DISTRICT COURTS

CASE MANAGEMENT MANUAL

JUDICIAL COMMITTEE

DISTRICT COURTS of DELHI

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Version 1.0

DISTRICT COURTS

CASE MANAGEMENT MANUAL

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Foreword

"Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident." Francis Bacon (1561-1626), the Lord Chancellor of England had tritely commented on the basic requirements of being a Judge.

Judges are expected to be informed to the brim so that he is confident in his job and looked up to with awe and respect both by the general public and the legal fraternity. For this, a sound knowledge of law and procedures, which is the hand-maiden of Justice, should be on the finger tips of a Judge. Sir William Blackstone aptly said "Judges are the depositaries of laws, the living oracles, who must decide in all case of doubt, and who are bound an oath to decide according to law of the land." Hence a comprehensive outlook with sound knowledge of the laws becomes indispensable. At the same time, the voluminous procedural law makes it quite tedious as Judges are also human beings.

There was always a long felt need for a hand book containing all important provisions required for day-to-day administration of justice. This long felt desire is being accomplished. The sole motive behind the project is to refurbish the memory that the Judges in action are made more confident and can save time without having to refer to different books on the relevant subjects. Laws germane to the cases being adjudicated are contained in the present compendium.

The Manual is divided into five parts, viz., a guide to the general administration of Subordinate Courts, the working of criminal and civil Courts with an appendix containing often quoted case law and pertinent provisions of law. An electronic version of this Manual is equipped with important statutes in Bare Act form. This effort is aimed at arming judicial officers and is not intended to disturb the learning and academic achievement of our officers but to facilitate their working in smoother and faster manner.

In compiling the Manual, several experienced and knowledgeable members of the Delhi Judiciary have burnt their midnight oil and contributed their might with a research orientation. Any short falls observed in the Manual may be intimated to the Editorial

Board, so that they are taken care of in the next edition. We invite comments and criticism with an open mind and heart.

The editors also express their indebtedness to the India Administration of Project for their assistance in this Himalayan task. It is hoped that this would be a helpful guide not only to the subordinate judiciary of Delhi but also to all concerned in this field.

"Justice should rule at all times and everywhere. Everyone who comes along should make this his concern, because it is a common interest for us all."

[Menander (c.342 – 292 BC)]

New Delhi

Dated: 30.04.2005 Editorial Board

1. PART I - INTRODUCTION

1.1. THE CONSTITUTION

1.1.1. Introduction

The Constitution of India is the Supreme Law of the land, providing a framework for the functioning of all organs of the State. It contains 395 Articles and 12 Schedules. The Constitution prescribes the limits for Parliament and State Legislatures, not only in the matter of law making but also in the conduct of their members. For example, Article 121 prohibits any discussion in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in discharge of his duties except upon a motion for presenting an address to the President praying for removal of the Judge. Correspondingly, Article 122 puts a restriction on Courts from inquiring into proceedings in Parliament. As per Article 105 every Member of Parliament and as per Article 194 every Member of the State Legislature enjoys freedom of speech and expression in Parliament and the Legislature respectively, subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the House.

1.1.2. Head of State

The Constitution recognises the President of India as the head of State (Article 52) and he is vested with executive powers of the Union and is the Supreme Commander of The Armed Forces (Article 53). The President appoints the Chief Justice of India and other Judges of the Supreme Court of India (Article 124 (2)), as well as the Chief Justice and other Judges of the High Courts. The President has the power to grant pardon, suspend, or remit any sentence, including any punishment or sentence ordered by a Court Martial (Article 72).

1.1.3. Separation of Legislative Powers

The Constitution provides for distribution of legislative powers between Parliament and State Legislatures with reference to the different lists in the 7th Schedule (Article 246). However, in respect of matters enumerated in the Concurrent List, a law made by Parliament shall prevail over a law made by a State Legislature (Article 254(2)).

The independence of the judiciary is a basic structure of the Constitution.

1.1.4. Jurisdictional Limits

The jurisdiction of a Court is determined by the Constitution and the law framed there under. It is the duty of the Courts to ensure that the executive and legislature do not exceed their constitutional limits. However, it is of utmost importance that the Courts do not exceed their own jurisdiction too. The Courts are under a legal and constitutional duty not to cross their own jurisdictional limits. Exceeding one's jurisdiction even in the name of justice is as harmful as refusing to exercise it or acting short of it.

1.1.5. The Supreme Court

The Supreme Court consists of a Chief Justice and prescribed number of Judges (Article 124). The Supreme Court has exclusive original jurisdiction in any dispute (a) between the Government of India and one or more States, or (b) between the Government of India and any State or States on one side and one or more States on the other or (c) between two or more States, if in and so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends (Article 131). It also has appellate jurisdiction over civil, criminal or other proceedings (Article 132) and writ jurisdiction for enforcement of fundamental rights (Article 32). The jurisdiction of the Supreme Court under Article 136 (petition by special leave to appeal) is unique. It also has advisory jurisdiction under Article 143. The law declared by the Supreme Court is binding on all Courts though out India (Article 141). It is incumbent upon all the civil and judicial authorities to act in aid of the Supreme Court (Article 144).

The Supreme Court has concurrent jurisdiction with the High Court in the enforcement of fundamental rights and it entertains public interest litigation under Article 32, if it considers that a question of public importance is involved.

The Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it (Article 142(1)). Subject to the law made by Parliament, it has the power to make any order for the purpose of securing the attendance of any person, discovery or production of any document, or investigation or punishment of any contempt of itself (Article 142(2)).

Wherever a question of law pending before the Supreme Court and one or more High Courts is the same or substantially the same, it may withdraw the case pending before the High Court(s) and dispose of all the cases itself. In the interest of justice, it may transfer any case, appeal or other proceedings pending before one High Court to another (Article 139A (2)).

The Supreme Court has power to review any judgment pronounced or order made by it (Article 137). The Supreme Court may, from time to time, with the approval of the President, make rules regulating the practice and procedure of the Court (Article 145). The jurisdiction of the Supreme Court can be enlarged as provided under Article 138.

1.1.6. The High Courts

Every High Court consists of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint (Article 216). At present there are twenty-one High Courts:

1. Allahabad High Court with Bench at Lucknow.
2. Andhra Pradesh High Court at Hyderabad.
3. Bombay High Court with Benches at Aurangabad, Nagpur and Panaji.
4. Calcutta High Court with Bench at Port Blair.
5. Chattisgarh High Court at Bilaspur.
6. Delhi High Court.
7. Guwahati High Court with Benches at Imphal, Kohima, Agartala, Shillong, Aizawl and Itanagar.
8. Gujarat High Court at Ahmedabad.
9. Himachal Pradesh High Court at Shimla.
10. Jammu and Kashmir High Court.
11. Karnataka High Court at Bangalore.
12. Kerala High Court at Cochin.

13. Madhya Pradesh High Court (Jabalpur) with Benches at Indore and Gwalior.
14. Madras High Court.
15. Orissa High Court at Cuttack.
16. Patna High Court.
17. Jharkhand High Court at Ranchi.
18. Punjab and Haryana High Court at Chandigarh.
19. Rajasthan High Court (Jodhpur) with Bench at Jaipur.
20. Sikkim High Court at Gangtok.
21. Uttaranchal High Court at Nainital.

The High Court has jurisdiction in all matters concerning judicial review and in respect of preservation and enforcement of any fundamental right conferred by Part III of the Constitution.

A High Court is entitled, within its territorial jurisdiction, to issue to any person or authority, including the government, appropriate directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of the rights conferred by Part III and for any other purpose.

Ordinarily, the right to move a High Court under Article 226 is a personal and individual right. However, this principle has been relaxed in cases of Public Interest Litigation. The existence of an alternative remedy is not an absolute bar to granting relief under Article 226 but it depends upon the facts and circumstances of each individual case.

All High Courts have powers of superintendence over all Courts and Tribunals within their jurisdiction (Article 227). A High Court may make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts. A High Court also has the power to withdraw any case involving a substantial question of law as to the interpretation of the Constitution pending before a Court subordinate to it (Article 228).

Chapter VI of the Constitution deals with matters relating to Courts subordinate to the High Court including the appointment of District Judges (Article 233) and their service matters. The High Court has control over the subordinate Courts under its jurisdiction (Article 235).

1.1.7. Rule of Law

The Constitution upholds the rule of law and no one is above the law. All persons are equal before the law and have equal protection of the law subject to protective discrimination as provided in the Constitution.

The Constitution also confers powers on the Supreme Court under Article 142 and on the High Court under Article 215 to punish for contempt of Court.

1.1.8. Fundamental Rights

It is the duty of the judiciary to enforce the fundamental rights effectively. Fundamental rights collectively represent the conscience of society. However, fundamental rights guaranteed by Part III of the Constitution are subject to reasonable restrictions. The laws framed by the Parliament as well as executive actions ostensibly taken under the cover of law are tested according to the provisions of the Constitution.

1.1.9. Directive Principles of State Policy

Part IV of the Constitution deals with the Directive Principles of State Policy. They are not enforceable by any Court but they are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws (Article 36 to 51).

1.1.10. Ordinance

The power to enact a law is given to a legislature and a corresponding power is given to the executive to enact an ordinance, albeit the procedure for promulgation of an ordinance is different from enacting a statutory law. The President, when both Houses of Parliament and the Governor when the State Legislature is not in session can promulgate an ordinance, but it shall cease to operate on the expiration of six weeks from the re-assembly of Parliament or the State Legislature (Article 123 and 213). The Court should be careful not to enforce an ordinance that has ceased to be law.

1.1.11. Taxation

No tax shall be levied or collected except by authority of law (Article 265). Tax illegally levied by the State is liable to be refunded.

1.1.12. Suits by or against the Union or a State

The Government of India may sue or be sued as the Union of India and the Government of a State may sue or be sued in the name of the State and may sue or be sued in relation to their respective affairs (Article 300).

1.2. JUDICIAL CULTURE

1.2.1. Public Power as a Trust

The preamble of our Constitution opens with the words "We, the people of India". These words declare that the Constitution has been adopted, enacted and given to themselves by the people of India. Ultimate sovereignty resides in the people.

The Supreme Court of India is the Apex Court and final interpreter of the Constitution and the laws and under its guidance and aegis rests the entire judicial system.

Dispensation of justice is an attribute conferred upon the judiciary, which performs its job through Judges. A function assigned to a Judge is to decide a case between an individual and the State, between individuals, and also to punish any person who has committed any offence. A Judge may grant liberty or curtail it. More the powers of the Judge, greater caution is expected from him/her.

1.2.2. Accountability to Self

Under Article 235 of Constitution of India, the Judges of the district judiciary are answerable to their respective High Courts. The ancient Latin adage *Ne Vibe Fano Justicia* (let nothing defile the temple of justice) is to be constantly kept in mind. Judges are accountable to their conscience and to the oath administered to them.

