

6. THE LAW OF CRIMINAL PROCEDURE IN BRITISH INDIA

THE LAW OF CRIMINAL PROCEDURE
IN
BRITISH INDIA
PRELIMINARY

Wrong and the Remedy for it

1.* One of the clauses in the constitution of the U. S. A. runs thus :

“No citizen shall be deprived of his life, liberty and property without due process of law”.

Such a clause is not found in the constitution of other states. All the same every civilized State seeks to protect the life, liberty and property of its citizen from unwarranted attacks.

Such a guarantee is the foundation of the state. With this object in view every state has a code of laws which defines what are wrongs. In India we have the Penal Code and the law of Torts.

2. Wrongs are either civil *or* criminal.

Some wrongs are both civil as well as criminal; *Assault, Defamation* : they are both civil as well as criminal wrongs. The aggrieved party can proceed both in a criminal court and also in a civil court.

3. *Remedy*. It would be of no avail whatsoever merely to enact wrongs if for every wrong an appropriate remedy is not provided. On the other hand, it may be said, that the law recognizes a wrong only when it provides a remedy for its vindication. When there is no remedy provided for the commission of a wrong, the enactment of a wrong would be an idle work.

Liberty of a person and the writ of Habeas Corpus.

4. The Criminal Procedure Code is a remedial law. It provides a remedy to the aggrieved party against the offender for the vindication of the criminal wrong done to him. It is a

* Paragraph numbers are retained as of original— ed.

popular notion that the law allows ten guilty persons to escape rather than punish an innocent individual. This is absolutely incorrect. All that the law says is that no man shall be tried except in accordance with the procedure laid down by law.

5. The Criminal Procedure lays down :

- (1) The Constitution of the Criminal Courts.
- (2) The means and methods by which the accused may be brought before a Criminal Court for his trial.
- (3) The rules as to trial of an accused.
- (4) The rules as to punishment, and
- (5) The rules as to rectification of an error in the trial, conviction or punishment of an accused.

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I. CONSTITUTION OF CRIMINAL COURTS

7. For a proper understanding of this subject a distinction must be drawn between the Presidency Towns system and the Provincial system.

Such distinction is often made in India in respect of other laws as well:

e.g. Insolvency— 1. Presidency Towns Insolvency Act.
2. Provincial Insolvency Act.

Small Causes— 1. Presidency Towns Small Causes Courts Act.
2. Provincial Small Causes Courts Act.

A. Provincial System

1. Sessions Courts

Section 7(1)

8. 1. Every Province shall be a Sessions Division or shall be divided into more than one Sessions Division. Every Sessions Division shall be coterminus with a district or more than one district.

Section 9 (3)

3. For any Sessions Division there may be Additional Session Judges and Assistant Judges to exercise jurisdiction in one or more of Sessions Courts.

* Para 6 is missing in the MS.—ed.

Section 9 (2)

4. The Court of Session shall hold its sitting at such place or places as may be notified by the L. G.* in the Official Gazette.

Section 9 (4)

5. A Sessions Judge of one division may also be appointed as an Additional Sessions Judge of another division in which case he may sit in either division to dispose of cases.

2. Magistrates Courts

9. (1) District Magistrate.

Section 10

(1) In every district there *shall* be magistrate of the first class who shall be called the District Magistrate.

(2) Any magistrate of the first class may be appointed to act as an Additional District Magistrate.

(2) Sub-Divisional Magistrate.

Section 8 (1)

10. A District may be sub-divided into a sub-division.

Section 13 (1) and (2)

A Magistrate of the 1st or 2nd Class may be placed in charge of a sub-division and shall be called a Sub-Divisional Magistrate.

(3) Subordinate Magistrates.

Section 12 (I)

11. In every District there may be appointed besides the District Magistrate, as many persons as may be necessary to be Magistrates of the first, second or third class.

They will exercise jurisdiction in such local areas as may be defined in the case of each.

Section 12 (2)

If no such area is fixed, their jurisdiction and power shall extend throughout such District.

* Local Government—ed.

3. District Magistrate and 1st Class Magistrate

The Code does not recognize any particular Court as that of the District Magistrate, but only Courts of 1st, 2nd and 3rd Class Magistrate.

