CHAPTER -V

PROTECTION DURING JUDICIAL PROCEEDINGS

A) Introduction

The second and major component of criminal justice system is court. The court has two distinctive functions. First is to find facts and then to apply the law. For proper administration of justice facts are as important as the law and, therefore, a judge must first determine the true state of facts. This is one of the most onerous as well as responsible function of a Judge. As far as judicial power is concerned, it is a mistake to think that a judge has power to decide those cases which come under his jurisdiction and has no power of his own. His only power is to decide according to law and the law is to be found in the statutes or in the doctrines laid down by his predecessors over years. A judge is obliged to enforce laws laid down by legislatures or pronounced by more senior judges. This is based on rule of law. Rule of law, as Dicey said, means:

“The absolute supremacy of predominance of regular law opposed to the influence of arbitrary power and the absence of discretionary authority on the part of the government." Everyone either high official or ordinary citizen is subject to the same Law administered by ordinary courts.

Thus Rule of Law is the guiding star in a denominated society. The rule of law and independence of judiciary always go together. The two cannot be visualized apart. General opinion is this, that Laws are collective wisdom of the members of the Society expressed through their representations in the legislatures. When it feels the need to regulate a particular activity, society enacts the law. In the administration of justice, law plays the most vital role.

All the procedures in the administration of justice revolve around the court system. If an individual is believed to have violated the law, the concern is to bring the violator in to the dock of the court, with due process of law, in order to face trial and to follow the judgment made by the court. Courts are charged with monitoring procedures and with coordinating the activities of those criminal justice practitioners engaged in the prosecutorial and trial processes to insure that justice are carried out in a fair and impractical manner within a constitutional framework, in order to

1 See, Alder John, Constitutional and Administrative Law, 1999 p.72-73
2 See, Dean Roscoe Pound, Justice according to Law, 1952,p.89-91
sustain innocence or probe the guilt of the accused.³ The court is also responsible for sentencing, based on the protection of society and the rehabilitation of the offender, of the convicted criminal.

In the criminal justice system, the court is the final arbiter, the frontline defender of democracy, personal freedom, human dignity and public protection. It is the only institution capable of identifying and maintaining the proper balance between the competing rights of individual and those of the State and society. It has the responsibility of enforcing the criminal law against defendants, who commit crimes and at the same time protect the same violator from the violation of his rights by criminal agents. It is for the courts to see that Justice is done.⁴ The purpose of Criminal Law is twofold. Firstly, it attempts to control the behaviour of human being. Secondly, criminal law seeks to sanction uncontrolled behaviour by punishing the law violator. "Laws are made to be broken," is not philosophically or legally accepted even though laws are broken. Laws are made to protect individual and society. Sanctions, in the form of punishment, are designed to prevent conduct that violates the rules of society.⁵ Human beings respond to a system of rewards and punishment. Freedom and liberty are the rewards; fine, imprisonment and death have been the traditional modes of punishment meant for the violation of the criminal law.

The courts include those judicial agencies at all levels of the Government that perform administration of criminal justice. The courts are responsible for reviewing the actions of law enforcement agencies to ensure that the agency has not violated the legal rights of the accused, the courts are given the authority and responsibility to review the actions of other agencies of criminal justice to ensure that their actions do not violate the right of the offender.⁶ After the accused has been found guilty and after a consideration of all factors, the court must determine whether the offender should be removed from society in order to protect the safety of life and property of common people. Thus, the function of the court is responsible supervision. The court has a high duty and a solemn responsibility to

³ See, Harry W. More, Principles and Procedures in the Administration of Justice, 1975, p.19
⁴ See, Gerald D. Robin, Introduction to the Criminal Justice System, 1990, p.168
⁵ See, Neil C. Chamelin, Vernon V. Fox, et.al., Introduction to Criminal Justice, 1975, p.180-181
⁶ See, Robert D. Pursely, Introduction to Criminal Justice, 1977, p.9
overview the work of the police, the prosecutor and defence or opposing counsel,\textsuperscript{7} to preserve the due process of law throughout the arrest and release procedure in the administration of criminal justice.

B) **Hierarchy of Criminal Courts in India**

The law relating to justice of the peace, called Magistrates, Justices clerks and Administration of Magistrate’s court was overhauled by the Justice of Peace Act, 1949. Magistrate’s court committees were set up, courses of instruction arranged for lay Justice of Peace. These committees appointed justice clerks who held office during the pleasure of committee. The Act also provides for further appointments of the stipendiary’s (for the areas outside London) by the Lord Chancellor. It leaves general administration in the hands of the Home Secretary, who sends advisory circulars to Magistrates so as to coordinate decisions. The appointment of metropolitan magistrate remained in the hands of Home Secretary.\textsuperscript{8}

In India, on January 26, 1950, the federal Courts gave way to Supreme Court under the new Constitution and thus began an exciting new era in Indian legal history. The court was inaugurated on Jan 28, 1950, with very broad jurisdiction. Referring to the extensive jurisdiction conferred on the Supreme Court by the Constitution, the first Attorney-General, M. C. Setalaved observed at the time of the inauguration of the courts,\textsuperscript{9} “under Article 131 of the constitution, the Supreme Court has an exclusive original jurisdiction in cases arising between the Center and the State. The Supreme Court has been empowered to issue directions, orders or writs like the Habeas corpus, Mandamus, Certiorari, Prohibition and Quo Warranto for the enforcement of the Fundamental Rights guaranteed by the Constitution to the people of India.”\textsuperscript{10} The Supreme Court has thus been made the guardian of the freedom and liberties of the Indian people. The Supreme Court has also jurisdiction to decide disputes arising out of the election of the President and the Vice-President.\textsuperscript{11} The Supreme Court has jurisdiction to report to the President that a member of the Public Service Commission may be removed from office on the ground of misbehaviour.\textsuperscript{12} The Supreme Court is primarily a court of appeal and an

extensive appellate jurisdiction has been conferred on it. Articles 132 and 136 of the Constitution deal with the appellate jurisdiction of the Supreme Court in constitutional, Civil and Criminal matters. In criminal matters, the Indian Constitution for the first time set up a court of criminal appeal over the High Courts and creates a right of second appeal.\(^{13}\) Article 134 of the Constitution for the first time, provide for an appeal to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court as of right where the High Court has on an appeal reversed an order of acquittal of an accused and sentenced him to death\(^{14}\); and where the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced him to death.\(^ {15}\)