1.2.3. Appearance of Justice

It is a basic dictum of the judiciary that justice should not only be done but should also appear to have been done. A Presiding Officer must be free from bias and must be righteous. The Presiding Officer is required to deal with all cases even handedly. Judges command unmatchable veneration both in and outside the Court for their fairness, impartiality and character. A judicial officer must be able to inspire such faith, inculcate and maintain it throughout and live up to such faith till his last breath.

1.2.4. Qualities of a Judicial Officer

In All India Judges Association Vs. Union of India AIR 1992 S.C. 165 it has been observed that the trial Judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigants during the proceedings in Court. On him lies the responsibility of building up the cases appropriately and on his understanding of the matter, the cause of justice is first answered. The personalities, knowledge, judicial restraint, capacity to maintain dignity are the aspects, which go into making a Court function successfully.

1.2.5. Legal Knowledge and Experience

A judicial officer is expected to be studious and the reason given by a Judge for his decision should be truthful. A Judge should not lack in intellectual integrity. The capital of a Judge is his knowledge and wisdom.

1.2.6. Professional Qualities

A Judge must possess:

1. Judicial temperament
2. Professional expertise and competence
3. Professional integrity
4. An able, agile, lucid mind
5. Appropriate professional, educational background or training.
6. The ability to communicate orally and in writing clearly.

As pointed out by Socrates, a quality of a Judge will be measured by his capability to consider wisely, to behave courteously, to hear patiently and to decide impartially.

1.2.7. Personal Qualities

The first quality of a Judge is to be a gentleman; a Judge has no personal life. The thorny crown, which decorates the personality of the Judge, is not taken off even while he sleeps. A Judge is not permitted to deviate from virtue even in his sleep. His every

action must be transparent since he is watched by society. His personal action, his family life and his behaviour with every living creature must be judicious, upright and above board. His every action is an example to the society. A Judge has a duty and responsibility to maintain judicial propriety.

1.2.8. Continuing Judicial Education

First National Judicial Pay Commission while commenting upon the expanding sphere of litigation suggested that the changing role of Judges in contemporary times necessitates organized and systematic training not only in law but also in other skills. Apart from being studious in his approach, a Judge must be a thorough reader of different subjects because success in this profession is not a chance worth taking, but needs a continuous process of hard work. A Judge must have strength to put an end to injustice and also must have with him the faculties of the historian the philosopher and the prophet.

1.2.9. Punctuality

Judicial officers should be punctual. Punctuality adds to credibility. Courtesy demands that the Court should start on time. There can be no justification for not being punctual.

1.2.10. Dress

Judicial officers should be properly dressed. They should adhere to the prescribed dress code. Dress establishes decorum, dignity and reflects the noble responsibility. It assists in being distinguished or recognised in the Court complex.

1.2.11. Conduct Outside the Court Room

Members of judiciary must realise that they perform special and solemn functions in the society. Therefore, the standard of behaviour needs to be high. ‘We are also human beings’ is not a valid excuse. Even outside the courtroom, the behaviour of a judicial officer should be impeccable and as far as possible, they should keep their social activities within acceptable parameters.

Examples:

1. Do not receive visitors at home whom you do not know.
2. If an acquaintance, friend or relative calls on you and wants to talk about a case in your Court, stop him firmly. However, if they have blurted out something, have it transferred to another Court.
3. In exemplary conduct, to sustain the faith in the judiciary is pivotal to the system. Public should have an unshakeable faith that their decisions are not influenced by extraneous considerations. This is not to say that one should become a recluse; however judicial officers need to consider their position to avoid undesirable social contacts.
4. There is a club at the place of your posting which is not exclusively for judicial officers. Should you visit the club? Should you become a member of that club? You will need to consider the nature of the club, its membership and ask yourself whether this could compromise your position and standing.
5. A necessary quality of a Judge is courage. Sitting in Judgment over others is difficult, particularly those who hold high office, social or religious positions. However, all are equal before the law and you should not flinch from your duty.
6. A Judge should not act or to work to be a populist Judge. Resist from clamouring for his personal propaganda or to build up personal image in the society beyond the sphere of duties.

1.2.12. Inside the Court Room

The dignity of an individual is paramount. All members of the public are entitled to courtesy and due respect whether they be observers, witnesses, parties or accused persons. Similarly, treat members of the Bar as officers of the Court, with the chivalry. An accused looks towards the legal system for justice, administered fairly, objectively and impartially.

During the proceedings, use appropriate temperate language. The use of inappropriate language derogates from the dignity of the Court. Use simple language without legal

jargon. Express yourself simply, clearly and audibly. What is said in Court be heard by everyone. Give reasons clearly and concisely when required and generally refrain from interrupting counsel or a witness.

J. White in Judicial Studies Board Bench book for County Court Judges writes "If there comes a moment on the bench when you feel your patience is being over extended, or you find yourself a little short on courtesy, it might be helpful to recall:

1. That judging at all levels is a most privileged occupation- there is hardly a day on the Country Court bench when you will not, by a Judgment or order, greatly affect some person's life; and
2. That whether the case before you lasts ten minutes or ten days, it will be of supreme importance to those involved, and it may be their only experience in a lifetime of the judiciary".

Listen more and talk less. Speak only when necessary. Focus attention on what is being said, take down notes and follow the party's or counsel's point of view. There is obviously a difference between appreciating a point of view and agreeing with it. Do not assume the role of a party or counsel; understand the case fully before it is decided, in the judicial process, there is no such thing as routine. Apply the mind at every step of the proceedings. Never show indulgence to one party at the expense of another and at the expense of justice.

1.2.13. Delay

Unnecessary adjournments should be avoided at all costs. Granting adjournments at the drop of a hat has been deprecated by Supreme Court. Once a case is concluded, the decision should not be delayed. Never leave judgments unannounced, unwritten or unsigned on transfer or retirement. Justice delayed is justice denied. Some delays caused by others may be beyond the control of the judicial officer, albeit if the Court can seek to expedite these, they should.

1.2.14. Disorder in Court

When an accused, who is sentenced, makes a comment about the Judge or the Court in the heat of the moment, then it may be wise to develop a little judicial deafness. Where there is minor disorder in Court the Presiding Officer may give a verbal warning or direct the police or court clerk to advise the person to behave himself. Where necessary he may order the person to leave the courtroom. If the disorder is more serious, it is suggested that the Judge should immediately adjourn and seek assistance of the police.

1.2.15. Contempt of Court

Jurisdiction to punish contempt should be exercised to vindicate the integrity of the Court and its proceedings and not to vindicate the personal dignity of the Judge. However, if the contempt in the face of the Court is designed to frustrate or obstruct the process of the Court, it has to be firmly dealt with so that the working of the Court may proceed smoothly. Procedure prescribed in the contempt of Courts Act should be followed.

1.3. RULES OF NATURAL JUSTICE

For ensuring fairness, compliance with the rules of natural justice is necessary. The two important principles of natural justice are *audi alterem partem* (hear the other side) and nemo judex in causa sua (no one may judge his own cause). These principles ensure that all relevant information is submitted; biased and prejudicial information is ignored, and proceedings are fair in the sense that all parties have an opportunity to know what is being said about them and have an adequate opportunity to reply.

1.3.1. Hear the Other Side

A party whose rights or property may be affected by a decision has the right to be heard before a decision is made. This extends to allowing a person sufficient notice to prepare his case and to collect evidence to support it. Both parties must have an opportunity to rebut or contradict their opponents. There are exceptions to this rule, where a provision specifically allows an order to be made in the absence of one party (ex parte).

1.3.2. No One May Judge His Own Cause

This is specifically referred to in Section 479 of the CrPC. Decisions should not be affected by bias, prejudice or irrelevant considerations. Bias arises when a decision-maker has a predisposition to a particular result, or it may appear so to the parties. There may be a pecuniary or other interest; some relationship with a party or witness; or a personal prejudice or predetermination on an issue.

For example: If you are a shareholder in a company, you should not hear the case of such company. However, as a small shareholder in a large public company, you may hear a case against the company, provided your interest is first disclosed to the parties.

1.3.3. Broad Guidelines

A Judge should not discuss a case outside Court and should not receive any information about a case privately; all information must be open to the scrutiny of both parties. The Court must give an opportunity to each party to respond to everything that is said by the other side. If a party does not appear at the hearing despite service, a Judge should be

satisfied that service has taken place before proceeding further in the hearing. If summons is not properly served and a decision is made, such a decision may be set aside on this count by a higher Court.

Before a hearing is concluded, consider the question; "Has each party had a fair opportunity to state his case?"

1.3.4. Relationship to a Party or Witness

A Judge should never preside over a case where the accused or a witness is a near relative or a close friend; careful consideration will be needed in situations where a spouse or family has an involvement or a financial interest in the outcome of a proceeding. At times, a Judge may commence the hearing of a case without realizing this; but when the facts become known, a Judge should excuse himself from the case.

1.3.5. Personal Prejudice or Predetermination of an Issue

A Judge should not sit in judgment over a matter, in which he may have or appear to have preconceived or pronounced views. This may be in regard to issues, witnesses or parties. An example, if you witness a motor accident, you should not preside over any case arising out of that accident. The danger is that subconsciously you may prefer your recollection of the events to the evidence heard in Court. If a Judge has publicly expressed an opinion in respect of any matter, he should excuse himself from presiding over a case in which that opinion is relevant.

1.4. CASE MANAGEMENT

Case management is one of the most important factors in the administration of justice. It helps the Presiding Officer in deciding a case efficiently and quickly. It is not practicable to decide all cases in a day, month or year, hence every Court needs to be familiar with techniques of case management and Court management.

1.4.1. The Cause List

The cause list of a Court should not be so long that the Presiding Officer consumes a substantial amount of time in adjourning matters and simultaneously it should not be so small that the Presiding Officer remains in the Court without work. Thus, the cause list should be such as is enough to keep the Presiding Officer busy during working hours and enables him to give his personal attention to each and every case. The Presiding Officer should always endeavour that no witness goes unexamined due to a heavy workload. It is better to fix two cases less in the cause list instead of sending the witness back unexamined. Thus, the Presiding Officer should always be vigilant and conscious about his cause list.

If the cause list is under control then the parties will not get an opportunity for seeking an adjournment on frivolous grounds and if any party fails to take appropriate steps for hearing, the Court should impose costs on the defaulting party. This practice will deter parties from seeking unnecessary adjournments and they will be more vigilant and sincere in conducting Court proceedings.