Where a trial was commenced by an officiating District Magistrate and before its close he reverted to his original position as 1st Class Magistrate in which capacity he had jurisdiction over the offence, it was held : he had jurisdiction to continue the trial.

Emp. v/s Sayed Sajjad Husain 3 A.L.J. 825

11. As regards original jurisdiction, whatever the District Magistrate might do with regard to offences committed outside the division, the Sub-Divisional Magistrate is competent to try within his local jurisdiction. 4 A. 366.

4. Special Magistrate

Section 14(1)

12. (1) In any local area persons may be vested with the powers of the Magistrate of the 1st, 2nd or 3rd class in respect of particular cases or classes of cases or in regard to cases generally.

(2) To be called a Special Magistrate and to be prescribed for a term.

(3) Such a person may be an officer under its control.

(4) If he is a police officer, he shall not be below the grade of Assistant District Superintendent and he shall not have any power beyond what is necessary for :

(i) preserving the peace

(ii) preventing crime

(iii) detecting, apprehending and detaining offenders in order to their being brought before a Magistrate

(iv) the performance by him of other duties imposed upon him by any law for the time being in force.

5. Bench Magistrates

Section 15 (1)

13. Any two or more Magistrates may sit together as a Bench and may hear such cases or such classes of cases only and within such local limits as may be prescribed in that behalf.

6. Relation of the different Courts in the Provincial System

Section 17 (2)

14. Every Bench and every Magistrate in a sub-division shall be subordinate to the Sub-Divisional Magistrate. Within a sub-division, the jurisdiction of the District Magistrate and sub-divisional Magistrate are coordinating. *4 All. 366.*

Magistrate who is subordinate to S. D. M. is also subordinate to D. M. All Benches and Magistrates including Sub-Divisional Magistrates are subordinate to the District Magistrate.

Section 10(3)

An Additional District Magistrate shall be subordinate to the District Magistrate for the purpose only of:

- (i) Section 192 (1)
- (ii) Section 407 (2)
- (iii) Section 528 (2) and (3).

Section 17 (3)

All Assistant Sessions Judges are subordinate to the Sessions Judge in whose court they exercise their jurisdiction.

15. Subordinate.—(1) inferior in rank.

9 Bom. 100

8 Mad.18(F.B.)

(2) Subordinate in respect of judicial as well as executive powers.

2 All. 205 (F. B.)

9 Bom. 100. There may be inferiority without subordination, but there cannot be subordination without inferiority, as subordinate means inferior in rank.

Section 17 (5)

Neither the District Magistrate nor the Magistrate and Benches shall be subordinate to the Sessions Judge except to be expressly provided by the Code.

Subordinate to the Sessions Judge only for the purposes of Section 123, 193, 195, 408, 431, 436, 437. If a Sessions Judge rule that touts should not be admitted to the Court it would not apply to the magistracy.

Subordinate means not merely subordinate so far as the regulation of work is concerned. Subordinate also means judicially inferior in rank, i. e. a Court over which another Court can proceed under Section 435. (call for records and pass orders) *9 Bom. 100.*

B. Presidency Towns System

1. Magistracy

Section 18(1)

16. In each of the Presidency Towns, a sufficient number of persons shall be appointed to act as Presidency Magistrates.

Of the number appointed for each town, one shall be appointed to act as a Chief Presidency Magistrate.

Any person may be appointed to act as an additional Chief Presidency Magistrate.

Section 19

17. Any two or more Presidency Magistrates may sit together as a Bench.

2. Relation of the Presidency Magistrates to the Chief Presidency Magistrate

Section 21

18. He is like a District Magistrate controlling Magistrates subordinate to him.

Local Government is to declare the extent of such subordination.

Control:

1. Conduct and distinction of business and practice in Courts.
2. Constitution of Benches.
3. Settle times and places at which Benches shall sit.
4. Settle differences of opinion.

18. The Bombay Government has defined that Presidency Magistrate shall be subordinate to the Chief Presidency Magistrate.

I Bom. L. R. 437.

High Court

19. Along with these Criminal Courts, we have the High Courts of Judicature.

The High Courts owe their origin to the Charter Act passed by Parliament in 1861.

