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## The organization of the functionaries under CRPC; their duties, functions and powers.

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In every civil society, semblance of order is demanded, and thus the law seeks to provide a system of a formal means through which it maintains order and inflicts punishment on individuals upon transgression of a law.

The criminal justice system can also be described as a tool that a government makes use of to ensure that those who are subject to its authority meet the administration's standards of conduct. It refers to a system of formal control that has been introduced to ensure that there's not a lot of scope for misconduct and to manage the same, the framework addresses a series of five separate but related subsystems: police, courts, prosecution, defense and correctional authorities, each with its own set of duties, functions, and powers.

The Indian Criminal justice system is one among the well-established ones in the world with an extensive and intricate court system. In all circumstances, whenever a crime has been committed, it is absolutely pertinent to comply with the procedure contained under the law as evidence and process followed by the authorities often determines the outcome of a criminal case.

The procedural aspects dealing with setting up of functionaries to perform various functions in order to uphold the law are contained under the Code of Criminal Procedure, 1970. It can be reasonably inferred from various definitions pertaining to functionaries, that the term refers to an individual, body of individuals or an authority established by the law to execute certain functions.

The paramount object of CRPC is to ensure that the accused receives a fair trial in accordance with the principles of justice. These functionaries are therefore appointed mainly to uphold the procedure as referred to in the Code. And thus, the code of criminal procedure contains five main functionaries for the efficient functioning of the code. These functionaries form an integral part of the criminal justice system.

**The functionaries referred to under this code are as follows:**

1. Police
2. Prosecutors
3. Courts
4. Defense Counsel
5. Prison/ correction authorities

## Police

The code doesn't specifically provide for the establishment of the Police force as such, although it acknowledges the existence of the authority and confers certain powers and responsibilities on them.

The law provides that, "the power of the police is a tool to stop and identify illegal acts"[1] they are thus an essential authority under the criminal justice system.

### Organization:

The organization and the establishment of the police are dealt with under The Police Act, 1861. It provides that "the police force is an instrument for the detection of crime and its prevention." Thus, this legislation in addition to CRPC governs the functioning of the force.

### Powers of police

#### 1. Power to arrest:

The main powers of police include the arresting of accused upon the issue of warrant by the magistrate. This power is inclusive of the power of preventive arrest, i.e., Arrest without a warrant under Section 151[2] of the code. Under this section, the police is empowered to make a preventive arrest in case of cognizable offences.

In the case of **Medha Patkar v. State**,[3] the police arrested certain landowners and others who had gathered on the roads for making demands and shouting slogans. The arrest was made under Section 151. However, it was observed that there was no imminent danger of the persons committing a cognizable offence and thus the arrest was held as arbitrary and violative of Article 21.

#### 2. Power to search and investigate:

The police is authorized to inspect an examine a cognizable offence without a warrant in accordance with Section 156[4]. However, the police is required to submit a report to magistrate before commencing the investigation. With respect to non-cognizable offences, investigation can be carried out once the magistrate passes an order for the same.

In the case of **State of Maharashtra v. Sarangdharsingh Chevan**[5], it was held that a police official in charge may conduct an investigation under Section 157(1), even without registering FIR, if he/she has a reason to believe that a cognizable offence has been committed.

#### 3. Power to compelling attendance and examination:

The police also has the authority to require the witness, who has knowledge of facts of the case, to appear before himself or any other person as per the provisions of Section 160(1)[6], the police can further examine them under section 161.[7]

### Duties and Functions:

#### 1. To register FIR:

The police are required to record information with respect to a cognizable offence in accordance with Section 154.

#### 2. Preliminary investigation:

The police are required to arrive at the scene of the crime to carry out a preliminary investigation and to arrest the suspect.

### 3. Producing the arrested person before the court:

Once the accused person is arrested, it's the duty of the police to ensure that the person arrested is produced before the magistrate within 24 hours.

### 4. Assist prosecution:

The police is further required to provide any kind of assistance as may be necessary to ensure the administration of justice.