An appeal may lie to the Supreme Court in any criminal case if High Court certifies that the case is a fit one for appeal to the Supreme Court. The certificate of the High Court would, of course, be granted only where some substantial question of law or some matter of great public importance or the infringement of some essential principles of justice are involved. Appeal may also lie to the Supreme Court from a criminal proceeding if the High Court certifies that the case involves a substantial question of law as to interpretation of the Constitution\(^ {16}\). Except it, no appeal lies from a criminal proceeding of the High Court to the Supreme Court under the Constitution but Parliament has been empowered to make any law conferring on the Supreme Court further powers to hear appeals in criminal matters.\(^ {17}\)

The original criminal jurisdiction of the High Court’s has been completely taken away by the Criminal Procedure Code, 1973\(^ {18}\) and the appellate jurisdiction of the High Court, similarly, is both Civil and Criminal.\(^ {19}\) The High Court has got superintendence over all subordinate courts throughout the concerned state.\(^ {20}\) The Criminal Procedure Code, 1973 also provides that the superintendence over the subordinate courts is to be so exercised as to ensure an expeditious and proper

---

\(^{13}\) See, V. D. Kulshreshtha, *Landmarks in Indian Legal and Constitutional History*, 1995, p.204

\(^{14}\) See, The Constitution of India, 1950 Art.134(a)

\(^{15}\) See, Ibid, Art.134(b)

\(^{16}\) See, Ibid, Art.132

\(^{17}\) See, Durga Das Basu, *Introduction to the Constitution of India*, 2001,p.301

\(^{18}\) See, The Constitution of India, 1950, Art.225

\(^{19}\) See, Ibid, Art.125(b)

\(^{20}\) See, Ibid, Art.217
disposal of cases in such courts.\textsuperscript{21} The Criminal Procedure Code gives to the High Court various powers including those relating to reference, appeal, revision and transfer of cases. It also recognizes specifically the inherent power of the High Court to prevent the abuse of the process of any court or to secure the ends of justice.\textsuperscript{22}

Besides the High Courts, in every State there are classes of criminal courts:- Courts of Session, Judicial Magistrate of first class, Metropolitan Magistrate in Metropolitan area, Judicial Magistrate of second class and Executive Magistrate.

The State Government can establish a court of session for every session division. The court is to presided over by a District Judge appointed by the High Court. The High Court may also appoint Additional Session Judges and Assistant Session Judges to exercise jurisdiction in the Court of Session. An Assistant Sessions Judge is subordinate to the Sessions Judge.\textsuperscript{23}

In every district there shall be established as many courts of Judicial Magistrate of First Class and of second class and at such places, the State Government may after, consultation with the High Court.\textsuperscript{24} The High Court is also required to appoint a Judicial Magistrate of first class to be the Chief Judicial Magistrate of the District\textsuperscript{25} and Judicial Magistrate of first class to be an Additional Chief Judicial Magistrate and such a Magistrate shall have all the powers of a Chief Judicial Magistrate as the High Court may direct.\textsuperscript{26}

The High Court may designate any Judicial Magistrate of first class in any sub-division as the sub-divisional Magistrate and provides him specified responsibilities as occasion requires.\textsuperscript{27}

In every Metropolitan area, there shall be established as many courts of Metropolitan Magistrate and at such places as the State Government may after consultation with the High Court. The presiding officers of such courts shall be appointed by the High Court. The jurisdiction and powers of every such Magistrate extend throughout the metropolitan area.\textsuperscript{28} It may also appoint Additional Chief Metropolitan Magistrates and such Magistrates shall have generally all the powers of

\textsuperscript{21} See, The Criminal Procedure Code, 1973, Sec.483
\textsuperscript{22} See, Ibid, Sec.6
\textsuperscript{23} See, Ibid, Sec.9
\textsuperscript{24} See, Ibid, Sec.11(1)
\textsuperscript{25} See, Ibid, Sec.12(1)
\textsuperscript{26} See, Ibid, Sec.12(2)
\textsuperscript{27} See, Ibid, Sec.12(3)
\textsuperscript{28} See, Ibid, Sec.16
Chief Metropolitan Magistrate. The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Session Judge, and every other metropolitan Magistrate shall subject to the general control of the Session Judge, be subordinate to the Chief Metropolitan Magistrate.

The Criminal Procedure Code has adopted the policy of separation of the Judiciary from the Executive. Therefore it has created the separate category of the courts which are distinct from the courts of Judicial Magistrate. The object of the policy of separation is to ensure the independent functioning of the Judiciary free of all suspicion of Executive influence and control.

In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be executive Magistrate; it may also appoint an Additional District Magistrate and for a sub-division a Sub-Divisional Magistrate.

C) Legal Aid to the needy person

One of the essential elements of a fair trial is the right of the accused to be defended by a competent and qualified legal practitioner of his or her choice. The right to a fair trial cannot be realized where the accused does not have not have equal access to legal resources in comparison with the prosecution. Without adequate legal service, the accused will not have the means or expertise to rebut the evidence lead by the prosecution.

Many people of India cannot afford a lawyer, when they are accused of a crime. As a result, they are essentially denied meaningful access to the criminal justice system.

For this reason, both international and Indian domestic law have established that an accused person who cannot procure a lawyer with his own resources is entitled to free legal aid at the State’s expenses. This right is enshrined in the Constitution of India.

The Indian Parliament passed the Legal Services Authorities Act 1987 which established both National and State authorities to administer the provision of legal aid.

---

29 See, Ibid, Sec.17
30 See, Ibid,Sec.19
31 See, R. V. Kelker, Lectures on Criminal Procedures, 1990, p.16
32 See, The Criminal Procedure Code, 1973,Sec.20
33 See, Legal Aid Committee (report), 1971,p.10
34 See, The Constitution of India, 1950, Art. 22(1) and 39 A
aid to people who are deemed eligible. The Legal Services Authorities Act provides the criteria that should be fulfilled by a person in order to get legal aid.