Section 1 empowered Her Majesty by *letters patent* to erect and establish High Courts for Bengal at Calcutta, for Bombay at Bombay, and for Madras at Madras.

Section 9

Each of the High Courts to be established under *Section 106* of this Act shall have and exercise all *such* Civil, Criminal, Admiralty, and Vice-Admiralty, Testamentary, Intestate and Matrimonial Jurisdiction, *original and appellate* and all such powers and authority for and in relation to the administration of justice in the Presidency for which it is established as His Majesty may grant and direct.

High Court's Power of Superintendence

3 Pat L.J. 581. 7.B.

Sheonandan v/s Emperor.

1. High Court's powers of superintendence are limited by Section 15 of the Act of 1861 (Section 107 of the Government of India Act) to Courts subject to its appellate jurisdiction.

2. But where the High Court has appellate jurisdiction, even in a *modified* form from an inferior Court, it will exercise superintendence over that Court, even in cases which are not subject to appeal.

3. There are three classes of cases to be considered:

(a) Where a subordinate Court is subject to the *appellate jurisdiction* of the High Court, in certain cases, only the right of superintendence exists and its exercise is not confined to cases where a right of appeal lies to the High Court. This special power of superintendence is not as a rule exercised in cases where there is an adequate remedy by other proceedings such as appeal or revision.

(b) In cases in which the High Court has powers of revision over subordinate or where the power of reference to the High Court exists, a modified form of appeal may be said to exist

(c) The power of superintendency may be conferred upon the High Court by the Act constituting the subordinate Court independantly of Section 15 of the Charter Act.

4. A Court may be established without being made subject to the superintendence of the High Court.

The Relation of the High Court to other Criminal Courts

Section 15, 107

Each of the High Courts shall have powers of superintendence which may be subject to its appellate jurisdiction and shall have powers to call for returns etc.

What are the Courts subject to its appellate jurisdiction?

Letters Patent.

The High Court shall be a Court of appeal from the Criminal Courts in the Presidency.

3. *Pat. L.J. 5817. B*

Two questions

Sheonandan v/s Emperor

1. Can the High Court have power of Superintendence where it has no power of appeal but has only power of revision or reference ?
2. Can there be a Criminal Court in the Presidency which will not be subject to its power of superintendence.

The Local limits of the jurisdiction:

- 10. (1) of the District Magistrate is the District.
- 11. (2) of the Sub- Divisional Magistrate is the Sub-Division.
- 12. (3) of the subordinate Magistrate, such local area as the Local Government may prescribe.
- 14. (4) of the Special Magistrate, such local area as the Local Government may prescribe.
- 20. (5) of the Presidency Magistrate.

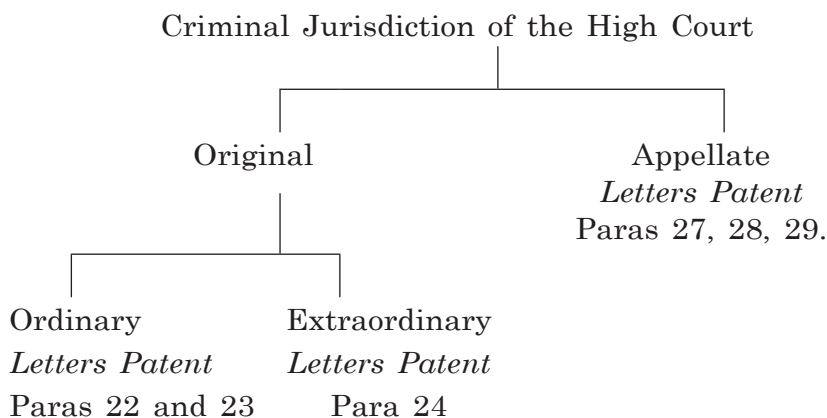
Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law.

(6) Sessions Judge—within the Sessions Division.

(7) High Court.

What are the powers granted by *letters-patent* in criminal matters.

22. The *letters patent* direct that High Court Jurisdiction shall be as follows:—



23. **Ordinary original Criminal jurisdiction.**—High Court shall have original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction.

24. **Extraordinary original Criminal Jurisdiction.**—High Court shall have Extraordinary Original Criminal Jurisdiction in places within the jurisdiction of any court subject to its superintendence.