1.4.2. Absence of Parties

In civil matters, if the plaintiff or defendant fails to appear before the Court without any intimation, the Court may pass appropriate orders under Order IX Rule 6 and under Order IX Rule 8 of CPC against the absenting party. The absenting party, in case he happens to be a defendant may move an application under Order IX Rule 7 CPC on showing a good cause of his previous non appearance and thereupon the Court may allow the application on payment of cost or otherwise. In case the absenting party happens to be a plaintiff, then he may file an application under Order IX Rule 9 CPC for restoration of the suit by

showing sufficient cause for his non appearance and thereupon the Court may pass an order setting aside the dismissal thereupon in such term as to costs and otherwise as it thinks fit.

1.4.3. Non-availability of Counsel

In criminal matters, as and when the accused seeks an adjournment to cross-examine a witness on the ground that his counsel is not available, an adjournment ought not to be lightly granted.

Hon'ble Supreme Court has held in Md. Khalid Vs. State of West Bengal 2002 (7) SCC 334 that:

"Unnecessary adjournments give scope for a grievance that accused persons get time to win over the witnesses. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the Trial Court should not adjourn the matter on mere asking".

In civil cases, attention is drawn to Order XVII of the CPC, which contain the provisions regarding adjournments. It is expected that if these provisions are followed, it will help in curbing delays in disposal of cases.

1.4.4. Delay in Recording of Evidence

Another main cause for delay in disposal of cases is that parties and the prosecution take years to complete their evidence. Though under the law, there is a provision that once a case is fixed for evidence, the evidence will be recorded on a day-to-day basis but that provision has lost its sanctity due to a shortage of judicial officers. In civil matters the list of witnesses is generally small but their testimony is generally long. Despite that, parties can examine at least one witness conveniently on the date fixed. Hence, as a matter of practice, a Court may not grant an adjournment to any party beyond the number of its witnesses.

While in criminal matters, the list of witnesses is long but most of the witnesses are formal in nature, the Court may take evidence of any witness whose evidence is of a formal character on an affidavit and may subject to all just exceptions be read in evidence

in any enquiry or trial under section 296 CrPC and when all the star witnesses of the case turn hostile completely and there is no chance of conviction, the Court should try to consider whether the examination of other formal witnesses is necessary or not.

1.4.5. Amendments in Code of Civil Procedure

Recently, Parliament has amended the CPC enacting an Amendment Act in 2002. Under the amended CPC, several important changes in procedure have been made. These amendments, if properly enforced, may prove to be milestones in reducing delays in disposal of civil matters. The amendments need to be implemented in right earnest by all Judges.

1.4.6. Delay in Execution

In civil matters, Order XXI "Execution of Decree" provides another opportunity to a party to delay matters. A Judge should endeavour to pay special attention for reducing delays at the stage of execution of a decree.

1.4.7. Use of New Technology to Curb Delay

To avoid delay in disposal of the cases, it is essential that new technology should be implemented in the administration of justice from time to time. Recently, the government has decided to computerize the District Courts of Delhi and work is almost complete. This will certainly help in speedy administration of justice.

1.4.8. Monitoring of the General Administration

The Presiding Officer should devote some time to monitoring the general administration of his Court. He must be vigilant whether the staff is maintaining all requisite registers properly and whether the staff is dealing with the public politely or not. If there is a complaint against any staff member, the Presiding Officer should take proper action immediately. Simultaneously, the Presiding Officer should also understand the difficulties of the staff and should give proper attention to redress their legitimate grievances. This will help in the smooth functioning of a Court which, in turn, helps in disposing of matters in time.

2. PART II - CIVIL

Part II of this Hand-Book deals with the working of Civil Courts in general, of course with specific reference to the laws applicable to Delhi. A brief introduction is given in Chapter 2.1 INTRODUCTION about the role of Civil Courts and the paces in disposing a civil case. This is followed by Chapter 2.2 PRELIMINARY MATTERS indicating the powers of Civil Courts, their territorial and pecuniary jurisdictions and the necessary ingredients of civil litigation.

Chapter 2.3 PARTIES TO THE SUIT relates to the parties in a suit, their agents and special suits as provided under the CPC. The next Chapter 2.4 PLAINT in this Part talks about when the plaint can be rejected or returned. When a suit is taken up for adjudication, the immediate necessary steps to be followed viz; issuance of notice, the mode of service etc. are dealt with in Chapter 2.5 THE GENESIS OF ADJUDICATION.

The scope of pleadings and what they should contain are discussed in Chapter 2.6 PLEADINGS. The succeeding duties on the part of the Court at the appearance or absence of the parties having knowledge of the pendency of the case are detailed for the day-to-day working of the Court is the subject matter of Chapter 2.7 THE FIRST HEARING. The question of sifting the chaff from the grain i.e. to collect the evidence on the differing points and the powers of the Judge forms the subject of Chapter 2.8 HEARING OF THE SUIT.

Various types of judgments to be written and the do's and don'ts in scripting them are given at Chapter 2.9 JUDGMENT followed by almost the same substance concerning the Decrees could be found in Chapter 2.10 DECREE. The High Court Rules necessarily to be observed are also pointed out.

A major part of this Section deals with the aspect in which the ever demanding concentration lies in adjudicating execution of Decrees, which can be scanned with a bird's eye-view at Chapter 2.11 EXECUTION OF DECREES AND ORDERS. This ensures a better guide for the Civil Courts. Appeals, the manner of their hearing and adjudicating with reference to the Rules are culled out for Chapter 2.12 APPEAL. The Civil Part of the Hand-Book concludes with the Rules governing contingencies that crop

up like death, marriage, insolvency, assignment and compromise etc. in Chapter 2.13 MISCELLANEOUS.

It is hoped that this Part will be useful in performing the duties of a Judge on Civil Side in letter and spirit of the CPC.

Abbreviations

1. CPC: Code of Civil Procedure
2. Where Orders, Rules and Sections are mentioned, they refer to the CPC, unless and until the name of the Act is mentioned.

2.1. INTRODUCTION

2.1.1. Civil Courts

Courts have jurisdiction to try all suits of a civil nature unless expressly barred. The Court of the District and Sessions Judge is the principal Court of original jurisdiction in civil cases. The District Judge is assisted by Additional District Judges of co-ordinate jurisdiction working under the administrative control of the District Judge. The Senior Civil Judge enjoys delegated powers of the District Judge for institution of civil suits and for distributing them amongst the civil judges. The Administrative Civil Judge is in charge of the process-serving establishment.

2.1.2. Adversarial System

A civil dispute between two or more parties is to be decided on the preponderance of evidence. Before trial, it is important that the issues to be adjudicated upon are clearly identified and articulated. The party that asserts bears the onus of proof. When a party has adduced evidence to prove his case, the other party has the right to adduce evidence to rebut. The onus of proof is neither fixed nor stationary; it shifts during the course of trial. The Court, therefore, has to be very careful while ruling whether the party concerned has rightly discharged the onus. Where an issue is contested, it has to be adjudicated upon in the light of admissible evidence.

2.1.3. The Role of the Judge

"The part of the Judge at a trial of a civil action is to listen to the evidence, asking question to a witness only when it is necessary to clear up any point that has been overlooked or left obscure, to see that the advocates behave themselves seemly and to keep to the rules laid down by law, to exclude irrelevance and discourage repetition, to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies." Jones Vs. National Coal Board [1957] 2 All E.R. 155.

2.1.4. Civil Procedure Code

The CPC regulates the procedure of the civil Courts. The High Courts have been empowered to alter or add to the rules and orders, provided any new rules or alternations are not inconsistent with the main body of the CPC. However, such rules are subject to the approval of the State Government. After the receipt of approval, the rules have to be published. Apart from the general powers conferred upon the High Courts, matters upon which the High Courts can frame rules are given in Section 128 of the CPC. Civil Courts are under an obligation to adhere to the rules in the First Schedule as strictly as to the sections of the Act.

The First Schedule contains the Rules and Orders. Not all the Orders are relevant to the district judiciary. Amendments or alterations made in the rules by a particular High Court are applicable only within the jurisdiction of the said High Court.

2.1.5. Overview of a Civil Case

The stages of a civil case are:

1. Filing the plaint, its scrutiny, and admission.
2. Service on parties and completion of pleadings.
3. Issues Recording of evidence.
4. Hearing of arguments.
5. Judgment and decree.
6. Execution of the decree.

2.2. PRELIMINARY MATTERS

2.2.1. Jurisdiction

A Civil Court entertains, tries and adjudicates suits of a civil nature excepting suits of which cognizance is expressly or impliedly barred by any Act or law for the time being in force (Section 9).

To entertain and try a matter of a civil nature, the Court shall *prima-facie* ensure that:

a. The Court is not barred from taking cognizance of the matter by any Act or law for the time being in force;

b. The Court has territorial jurisdiction as per the provisions contained in the CPC;

c. The Court has pecuniary jurisdiction.

2.2.2. Pecuniary Jurisdiction

Pecuniary jurisdiction in Delhi in original suits is as under:

COURT	**JURISDICTION**
High court	where value of suit is more than Rs.20.00 Lakhs
District/Additional District Judge	where value of suit is above Rs. 3.00 Lakhs & up to Rs.20.00 Lakhs
Civil Judge	where value of suit is up to Rs 3.00 Lakhs

2.2.3. Territorial Jurisdiction

The territorial jurisdiction of a Civil Courts extend to the entire National Capital Territory of Delhi.

2.2.4. Venue of the Suit

All the Judges are empowered to entertain, try and decide civil suits subject to the pecuniary jurisdiction as stated above in respect of any matter of which the cause of action or part thereof has arisen in or if the defendant resides in Delhi.

The guiding principles in respect of cause of action for territorial jurisdiction are enshrined in Section 15 to 20 of the CPC and other relevant Orders. A brief table of the venue of suit depending on its nature is given as Annexure-A to this chapter.

2.2.5. Power to Transfer Suit

The District Judge may transfer cases from one Court to other Court within the same district. The High Court may transfer the cases from one District Court to another Court. Apex Court may transfer cases from the territorial jurisdiction of one High Court to another as contained in Section 22 to 25 of the CPC.

2.2.6. Issues

According to Order XIV Rule 1, issues in a case are of two kinds:-

1. Issues of Fact
2. Issues of Law

If an issue in respect of maintainability of a suit is made out, more particularly an issue of limitation, then the Court should try to adjudicate on such an issue as a preliminary issue before proceeding further in the suit.

2.2.7. Frame of Suit

Order II Rule 1 provides that every suit be framed in such a manner, as far as possible, so as to afford a ground for a final decision upon the subject matter in dispute and to prevent further litigation.

Order II Rule 2(1) provides that every suit should include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. However the plaintiff is entitled to relinquish any portion of his claim in order to bring the suit within the

jurisdiction of any Court. But when the plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, then afterwards he would not be allowed to sue in respect of the portion so omitted or relinquished (Order II Rule 2(2)).

