the IPC**, a person can be held vicariously liable if they **instigate, engage in a conspiracy, or intentionally aid** the commission of an offence. The person does not need to have physically committed the crime but can still be held responsible as an **abettor**.

**Example:** In **Kehar Singh v. State (1988)**, the Supreme Court upheld the conviction of Kehar Singh for conspiracy and abetment in the assassination of Prime Minister Indira Gandhi, even though he did not directly participate in the killing.

### 4. Corporate Liability:

- Corporations can be held criminally liable for the actions of their employees if the offence is committed by an individual acting within the scope of their employment or authority. Corporate directors or officers can also be held vicariously liable under certain circumstances.

**Example:** In **Iridium India Telecom Ltd. v. Motorola Inc. (2011)**, the Supreme Court held that a corporation could be held criminally liable for offences committed by its directors or employees if the act was carried out within the scope of their duties and in furtherance of the corporation's objectives.

### 5. Doctrine of Common Intention:

- Under **Section 34 of the IPC**, when a criminal act is committed by several persons in furtherance of a **common intention**, each person is held vicariously liable as if they had committed the act themselves.

**Example:** In **Mahbub Shah v. King Emperor (1945)**, the Privy Council ruled that for **Section 34** to apply, the participants must share a common intention, and the liability is vicarious for each person involved.

### Conclusion:

A person can be held vicariously liable for the acts of others under specific conditions such as involvement in a conspiracy, aiding or abetting, or when an offence is committed within the scope of an employment or agency relationship. The application of **Sections 34, 107, and 149** of the IPC, as well as other specific statutory provisions, can extend criminal liability to those who did not directly commit the offence but were involved in its planning, facilitation, or execution.

### B. Describe the Procedure to Take Security for Keeping the Peace and for Good Behavior

The procedure for taking **security for keeping the peace and good behavior** is governed by **Chapter VIII** of the **Criminal Procedure Code (CrPC), 1973**. The goal of these provisions



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is preventive, designed to maintain public order and prevent potential breaches of peace or acts of misconduct by individuals.

#### Relevant Sections of the CrPC:

##### 1. Section 106 – Security for Keeping the Peace on Conviction:

- This section provides that a person who has been convicted of specific offences involving violence, disturbance of peace, or threat to public tranquility may be ordered by the court to furnish security for keeping the peace for a specified period.
- **Procedure:**
  - After conviction, the court may require the offender to provide a **bond** with or without sureties.
  - The period for which the security can be demanded cannot exceed **three years**.

##### 2. Section 107 – Security for Keeping the Peace in Other Cases:

- This section allows an **Executive Magistrate** to demand security from any person if there is information that suggests the person is likely to commit a breach of the peace.
- **Procedure:**
  - The magistrate receives information (often through a **police report**) that someone is likely to disturb the public peace.
  - The magistrate issues a **show-cause notice** to the individual, requiring them to explain why they should not be required to provide security.
  - A hearing is conducted, and if the magistrate is satisfied that a breach of peace is likely, the person is asked to provide a **bond** (with or without sureties) to keep the peace for a period not exceeding **one year**.

**Case Law:** In **Madhu Limaye v. Sub-Divisional Magistrate (1970)**, the Supreme Court held that the purpose of **Section 107** is preventive, and its provisions must be applied when there is a genuine apprehension of a breach of peace.