Section 12 of the Legal Services Authorities Act provides that ‘every person who has to file or defend a case will be entitled to legal aid, if that person is:-

- A member of scheduled caste or scheduled tribe;
- A victim of trafficking in human being or begar;
- A woman or child;
- A mentally ill or otherwise disabled person;
- A person under circumstance of undeserved want such as being a victim of a mass disaster;
- An industrial workman;
- In custody, including custody in a protective home, in a juvenile home or in a psychiatric hospital or psychiatric nursing home; or
- In receipt of annual income less than nine thousand rupees or such other higher amount as may be prescribed by the State Govt; if the case is before a court other than the Supreme Court and less than twelve thousand rupees or such other higher amount as may be prescribed by the Central Govt.; if the supreme Court.

Despite the fact that the right to free legal aid has been declared a constitutional right, the Supreme Court has, rather inconsistently, made exceptions to this right. In the case of M.H. Hoskot v/s State of Maharashtra, the Court ruled that there may be cases involving offences against laws where social justice mandates that free legal service not be provided by the State.35

It should also be noted that eligibility for Legal Aid does not create a duty to accept that Aid. The accused is under no obligation to accept any legal representation against his or her will.36

D) **Grant of Bail**

Bail is a generic term used to mean judicial release from custody. The right to bail, the right to be released from jail in a criminal case, after furnishing sufficient security and bond has been recognized in every civilized society as a fundamental aspect of Human Rights. This is based upon the principle that the object of a

---

36 See, Legal Services Authority Act.1987, Sec. 2
criminal proceeding is to secure the presence of the accused charged of a crime at the time of the enquiry, trial and investigation before the court and to ensure the availability of the accused to serve the sentence, if convicted. It would be unjust and unfair to deprive a person of his freedom and liberty and keep him in confinement, if his presence in the court, whenever required for trial is assured.

The Code of Criminal Procedure, 1973, under sections 436 to 450 has laid down in detail the norms for grant of bail and bonds in criminal cases. There is no definition of bail in the Code, although the term ‘bail-able offence’ and ‘non-bailable offence’ has been defined in the Code of Criminal Procedure. A person who is unable to meet the conditions of release imposed or who is released on condition that he return to custody after specified hours is entitled to a prompt reconsideration of such conditions and if they are not removed, to have the judge set forth in writing the reasons for them. Subject to the same limitations, the Judicial Officer may at any time amend his order to impose additional or different conditions of release. One who has been unable to obtain his release at all or except upon the condition that he return to custody after specified hours, is entitled to a prompt appeal.

i) In what type of cases bail to be granted

When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in-charge of a police station or appears or is brought before a court and is prepared at any time, while in the custody of such officer or at any stage of the proceeding before such court to give bail, such person shall be released on bail.

Provided that such officer or court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance.

Where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the court or is brought in custody and any such refusal shall be without prejudice to the powers of the court to call upon any person bound by such bond to pay the penalty.

37 See, The Criminal Procedure Code, 1973, sec.2(a)
38 See, Ibid. Sec.436
39 See, Ibid. Sec.437(2)
ii) **When bail may be taken in case of non-bail-able offence**

When any person accused of or suspected of, the commission of any non-bail-able offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but such person shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life and such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for 7 years or more or he had been previously convicted on two or more occasions of a non-bail-able and cognizable offence.\(^{40}\)

If it appears to such officer or court at any stage of the investigation, enquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bail-able offence, but that there are sufficient grounds for further enquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such enquiry, be released on bail or at the discretion of such officer or court on the execution by him of a bond without sureties for his appearance.\(^{41}\)

iii) **Other instances where bail must be granted**

In addition to bail being granted for the commission of a bail-able offence, an accused person has the right to be granted bail in a non-bail-able offence, if the investigation is not completed within the prescribed number of days. Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. Sixty days, where the investigation relates to any other offence and on the expiry of the said period of ninety days or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail.\(^{42}\)

It is extremely important to note that once the given time has elapsed, this right to bail is absolute. The Supreme Court has ruled that even in case dealing with ghastly and serious type of crimes, the accused will be entitled to be released on

\(^{40}\) See, Ibid, Sec.437(1)  
\(^{41}\) See, Ibid, Sec.437(2)  
\(^{42}\) See, Ibid, Sec.167(20(a)
bail.\textsuperscript{43} Not only is this right absolute, but bail granted pursuant to S. 167(2) Cr.PC shares the property of bail granted pursuant to Ss. 437 and 439 Cr.PC in that, it cannot be cancelled except through the powers conferred upon the court in Ss. 437(5) and 439(2) Cr. PC.\textsuperscript{44} However, if a charge-sheet is filed after the sixty or ninety days period and the accused has not exercised the right to bail, the court may actually deny bail; and so, it is extremely important that the accused exercise this right as soon as the mandated period has expired.\textsuperscript{45}

\textbf{vi) Direction for grant of bail to person apprehending arrest}

When any person has reason to believe that he may be arrested on an accusation of having committed a non-bail-able offence, he may apply to the High Court or the Court of Session for direction under this section; and that court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.\textsuperscript{46}

When the High Court or the Court of Session makes a direction it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including-

a) A condition that the person shall make himself available for interrogation by a police officer when required;

b) A condition that the person shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

c) A condition that the person shall not leave India without the previous permission of the court;

d) Such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.\textsuperscript{47}

If such person is thereafter arrested without warrant by an officer in-charge of a police station on such accusation and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail and if a Magistrate taking cognizance of such offence that a warrant should issue in

\textsuperscript{43} See, Natabar Parida v. State of Orrisa, 1975 SCR p.137,143
\textsuperscript{44} See, Aslam Babulal Desai v. State of Maharashatra, AIR, 1993 SC p.1,7
\textsuperscript{45} See, Dara Singh v. State of Haryana, 1994, Cri. L. J p.2342,2344
\textsuperscript{46}See, Ibid, Sec.438(1)
\textsuperscript{47}See, Ibid, Sec.438(2)
the first instance against that person, he shall issue a bail-able warrant in conformity with the direction of the court.\textsuperscript{48}

v) \hspace{1em} \textbf{Special powers of High Court or Court of Session regarding bail}

A High Court or Court of Session may direct:

(a) That any person accused of an offence and in custody be released on bail and if the offence is of nature specified in sub-section(3) of section 437, may impose any condition, which it considers necessary for the purposes mentioned in that sub-section;

(b) That any condition imposed by a Magistrate when releasing any person on bail be set aside or modified.