Order II Rule 2(3) further provides that when a person is entitled to several reliefs in respect of the same cause of action, then he can either choose to file separate suits claiming each relief or combine all the reliefs in the same suit. But if he omits to sue for all such reliefs he shall not be able to sue for any relief so omitted except with the permission of the Court.

Order II Rule 3 allows joinder of various causes of action against the same defendant or the same defendants jointly and any plaintiff(s) having causes of action in which they are jointly interested against the same defendant or the same defendants may unite such causes of action in the same suit. However, where different causes of action are joined, then the value of the suit would be the total sum of the different causes of action.

Order II Rule 4 provides that only the following claims can be joined together in respect of immoveable property:

1. Claims for mesne profit or arrears of rent in respect of the property claimed or any part thereof; or
2. Claims for damages for breach of any contract under which the property or any part thereof is held; and
3. Claims in which the relief sought is based on the same cause of action.

For joining any other claims in respect of any immoveable property, leave of the Court is required.

Order II Rule 5 provides that claims against an executor or administrator in his official capacity cannot be combined with the claim against him in a personal capacity except those that are alleged to have arisen with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir or are such as he was entitled to or liable for jointly with the deceased person whom he represents.

Order II Rule 6 provides that in the interest of justice and to avoid delay, inconvenience or embarrass a trial, the Court can order a separate trial in respect of different causes of

action or may make any such other order in the interest of justice. All objections on grounds of misjoinder of issues should be taken at the earliest opportunity and if it is not done, then this objection is deemed to have been waived (Order II Rule 7). Please refer to 5.3.1 for more details.

2.3. PARTIES TO THE SUIT

All persons may be joined in one suit as plaintiffs if the following two conditions are satisfied (Order I Rule 1):

1. The right to relief existing in each plaintiff arises out of the same act or transaction; and
2. The case is of such a character that, if such persons brought separate suits, common questions of law or fact would arise.

All persons may be joined in one suit as defendants if the following two conditions are satisfied (Order I Rule 3):

1. The right to relief against them arises out of the same act or transaction; and
2. The case is of such a character that, if separate suits were brought against such persons, a common question of fact or law would arise.

2.3.1. Necessary and Proper Parties

A necessary party is one whose presence is indispensable to the adjudication of a suit, against whom a relief is sought and without whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed but whose presence is necessary for a complete and final decision on the question involved in the proceeding. In other words, in the absence of a necessary party no decree can be passed, while in the absence of a proper party a decree can be passed so far as it relates to the parties before the Court; his presence however, enables the Court to adjudicate "effectually and completely".

2.3.2. Non-Joinder and Misjoinder of Parties

Where a person, who is a necessary or a proper party to a suit has not been joined as a party, it is a case of non-joinder. On the other hand, if two or more persons are joined as plaintiffs or defendants in one suit in contravention of Order I Rule 1 and 3 respectively and they are neither necessary nor proper parties, it is a case of misjoinder of parties.

The general rule is that a suit cannot be dismissed only on the ground of non-joinder or misjoinder of parties. Nor a decree passed by a competent Court on merits will be set aside on the ground of non-joinder, misjoinder of parties or mis-description of a defendant.

However this rule does not apply in case of non-joinder of a necessary party. If a person likely to be affected by the decree is not joined as a party in a suit or appeal, the suit or appeal is liable to be dismissed on that ground alone.

2.3.3. Addition or Substitution of Plaintiffs

After the filing of a suit, if the plaintiff discovers that he cannot get the relief he seeks without joining some other person also as a plaintiff or where it is found that some other person and not the original plaintiff is entitled to the relief as prayed for, an application for addition or substitution of the plaintiff can be made if the mistake is *bona fide* (Order I Rule 10(1)).

2.3.4. Striking Out or Adding of Parties

The Court may add any person as a party to the suit on either of the two grounds (Order I Rule 10(2)):

1. He ought to have been joined as a plaintiff or a defendant and is not so joined; or
2. Without his presence the question involved in the suit cannot be completely decided.

The power to strike out or add any party to the suit may be exercised by a Court at any stage of the proceedings. It may be exercised either upon an application by the parties or even *suo moto*.

Where a defendant is added, the plaint shall be amended and the summons of the amended plaint must be served upon the new defendant.

2.3.5. Agents and Pleaders

Generally any appearance, application or act in or to any Court may be made or done:

1. By a party in person; or
2. By his recognized agent; or
3. By a pleader appearing, applying or acting on his behalf.

However, the Court can direct any party to appear in person.

2.3.6. Recognized Agents

The following persons are agents recognized by the CPC (Order III Rule 2):

1. Persons holding a power of attorney; or
2. Persons carrying on trade or business for parties not residing within the territorial jurisdiction provided that there is no other agent; and
3. Persons specifically appointed by the Government to prosecute or defend on behalf of foreign rulers (Section 85).

2.3.7. Appointment of Pleader

A pleader can be appointed by a document in writing, known as a Vakalatnama (Power of Attorney), signed by the party or by his recognized agent or by some other person duly authorized by him. Every such appointment shall be filed in the Court and deemed to be in force until the determination of all proceedings in the suit; or determination by the client or the pleader or in case the client or pleader dies; or the duration for which he is engaged is over.

A process served on the recognized agent or a pleader of the party or left at the office or residence of the pleader will be considered as valid and proper service on the party.

2.3.8. Suit By or Against the Government

In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be:

1. In the case of a suit by or against the Central Government 'the Union of India', and
2. In the case of a suit by or against the State Government 'the State'.

In ordinary suits, the plaintiff need not give notice to the defendant before filing the suit. Such notice, however, is a condition precedent under Section 80 before filing a suit against the Government or against a public servant in respect of any act purportedly done by such public officer in his official capacity, except where an urgent or immediate relief is required. No suit can be filed, until expiration of two months next after service of notice in writing under Section 80.

2.3.9. Suits in the Case of a Soldier, Sailor or Airman

Order XXVIII prescribes the procedure for filing or defending a suit in the case of a soldier, sailor or airman. Rule 1 of this Order provides that where any officer, soldier, sailor or airman is a party to the suit and if he is in active service in such capacity and cannot obtain leave for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend on his behalf. The person so authorized may himself prosecute or defend the suit or appoint a pleader.

2.3.10. Suits by or Against a Corporation

Order XXIX provides that in suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by

1. The secretary; or
2. Any director; or
3. Other principal officer of the corporation able to depose to the facts of the case.

The Court may at any stage of the suit require the personal appearance of any of the above named officers who may be able to answer material question relating to the suit.

2.3.11. Suits by or Against Trustees

Order XXXI deals with suits by or against trustees, executors and administrators. In all suits between persons beneficially interested in the property vested in a trust, executor or administrator and a third party concerning such property, it is not necessary to join beneficiaries as parties. They shall be represented by the trustee, executor or administrator. The Court has, however, power to make them, or any of them, parties to the suit. All except the following shall be made parties:

1. The executors who have not proved their testator's will; and
2. Trustees, executors or administrators living outside India.

2.3.12. Suits relating to Minors or Persons of Unsound Mind

Order XXXII prescribes the procedure in suits to which minors or persons of unsound mind are parties. According to Rule 1 every suit by a minor shall be instituted in his name by his next friend. If such a suit is filed by or on behalf of a minor without a next friend, on an application being made by the defendant, the plaint will be taken off the file. Rule 2A confers on the Court the power to order the next friend to furnish security for costs of the defendant. Any order made in a suit or an application made without the minor being represented by a next friend or guardian does not bind him and such order is liable to be discharged.

2.3.13. Suits By Indigent Persons or Paupers

Order XXXIII deals with suits by indigent persons or paupers. The provisions of this Order are intended to enable indigent persons to institute and prosecute suits without payment of any Court Fee. A person is an "indigent person" if

1. He is not possessed of sufficient means to enable him to pay the fee prescribed by law on the plaint in such suit; or
2. Where no such fee is prescribed, when he is not even holding property worth one thousand rupees.

In both cases, property exempt from attachment in execution of a decree and the subject matter of the suit should be excluded. The chief ministerial officer of the Court should make an initial inquiry into the means of an applicant. The Court may adopt the report made by such officer or may itself make an inquiry. Rule 17 allows the defendant also who is an indigent person to plead a set off or counter claim in that capacity.

2.3.14. Cases Involving the Interpretation of Constitutional Law

Order XXVII-A provides that in a suit or appeal in which a substantial question of law as to the interpretation of the Constitution as referred to in Article 132(1) or 147 of the Constitution of India is involved, the Court shall not proceed to determine the question until after notice to the Attorney General of India if the question of law concerns the Central Government and to the Advocate General of the State if the question of law concerns the State Government. If such officers apply, they may be made a party to the suit or appeal. In such a case, the Attorney General or the Advocate General shall not be entitled to or liable for costs.

2.3.15. Mortgages of Immovable Property

Order XXXIV prescribes the procedure with regard to the suits relating to mortgages of immovable property. All persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any such suit relating to a mortgage. This provision is however, subject to other provisions of the CPC, for example, Order I Rule 9 lays down that no suit shall be defeated by the reason of non-joinder of parties.

2.4. PLAINT

2.4.1. Plaint

Every suit shall be instituted by presenting a plaint in duplicate to the Court or to such officer appointed in this behalf (Order IV Rule 1). A plaint is a written document tendered to the Court in which the plaintiff sets out his cause of action, seeks judgment and relief from the Court.

The word "presenting" implies delivery to the Court or to its officer either in person or by a recognized agent or pleader of a party. The sending of a plaint by post is not a proper presentation. The absence of presentation of plaint on the part of some of the plaintiffs, does not affect the jurisdiction of the Court and the suit is deemed instituted on their behalf as well if it was filed with their knowledge and authority.

A suit in *forma pauperis* stands instituted on filing of an application under Order XXXIII Rule 3. During the pendency of such an application, interim applications that may be filed in that suit are maintainable.

There is no question of returning a plaint that is not registered. It simply remains under objection till it is admitted. The CPC envisages two stages, first of the presentation of a plaint and then the admission of a plaint. When a plaint is presented the suit is instituted under Order IV Rule 1 and the suit must forthwith be entered in the register of civil suits in accordance with Order IV Rule 2. When the plaint is registered, the Court will fix a date to examine the plaint. On this date, the plaintiff is expected to appear to receive notice of the date fixed for hearing. The provisions of Order IX do not apply at that stage and dismissal of the suit for non-appearance of the plaintiff on that date is not permissible. The only course left with the Court is to issue notice to the plaintiff for his appearance and then summons to the defendant for his appearance. If thereafter the plaintiff fails to appear, dismissal of the suit may be justified.

