

CRIMINAL PROCEDURE

UNIT – II

Trial Process – I

Cognizance • Charge • Bail • Processes • Security Proceedings

UNIT-II Full Coverage

1. Cognizance – Meaning

2. Who can take Cognizance

3. Limitations on Cognizance

4. Commencement of Proceedings

5. Dismissal of Complaints

6. Charge – Meaning & Object

7. Contents of Charge

8. Joinder of Charges

9. Alteration of Charge

10. Processes to Compel Appearance

11. Summons & Warrant

12. Proclamation & Attachment

13. Processes to Compel Production

14. Bail – Concept

15. Bailable vs Non-Bailable

16. Anticipatory Bail

17. Cancellation of Bail

18. Preliminary Pleas

19. Security for Peace

20. Key Takeaways

Section 190 CrPC

Taking cognizance means becoming aware of an alleged offence and applying the judicial mind to the facts for the purpose of taking further action under the Code. It is the first step of judicial proceedings.

Upon Complaint

Magistrate takes cognizance on a complaint filed before him.

Upon Police Report

On a charge-sheet / police report under Sec 173.

Upon Own Knowledge

Magistrate may take cognizance suo motu on information received.

Not a Formal Act

No particular form; application of mind is the test.

Bars and Restrictions

Sec 195

Certain offences (contempt of lawful authority, offences against public justice, offences relating to documents) require complaint by specific public servants / courts.

Sec 196

Offences against the State – prior sanction of Central / State Government required.

Sec 197

Public servants – prior sanction for prosecution of acts done in discharge of official duty.

Sec 198 / 198A

Offences against marriage / cruelty – only specified persons can complain.

Limitation (Sec 468)

Time limits for taking cognizance of offences punishable with fine / short imprisonment.

Exam Tip

Sanction under Sec 197 is a frequent and high-scoring topic.

Proceedings before Magistrate

Commencement

After cognizance, Magistrate issues process (summons / warrant) or postpones process and inquires.

Sec 200

Examination of complainant on oath – mandatory in complaint cases.

Sec 202

Postponement of process – inquiry or investigation to decide whether sufficient ground exists.

Sec 203

Dismissal of complaint if after considering statements and inquiry no sufficient ground.

Reasons

Dismissal must be supported by reasons. Non-speaking order is bad.

Revival

Dismissal under 203 does not bar a fresh complaint on same facts in appropriate cases.

Meaning, Object and Contents

Charge is the precise formulation of the specific accusation made against a person. Its object is to tell the accused precisely and concisely what he is alleged to have done so that he can prepare his defence.

Contents (Sec 211)

Statement that the accused has committed the offence; time, place, person; particulars necessary for notice.

Language

In a language understood by the accused; written.

Error in Charge

Not fatal unless the accused was misled and a failure of justice occurred (Sec 215, 464).

Alteration

Court may alter or add to charge at any time before judgment (Sec 216).

Sections 218–223

General Rule

For every distinct offence there should be a separate charge and separate trial (Sec 218).

Exceptions

Same transaction, same kind of offence within 12 months, acts forming same transaction, etc.

Object of Joinder

Avoid multiplicity of trials when offences are connected.

Misjoinder

Not fatal unless failure of justice is shown.

Separate Trial

Court has power to order separate trials even when joinder is permissible.

Exam Tip

Write the general rule first, then the exceptions with illustrations.

Summons, Warrant, Proclamation

Summons

Order to appear. Ordinary mode for attendance of accused / witness.

Warrant of Arrest

When summons is unlikely to secure attendance or offence is serious.

Bailable / Non-Bailable Warrant

Court may endorse warrant as bailable.

Proclamation

If accused absconds, Court may publish written proclamation requiring appearance (Sec 82).

Attachment

Simultaneously or thereafter, Court may order attachment of property (Sec 83).

Object

To secure presence without unnecessary detention when possible.

Documents and Things

Summons to Produce

Sec 91 – Court or officer in charge may issue summons / order to produce document or thing.

Search Warrant

Sec 93 – when document/thing is not known to be in possession of a particular person or summons may not work.

General Search

Search of place for stolen property, forged documents, etc.

Power of Police

During investigation, limited power under Sec 165.

Safeguards

Independent witnesses, inventory, rights of the person searched.

Exam Tip

Distinguish summons to produce (91) and search warrant (93).

Liberty vs Investigation

Bail is the release of a person from custody on the undertaking that he will appear when required. It reconciles the right to liberty of the accused with the need of the society to ensure that the accused stands trial.

Bailable Offence

Accused has a right to be released on bail (Sec 436).

Non-Bailable Offence

Bail is discretion of the Court (Sec 437 / 439).
Guidelines in case law.

Anticipatory Bail

Sec 438 – pre-arrest bail when person has reason to believe he may be arrested for non-bailable offence.

Factors for Bail

Nature of accusation, severity of punishment, evidence, likelihood of absconding, tampering, antecedents.

Important Aspects

Sec 438 Conditions

Court may impose conditions – cooperation with investigation, not leave India, etc.

Gurbaksh Singh Sibbia

Leading case – liberal interpretation; no rigid formula.

Sushila Aggarwal

Clarified that anticipatory bail need not be limited by time in all cases.

Cancellation

Bail once granted can be cancelled if accused misuses liberty, absconds, tampers with evidence, or new circumstances arise.

Who can Cancel

Court that granted bail or a superior court.

Exam Tip

Always cite Sibbia and mention the balancing of liberty and investigation.

Bars to Trial and Preventive Measures

Preliminary Pleas

Absence of sanction, limitation, double jeopardy, want of jurisdiction, defective charge – raised at the threshold.

Autrefois Acquit / Convict

Sec 300 – person once tried and acquitted/convicted cannot be tried again for same offence.

Security for Keeping Peace

Chapter VIII – Magistrate may require bond for keeping peace (Sec 106–107) or good behaviour (Sec 108–110).

Object of Security

Preventive, not punitive. To secure future good conduct.

Procedure

Show-cause notice, inquiry, order to execute bond with or without sureties.

Failure to Give Security

Can lead to imprisonment for the period of the bond.

UNIT-II

01

Cognizance

Application of judicial mind – Sec 190. Limitations under 195–199 important.

02

Charge

Precise accusation. Object – notice to accused. Error not fatal unless prejudice.

03

Processes

Summons → Warrant → Proclamation → Attachment. Least restrictive first.

04

Bail

Bailable = right; Non-bailable = discretion. Anticipatory bail under 438.

05

Security Proceedings

Preventive jurisdiction under Chapter VIII.

06

Preliminary Pleas

Sanction, limitation, double jeopardy – raise early.

End of UNIT – II

Trial Process – I • Cognizance • Charge • Bail

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