25. *Appellate Criminal Jurisdiction*.—High Court shall be a Court of appeal from the Criminal Courts in the Presidency and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

Sentence on Escaped Convict

Section 396.

(1) When a sentence is passed on escaped convict, such sentence, if of death, or fine or whipping shall subject to the provisions hereinafter contained, take effect immediately, and if on imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say—

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which at the time of his escape remained unexpired of his former sentence.

Explanation : for the purposes of this Section :

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment.

(b) a sentence of imprisonment with solitary Confinement shall be deemed severer than a sentence same description of imprisonment with solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer man a sentence of simple imprisonment with or without solitary confinement.

397. *Sentence on a person already undergoing sentence*.—

When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment,

penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence: Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced: Provided, further, that where a person, who has been sentenced to imprisonment by an order under Section 123 in default of furnishing security, is whilst undergoing such sentence sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

398. (1) Nothing in Section 396 of 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2)

399. Confinment of youthful offenders in Reformatories.

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Suspensions, Remissions and Commutations of Sentences

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Section 401

Governor-General in Council or Local Government may suspend or remit on conditions or without conditions any sentence.

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Section 402

Power to commute sentences for any other mentioned

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IV. Conferment, Continuance and Cancellation of Powers

Section 39

(1) In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office or classes of officials *generally* by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Section 40

Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is *appointed* to an equal or higher office of the same nature within a local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Section 41

(1) The Local Government may withdraw all or any of the powers conferred under this code on any person by it, or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

Statement made by a witness in deposition is not a complaint.

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PART II

Trial of an Offender

I. TAKING COGNIZANCE OF AN OFFENCE

When an offence has been committed, there are three ways in which the Magistrate can take cognizance of an offence.

Section 190

(a) upon receiving a complaint of facts which constitute such offence.

(b) upon a report in writing of such facts made by any police-officer.

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

A. Complaints to Magistrates.

1. Definition of a complaint.

= means the allegation made *orally* or in writing to a Magistrate, with a view to his taking action under the Cr. P. C. that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer.

Complaint must allege that an offence has been committed.

An application for taking action under Section 107 is not a complaint.

Complaint must be with Magistrate ; it must be with a view to his taking action.

Mere statement to a Magistrate by way of information without any intention of asking him to take action, is not a complaint.

e.g. An Assistant Collector writing to the District Magistrate complaining against a party but merely 'solicited for orders', did not amount to a complaint.

40 All. 641

It must be with a view to taking action under this Code.

A statement made to a Magistrate with the object of inducing him to take action not under this Code, but under Section 6 of the Bombay Gambling Act IV of 1887, is not a complaint within the meaning of this Section.

15 Cr. L. F. 657

II. WHO MAY COMPLAIN

As a general rule the person aggrieved is the complainant.

But the complainant is not an essential party for initiation of criminal proceedings.

The Magistrate can act upon information received or upon his own knowledge.

Although, if he does so act, he shall be bound by the provisions of Section 491.

But there are exceptions to the general Rule.

These exceptions will be found in Sections 195 to 199-A. Section 195 deals with

(a) Prosecution for contempts of lawful authority of public servants.

(b) Prosecution of certain offences against public justice.

(c) Prosecution of certain offences relating to documents given in evidence.

In cases coming under (a) No courts shall take cognizance except on the complaint in *writing* of the public servant concerned or of some other public servant to whom he is subordinate.

In cases coming under (b) No court (shall take cognizance)*

except on the complaint in writing of such Court or of some other Court to which such Court is subordinate.

* Inserted—ed.

In cases coming under (c) (No Court shall take cognizance)*
except on the complaint in writing of such Court or of
some other Court to which such Court is subordinate.

Section 196. Prosecution for offences against the State.

Unless upon complaint made by order of, or under authority
from, the Governor General in Council, the Local Government,
or some officer empowered by the Governor General in Council
in this behalf.

Section 196-A

Prosecution for certain classes of Criminal Conspiracy
falling under Section 120-B of the I. P. C.

If they fall under sub-Section (I) then :

Complaint must be under order of, or under the authority
from, the Governor General in Council, the Local Government
or some officer empowered by the Governor General in Council
in this behalf.