##### 3. Section 108 – Security for Good Behavior from Persons Disseminating Seditious Matters:

- **Section 108** empowers an **Executive Magistrate** to take security from any person who is involved in the publication or dissemination of materials that could incite public disorder, sedition, or hatred between different communities.
  - **Procedure:**
    - When the magistrate receives information that a person is involved in activities that incite **sedition** or hatred, they issue a **show-cause notice**.
    - The person is asked to provide a **bond** (with or without sureties) to maintain good behavior for a period not exceeding **one year**.
4. **Section 109 – Security for Good Behavior from Suspected Persons:**
- **Section 109** applies to individuals who have no apparent means of subsistence or who are habitually involved in criminal activities. If an **Executive Magistrate** believes such a person is likely to commit an offence, they can demand security for good behavior.
  - **Procedure:**
    - The person suspected of criminal behavior is served with a **show-cause notice**.
    - After a hearing, if the magistrate finds the individual’s conduct to be suspicious, they are required to execute a **bond** with or without sureties for good behavior for a period not exceeding **one year**.
5. **Section 110 – Security for Good Behavior from Habitual Offenders:**
- This section focuses on habitual offenders, such as those involved in theft, robbery, or housebreaking, and provides that an Executive Magistrate may require them to furnish security for good behavior.
  - **Procedure:**
    - The magistrate issues a **show-cause notice** to the habitual offender based on a **police report** or other credible information.
    - If, after inquiry, the magistrate is satisfied that the individual poses a risk to public safety, they are required to execute a **bond** (with or without sureties) for good behavior for a period not exceeding **three years**.

**Case Law:** In **State of Gujarat v. Mehboob Khan (2002)**, the Gujarat High Court held that habitual offenders can be required to furnish security under **Section 110** to prevent them from continuing their criminal activities.

**Inquiry Process and Hearing:**



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- The proceedings under **Sections 107 to 110** involve a **preliminary inquiry**. The magistrate examines the **police report** and other evidence to determine whether a show-cause notice should be issued.
- The accused is given an opportunity to present their case and prove why security should not be required.
- If the magistrate is satisfied that a breach of peace or misconduct is likely, they can order the person to execute a **bond** for a specified period. Failure to comply with the bond may result in imprisonment.

#### **Breach of Bond:**

If the person fails to maintain the peace or good behavior as agreed upon in the bond, the magistrate can take action to **forfeit the bond**. This may involve imprisonment or imposing fines.

#### **9.A. Discuss the Power of the Police Regarding Prevention of Offences**

The police play a vital role in maintaining public order and preventing offences, and the **Criminal Procedure Code (CrPC), 1973** provides various powers to the police for this purpose. These powers are preventive in nature and are aimed at ensuring peace and security, preventing the commission of offences, and maintaining law and order. The preventive powers of the police are essential for ensuring public safety and reducing crime rates.

#### **Key Provisions of the CrPC Regarding Police Powers to Prevent Offences:**

##### **1. Section 149 – Police to Prevent Cognizable Offences:**

- **Section 149** empowers the police to intervene and prevent the commission of any **cognizable offence**. A cognizable offence is one where the police can arrest without a warrant, such as murder, theft, or robbery.
- The police are authorized to take preventive action when they receive information that an offence is about to be committed.

**Example:** If the police learn about a planned riot, they can take immediate action to prevent the riot from occurring, even if no offence has been committed yet.

**Case Law:** In **State of West Bengal v. Swapan Kumar Guha (1982)**, the Supreme Court held that police have the duty to take all necessary steps to prevent cognizable offences, and failure to do so could amount to dereliction of duty.

## 2. Section 150 – Information of Design to Commit Offence:

- **Section 150** states that every police officer is bound to communicate information about any design to commit an offence that comes to their knowledge to their superior officers. This provision ensures that any potential threat is escalated and dealt with effectively.

**Example:** If a police officer receives credible information about a conspiracy to commit a robbery, they must inform their superiors to take necessary preventive measures.

## 3. Section 151 – Arrest to Prevent the Commission of Cognizable Offences:

- Under **Section 151**, a police officer can arrest a person without a warrant if they have knowledge or reasonable suspicion that the person is about to commit a cognizable offence and arresting them is necessary to prevent the offence.
- The arrest under this section is preventive in nature and is meant to avert imminent danger. However, the arrested person cannot be detained for more than **24 hours** without a proper legal charge.

**Example:** In situations where a police officer observes a group of people preparing to engage in violent activities, they can arrest the individuals under **Section 151** to prevent the violence.

**Case Law:** In **Ahmed Noor Mohammed Bhatti v. State of Gujarat (2005)**, the Supreme Court reiterated that preventive arrests under **Section 151** must be based on reasonable grounds and should not be arbitrary.