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable is punishable with imprisonment for life, give notice for the application for the bail to the Public Prosecutor if it is, for reasons to be recorded in writing, of opinion that is not practicable to give such notice.\textsuperscript{49}

A High Court or Court of Session may direct that any person who has been released on bail under this chapter be arrested and commit him to custody.

If an accused person who has been released on bail attempts to obstruct the smooth progress of a fair trial either by suborning or by intimidating prosecution witnesses or tries to jump bail and to abscond or to run away to a foreign country, it would be just and reasonable that his bail is cancelled and he is arrested and committed to custody.\textsuperscript{50}

Provisions have also been made in the Criminal Procedure Code regarding the form of bond, amount of bond and reduction(Sec.440), bond of accused and sureties(Sec.441), discharge from custody(Sec.442), power to order sufficient bail when that first taken is insufficient (Sec.443), discharge of sureties (Sec.444), deposit instead of recognizance (Sec.445), procedure in case of bond has been forfeited(Sec.446), in cases of insolvency or death of surety (Sec.447) and power to direct levy of amount due on certain recognizance(Sec.450) etc.\textsuperscript{51}

\textsuperscript{48} See, Ibid, Sec.438 (3)
\textsuperscript{49} See, Ibid, Sec.439 (1)(b)
\textsuperscript{50} See, Ibid, Sec 439 (2)
\textsuperscript{51} See, Ibid, Sec.40
E) **Trial by Criminal Court**

Criminal Court in India has recognized that the primary object of Criminal Procedure Code is to ensure a fair trial to the accused person. This view has also been accepted by the Law Commission of India that the requirement of a fair trial, relate to the character of the court, the venue, the mode of conducting the trail, rights of the accused in relation to defence and other rights.\(^{52}\)

i) **Framing of Charge**

The basic requirement of fair trial in criminal cases is to give precise information to the accused as to the accusation against him. In all trials under the Code of Criminal Procedure the accused is informed of the accusations to be formulated and reduced to writing with great clarity and precision. This ‘charge’ is then to be read and explained to the accused person.\(^{53}\)

The provisions regarding charge are contained in Sections 211-224 and 464. Every charge shall state the offence with which the accused is charged. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only and if the law does not give any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. If the accused, having been previously convicted of any offence is liable, by reason of such previous conviction, to enhanced punishment or to punishment of a different kind, for a subsequent offence and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may think fit to award for the subsequent offence, the fact date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the court may add it any time before sentence is passed.\(^{54}\)

The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other moveable property, it shall be sufficient to

---


\(^{54}\) See, The Criminal Procedure Code, 1973, Sec.211(7)
specify the gross sum or as the case may be, described the movable property in respect of which the offence is alleged to have been committed, without specifying particular items or exact dates.55

When the nature of the case do not accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the matter in which the alleged offence was committed as will be sufficient for that purpose. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.56

No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice.57

A court may alter or add to any charge at any time before judgment is pronounced and every such alteration or addition shall be read and explained to the accused.

For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately and if the accused committed three offences of same kind within a year, he may be charged and tried at one trial.58

If a single act or series of acts is of such nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.59

It is such a case the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section(1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.60

55 See, Ibid, Sec.212(2)
56 See, Ibid, Sec.214
57 See, Ibid, Sec.215
58 See, Ibid, Sec.219(1)
59 See, Ibid, Sec.221(1)
60 See, Ibid, Sec.222(2)
When a person is charged with an offence consisting of several particulars, a combination of one only of which constitutes a complete minor offence and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.\textsuperscript{61} The following persons may be charged and tried together, namely:

(a) Persons accused of the same offence committed in the course of the same transaction;\textsuperscript{62}

(b) Persons accused of an offence and persons accused of abetment of or abetment to commit such offence;

(c) Persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) Persons accused of different offences committed in the course of the same transaction;

(e) Persons accused of different offences which includes thefts, extortion, cheating, or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of property possession of which is allegedly to have been transferred by any such offence committed by the first-named offence;

(f) Persons accused of offences in respect of stolen property the possession of which has been transferred by one offence;

(g) Persons accused of any offence relating to counterfeit coins and persons accused of any other offence under the said Chapter relating to the same coin or of abetment of or attempting to commit any such offence.

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire and if he is satisfied that such persons would not be prejudicially affected thereby and it is expedient so to do, all such persons together.\textsuperscript{63}

When a charge containing more heads than one is framed against the same person and when a conviction has been made on one or more of them, the

\textsuperscript{61} See, Ibid, Sec.222
\textsuperscript{62} See, Ibid, Sec.223
\textsuperscript{63} See, Ibid, Sec.223
complainant or the officer conducting the prosecution, may, with the consent of the court, withdraw the remaining charge or charges or the court of its own accord may stay the enquiry into or trial of such charge or charges and such withdrawal shall have the same effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said court (subject to the order of the court setting aside the conviction) may proceed with the enquiry into or trial of the charge or charges so withdrawn.

No finding sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.  

ii) Trial before a Court of Session

In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor when the accused appears or is brought before the court in pursuance of an offence, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposed to prove the guilt of the accused.

If, upon consideration of the record of the case and the documents submitted here with and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

If the accused pleads guilty; the judge shall record the plea and may, in his discretion, convict him and if the accused refuses to plead or does not plead or claims to be tried the judge shall fix a date for the examination of witnesses and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

On the date so fixed, the judge shall proceed to take all such evidence as may be produced in support of the prosecution.

