

BA-LLB (Hons) 5th Sem
The Code of Criminal Procedure
BALLBH 503

Definition Clause:-

Introduction: -The Code of Criminal Procedure 1973, has been taken the place of the Code of Criminal Procedure ,1898.It has been enacted by the Parliament in the twenty – fourth year of the Republic of India to consolidate and amend the law relating to Criminal Procedure, hence it is called as the Code of Criminal Procedure ,1973.

New Criminal Procedure Code – 484 Sections, Two Schedules, 37 Chapters

Old Criminal Procedure Code - 565 Sections, Five Schedules ,46 Chapters¹

Section 1: -Short title extent and commencement.

(1) This Act may be called the Code of Criminal Procedure, 1973.

(2) It extends to the whole of India except the State of Jammu and Kashmir: Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply-

(a) to the State of Nagaland,

(b) to the tribal areas,

But the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

Explanation: - In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972 , were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong².

(3) It shall come into force on the 1st day of April, 1974.

Section 2 Definition-there are some important definition Cr.P.C. which have some technical meaning.

2[a]Bailable offence – means an offence which is shown as bailable in the first schedule, or which is made bailable by any other law for the time being in force ,and “non -bailable offence “means any other offence ,

Bail :-

1-Bailable offence

2-Non- bailable offence

3-Anticipatory bail

1.Chaturvedy Dr.M-D. The code of criminal procedure 1973, Allahabad Law agency.Vth Edition ,2015,P-8.

2.Code of Criminal Procedure 1973.The criminal law(Amendment)act ,2018(22 of 2018)

Bail word means temporary release from imprisonment on furnishing surety or security to appear for trial .in other word bail means release of a person from legal custody.³

Bailable offence is that offence in which bail is to be granted as a matter of right.

Non -bailable offence is that offence in which bail is not admitted as a right.

Moti Ram V. State of M.P⁴ In this case justice V.R. Krishna Ayyar has observed that “Bail is arule and jail is an exception.”

Difference between bailable and non-bailable -before the difference we write the definition bailable and non-bailable offence.

- 1-Bailable offence shown as bailable in first schedule while non-bailable offence is also shown as non bailable in first schedule
- 2-bailable offence is less serious in comparison to non bailable offence. while non -bailable offence is more serious in comparison to a bailable offence.
- 3- In bailable offence bail can claim as right while in non -bailable offence bail can not claimed as a right.
- 4-In bailable offence bail is granted by the police officer or by the court while non -bailable offence bail is granted by the discretion of the court.
- 5- in bailable offence the accused may be released after executing a bond without sureties while in non – bailable offence accused cannot be released with sureties.
- 6-In bailable offence, every person can seek the bail as of right while in non -bailable offence ,aperson under the age of sixteen years ,a woman or a sick or infirm may be release on bail even if the offence charged punishable with death or life imprisonment.

2[b] Charge -include any head of charge when the charge contains more heads than one.

Charge means an information or allegation. which allegat by the magistrate of the accused. It is the basic requirement of a fair trial in criminal case.

Esher Singh V. State of A.P.⁵in this case held that charge is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest state.

2 [c] Cognizable offence -means an offence for which, and cognizable case means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

In general word a cognizable offencea police officer can arrest without warrant. In other word cognizable offence, a police officer can arrest the alleged culprit without warrant and can investigate into such a case without any order or directions from a Magistrate.

2[l]“Non-cognizable offence” means an offence for which, and “non-cognizable case”

means a case in which, a police officer has no authority to arrest without warrant;

3.Lal BatukThe code of Criminal Procedure,1973 Central Law Agency, Second Edition 2010 P.3.

4. AIR 1978 SC 1594.

5. (2004) 11 SCC585.

Difference between cognizable offence and non-cognizable offence-

- 1-Cognizable Offence are generally serious offence, while non-cognizable offence are generally lighter offence
- 2-In cognizable offence ,the police may arrest without warrant, while non- cognizable offence police officer may not arrest without warrant
- 3-In cognizable offence police starts investigation suo-motu while in non- cognizable offence ,the magistrate permission is essential .
- 4-In cognizable offence ,the offence is considered against an individual, while in non-cognizable offence the offence is considered against the society as a whole.

2[d]Complaint -means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation-A report made by a police officer in a case which discloses, after investigation, the commission of a non – cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant.

A Complaint in a criminal case is one of the modes whereby a Magistrate can take cognizance of an offence. Thus any allegation made orally or in writing would constitute a complaint, if the following four conditions are satisfied:

- i) It must be made to a Magistrate and not to a Judge.
- ii) It must be made with a view that the Magistrate may take action on it.
- iii)The Magistrate s action must be under this code.
- iv)It must allege the commission of an offence.