If they fall under sub-section (2), the Chief Presidency
Magistrate or D. M. has by order in writing, consented to
the initiation of the proceedings.

Section 197

Prosecution of Judges, Magistrates and public servants
for an offence alleged to have been committed by him, while
acting or purporting to act, in the discharge of his official duty.

No Court shall take cognizance of such offence except with
the previous sanction of the Local Government.

(2) Such Local Government may determine the person by
whom, the manner in which, the offence or offences for which,
the prosecution of such Judges, etc ... is to be conducted, and
may specify the Court before which the trial is to be held.

Section 198

Prosecution for breach of contract or defamation, or offences
against marriage. No cognizance except upon a complaint
made by some person aggrieved by such offence. Proviso : in
certain cases some other person may with the leave of the
Court, make a complaint on his or her behalf.

* Inserted—ed.

Section 199

Prosecution for adultery or enticing a married woman : No cognizance except upon a complaint made by the husband of the woman, or in his absence, made with the leave of the Court,” by some person who had care of such person on his behalf at the time when such offence was committed.

POLICE REPORT**I. How does it originate ?**

It originates in what is known as the first information. Information is usually given by the aggrieved party. But it may be given by any party. Even a police officer may give such information based on his knowledge. Not only that but in certain cases the law compels certain persons to give information.

Section 44.

Every person shall give information to the Magistrate or Police of certain offences.

Section 45

Information given to the police may refer to a cognizable offence or to a non-cognizable offence.

Cognizable offence is one in which the police can arrest without a warrant.

Non cognizable offence is one in which the police cannot arrest without a warrant.

Section 154

Information relating to a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and the substance of it shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Section 155

Information relating to non-cognizable offence

He shall enter in a book to be kept the substance of such information and refer the informant to the Magistrate.

Section 155

No police-officer shall investigate a non-cognizable case, without the order of a Magistrate of the 1st or 2nd class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Section 156

Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station, would have power to inquire into.

The police report which can be the basis of action by a Magistrate, is based upon information relating to a cognizable offence.

Section 157

If, from information received i.e. under Section 154, the officer has reason to suspect the commission of a cognizable offence then ;

(1) He shall send a report of the same to a Magistrate empowered to take cognizance of it.

(2) Shall proceed to the spot to investigate the facts and circumstances of the case

and

(3) take measures, if necessary, for the discovery and arrest of the offender.

Provided

(a) that the informant gives the names of the offender and the case is not of a serious nature, the officer need not proceed in person to make an investigation on the spot.

(b) that if the officer thinks, there are no sufficient grounds for entering on an investigation, he shall not investigate the case.

He shall state in his said report his reasons for not complying fully with the requirements of the Section.

He should notify to the informant that he will not investigate the case or cause it to be investigated. But this withdrawal of the police cannot block the prosecution of the offender. They are two ways yet open.

Section 159

I. The Magistrate, on receiving such report, may direct an investigation or may at once proceed and ask subordinate Magistrate to hold a preliminary inquiry into or otherwise dispose of the case in manner provided by the case.

This is a preliminary report before completion of the investigation. The Magistrate can act under Section 159. But if the report is submitted *after investigation*, the Magistrate is not empowered to act under this Section.

II. The aggrieved party may move.

If the police do not move, then they have the following powers ;

Section 160

(1) to require attendance of witnesses by an order in writing.

Witnesses are not required to tell the truth under this Section. If they give false testimony they cannot be prosecuted.

They don't sign it.

It is made before police.

Section 161

Police may examine witnesses acquainted with the facts of the case.

(2) Such witnesses shall be bound to answer all questions put to them, unless the question incriminates them.

Although Police can take statements from witnesses yet

Section 162

(a) they shall not be signed by them,

(b) they shall not be made use of at any inquiry or trial, in respect of any offence under investigation at the time when such statement was made.

Provided that, on the request of the accused, the Court shall refer to such writing and direct that the accused be given a copy thereof for contradicting such witness, provided that Court may exclude that part which is irrelevant or its disclosure is inexpedient with interests of the public or does not promote the ends of justice.

In short, they do not form evidence which can be said to be admissible.

If such statements are to be treated as evidence, then they must be recorded by Magistrates and not Police Officers. Consequently provision is made in the Criminal Procedure Code.