## 4. Section 152 – Prevention of Injury to Public Property:

- **Section 152** authorizes police officers to prevent damage or injury to public property. They are empowered to take necessary steps to safeguard public property from harm or destruction.

**Example:** During protests, if the police see that there is a likelihood of public property such as buses or government buildings being damaged, they can take action under this section to prevent such injury.

## 5. Section 153 – Inspection of Weights and Measures:

- This section empowers the police to take preventive action by checking whether weights and measures used in transactions comply with legal standards. It ensures that no offence related to cheating or fraud through incorrect weights and measures is committed.

## 6. Section 107 – Security for Keeping the Peace:

- While this section primarily falls under the jurisdiction of an **Executive Magistrate**, the police play a crucial role in bringing potential breaches of peace to the magistrate's attention. The police can initiate proceedings to require individuals to furnish security for keeping the peace.



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**Example:** If the police believe that a local group is likely to incite violence at a public event, they can request the Executive Magistrate to take preventive action and require the individuals to provide a bond for maintaining peace.

#### 7. Section 144 - Power to Issue Orders in Urgent Cases of Nuisance or Apprehended Danger:

- Though this power is vested in the **Executive Magistrate**, the police are responsible for enforcing **Section 144** orders. The magistrate may impose restrictions on public gatherings, protests, or movements in areas where there is an imminent threat to public order.
- The police can arrest individuals violating these orders or take other necessary steps to prevent disturbances.

**Example:** If the magistrate imposes a curfew under **Section 144** in a city due to communal tension, the police are responsible for enforcing the curfew and preventing unlawful assemblies.

**Case Law:** In **Babulal Parate v. State of Maharashtra (1961)**, the Supreme Court upheld the validity of **Section 144** orders to prevent public disorder, stating that such preventive measures are necessary for maintaining public peace.

#### 8. Police Powers Under Special Laws:

- The police are also empowered to prevent offences under special statutes such as the **Unlawful Activities (Prevention) Act, 1967**, the **Prevention of Atrocities Act**, and the **Narcotic Drugs and Psychotropic Substances Act, 1985**. These laws often give the police additional powers for surveillance, detention, and searches to prevent serious crimes such as terrorism, trafficking, and organized crime.

#### Conclusion:

The police have broad powers under the **CrPC** to prevent offences. These powers include the ability to arrest individuals without a warrant, issue warnings, prevent damage to public property, and enforce orders from magistrates. The aim of these preventive measures is to safeguard public peace, prevent crimes before they occur, and maintain law and order.

#### B. Who is an 'Approver'?

An **approver** in criminal law refers to a person who is involved in the commission of a crime but agrees to turn state's evidence by giving full disclosure of the facts of the crime, including

the role of other co-accused, in exchange for certain benefits, such as a pardon or leniency in sentencing. An **approver** is typically someone who confesses to their involvement in a crime and provides assistance in prosecuting others involved.

### Legal Provisions Related to Approvers:

#### 1. Section 306 – Tender of Pardon to Accomplice:

- Under **Section 306 of the CrPC**, a **Magistrate** can tender a **pardon** to a person accused of an offence in exchange for their full and true disclosure of the facts and circumstances of the crime.
- The person granted a pardon becomes an **approver** and is required to testify against the other accused.
- This section applies primarily to cases of **serious offences** like murder, dacoity, and conspiracy, where the testimony of an insider is crucial for securing convictions.

#### Procedure:

- The pardon can be granted at any stage of the investigation or trial.
- The approver is required to make a full and truthful disclosure of all facts regarding the crime.
- If the approver provides false testimony or fails to fully disclose the facts, the pardon can be revoked, and the approver can be prosecuted for the offence.

**Case Law:** In **State v. Jagjit Singh (1989)**, the Supreme Court emphasized that a pardon granted under **Section 306** binds the approver to make a full disclosure. If they fail to do so, they can be tried for the original offence as well as for perjury.