---

64 See, Ibid, Sec.464(1)
65 See, The Criminal Procedure Code, 1973, Sec.226
66 See, Ibid, Sec.227
67 See, Ibid, Sec.230
The judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence; the judge shall record an order of acquittal.\(^68\)

Where the accused is not acquitted he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

If the accused puts any written statement, the judge shall file it with the record. If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing the judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

When the examination of the witnesses for the defence is complete the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the judge, make his submissions with regard to such point of law.

After hearing arguments and points of law, the judge shall give a judgment in the case. If the accused is convicted, the judge shall hear the accused on the question of sentence and then pass sentence on him according to law.\(^69\)

iii) **Trial of cases by Magistrates**

Warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Warrant cases are more serious than summon cases\(^70\) and the trial of heinous crimes is triable by a court of session and remaining are triable by Magistrates.

When in any warrant-case instituted on a Police report, the accused appears or is brought before a Magistrate at the commencement of the trial.

---

\(^{68}\) See, Ibid, Secs.231,232  
\(^{69}\) See, Ibid, Sec.233-235  
\(^{70}\) See, Ibid, Sec.2(x)
If, upon considering the Police report making examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

If, upon such consideration examination, if any and hearing, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence which such magistrate is competent to try and which, in opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

The charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or claims to be tried. If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him.

If the accused refused to plead or claim to be tried or the Magistrate does not convict the accused then the Magistrate shall fix a date for the examination of witnesses. The Magistrate may on the application of the prosecution, issue summons to any of its witnesses directing him to attend or to produce any document or other things. On the date so fixed the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.71

If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination or the production of any document or other thing.

When in any warrant case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

The Magistrate may, on the application of the prosecution, issue summon to any of its witnesses directing him to attend or to produce any document or other thing.

---

71 See, Ibid, Secs.238-241
If, upon taking all evidence the Magistrate considers for reasons to be recorded that the case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Nothing shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by the Magistrate, he considers the charge to be groundless.  

If, When such evidence has been taken, or at any previous stage of the case, the magistrate is of opinion that there is ground for presuming that the accused has committed an offence, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

If the accused pleads guilty, the magistrate shall record the plea, and may, in his discretion convict him and if the accused refuses to plead or does not plead or claims to be tried or if the accused is not convicted he shall be required to be state, at the commencement of the next hearing of the case or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any and if so which of the witnesses for the prosecution whose evidence has been taken.

If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

iv) Trial of summon cases and summary trial

A summon case means a case relating to an offence and not being a warrant case. Thus, it means that it is a case relating to an offence not punishable with death, imprisonment for life or imprisonment for term exceeding two years.

When in a summon case the accused appears or is brought before the magistrate, the particulars of the offence of which he is accused shall be stated to

---

72 See, Ibid, Secs.243-245
73 See, Ibid, Secs.246,247
74 See, Ibid, Sec.2(w)
him and he shall be asked whether he pleads guilty or has any defence to make but it shall not be necessary to frame a formal charge.

If the accused pleads guilty, the magistrate shall record the plea as early as possible in the words used by the accused and may, in his discretion convict him.

Where a summon has been issued and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

The Magistrate may in his discretion convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summon and the amount transmitted by the accused shall be adjusted towards that fine or where a pleader authorized by the accused in this behalf pleads guilty on behalf of the accused, the magistrate shall record the plea as early as possible in the words used by the pleader and may in his discretion, convict the accused on such plea and sentence him as aforesaid.\textsuperscript{75}

If the Magistrate does not convict the accused the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summon to any witness directing him to attend or to produce any document or other thing.

A Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in court.

If the magistrate, upon taking the evidence may, of his own motion, cause to be produced, finds the accused not guilt, he shall record an order of acquittal.

A Magistrate may, convict the accused of any offence which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons if the Magistrate is satisfied that the accused would not be prejudiced.

\footnote{\textsuperscript{75} See, Ibid, Secs.251,253}
If the summon has been issued on complaint and on the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.76

If a complainant, at any time before a final order is passed in any case, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same and shall thereupon acquit the accused against whom the complaint is so withdrawn.

In any summon case instituted otherwise than upon complaint, a Magistrate of the first class or with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceeding is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal and in any other case release the accused and such release shall have the effect of discharge.

When in the course of the trial of summon-case relating to an offence it appears to the Magistrate punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such magistrate may proceed to re-hear the case and may recall any witness who may have been examined.77

v) **Power to try summarily**

Any chief Judicial Magistrate, Metropolitan Magistrate, Magistrate of the first class specially empowered in this behalf by the High Court, may if he thinks fit, try in a summary way all or any of the following offences:

---

76 See, Ibid, Secs.254-256
77 See, Ibid, Secs.257-259
• Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
• Theft under sections 379, 380 or 381 of the Indian Penal Code, where the value of the property stolen does not exceed two hundred rupees;
• Receiving or retaining stolen property, under section 411 of the Indian Penal Code, where the value of the property does not exceed two hundred rupees;
• Assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code, where the value of such property does not exceed two hundred rupees;
• Offences under sections 454 and 456 of the Indian Penal Code;
• Insult with intent to provoke a breach of peace, under section 504 and criminal intimidation, under section 506 of the Indian Penal Code;
• Abetment of any of the foregoing offences;
• An attempt to commit any of the foregoing offences, when such attempt is an offence;
• Any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871.

When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by this code.

The High Court may confer on any magistrate invested with the powers of a Magistrate of the second class, to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine and any abetment of or attempt to commit any such offence.

In every case tried summarily, the Magistrate shall enter in such form as the state Government may direct, the following particulars namely:-

• the serial number of the case;
• The date of the commission of the offence;
• The date of the report of complaint;
• The name of the complainant (if any);
• The name, parentage and residence of the accused;
- The offence complained of and the offence (if any) proved and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;
- The plea of the accused and his examination (if any);
- The finding;
- The sentence or other final order;
- The date on which proceeding terminated.

In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

Every such record and judgment shall be written in the language of the court. The high court may authorize any Magistrate empowered to try offence summarily to prepare the aforesaid record or judgment or both by means of an officer appointed on behalf by the Chief Judicial Magistrate and the record or judgment so prepared shall be signed by such Magistrate.  