Rajesh Bajaj V. State N.C.T. of Delhi⁶.In this case the court held that it is not essential that the complaint should verbatim contain all the ingredients of the offence alleged so long as the factual foundation for the offence has been laid.

Difference between complaint and FIR

Complaint according to sec 2(d) and FIR means First Information Report ,the information given to a police officer and reduced to writing as required by if called the FIR. First Information report is not mentioned in this code

- 1- Complaint is the magistrate acts,while the Information is the police acts.
- 2- In case of complaint the complainant is to be examined on oath ,while In the case of information no complainant is to be examined on oath.

2 [e] High court -means

- i) In relation to any State, the High Court for that State.
- ii) In relation to a Union Territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court.
- iii) In relation to any other Union Territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India.

2[f] India-means the territories to which this Code extends.

2 [g] Inquiry -means every inquiry, other than a trial, conducted under this code by a magistrate or court.

Inquiry means every inquiry conducted under this code by a magistrate or court. Inquiry are judicial proceeding

2[h] Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a magistrate in this behalf.

Investigation mainly conducted by a police officer or by any person other than a Magistrate. The main purpose of investigation are to collect the evidence ,it is the first stage of a criminal case.

There are some proceeding include for Investigation:-

- 1) To visit the crime place.
- 2) To ensure the facts and circumstance of the case.
- 3) To search and arrest of the suspected offender,
- 4) To collect the evidence related that's crime.
- 5) To prepare the report and sand to the Magistrate. This report are called charge -sheet under section 173 of this code.⁷

Difference between Inquiry and investigation

1-Inquiry is defined in sec 2(g) while Investigation is define in sec 2(h)

2-An inquiry is a judicial proceeding made by a magistrate or a court while An investigation is made by a police officer or by some person authorized by a magistrate or a court.

3-The object of an inquiry is to find out the truth and real fact, while the object of the investigation is to collect the Evidence for the prosecution of the case .

2[i]Judicial proceeding-includes any proceeding in the course of which evidence is or may be legally taken on oath,

- 2[j] “Local jurisdiction”** in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;
- 2[k] “Metropolitan area”** means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;
- 2[m] “Notification”** means a notification published in the Official Gazette;
- 2[n] “Offence”** means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871).
- 2[o] “Officer in charge of a police station”** includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present.
- 2[p] “Place”** includes a house, building, tent, vehicle and vessel.
- 2[q] “Pleader”** when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practise in such Court, and includes any other appointed with the permission of the Court to act in such proceeding;
- 2[r] “Police report”** means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173.
- 2[s] “Police station”** means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf.
- 2[t] “Prescribed”** means prescribed by rules made under this Code.
- 2[u] “Public Prosecutor”** means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor.
- 2[v] “Sub-division”** means a sub-division of a district.
- 2[w] “Summons-case”** means a case relating to an offence, and not being a warrant-case;
- 2[wa] Victim⁸:** -means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.
- 2[x] “warrant-case”** means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.¹

8. Inserted by the Code of Criminal Procedure (Amendment) Act, 2008, S.2.

Difference between summons case and warrant -case

1-summons case define in sec 2(w) while warrant is define in sec 2(x).

2-In summons case an accused may be awarded two year maximum punishment, while In warrant case an accused is punishable with death ,life imprisonment, exceeding two years

3-In summons case, no charge framed while in warrant case , a charge is to be framed against the accused

4-In summons case, after the issue of a summons the accused may plead guilty to the charge without appearing before the magistrate while there is no such provision in warrant case.

5-In a summons – case the complainant may withdraw his complaint with the permission of the magistrate while In a warrant case a complaint cannot bewithdrawn.

2 (y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

Question:-

Q 1-In which sec bailable and non bailable offence has been define .?

Q 2-In which sec cognizable and non-cognizable offence ?

Q 3-Define and distinguish between the following :-

a)-Bailable offence and non-bailable offence ?.

b)-cognizable and non-cognizable offence ?

c)-Inquiry and investigation ?

d)-Complaint and FIR ?

f)-summons case and warrant case ?

Q 4-what do you mean by a complaint ?Explain its essentials.

Reference:-

- Lal Ratan & Lal Dheeraj,The code of Criminal Procedure .
- Dr. M. D.b Chaturvedy ,The code of Criminal Procedure ,1973.Fifth Edition ,2015
- Kelkar R.V.,Criminal Procedure Code.
- S. N. Mishra,The Code of Criminal Procedure.
- The Code of Criminal Procedure, 1973 (Bare act)