#### 2. Section 307 – Power to Tender Pardon to an Accomplice at Trial:

- **Section 307** extends the power to tender a pardon to an accomplice during the trial stage. This section is invoked when the **Sessions Judge** or the **Court of Trial** believes that the testimony of an accomplice is necessary for the conviction of other accused persons.

#### 3. Section 308 – Consequence of Not Complying with the Pardon:

- **Section 308** of the CrPC deals with the consequences if an approver fails to comply with the terms of the pardon (i.e., they do not make a full and truthful disclosure). If the court is satisfied that the approver has willfully concealed material facts or lied, the approver can be prosecuted for the original offence and other related charges.

### Requirements for Becoming an Approver:

- The person must have been involved in the commission of the crime.



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- They must confess to their involvement and make a full, truthful disclosure of all relevant facts.
- They must testify against their co-accused in court.

#### **Role and Admissibility of an Approver's Testimony:**

##### **1. Admissibility of Evidence:**

- The testimony of an approver is admissible in court but is treated with caution. According to **Section 133 of the Indian Evidence Act**, an approver is a competent witness, and their evidence can be sufficient to convict the accused.
- However, **Section 114 (b) of the Indian Evidence Act** requires that an approver's testimony be corroborated by independent evidence. Courts generally look for corroboration to avoid wrongful convictions based solely on the testimony of a co-accused who may have an incentive to lie.

**Case Law:** In **R. K. Dalmia v. Delhi Administration (1963)**, the Supreme Court emphasized the importance of corroborating an approver's testimony with other independent evidence to ensure the reliability of the testimony.

##### **2. Testimony Treated with Caution:**

- Since an approver is typically an accomplice who turns against their co-accused for personal benefit, their testimony is scrutinized carefully. The court must ensure that the approver's evidence is credible and reliable before using it as the basis for conviction.

**Case Law:** In **K. S. Panduranga v. State of Karnataka (2007)**, the Supreme Court held that while an approver's evidence is admissible, it should be corroborated by independent evidence to establish the credibility of the testimony.

#### **Conclusion:**

An approver is a person who, having been involved in a crime, provides full disclosure and testimony against their co-accused in exchange for a pardon or reduced sentence. The powers related to approvers are governed by **Sections 306 to 308 of the CrPC**, and their testimony, while admissible, is carefully scrutinized and requires corroboration to ensure its reliability.

#### **10. A. Contents of a Judgment in a Criminal Trial and Language of Delivery**

##### **Contents of a Judgment in a Criminal Trial**

A judgment in a criminal trial is a detailed document that summarizes the findings, reasoning, and conclusions of the court. It is critical for ensuring transparency and fairness in the judicial process. The contents of a criminal judgment should include:

**1. Title and Introduction:**

- The title should include the case number, the names of the parties, and the court in which the case was tried.
- The introduction should briefly state the nature of the case and the charges against the accused.

**2. Facts of the Case:**

- A detailed account of the facts as established during the trial, including the evidence presented, witness testimonies, and any relevant circumstances surrounding the offence.

**3. Charges:**

- A clear statement of the charges framed against the accused, specifying the sections of the law under which the charges are laid.

**4. Arguments of the Prosecution and Defence:**

- A summary of the arguments made by both the prosecution and the defence, including their respective contentions, evidence, and legal arguments.

**5. Issues Framed:**

- The issues or questions of law and fact that the court has to decide, based on the charges and the evidence presented.

**6. Findings:**

- The court's findings on each issue framed, supported by a discussion of the evidence and the application of the law. This includes whether the prosecution has proved its case beyond reasonable doubt or whether the defence has established its case.

**7. Decision:**

- The court's decision on the charges, including whether the accused is found guilty or not guilty. The judgment should detail the reasons for the decision.

**8. Sentence or Acquittal:**

- If the accused is found guilty, the judgment should specify the sentence imposed, including any penalties, fines, imprisonment terms, or other measures.
- If acquitted, the judgment should state that the accused is discharged and the reasons for the acquittal.



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#### **9. Legal References:**

- Citations of relevant legal precedents, statutes, or case laws that influenced the court's decision.