2.4.2. Drafting of Plaint

Order VII deals with how a plaint should be drafted and what particulars it should contain. The title of a suit can never be treated as a part of the plaint because it is not covered by the verification at the foot of the plaint. The object of Order VII Rule 1 is to present a full picture with sufficient details of the cause of action so as to make the opposite party understand the case. It is to define and limit the issues to be tried. The plaintiff has to state specifically when the cause of action for the suit arose, for the purpose of enabling the Court or the defendant to ascertain from the plaint whether there is a cause of action or not and whether it is not barred by limitation. All the facts showing that the Court has jurisdiction should be set out in the plaint, and if any special jurisdiction vested in the Court by law is invoked, all the facts, which call for the exercise of that jurisdiction, should be set out.

When the jurisdiction of the Court to try a suit is disputed, the Court must decide the same as a preliminary issue. The valuation of a suit for the purposes of jurisdiction is necessary in order to ascertain whether the suit is within the pecuniary jurisdiction of the Court. In a suit for the recovery of money, the plaint should, as a rule, state the amount claimed precisely.

In a suit pertaining to immovable property, the plaint should contain a description of the immovable property sufficient to identify it, otherwise the decree, if passed, will be incapable of execution (Order VII Rule 3). The provisions of Order VII Rule 4 provide that in case the plaintiff is claiming as a representative of some one, all the particulars of such capacity, the existing interest and the steps that he has taken prior to fling the suit should be clearly pleaded. If a decree was passed without such compliance, it would not bind the estate or the persons represented by the plaintiff in the suit. Order VII Rule 5 makes it necessary for the plaintiff to show the interest of the defendant in the subject matter of the suit and his liability to meet the plaintiff's demand. Order VII Rule 6 provides that where, but for some ground of exemption from the law of limitation, a suit would *prima facie* be barred by limitation; it is necessary for the plaintiff to show in the plaint such grounds of exemption. Order VII Rule 7 demands that the relief be specifically stated.

2.4.3. Return of Plaint

The Court can return the plaint at any stage of the suit if it is instituted in the wrong Court. On its return, the plaint may be presented to the correct Court. The Judge returning the plaint shall endorse thereon the date of its presentation and the return, the name of the party presenting it and a brief statement of the reason for doing so (Order VII Rule 10). This Rule applies only when the Court has no jurisdiction to try the suit. If a special statutory tribunal has exclusive jurisdiction in the matter, the Court can dismiss the suit, as this rule will have no application.

Where at any stage of the suit, the Court finds that it has no jurisdiction, either territorial or pecuniary, or with regard to the nature of the suit, the Court is bound to return the plaint to be presented to the proper Court. But where the Court has no pecuniary or territorial jurisdiction and without returning the plaint, it passes a decree, no objection to the validity of the decree will be allowed except under the circumstances mentioned in Section 21 of the CPC.

2.4.4. Rejection of Plaint

The Court is under a duty, before issuing any summons, to examine the plaint and it shall reject the plaint if:

1. It does not disclose a cause of action (Order VII Rule 11(a)).
2. Where the relief claimed is under-valued and not corrected after the Court has directed revaluation (Order VII Rule 11(b)).
3. The plaintiff has failed to furnish the Court with sufficient stamp paper within the time allowed (Order VII Rule 11(e)).
4. The suit appears barred by law (Order VII Rule 11(d)).
5. When the suit is not filed in duplicate (Order VII Rule 11(e)).

The effect of a dismissal as distinguished from a rejection is that, in the latter case, the plaintiff is not precluded from filing a fresh plaint in respect of the same cause of action if he so desires (Order VII Rule 13). The question of maintainability or a defect in a plaint has to be examined with reference to the date on which the suit was filed. The grounds for rejection must be based upon defects that are on the face of the plaint alone; the contents of a written statement are not to be relied upon for this purpose. Before rejecting the plaint, the Judge must record an order to that effect with reasons for such an order.

2.5. THE GENESIS OF ADJUDICATION

2.5.1. Service of Process

When a suit is instituted, a summons should be issued together with a copy of the plaint to the defendant to appear and answer the claim. This 'process' must be served on the defendant(s). Service does not necessarily have to be personal, that is, on the party himself. Service may be made on a recognised agent or pleader. If the defendant attends the Court when the plaint is filed and admits the claim, no summons shall be issued.

A Judge must monitor and supervise his Court staff and the process-serving agency to ensure that they comply with the requirements of law. Mishandling of service of process, whether deliberate or accidental, must not be allowed. Effective control of the process-serving agency is an element of Court management. For effective service Order V Rule 9 provides for hand-delivery of summons (dasti) or service through registered post, speed post or through an approved courier as well as by fax or by e-mail as per rules.

If the A.D. card is received back or the envelope is received back with a report of refusal, the Court may treat that it has been properly served. In case of non-receipt of any of these within 30 days, the Court may presume that the addressee has been duly served.

If there are several defendants, each of them is to be served personally. In case of business establishment service on any of the manager or agent is proper service (Order V Rule 13). Where defendant is absent service may be made on any of the adult member of his family, but not on a servant. (Order V Rule 15). For personal service, signature of the person receiving the summons is to be obtained.

If the defendant refuses or is not available, himself or through his agent, then affixure on the outer door at the address is prescribed. Every such service must be endorsed about the manner. The Court may examine the serving officer before treating it as proper service. (Order V Rule 16 to 19).

2.5.2. Substituted Service

Where a party is not found at the address given for service and is avoiding service, the procedure under Order V Rule 20 should be followed. Where a party wishes to change the address for service, he may file an application for amendment of the record along with a fresh Address Form. An example of substituted service includes affixing the summons on a conspicuous part of a house or office, publication in the approved newspapers circulating in the locality in which the defendant is last known to have been actually and voluntarily resided, carried on business or personal work for gain.

List of approved newspapers:

Hindustan	The Educator	Daily Telegram	Mathrubhumi
Indian Express	Pracheen Times	Nav Hind Times	Daily Thenthi
Statesman	Quami Awaz	Arya Varta	Loksatta
Times of India	Mid Day	Nai Duniya	Prayavani
National Herald	Indian Post	Nav Bharat	Samaj
Hindustan	Assam Tribune	Hind Kesri	Anand Bazar Patrika
Nav Bharat Times	Indian Nation	Navjyoti	Jugantar
Vir Arjun	The Hindu	Rajasthan Patrika	Andhra Prabha
Milap	The Tribune	Aaj	Basumati
Pratap	Deccan Herald	Hind Samachar	Nagasi
Tej	Northern India Patrika	Daily Assam	Akali Patrika
Bande Matram	Amrit Bazar Patrika	Janasatta	Telegraph
Vyapar Bharti	Anand Bazar Patrika	Malayalam Manorma	Rashtra Doot

Summons to persons living outside the Court limits may be sent by fax or e-mail apart from postal or courier service. It could be also sent to the Court, in whose jurisdiction he resides, for effecting service. If a party is in jail, the summons may be sent by above all means apart from through the Jail Superintendent. In case of persons living abroad, the same modes are prescribed apart from the officers of the foreign government nominated by Central Government. (Order V Rule 26-A). If a defendant is a government servant, he

can be served through his employer. Defence personnel are to be served through their Commanding Officer. To effect service on a defendant of a rank, which in the opinion of Court entitles him to such consideration, instead of summons, a letter may be written as provided in Order V Rule 30. The letter shall contain all the details required to be given in a summon.

2.5.3. Documents Relied Upon in Plaint

Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint (Order VII Rule 14(1)).

Where he relies upon other documents as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint (Order VII Rule 14(2)).

There is an important distinction between documents sued upon and documents to be used in evidence.

2.5.4. Lost Negotiable Instruments

Where the suit is founded upon a negotiable instrument, which is proved to be lost, the Court may pass such decree as it would have passed if the original instrument had been produced in Court along with the plaint; provided the plaintiff gives an indemnity to the satisfaction of the Court against possible claims of any other person upon such an instrument (Order VII Rule 16).

2.5.5. Production of Shop-Book

Where the document consists of account entries or entries in a shop-book, the shop-book must be produced in the Court and the Court or an authorised officer shall mark the entry for the purpose of identification. The original may be returned to the plaintiff and a copy may be retained on the file (Order VII Rule 17).

2.5.6. Admissibility of Documents not Produced When Plaint Filed

Where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he has to produce such document along with a list at the time of filing of suit and a copy thereof be filed with plaint. If such a document is not in possession or power of the plaintiff, he shall state in whose possession or power it is but a document may be produced for the cross examination of the plaintiff's witness or handed over to a witness merely to refresh his memory. No document, that has been relied upon but not filed along with the plaint, shall be later admitted as evidence, except with the leave of the Court.

2.6. PLEADINGS

Pleadings should state the material facts giving rise to a cause of action. They should not state the evidence relied upon nor the law. The purpose of the pleadings is to let the other party know what case it has to meet. Judgments cannot be based upon matters not raised in the pleadings.

If the pleadings are incorrect, the Court may allow the pleadings to be amended before the commencement of trial. However, the party making the amendments may be ordered to pay costs to the other side in relation to any amendment. The Court may at any stage of the proceedings order any matter in any pleading, which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit, to be struck out or amended (Order VI Rule 16). Where one party has been permitted to amend the pleadings an opportunity has to be given to opposite party to make consequential amendment and no new plea can be permitted to be added in the garb of consequential amendment, though it can be permitted by way of an independent amendment. (Gurdial Singh vs. Raj Kumar Aneja 2002 AIR SCW page 718)

2.6.1. Defence

The defendant may, and if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. Such time should not ordinarily exceed 30 days (Order VIII Rule 1). However for reasons to be recorded, time may be extended up to 90 days from the date of service of summons. The defence cannot be a general denial. It shall not be sufficient in a written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact, of which he does not admit the truth (Order VIII Rule 3). Normally, unless the defendant denies a fact in his written statement, it shall be taken as admitted. However, the Court has the power to require any fact so admitted to be proved otherwise than by such admission (Order VIII Rule 5).

2.6.2. Set Off

In a suit for the recovery of money, where the defence claims a set off, that is, the defendant claims the plaintiff owes him an ascertainable sum of money legally recoverable from him, to the extent of such claim, the role of the plaintiff or the defendant are reversed. The effect of a claim for set off will be that the written statement will be treated as a plaint in a cross-suit (Order VIII Rule 6).

Normally, after the written statement of a defendant, no other pleading will be admitted other than by way of defence to a set off. However, the Court has the power to allow filing of an additional written statement as it thinks fit (Order VIII Rule 9). Where a party fails to present the written statement within time, the Court may pronounce Judgment against him or make such order in relation to the suit as it thinks fit (Order VIII Rule 10).