## Prosecutor

Prosecutors are described as "administrators of justice." A crime is regarded as a wrong not just against the immediate victim affected, but also the society as a whole as it offends and threatens the society in general. Thus, a prosecutor plays a significant role in the Criminal Justice system. A prosecutor while representing the state in a trial is primarily required to ensure that justice is administered, and not just to secure conviction or acquittal of the accused.

### Organisation:

A prosecutor is appointed to conduct prosecution and appeal in the court.[8] Additional and Assistant public prosecutors may also be appointed by the State government and they shall function subject to the directions of Public Prosecutor. The code also includes provisions for Special Public Prosecutors (SPP) that are to be appointed by the Central government. However, if the appointment for SPP is specifically requested by the victim, then the same shall be appointed by the state but the legal fees shall be paid by the victim.[9]

The directorate of prosecution is the main authority which exercises control over all the officers.

### Powers:

#### 1. Power to appear and plead:

In accordance with Section 301, a public prosecutor may appear and plead before any court, with respect to any case assigned to him

#### 2. Power to withdraw:

Section 321 enumerates that the PP, With the permission of the Court, can drop a case against anyone for reasons to be recorded.

### Duties And Functions:

#### 1. To administer justice:

Public prosecutors are mandated to remain impartial while interpreting the facts and examining the witnesses. Their ultimate aim must be to ensure that justice is served and not just to secure acquittal or conviction of the accused.

In the case of **Mohd. Mumtaz vs Nandini Satpathy And Ors**[10], it was observed that that a public prosecutor should be personally unconcerned about the outcome of the case as long as he is acting in accordance with the law. His sole responsibility should be to provide all the relevant evidence to the court, regardless of whether it is against or for the accused, in order to assist the court in ascertaining the truth.

#### 2. To obtain the necessary warrants:

The prosecutor is required to appear in the court and obtain the arrest warrant for the suspect and search warrants for the purpose of collecting evidence.

3. To conduct proceedings in the court.

## Courts

Judiciary is the 3rd essential organ of the state. Their role in administering justice, is of paramount importance. The Supreme court of judicature is the highest appellate body, among the hierarchy of courts. Following the supreme court are 25 High Courts situated in different states, which also exercise control over the District Courts.

### Organisation:

Chapter II of CRPC elucidates the provisions with respect to establishing courts, and section 6 specifically highlights the different categories of criminal courts.

The hierarchy of Criminal Courts are distinguished based on the district level and metropolitan areas. At the lowest level, the subordinate courts include the Judicial Magistrate (JM) of 1st and 2nd class or the Metropolitan Magistrate and the Special Magistrate court. The level above that includes the courts of sessions and special courts. The top most level consists of the Supreme court and High Courts (HC), having appellate jurisdiction pertaining to criminal offences.

### Powers:

Chapter III of the code lays down provisions relating to the powers of courts, which are as follows:

#### 1. Power to try a case/offence:

Section 26[11] lays down the powers of the High Court, sessions court and other courts mentioned in the 1st schedule to try any offence committed under IPC.

#### 2. Power to pass sentences:

The power of different categories of courts to pass sentences differs based on the quantum of punishment:

- **High court:** The HC is empowered to pass any sentence in accordance with the law as per the provisions of Section 28 of the code.  
In the case of **Onkar Nath v. Emperor**[12], it was observed that Section 28 does not entail that the HC can impose any sentence; rather, its ability to impose any sentence exercising appellate jurisdiction, must be judged by the power of the court from which the appeal has been preferred.
- **Sessions Court:** they're established by virtue of section 9 of the code which requires the state government to constitute a court for every session division. The sessions court is empowered to award any punishment including death penalty which is subject to the approval of high court. Further assistant sessions judge may also assume jurisdiction in a sessions court, if appointed by the HC,[13] and they have the authority to impose any sentence other than the death penalty, life imprisonment or a term beyond 10 years.  
[14]
- **Chief Judicial Magistrate and Chief Metropolitan Magistrate:** any JM of the 1st class may be appointed by the HC to be the Chief judicial magistrate. The provisions for the establishment of Chief metropolitan magistrate is contained under section 10 of the act. Their powers include passing any sentence except capital punishment, life imprisonment and a sentence of more than 7 years in prison.[15]
- **Judicial magistrate 1st and 2nd class and Metropolitan Magistrate:** The code specifies that Judicial Magistrate of 1st class is entitled to impose a sentence of imprisonment for a term which shall not extend beyond 3 years including the power of imposing fine