F) Concept of Plea Bargaining

A formal proposal for incorporating Plea bargaining into the Indian Criminal Justice process was put forth in 2003 through the Criminal Law (Amendment) Bill, 2003 (hereinafter referred to as the Bill). However, those provisions failed to come through and were reintroduced with slight changes through the Criminal (Amendment) Bill, 2005 which was passed by both the houses of Parliament. And was finally incorporated into the Code of Criminal Procedure, 1973 as Chapter XXI-A through the Criminal Law (Amendment) Act, 2005, and came into being from July 5, 2006.  

The report has been forwarded by the officer in-charge of the police station under Section 173 of Cr.P.C alleging that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force. A Magistrate has taken cognizance of an offence on complaint other than an offence for which the punishment of death or of

---

78 See, Ibid, Sec.260-265
79 See, Lok Sabha Bulletin, Part-2, Wednesday, 30th June, 2004
imprisonment for a term exceeding seven years, has been provided under the time being in force and after examining complainant and witnesses under Section 200, issued the process Section 204. But does not apply where such affects the socio-economic condition of the country or has been committed against a woman or a child below the age of fourteen years.  

A person accused of an offence may file application for plea bargaining in the court in which such offence is pending for trial. The application shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law. The offence, the plea bargaining in his case and that he has not previously been convicted by a court in case in which he had been charged with the same offence. After receiving the application, the court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be and to the accused to appear on the date fixed for the case. When the Public Prosecutor or the complainant of the case, as the case may be and the accused appear on the date fixed. The Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy that the accused has filed the application voluntarily. If the court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the public prosecutor or the complainant of the case and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and hereafter fix the date for further hearing of the case. In case the Court finds that the application has been filled involuntarily by the accused or he has previously been convicted by the Court in case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed by the accused.

---

80 See, The Criminal Procedure Code, 1973, Sec.265(A)
81 See, Ibid, Sec.265(B)
In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265B the Court shall follow the following procedure, namely\(^82\):-

a) In a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case.

b) In a case instituted otherwise than on police report, the court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case. It shall be the duty of the Court to ensure, throughout such process of work out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting.

Where in a meeting under Section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this code from the stage the application under sub-section 265-B has been filed in such case.\(^83\)

Where a satisfactory disposition of the case has been worked out under Section 265-D, the court shall dispose of the case in the following manner, namely\(^84\):-

- The court shall award the compensation to the victim in accordance with the disposition under Section 265-D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under Section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

---

\(^82\) See, Ibid, Sec.265(C)  
\(^83\) See, Ibid, Sec.265(D)  
\(^84\) See, Ibid, Sec.265(E)
• After hearing the parties under clause (a), if the court is of the view that Section 360 or the provisions of the Probation of Offender Act, 1958 or any other law for the time being in force are attracted in the case of the accused, it may release in the case of the accused on probation or provide the benefit of any such law, as the case may be;

• After hearing the parties under cause (b), if the court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

• In case after hearing the parties under clause (b) or the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

The Court shall deliver its judgment in terms of section 265-E in the open court and the same shall be signed by the presiding officer of the Court. The judgment delivered by the Court shall be final and no appeal (except the special leave petition under article 136 and writ petition under article 226 and 227 of the constitution) shall lie in any Court against such judgment.85

The provisions of Section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this chapter, in the same manner as they apply in respect of the imprisonment under other provision of this code.86

Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining file under Section 265-B shall not be used for any other purpose except for the purpose of this Chapter.87

G) **Special Procedure of Evidence**

Whenever, in the course of any enquiry, trial or other proceeding, it appears to a court of Magistrate that the examination of a witness is necessary for the end of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or in convenience which, under the circumstances of the

85 See, Ibid, Secs.265(F),265(G)
86 See, Ibid, Sec.265(I)
87 See, Ibid, Sec.265(K)
case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness.

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union Territory as witness is necessary for the ends of justice, a commission shall be appointed for the examination of such a witness.

The court may, when issuing a commission for the examination of a witness for the prosecution directs that such amount as the court considers reasonable to meet the expenses of the accused including the pleader fees, be paid by the prosecution if the witness is with the territories to which this code extends, the commission shall be directed to the Chief Metropolitan Magistrate or chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

If the witness is in India, but in a state or an area to which this code does not extend the commission shall be directed to such court or officer as the Central Government may, by notification specify in this behalf.

If the witness is in a country or place outside India and arrangements have been made by Central Government with the Government of such country or place for taking the evidence of witnesses in relation to a criminal matter, the commission shall be issued in such form, directed to such court or officer and sent to such authority for transmission as the Central Government may, by notification prescribe on this behalf.

Upon receipt of the commission, the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan or Judicial Magistrate as he may appoint in this behalf, shall summon the witness to appear before him or proceed to the place where the witness is and shall take down his evidence in the same manner and may for this purpose exercise the same powers, as in trial of warrant cases.

The parties to any proceeding in which a commission is issued may respectively forward any interrogatories to the issue and it shall be lawful for the Magistrate, court or officer to whom the Commission is directed or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.
Any such party may appear before such Magistrate, court or officer by pleader or if not in custody, in person and may examine, cross-examine and re-examine (as the case may be) the said witness.

After any commission has been duly executed, it shall be returned, together with the deposition of the witness examined there under, to the court or Magistrate issuing the commission and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties and may, subject to all just exceptions, be read in evidence in the case by either party and shall form part of the record.

In every case in which a Commission is issued, the enquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Any Court, Judge or Magistrate exercising jurisdiction in any foreign country or place outside India, as the Central Government may, by notification, specified in this behalf, and having authority under the law in force in that country of place, to issue commissions for the examination of the witnesses in relation to Criminal matters.

The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused or taken on commission, may be given in evidence in any enquiry or other proceeding, although the deponent is not called as a witness.

If the court may think fit and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject matter of his deposition.

Any document purporting to be a report under the hand of any such gazetted officer of the Ministry or of the India Security Press (including the office of the controller of Stamps and stationary) as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding, may be used as evidence in any enquiry, trial or other proceeding, although such officer is not called as a witness.