2.6.3. Counter-Claim

The defendant may file a counter claim against the plaintiff within the time granted for filing a written statement, provided such claim in within the pecuniary limits of the Court. (Order VIII Rule 6A)

2.7. THE FIRST HEARING

2.7.1. Appearance of Parties

Order IX states that on the day fixed in the summons for the defendant to appear, parties shall attend in person and the suit shall then be heard unless adjourned. The parties do not necessarily have to be present in person if counsels represent them.

2.7.2. Absence of both Parties

Where neither party attends, the Court may dismiss the suit (Order IX Rule 3).

2.7.3. Absence of Plaintiff

If the plaintiff is absent on a date fixed by the Court for proceeding but the defendant attends, the suit shall be dismissed. However, if the defendant admits the claim or part of the claim, the Court may pass a decree in respect of the sum admitted (Order IX Rule 8). The effect of dismissal is a bar to a fresh claim. However, the plaintiff may apply to set aside the dismissal, if sufficient cause is shown. The Court may make an order setting aside the dismissal, upon such terms as to costs as it thinks fit and appoint a day for proceeding with the suit (Order IX Rule 9). "Sufficient cause" has no exact definition and each situation must be decided upon its own merits. Where the non-appearance was not intentional, a strict view ought not to be taken.

2.7.4. Absence of the Defendant

If the plaintiff appears and the defendant doesn't, as long as there is proof of service of summons within the time limit, the Court may proceed to hear the case *ex parte*. If the summons was served, but there was insufficient time for appearance, the Court shall fix a new date enabling the defendant to be informed of the new date. If the summons has not been served a second summons shall be issued and served on the defendant. Where the summons was not served owing to some default on the part of the plaintiff, the Court shall order him to pay the costs occasioned by the postponement (Order IX Rule 6(2)).

Where the case is postponed and the defendant subsequently appears at or before the adjourned hearing, and gives a good cause for his previous non appearance, the Court may allow him to be heard upon such terms as to costs as the Court thinks fit (Order IX Rule 7) by setting aside the order proceeding *ex parte*. The application for setting aside an *ex parte* order can be made only at or before the adjourned date of hearing otherwise no limitation is provided for setting aside *ex parte* proceedings in the Limitation Act. However, if good cause is not shown, the defendant can join and participate in the proceedings at a later stage and is entitled to lead evidence and cross examine the witness.

2.7.5. Setting Aside an *ex parte* Decree

If a decree is passed in the defendant's absence, he may apply to have the Judgment and decree set aside if he can satisfy the Court that either the summons was not served or he was prevented by sufficient cause from appearing when the suit was called. The Court shall make an order setting aside the decree against him upon such terms as the Court thinks fit, and shall appoint a day for proceeding with the case (Order IX Rule 13). No decree can be set aside unless notice thereof has been served on the other party (Order IX Rule 14).

The provisions of Section 5 of the Limitation Act 1908 will apply to all applications and therefore such applications must be made within 30 days of the order, or where the summons was not served, within 30 days of knowledge of the decree or order.

2.7.6. Examination of Parties by the Court

At the first hearing of a suit, the Court shall ascertain from the parties what facts alleged in the plaint or written statement they admit or deny. The Court shall record such admissions and denials (Order X Rule 1). To start with, the party or his pleader shall be examined orally and the Court may ask questions suggested by the other party. Subsequently, however, the substance of such examination must be reduced in writing to form a part of the record. Sometimes, one party is not present but represented by his pleader and the pleader may be unable to answer some material questions. In such a case a date may be given for appearance of the party himself. If the party fails to appear on the

date fixed by the Court, it is open to the Court to pronounce judgment against him or make any other suitable order (Order X Rules 2 to 4).

2.7.7. Settlement of Disputes Outside Court

In case where the Court is of the view that settlement of dispute may take place, it will formulate the 'terms of reference' and views of both the parties will be taken and after considering the same, final 'terms of reference' will be drawn up. As per Section 89, the dispute may be referred for settlement to:

1. arbitration;
2. conciliation;
3. Lok Adalat/judicial settlement; or
4. mediation

In arbitration/conciliation proceedings, provisions of the Arbitration and Conciliation Act, 1996 shall apply. In Lok Adalat or similar judicial proceedings; provisions of Legal Services Authority Act, 1987 will apply and for mediation, the Court shall effect a compromise between the parties.

2.7.8. Interrogatories

Interrogatories are a series of written questions by one party to ascertain facts. The parties can prepare interrogatories requiring the opposite parties to answer them. However, this can only be with leave of the Court. Leave will only be granted for one set of interrogatories. This means that for every new set of interrogatories, permission of the Court will be needed. It is for the Court to decide as to which, if any, of the interrogatories are relevant (Order XI Rule 1). Answers to the interrogatories will be in the form of an affidavit to be filed in Court within 10 days or such time as the Court may allow. The form of interrogatories shall be Form 2, appendix – C to the CPC and answers to be given in Form 3. Where any party, to a suit is a corporation or a body of persons, the Court may direct the interrogatories to be delivered to, and answered by, a member or officer of such corporation or body. The answers given in response to the interrogatories can be used in evidence (Order XI Rule 22).

2.7.9. Discovery of Documents

A party may obtain an order from the Court directing the other party to disclose and make available for inspection any document. Discovery of facts can be by means of interrogatories under Order XI Rule 1. Discovery of documents is obtained under Order XI Rule 12. The party holding the documents may file an affidavit stating which documents he holds in his possession and those that he objects to produce. It will be for the Court to decide whether it will direct discovery of a specific document. The penalties to be imposed on a defaulting party are given in Order XI Rule 21.

2.7.10. Production, Impounding and Return of Documents

No documentary evidence in the possession or power of any party that should have been, but was not, produced before the Court at the first hearing shall be received at any subsequent hearing. However, the Court may allow such subsequent production if sufficient cause is shown (Order XIII Rule 1). Documentary evidence in possession of all parties shall be produced at the first hearing whereupon the Court may call upon the parties to admit or deny them (Order XIII Rule 3A).

Irrelevant and inadmissible documents should be rejected by the Court recording thereon the reason for doing so. If a document is admitted in evidence, it has to be endorsed in accordance with Order XIII Rule 4. If only an entry in books of accounts or other such record is to be admitted in evidence, a copy thereof after due verification from the original may be endorsed. The documents admitted by the Court will from part of the record and those rejected will be returned to the person concerned. The Court may also impound a document or book, produced before it if there is sufficient cause for doing so (Order XIII Rule 8). The Court may also send or call for papers from its own record or from another Court (Order XIII Rule 10). The Court cannot use in evidence any document, which is inadmissible under the law of evidence.

2.7.11. Admissions

A party may call upon another party in a case either through his pleadings or otherwise in writing to admit the truth of the whole or any part of the case. Similarly, either party may require the other party to admit any document. If the party so called upon neglects or

refuses to admit the document, the cost of proving such a document shall be on the party so neglecting or refusing unless the Court directs otherwise (Order XII).

2.7.12. Settlement of Issues

Settlement of issues is a critical step in the trial of a suit. The issues drawn by the Court articulate the dispute and determine the scope of the case. The issues are either on facts or on law. It is for the Court to ascertain, before framing the issues, as to what proposition of facts or law the parties are at variance. If the defendant at the first hearing of the suit makes no defence or if the defendant is *ex parte*, no issues need be framed (Order XIV).

If the Court is of opinion that the case can be disposed of on issues of law alone, it shall try those issues first and postpone the settlement of other issues. Before framing issues, however, the Court may examine witnesses or documents to narrow down, if possible, the scope of the case. The Court, at any time before passing the decree, can amend the issues, frame additional issues or strike out issues already framed.

It is possible for the parties to agree upon the questions of fact or law in dispute, which are then expressed in the form of issues. If the Court is satisfied that the agreement is in good faith, it may pronounce judgment (Order XIV).

2.7.13. Disposal of the Suit at First Hearing

Sometimes, it is possible to pronounce judgment at the first hearing if the parties are not at issue on any question of law or fact (Order XV Rule 1). However, care should be taken that no injustice results from such a decision; the Court must be satisfied of the good faith and identity of the parties.

Where the parties are at issue and the issues have been framed, if the Court is satisfied that no further argument or evidence other than that already available is required, the Court may proceed to determine such issues, make findings and pronounce judgment even if no summons has been issued for settlement of issues or final disposal (Order XV Rule 3). However, if the summons has been issued for the final disposal of the suit and one party fails, without sufficient cause, to produce the evidence on which he relies, the

Court may at once pronounce judgment. In its discretion, however, the Court can adjourn the hearing and go through the normal process of trial (Order XV Rule 4).

2.7.14. Summary Suits

Summary suits can be filed under Order XXXVII in respect of recoveries based upon bills of exchange, hundies and promissory notes; debt or liquidated demands, with or without interest based on a written contract or law or on a guarantee claim against the principal. The suit must contain a specific averment that suit has been filed under Order XXXVII; no relief outside the ambit of this Order has been claimed and just below the title it is mentioned "(Under Order XXXVII of the Code of Civil Procedure, 1908)".

On service of prescribed summons in Form No. 4 in Appendix B, the defendant may file his appearance within 10 days otherwise the suit would be decreed against him. If appearance has been filed by the defendant, then Summons for Judgment in Form No. 4A shall be served upon the defendant along with affidavit of plaintiff verifying cause of action, amount claimed and stating that in his belief, there is no defence to the suit.

The defendant may apply for leave to defend suit within 10 days of receipt of summons for judgment, for grant of leave to defend, disclosing such facts which entitle him to defend the suit and where the Court considers the defence sought to be raised is not *bona fide*, it will decree the suit. Otherwise, where defence appears to be *bona fide*, Court may grant leave to defend, with or without conditions. When leave to defend is granted, the procedure for ordinary suits is to be followed.

2.7.15. Summoning and Attendance of Witnesses

Not later than fifteen days after settlement of issues, the parties shall present to the Court a list of witnesses they propose to call. A witness, whose name does not appear in the list, shall not be called without leave of the Court and without good cause for the omission. Order XVI sets out the procedure for summoning witnesses, their examination and how the expenses for summoning witnesses should be recovered from the concerned parties and defrayed. The Court can examine a witness not shown in the list if sufficient cause is shown (Order XVI Rule 1(3)).

2.7.16. Adjournments

Order XVII permits the Court to grant an adjournment from time to time, if sufficient cause is shown. The number of adjournments has been restricted to 3in a trial. It is important that Judges exercise caution while granting an adjournment in a trial. Thoughtless approach to this matter results in unnecessary delay that brings criticism upon the judiciary and the Courts. No adjournment should be granted for the benefit of any party unless it is absolutely necessary and as provided for in the CPC.