#### **10. Order for Disposal of Property:**

- If applicable, the judgment may include orders for the disposal of property involved in the offence, such as its confiscation or return.

#### **11. Right to Appeal:**

- A statement informing the parties of their right to appeal the decision to a higher court and the procedure for filing an appeal.

#### **Language of Delivery**

- **Section 353 of the Criminal Procedure Code (CrPC):** The judgment should be pronounced in the language of the court. In India, judgments in most High Courts and Supreme Court are delivered in English, while judgments in lower courts (e.g., District Courts and Magistrates' Courts) are typically delivered in the local language of the court, unless otherwise directed.

**Case Law:** In **H.L. Bolton v. The Mahadeo (1980)**, the Supreme Court emphasized that judgments must be clear, comprehensible, and in the language understood by the parties involved.

#### **Conclusion:**

The judgment in a criminal trial must be comprehensive, covering all relevant aspects of the case, including facts, legal issues, arguments, findings, and the final decision. The language of delivery depends on the court in which the trial is held, with English generally used in higher courts and local languages in lower courts.

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#### **B. Can Compensation Be Awarded to a Complainant? If So, Under What Circumstances**

Yes, compensation can be awarded to a complainant in certain circumstances under the **Criminal Procedure Code (CrPC)** and various statutory provisions. The compensation is aimed at providing relief to victims and ensuring justice.

#### **Relevant Provisions for Awarding Compensation**

##### **1. Section 357 – Order to Pay Compensation:**

- **Section 357** of the CrPC allows a court to order the payment of compensation to the victim or their dependents in certain cases. This can be ordered in addition to or instead of other punishments.

#### **Circumstances Under Section 357:**

- When a person is convicted of an offence and it is established that the victim has suffered harm or loss due to the crime.
- The court may award compensation to the victim for any loss or injury suffered as a result of the offence.

#### **Procedure:**

- The court can direct the payment of compensation during sentencing. The amount is determined based on the nature of the offence and the extent of harm caused to the victim.
- In cases of **conviction for crimes like assault, theft, or injury**, the court assesses the damage and orders compensation accordingly.

**Case Law:** In **Nandini Satpathy v. P.L. Dani (1978)**, the Supreme Court held that victims of crimes can be awarded compensation under **Section 357**, especially in cases where the crime has caused physical or financial harm.

#### **2. Section 357A – Victim Compensation Scheme:**

- **Section 357A** was introduced by the **Criminal Law (Amendment) Act, 2008** and provides for the formulation of a victim compensation scheme by the State Government. The scheme aims to provide financial assistance to victims who do not receive compensation through the court's orders.

#### **Circumstances Under Section 357A:**

- The victim is eligible for compensation if they have suffered harm due to a crime and are not adequately compensated by the court.
- The scheme is meant to cover a range of offences and provides a structured approach to victim compensation.

#### **Procedure:**

- Victims can apply for compensation under the scheme to the State Government, which assesses the application and provides financial assistance.
- The State Government is required to set up a fund for this purpose and may involve the District Legal Services Authority in the compensation process.

**Case Law:** In **Lalita Kumari v. Government of Uttar Pradesh (2014)**, the Supreme Court emphasized the importance of victim compensation schemes and directed the State Governments to implement effective mechanisms for compensating victims under **Section 357A**.



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#### **3. Section 366 – Compensation to Victims of Offences Related to Kidnapping:**

- In cases of kidnapping or abduction, the court may award compensation to the victim or their family under **Section 366** if the victim has suffered harm due to the offence.

#### **4. Section 428 – Compensation for Wrongful Confinement:**

- **Section 428** provides for compensation to individuals who have been wrongfully confined or imprisoned. This is intended to cover the period of wrongful detention.

#### **Conclusion:**

Compensation can be awarded to a complainant or victim under various provisions of the CrPC. **Section 357** allows for compensation directly from the convicted person, while **Section 357A** provides for victim compensation schemes administered by the State Government. The aim is to address the harm caused by the crime and provide financial relief to the victims.

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