Any document purporting to be a report under the hand of a government scientific expert, upon any matter or thing dully submitted to him for examination or
analysis and report in the course of any proceeding may be used as evidence in any
equiry, trial or other proceeding. The court may, if it thinks fit, summon and
examine any such expert as to the subject matter of his report.

Where any such expert is summoned by a court and he is unable to attend
personally, he may, unless the court has expressly directed him to appear personally,
depute any responsible officer working with him to attend the court, if such officer is
conversant with the facts of the case and can satisfactorily depose in court on his
behalf.

This provision applies to the following Government scientific experts,
namely:

(a) Any chemical examiner or assistant chemical examiner to government;
(b) The Chief Inspector of Explosives;
(c) The Director of Finger Print Bureau;
(d) The Director, Haffkeine Institute, Bombay;
(e) The Director (Deputy Director or Assistant Director of a Central
Forensic Science Laboratory or a state Forensic Science Laboratory);
(f) The Serologist to the Government.

Where any document is filed before any court by the prosecution or the
accused, the particulars of every such document shall be included in a list and the
prosecution or the accused, as the case may be or the pleader for the prosecution or
the accused, if any, shall be called upon to admit or deny the genuineness of each
such document.

Where the genuineness of any document is not disputed, such document may
be read in evidence in any enquiry, trial or other proceeding without proof of the
signature of the person to whom it purports to be signed, provided that the court
may, in its discretion, require such signature to be proved.

When any application is made to any court in the course of any enquiry, trial
or other proceeding and allegations are made therein respecting any public servant,
the applicant may give evidence of the facts alleged in the application by affidavit
and the court may, if it thinks fit, order that evidence relating to such facts be so
given.

The evidence of any person whose evidence is of a formal character may be
given by affidavit and may, subject to all just exceptions, be read in evidence in any
enquiry, trial or other proceeding and the court may, if it thinks fit and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

Affidavits shall be confined to and shall state separately such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true and in the latter case, the deponent shall clearly state the ground of such belief and the court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

In any enquiry, trial or other proceeding, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force.

(a) By an extract certified under the hand of the officer having the custody of the records of the court in which such conviction or acquittal was held, to be a copy of the sentence or order, or

(b) In case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was undergone or by production of warrant of commitment under which the punishment was suffered together with, in each of such cases evidence as to the identity of the accused person with the person so convicted or acquitted.

If it is proved that an accused person has absconded and that there is no immediate prospect of arresting him, the court competent to try(or commit for trial) such person for the offence complained of, may, in his absence, examine the witnesses( if any) produced on behalf of the prosecution and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the enquiry into or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense inconvenience which, under the circumstances of the case, would be unreasonable and if it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an enquiry and examine any witness who can give evidence concerning the offence and any deposition so taken may be given in evidence against any person who is
subsequently accused of the offence, if the deponent is dead or incapable of giving
evidence or beyond the limits of India.88

H) Release on Probation

It is possible and often preferable for the courts to release offenders on
probation. Release on probation means the court may order that instead of being
immediately sentenced, for a period of up to three years the convicted may be
released on probation, with the condition that he or she maintains good behavior
during this period.89 This means that the accused will not have to serve a prison
sentence unless he violates the condition of good behavior. In the event that the
person on probation commits a crime, he will likely be sent to jail.

Probation may be ordered where the courts think that the offender can be
reformed and rehabilitated, without subjecting them to the damaging effects of
serving sentence in jail. Section 360 of the Code specifies that offenders who may be
released on probation must satisfy any of the following criteria:

- A person over twenty years who is convicted of an offence punishable with
  only a fine or imprisonment of seven years or less;
- A person under twenty –one years of age who is convicted of an offence
  punishable with death or life imprisonment;
- A woman who is convicted of an offence not punishable with death or life
  imprisonment;
- The offender has no previous conviction;
- It appears to the court with regard to the age, character or antecedents of the
  offender and with regard to all the circumstances of the case, that he or she
  should be released on probation of good conduct.

The Probation of Offenders Act states that for offenders under twenty-one years
of age, probation is to be the rule and imprisonment the exception.90 This is clearly
in order to prevent young person from being exposed to the harsh conditions of jail
life and to hardened criminals who may have a bad influence on them. It may also be
thought that first time young offenders can be more easily rehabilitated and are less
of risk if released into society.

88 See, Ibid, Sec.284-299
89 See, Ibid, Sec. 360
90 See, Probation of Offenders Act, 1957, Sec. 6
I) **Judgment in Criminal Trial**

The main functions of the Criminal courts are to decide as to the guilt or innocence of the accused person tried before it and if such person is found guilty of any offence to determine as to the appropriate punishment or other method of dealing with him. In every trial, irrespective of its nature, the court will have to give a judgment in the case at the conclusion of the trial. The judgment is the final decision of the court, given with reasons, on the question of guilt or innocence of the accused person.

The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. By delivering the whole of the judgment; or reading out the whole of the judgment and explaining the substance of the judgment in a language, which is understood by the accused or his lawyer. Where the judgment is delivered, the presiding officer shall cause it to be taken down in short hand, sign the transcript and every page thereof as soon as it made ready and write on the date of the delivery of the judgment in open court.91

Every judgment shall be written in the language of the court contain the point or points for determination, the decision thereon and the reasons for the decision specify the offence (if any) of which and the section of the Indian Penal Code or other law under which, the accused is convicted and the punishment to which he is sentenced. If it be judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

When the conviction is for an offence punishable with death or in alternative, with the imprisonment for life or imprisonment for term of 10 years, the judgment shall state the reasons for the sentence awarded and in the case of sentence of death, the special reasons must be given for such sentence.92

When a court imposes a sentence of fine or (including a sentence of death) of which fine forms a part, the court may, when passing judgment order the whole or any part of the fine recovered to be applied. In defraying the expenses properly incurred in the prosecution and the payment to any person of compensation for any

---

91 See, The Criminal Procedure Code, 1973, Sec.353
92 See, Ibid, Sec.354
loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court.\textsuperscript{93}

When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.\textsuperscript{94}

The original judgment shall be filed with the record of the proceedings and where the original is recorded in a language different from that of the court and the accused so requires, a translation thereof into the language of the court shall be added to such record.\textsuperscript{95}

In case tried by the Court of Session or a Chief Judicial Magistrate as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.\textsuperscript{96}

\textbf{J) Appeals and Revision}

The appeal system is an integral aspect of the right to a fair trial and the judicial protection of human rights. It provides a system to review court decisions and thereby ensures that any mistake or injustice can be rectified. Where the offences in question are serious ones which would stigmatize the offender and particularly where loss of liberty is involved, it is vital that any decision made by a court is subject to scrutiny.