which shall not exceed ₹10,000[16], and the Judicial Magistrate of the 2nd class is at the lowest level which is entitled to try offences, if the same is punishable with fine or imprisonment not exceeding ₹5000 and 1 year respectively[17], the powers of a metropolitan magistrate is similar to that of JM of 1st class.

- **Executive Magistrate:** The State Government has been entrusted with the authority to appoint the required number of executive magistrates in every district and metropolitan regions, among such executive magistrates, one of them may be appointed as District Magistrate.[18]

### 3. Power to confer powers:

The State Government and the HC are empowered to confer powers on the subordinate officers by virtue of Section 32[19] and the same can be subject to withdrawal by the State Government or the HC.[20] In Prem Nath v. the State of Rajasthan,[21] it was observed that the HC or the State Government are entitled to confer additional powers upon any subordinate authority.

### 4. Power to examine the defendant:

The court may pose such questions to the accused as the court deems fit and the court may also frame questions with the aid of prosecutor and defense counsel in accordance with Section 313.[22]

### 5. Power to summon the attendance of persons and question them:

The court has the authority to require the attendance of witnesses to examine them and any other person during the course of proceedings for collecting evidence as per the provisions of section 311. [23]

### 6. Authority to postpone proceedings:

Section 309[24] stipulates that the court may adjourn or postpone proceedings, if it considers it necessary for any reason that has to be recorded.

### 7. Authority to prosecute persons who appear to be guilty

During the course of a hearing, if the court is satisfied, that any person connected to the case has committed an offence, the court may initiate proceedings against such person(s).[25]

## Duties And Functions:

### 1. To resolve/settle disputes

The most essential function of the court is to hear the contentions of both parties. In criminal offences, if the accused denies committing any crime alleged against him, the court is required to determine the truth by selecting between the defendant's version of events and the facts produced by the prosecutor. The court may be required to decide on questions that are either factual or legal or questions that involve both.

### 2. To enforce judicial decisions

In criminal offences, the manner of enforcing decisions, usually depend on the nature of decision to be enforced.

### 3. Functions of Magistrate under Section 3(4)

Judicial magistrates are required to perform all functions pertaining to matters involving the evaluation, transferring of evidence or to pass an order by which a person is subject to penalty, imprisonment or other punishment.[26] On the other hand, executive magistrates

have authority over matters of administrative nature which includes granting and suspending licenses, withdrawal or sanctioning of a prosecution.

### **Defence Counsel**

One of the cardinal rules of natural justice embodies that both parties must be given an equal opportunity of being heard. This rule is to be complied with at the first instance while recording the statement of the accused as mandated under Section 313[27].

Once the trial commences, the accused has a right to be defended with the aid of a counsel, especially since the accused, in most cases would be layman and thus would not be very well versed with the technicalities of law. The Anglo- Saxon system which is adopted by India, provides that, in all criminal cases the state shall be represented by the public prosecutor whereas the defendant shall be represented by the defence counsel.

The accused/defendant has a right to appoint a defence counsel at his own cost by virtue of section 303[28] of the code. This right conferred upon the accused under this section is indispensable as it ensures a fair trial. In addition to section 303, Article 22[29] of the constitution also stipulates that the accused can hire a defence attorney of his choice.

A conjoint reading of Article 39a[30] and section 304[31] of CRPC provides that, in case the accused lacks the financial means to hire counsel, the court will appoint a pleader at the state's expense. In a plethora of decisions, the court has repeatedly insisted that the accused must be given free legal representation by appointing a defence attorney.[32] Further, in the case of State of Madhya Pradesh v. Shobharam[33], it was observed that any law that attempts to deny the accused of his right of defence, is violative of the provisions of the constitution.