2.8. HEARING OF THE SUIT

2.8.1. Introduction

The hearing of a suit begins after issues are framed. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff or contends that either on a point of law or some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks; in such a case, the defendant has the right to begin (Order XVIII Rule 1). The defendant, in his evidence may refute the evidence led by the plaintiff and also prove the issues where the onus of proof is upon him. The plaintiff then has the right to rebut the defence evidence. While recording evidence, the Court should allow only relevant questions, which are necessary for a decision of the issues involved.

In every case, the examination-in-chief of a witness shall be on affidavit and a copy thereof shall be supplied to the opposite party by the party who calls him for evidence, provided that where documents are filed and a party relies upon the documents, the proof and admissibility of such documents which are filed along with the affidavit shall be subject to the orders of the Court. The evidence (cross-examination and re-examination) of the witness in attendance, where evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by a Commissioner appointed by it. Ordinarily, evidence shall be recorded in the same language in which it is given. However, where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given. Then it shall be corrected wherever necessary and shall be signed by the witness and then by the Judge.

The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer or any objection to any question, if there appears to be any special reason for doing so. Where a party or his pleader objects to any question put to a witness, and the Court allows the question to be put, the Judge shall take

down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

2.8.2. Power to Examine a Witness Immediately

Where a witness is about to leave the jurisdiction of the Court, or some other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon an application of any party or of the witness, at any time after the institution of a suit, take the evidence of such witness. Where evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient shall be given to the parties for a day fixed for examination (Order XVIII Rule 16).

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence) put such questions to him as the Court thinks fit (Order XVIII Rule 17).

The Court may at any stage of a suit, inspect any property or thing concerning which any question may arise and where the Court inspects any property or a thing, it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form part of the record of the suit (Order XVIII Rule 18).

2.8.3. Incapacity of the Presiding Judge

Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules, as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it (Order XVIII Rule 15).

2.8.4. Commissions

The Court may issue a commission to examine any person, to make a local investigation, to examine or adjust accounts or to make a partition, to hold a scientific, technical or expert investigation, to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit and to perform any ministerial act (Order XXVI). Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be paid into Court, within a time to be fixed, by the party at whose instance or for whose benefit the commission is issued.

2.9. JUDGMENT

A judgment is the crystallization of the findings in a suit in the form of a final expression by a Judge after hearing the parties or their pleaders. A Judgment is defined as "The statement given by the Judge on the grounds of a decree or order" (Section 2 (9)).

2.9.1. Pronouncement of Judgment

After a case is heard, a Judge shall pronounce judgment in open Court, either at once or, as soon thereafter as may be practicable, on some future day; and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders. If the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinary be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders (Order XX Rule 1).

Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for perusal of the parties or the pleaders immediately after the judgment is pronounced (Order XX Rule 1(2)).

A judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf. If the judgment is pronounced by dictation in the open Court, a transcript of the judgment so pronounced shall, after making any correction therein, be signed by the Judge, with the date which forms a part of the record (Order XX Rule 1(3)).

2.9.2. Form of Judgments

Judgment of the Small Causes Courts need not be based on issues, but should contain points for determination and decision thereon (Order XX Rule 4(2)).

Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of issues is sufficient for the decision of the suit (Order XX Rule 5).

Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties (Order XX Rule 5-A).

It is necessary that a Judge should proceed to the consideration of the judgment while the demeanour of the witnesses and their individual characteristics are fresh in his memory. He should bear in mind that his first duty is to arrive at a conscientious conclusion as to the true state of those facts of the case about which the parties are not agreed. The oral and documentary evidence adduced upon each issue should be carefully appreciated.

In preparation and delivery of a judgment, attention of the Civil Courts is drawn to the following directions:

1. The judgment should be either in the language of the Court, or in English;
2. When a judgment is not written by the Presiding Officer with his hand, every page of such judgment shall be signed by him;
3. It should be pronounced in open Court after it has been written and signed;
4. It should be dated and signed in open Court at the time of pronouncement and when once signed, shall not afterwards be altered or added to, save as provided by Section 152 or on review;
5. It should contain the direction of the Court as to costs;

6. All the paragraphs of the judgment should be serially numbered to facilitate reference;

7. The memorandum of the substance of the evidence given by each witness examined is not required to be referred in the judgment. All that is required is the concise statement of the case and not a reproduction of the evidence. It may be necessary, in particular cases, to refer to, and give a summary of, the statement of a witness or witnesses; but, if so, such summary should be incorporated in the reasons given for the decision. When it is necessary to refer to the evidence, the reference should be by name as well as the number of the witnesses.

8. Order XXII Rule 6 provides that if any party to a suit dies between the conclusion of the hearing and the date of pronouncing the judgment, such judgment may be pronounced notwithstanding the death, and shall have the same force and effect as if it has been pronounced before the death took place.

2.10. DECREE

'Decree' is the formal expression of an adjudication, which so far as the Court expressing it is concerned, conclusively determines the rights of parties with regard to all or any matter in controversy in the suit. The decree may be either preliminary or final.

2.10.1. Contents of a Decree

The decree shall bear the day and date on which judgment was pronounced. When the Judge is satisfied that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Where a Judge has vacated office after pronouncing judgment, but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

Where the subject matter of a suit is immovable property, the decree shall contain a proper description of the property sufficient to identify it, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be made.

Where and in so far as a decree is for payment of money, the Court may for any sufficient reason incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, and order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable (Order XX Rule 11(1)).

After the passing of a decree the Court may, on an application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest,

the attachment of the property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit (Order XX Rule 11(2)).

2.10.2. Decree for Possession and Mesne Profits

Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree –

1. For possession of the property;
2. For the rents accrued on the property during the period prior to the institution of the suit or for directing an inquiry as to such rent;
3. For mesne profits or directing an inquiry as to such mesne profits;
4. Directing an inquiry as to rent or mesne profits from the institution of the suit until –
   I. Delivery of possession to the decree holder,
   II. The relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or
   III. The expiration of three years from the date of the decree, whichever event first occurs.

Where an inquiry is directed, a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry (Order XX Rule 12).

2.10.3. Decree for Specific Performance of Contract

Where a decree for specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or the sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made (Order XX Rule 12A).

2.10.4. Decree in Administration Suit

Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary

decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit (Order XX Rule 13).

2.10.5. Decree in Pre-emption Suit

Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall –

1. Specify a day on or before which the purchase-money shall be so paid, and
2. Direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs (Order XX Rule 14(i)).

Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,

1. If and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provision would, but for such default, have taken effect; and
2. If and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions (Order XX Rule 14(2)).

2.10.6. Decree in Suit for Dissolution of Partnership

Where a suit is for dissolution of a partnership, or rendition of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit (Order XX Rule 15).

2.10.7. Decree in Suit for Accounts Between Principal and Agent

In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit (Order XX Rule 16).

2.10.8. Special Directions as to Accounts

The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken. It may, in particular direct that in taking the account the books of account in which the accounts shall be taken as *prima facie* evidence of the truth of the accounts with liberty to the parties interested to take such objection thereto as they may be advised (Order XX Rule 17).

2.10.9. Decree in Suit for Partition of Property or Separate Possession of Shares

Where the Court passes a decree for the partition of property or for separate possession of a share then:

1. If the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector in accordance with such declaration and with possession. (See also Section 54).
2. If such decree relates to any immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required (Order XX Rule 18).

2.10.10. Decree When Set-off [Counter-Claim] is Allowed

Where the defendant has been allowed a set-off [or counter-claim] against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party (Order XX Rule 19(1)).

2.10.11. Suits for Foreclosure

In a suit for foreclosure if the plaintiff succeeds, the Court shall pass a preliminary decree

1. Ordering that an account be taken of what was due to the plaintiff on the date of such decree for principal and interest on the mortgage, the costs of the suit awarded to him and other costs, charges and expenses properly incurred by him;
2. Declaring the amount so due; and
3. Directing that if the defendant pays into Court the said amount on or before such date fixed by the Court, the original document be delivered by the plaintiff to him, retransfer the property to the defendant free from all encumbrances and put the defendant in possession thereof. If the defendant does not make the payment, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all rights to redeem the mortgaged property.

Where the payment is made by the defendant on or before the date fixed for such payment the Court shall, on an application being made by him pass a final decree ordering the plaintiff to deliver to the defendant all the documents referred to in preliminary decree to retransfer the property and to put the defendant in possession thereof.

2.10.12. Suit for Sale

In a suit for sale, if the plaintiff succeeds the Court shall pass a preliminary decree in the aforesaid manner.

Where on or before the day fixed or at any time before the confirmation of sale, the defendant makes payment into Court all amounts due, the Court shall on application being made by him pass a final decree ordering the plaintiff to deliver to the defendant all the documents referred to in the preliminary decree, to retransfer the mortgaged property and to put the defendant in possession thereof.

If the defendant has not made the payment, the Court shall, on application being made by the plaintiff, pass a final decree directing sale of the mortgaged property.

2.10.13. Suit for Redemption

In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree in the above manner.

Where before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale, the plaintiff makes payment into Court all amounts due, the Court shall on application being made by him pass a final decree ordering the defendant to deliver to the plaintiff all the documents referred to in the preliminary decree, to retransfer the mortgaged property and to put the plaintiff in possession thereof. Where, however, the payment has not been made by the plaintiff the Court shall on application being made by the defendant pass a final decree declaring that the plaintiff is debarred from all right to redeem the mortgaged property.

2.10.14. Representative Suits

One or more persons with the permission of Court may sue or be sued, for and on behalf of, or for the benefit of all such interested persons (Order I Rule 8). A decree passed under this rule shall bind all such parties.

2.10.15. High Court Rules

The High Court Rules provide that:

Careful attention should be given while framing a decree, which must agree with the judgment, and be not only complete in itself but also precise and definite in its terms. It should specify clearly and distinctly the nature and extent of relief granted, and what each party, is ordered to do or forbidden from doing. Every declaration of right made by a decree must be concise, yet accurate; every injunction, simple and plain.

In decrees for possession of agricultural land, it should be stated whether possession is to be given at once, or after the removal of any crop that may be standing on the land at that time, when the decree is executed, or on or after any specific date.

2.10.16. Appellate Decrees

In appellate Courts, the language used in preparing a decree shall direct that the decree of the lower Court be either “affirmed”, “varied”, “set aside” or “reversed”. In each case in which a decree is affirmed, the terms thereof shall be recited, so as to make the appellate decree complete in itself. In varying a decree, the relief granted, in lieu of that originally granted should, be fully and accurately set out.

Where a decree is reversed on appeal, the consequential relief granted to the successful party should similarly be stated. Every decree should be written, so as to be executable without reference to any other document.

2.10.17. Compromise Decree

When a decree is to be passed on the basis of a compromise, the Court should order the terms of the compromise to be recorded in accordance with the provisions of Order XXIII Rule 3 and then pass a decree in accordance with the compromise terms. When, however, the compromise goes beyond the subject matter of the suit, a decree can be passed only in so far as it relates to the suit.