An appeal is made in the form of petition in writing to the court, accompanied by a copy of the judgment or order appealed against.\textsuperscript{97} If the offender is in jail, the petition of appeal and copies of the accompanying documents can be given to the officer-in-charge of the jail, who should then forward these documents to the proper appellate court.\textsuperscript{98}

The person presenting the appeal has the right to be given reasonable opportunity to be heard by the court.\textsuperscript{99} However, if the court has good reason to believe that there are no grounds for the appeal, it may summarily dismiss it. If the court dismissing the appeal is a Court of Session or of the Chief Judicial Magistrate, then the court must record its reasons for dismissing the appeal. This is in case the

\textsuperscript{93} See, Ibid, Sec.357
\textsuperscript{94} See, Ibid, Sec.363
\textsuperscript{95} See, Ibid, Sec.364
\textsuperscript{96} See, Ibid, Sec.365
\textsuperscript{97} See, Ibid, Sec.382
\textsuperscript{98} See, Ibid, Sec.383
\textsuperscript{99} See, Ibid, Sec.384(1)(b)
High Court comes to examine or revise the summary dismissal. For the same reason, the High Court should also record its reasons for summarily dismissing a case, in case this decision comes to be examined by the Supreme Court later.100

Appeal is not permissible in the following circumstances101:-

- Where a High Court passes a sentence of imprisonment for a term not exceeding six months or fine not exceeding rupees one thousand or both;
- Where a Court of Session or Metropolitan Magistrate passes a sentence of imprisonment for a term not exceeding three months or a fine not exceeding rupees two hundred or both;
- Where a First class Magistrate passes only a sentence of one month or a fine not exceeding one hundred rupees or both;
- Where in a case tried summarily, a Magistrate passes only a sentence of fine not exceeding two hundred rupees; and
- Where an accused person has pleaded guilty and been convicted on this plea, if the conviction is by a High Court, Court of Session, Metropolitan Magistrate or Magistrate of the First or Second class. In this case, although the conviction cannot be appealed, the sentencing term can be appealed.

In following rare circumstances, it may be possible to make an appeal to the Supreme Court:-

- Where any person is convicted in a trial held by a High Court in its criminal jurisdiction, they may appeal to the Supreme Court.102
- Where the High Court has, on appeal reversed an order of acquittal of an accused person and convicted and sentenced them to death, imprisonment for life or for more than ten years and this person has a right to appeal to the Supreme Court.103
- Where the High Court certifies any judgment, decree or final order in a case before it involves a substantial question of Law as to the interpretation of the constitution, there is a right of appeal to the Supreme Court under the Article 132(1) of the constitution. Even where the High Court refuses to give such a certificate, where the Supreme Court is satisfied that there is a substantial

100 See, Ibid, Sec.384(1)(3)
101 See, Ibid, Sec.375
102 See, Ibid, Sec.374(1)
103 See, Ibid, Sec.379
question of Law in relation to the constitution it may grant special leave to appeal. If leave is granted by the High Court or the Supreme Court then any party in the case may appeal on the ground that the Law has been wrongly decided.\textsuperscript{104}

- In some cases where the High Court has made a sentence of death, it may be possible to appeal the sentence before the Supreme Court.\textsuperscript{105}

- Where the Supreme court exercise its discretion under the constitution to grant special leave to appeal from any judgment or sentence or order by any court or tribunal, except for those made by any court or tribunal constituted under any law relating to the armed forces.\textsuperscript{106}

- In some circumstances it is also possible to appeal to the High Court. This is where a person has been convicted by a Session Judge or Additional Session Judge or where he or any co-accused were sentenced to seven or more years imprisonment.\textsuperscript{107}

Appeal to the Court of Session may occur in the following circumstances under S. 374 (3) of Cr. PC

- Where a person is convicted by a Metropolitan Magistrate or Assistant Sessions Judge or a Metropolitan Magistrate of the first or second class;

- Where a person is sentenced under S. 325 of Cr. PC;

- Where an order or sentence has been passed under S. 360 of Cr. P.C by any Magistrate.

- In case where a person is convicted along with a member of other Co-accused and one or more of these co-accused are granted a right to appeal, all those convicted in the case will have the same right of appeal.\textsuperscript{108}

Occasionally, an appeal may be made against an acquittal or by the state government against the length of a sentence.\textsuperscript{109} However, appeal against acquittal is extremely rare because it would be akin to an attempt to put the person on trial again even after the presumption of their innocence had been rebutted by the prosecution in the original trial.

\textsuperscript{104} See, The Constitution of India, 1950, Art.132(3)136(a)
\textsuperscript{105} See, Ibid, Art.134(1)(a)
\textsuperscript{106} See, Ibid, Art.136
\textsuperscript{107} See, The Criminal Procedure Code,1973, Sec.374(2)
\textsuperscript{108} See, Ibid, Sec.380
\textsuperscript{109} See, Ibid, Secs.377, 37823
K) **Sum-up**

The foregoing study of statutory provision of Criminal Procedure Code reveals that in Indian Criminal Justice system the Courts have vast discretionary power especially in matters of bail. The accused person has only single remedy to challenge the order of trial court in upper court by filing an appeal, but many persons are not in a position to avail this remedy because of his/her financial capacity. But several enactments such as Probation of Offender Act, Juvenile (Care and Protection) Act and Plea Bargaining are added in the code of criminal procedure by amendments have been in acted to provide protection to the human rights under criminal justice delivery system, which appears very protective for Human Rights to some extents.