The Legal Services Authorities Act, 1987, also makes provisions for extending free legal assistance to the poor.

### **Duties And Functions:**

#### **1. To investigate and review prosecution's evidence:**

The defence attorney is required to dig deeper to analyse all evidence available and all other aspects of the matter at hand to be able to defend his client more efficiently.

#### **2. Defend the Client:**

The primary responsibility of the defence counsel is to defend his client before the court. This also includes examining the prosecution's theories and developing counter-arguments.

#### **3. To keep the client informed and updated:**

Throughout the entire legal proceedings, the attorney must keep his client regularly informed regarding the new developments in his case.

### **Prison Authorities And Correctional Facilities**

The Criminal procedure code does not specifically include provisions pertaining to prison authorities; however, they play a significant role in ensuring that proper care and custody is provided for the prisoners. The state government is empowered to appoint these officials

They are entrusted with the responsibility of looking after the inmates as well as ensuring their safety and security.

The procedural aspects pertaining to the functioning of prison officials is not contained under CRPC, and thus the Prisoners Act, 1900 was introduced to govern the duties, and to control the proceedings of prison authorities. The act empowers the police in charge to detain the convicted.

#### **Duties:**

**1. To be a custodian of prisoners:**

The primary duty of the prison officials is to ensure the safety of inmates. Thus, in order to fulfil this duty, they are also empowered to make use of force, whenever necessary to prevent an inmate from attacking another inmate or a staff.

**2. To inform the Relatives/Guardians in case of health or other issues:**

In case an inmate is sick or is being transferred to another prison, it's the responsibility of the prison officials to inform their relatives or guardians regarding the same.

**3. To detain the convicted as mandated:**

The prison officials are required to detain the convicted till the completion of his/her imprisonment term and release them in accordance with the order.[34]

**4. To return the order, writ, etc. following the release of prisoners:**

Once the persons convicted of a crime, have been released the police officials must ensure that "order, writ or warrant" has been returned to the court.[35]

**5. To provide for rehabilitation and reformation of prisoners:**

Though this isn't a strict rule, the prison officials must ensure that some rehabilitation measures are provided for the criminal offenders.

#### **Conclusion:**

The procedure concerning the organization of functionaries and their responsibilities as embodied in the Criminal Procedural Code and other various legislations are of considerable importance. It is pertinent to note that the procedure followed often has a bearing on the verdict.

The primary intent behind constituting various functionaries, and establishing an intricate court system is to ensure that justice is accessible for all citizens, further, the system is also aimed at reducing crime in the society. Subsequently, the criminal justice system seeks to ensure a fair trial that establishes the guilt of the accused before securing a conviction, as in a democratic nation like ours, even the rights of the defendant are sacrosanct.

The fate of the accused and the victim are dependent on the proper administration and functioning of the various functionaries Thus, each of them must exercise their powers and perform their duties, in accordance with the law to uphold the Principles of Natural Justice.

#### **End-Notes:**

1. The Police Act, 1861, no. 05, Preamble.
2. Code of Criminal Procedure, 1970, no. 02, ♦ 151; Arrest to prevent the commission of cognizable offences
3. 2008 CriLJ 47
4. Code of Criminal Procedure, 1970, no. 02, ♦ 156; Police officer's power to investigate cognizable case
5. SLP (Cri.) No. 2614 of 2009
6. Code of Criminal Procedure, 1970, no. 02, ♦ 160 cl. 1; Police officer's power to require attendance of witnesses.
7. Code of Criminal Procedure, 1970, no. 02, ♦ 161; Examination of witnesses by police
8. Code of Criminal Procedure, 1970, no. 02, ♦ 24; Public Prosecutors.
9. Phool Singh v State of Rajasthan, 1986 WLN (UC) 249.
10. 1987 SCC (1) 279