When any of the parties to the case is a minor, care should be taken to see whether the compromise is for the minor’s benefit and to record a finding to that effect if the compromise is sanctioned and made the basis of a decree.

When any parties are added or substituted in the course of the suit, care should be taken to see that their names are properly shown in the decree-sheet.

Every decree must set forth the powers of the officer deciding the suit.

2.10.18. Decree in Pauper Suit

In suits by paupers, when an order is passed under Order XXXIII Rules 10,11 or 12 a copy of the decree should be forthwith forwarded to the Collector.

2.11. EXECUTION OF DECREES AND ORDERS

2.11.1. Introduction

Every law shall perish if its enforceability is neither ensured nor made feasible. A decree or order passed by a Court is of no use if it is not properly executed.

The law relating to execution of decrees is to be found in Section 36 to 74, Section 82 and 135A and 136 and Order XXI of the CPC. Execution of decrees and orders needs to be done expeditiously, in letter and spirit and should be given equal attention, with original civil work. For this reason, the High Court has directed the district Courts to fix execution matters on Fridays.

Every Court is required, as far as possible, to execute a decree passed by it. When that is not possible, care should be taken to see that it is sent to a Court of competent jurisdiction for execution (Section 39(2) and (4)). A Court shall be deemed to be a Court of competent jurisdiction, if at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed (Section 39(3)).

2.11.2. Mode of Execution

Section 51 incorporates various modes in which the execution of a decree may be ordered, viz.

1. By delivery of any property specifically decreed;
2. By attachment and sale, or by sale without attachment of any property;
3. By arrest and detention of the judgment debtor;
4. By appointment of a Receiver; or
5. In such manner as the nature of relief may require.

2.11.3. Application for Execution

The holder of a decree should move an application for its execution (Order XXI Rule 10). However, Order XXI Rule 11 provides for making an oral application at the time of passing the decree. The written application should describe the parties, suit, decree, appeal preferred, whether any previous application was moved or decree having been partly satisfied and the nature of assistance required in precise terms. Order XXI Rule 17 details the procedure to be followed on receiving an application for execution. Order XXI Rule 18 to 20 govern the execution of a decree in cases of cross decrees and cross claims.

2.11.4. Notice of Application

When an application is made after two years from the date of decree or against the legal representatives of a party to the decree or against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent, the Court must first issue a notice to the person against whom execution is applied for, requiring him to show cause why the decree should not be executed against him. Notice is not required to be given if any order on an earlier execution application was passed within two years or the said legal representative was a party. Notice may be dispensed with to avoid unreasonable delay, or to meet the ends of justice (Order XXI Rule 22(2)).

Objections to the execution of a decree must be considered by the Court, which shall make such order as it thinks fit (Order XXI Rule 23(2)).

Section 47 lays down the fundamental law that all questions arising between parties in a suit have to be determined by the executing Court and not by a separate suit, as per procedure laid down in Order XXI. An executing Court cannot travel beyond the order or the decree under execution and third party rights cannot be projected for determination in an execution application.

2.11.5. Stay of Execution

On showing sufficient cause, execution can be stayed by the executing Court (Order XXI Rule 26). When a stay of execution is granted, it is compulsory for the Court to require security or impose such conditions as it thinks fit unless sufficient cause is shown to the contrary (Order XXI Rule 26(3)).

2.11.6. Decree for Movable Property

A decree for any specific movable property or any share in a specific movable may be executed by the seizure, if practicable, of the movable or shares and by delivery thereof to the decree holder or his appointee, or by detention in civil prison of the Judgment debtor, or by attachment of his property, or by both (Order XXI Rule 31).

2.11.7. Decree for Restitution of Conjugal Rights or Injunction

A decree for restitution of conjugal rights may be enforced by the attachment of property, or in the case of a decree for specific performance of a contract, or for an injunction by detention in civil prison, or by the attachment of property, or both (Order XXI Rule 32). It is the discretion of the Court in executing a decree for restitution of conjugal rights, to require a Judgment debtor to make periodical payments to the decree holder in the event of the decree not being obeyed within the period fixed by the Court (Order XXI Rule 33).

2.11.8. Decree for Endorsement/Registration

Where a decree is for execution or endorsement of a document, subject to the requirement of registration and after giving the Judgment debtor an opportunity of making any objection or any alteration to the draft of the document or endorsement/instrument drafted by the decree holder in the execution of a decree in respect of a document or endorsement of a negotiable instrument when the Judgment debtor neglects or refuses to obey the decree (Order XXI Rule 34).

Mere pendency of an appeal in a superior Court is not a ground either to stay or prolong the proceedings in the executing Court unless there is a stay by the superior Court.

However, when an order is made for sale of immoveable property and during the pendency of an appeal, the judgment debtor applies for stay of the sale, the Court ordering the sale is bound to stay it, though it can impose such terms as to security or otherwise as it thinks fit (Order XXI Rule 6(2)).

Where a suit filed by a Judgment debtor is pending in any Court against the decree holder, the Court may, on such terms as to security or otherwise, stay execution of the decree till the disposal of that suit. Reasons are to be recorded by the Court granting stay without requiring security, if the decree is one for payment of money (Order XXI Rule 29).

2.11.9. Mode of Execution

Every decree for the payment of money may be executed by the detention in civil person of the judgment debtor, (where the amount is above Rs.2000/-) or by attachment and sale of his property, or both (Order XXI Rule 30).

2.11.10. Decree for Immovable Property

In execution of a decree for delivery of immovable property, possession has to be delivered to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property.

Where a decree is for joint possession of immovable property, or for delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court has to order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place.

Where the Judgment debtor in possession does not obey in execution of decree, the Court, through its officers may after giving a reasonable warning and facility to any woman to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession (Order XXI Rules 35 and 36).

2.11.11. Arrest and Detention in the Civil Prison

On failure of a judgment debtor to honour a decree for more than Rs.2000/-, a show cause notice should be issued to him and if the notice is not complied with, the judgment debtor can be detained in civil prison (Section 58). The law regarding arrest and imprisonment is contained in Section 51, 55 to 59, 135, 135A and 136 and Order XXI Rules 37 to 40, Order XXXVIII Rules 1 to 4.

A woman is exempted from arrest or detention in execution of a decree for money (Section 56 of the CPC). Other exempted persons are enumerated in Section 135 and 135A.

A Judgment debtor can be released on the ground of his illness and even warrants may cancelled by the Court (Section 59). Instead of issuing a warrant, a notice may be issued calling upon a Judgment debtor to appear and show cause why he should not be committed to civil prison (Order XXI Rule 37).

The decree holder has to pay in advance for the subsistence allowance of a judgment debtor in Court for his arrest in execution of a decree (Order XXI Rule 39). On appearance or production of the judgment debtor in execution of an arrest warrant, the Court should to conduct an enquiry as per the procedure laid in Order XXI Rule 40, and due opportunity should be given to the judgment debtor to show cause why he be not committed to a civil prison. Pending such enquiry, the Court can release the judgment debtor on his furnishing security to the satisfaction of the Court (Order XXI Rule 40).

A judgment debtor can also seek time for applying to an Insolvency Court to adjudicate himself as an insolvent under Section 55(4). Where the decree is for payment of a sum of money exceeding Rs.5000/-, the judgment debtor can be detained in civil prison for a period not exceeding three months and if the decree is for the payment of a sum of money exceeding Rs.2000/- but not exceeding Rs.5000/-, the detention period cannot exceed six weeks. On satisfaction of the decree during the period of detention, a judgment debtor would become entitled release from detention (Section 58).

2.11.12. Examination of Judgment Debtor as to his Property

The decree holder may apply to a Court for an order that the judgment debtor, or any other person be orally examined to ascertain what property or means exist or are available to satisfy the decretal amount. In case such decree remains unsatisfied for thirty days then the Court may call upon the judgment debtor to make an affidavit stating the particulars of his assets. If disobeyed, the Court may order the person to be detained in civil prison for a term not exceeding three months (Order XXI Rule 41).

2.11.13. Attachment of Property

One can execute a decree in respect of an ascertained amount. This is the general rule. But an exception to this general rule is in case of a decree for rent or mesne profits or any other matter, the amount of which is to be subsequently determined. For an unascertained amount, the property of a judgment debtor may be attached. No further steps need be taken in execution till the amount is ascertained (Order XXI Rule 42).

Moveable property other than agricultural produce is to be attached by actual seizure. The attaching officer ought to keep the property in his own custody or in the custody of his subordinates and is responsible for it. When the property is perishable or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once. When the property attached is of live stock or other articles which cannot be conveniently removed, then the attaching officer may draw up a schedule of the property in triplicate with details and hand it over to a custodian (Order XXI Rule 43).

2.11.14. Garnishee – Role – Liability

In the case of a debt, share or other property not in possession of a judgment debtor, attachment is effected by the issue of a prohibitory order to a third party liable to pay or deliver any property to the judgment debtor directing to remit the debt to the Court. These proceedings are called garnishee proceedings and the third party is called a garnishee. If the garnishee does not respond, then the Court can proceed as if the order is a decree passed against the garnishee. The garnishee can raise a dispute if he questions the liability in entirety or in part. Disputed questions raised by a garnishee are to be tried

as if it were an issue in a suit. The executing Court can dispose of the claim only if it is within its own pecuniary limits.

Attachment of the shares or interest of the judgment debtor in moveable property belonging to him is to be so done by a notice to the judgment debtor prohibiting him from transferring the share or interest or charging it in any way (Order XXI Rule 47).

Attachment of salary or allowances of a government servant can be ordered in execution of a decree (Order XXI Rule 48). Similarly salary or allowances of private employees can be attached (Order XXI Rule 49). The attachment of salary is subject to certain restrictions imposed as per Section 60. Salary to the extent of the first one thousand rupees and two thirds of the remainder in execution of any decree other than a decree for maintenance is exempt for attachment. Attachment in pursuance of a single decree can be made only for a period of 24 months and thereafter the salary cannot be attached in execution of that decree, even if any balance is due.

In execution of one or more decrees, once there is continuous attachment for a period of 24 months, the salary cannot be attached by anyone for a period of 12 months thereafter. These general rules are not applicable in cases of maintenance. In a case of maintenance, the attachable portion is two-third of the salary and there is no exemption for first Rs.1000/-. Also, there is no restriction for attachment of salary beyond a period of 24 months. The wages of labourers and domestic servants, stipends and gratuities allowed to pensioners are exempt from attachment. The pay of persons to whom the Air Force Act 1950, or the Army Act 1950 or the Navy Act 1957 applies is exempt from attachment. No order for attachment is to be made unless the Court is satisfied that the property sought to be attached is not exempt for attachment or sale (Section 35 of the Punjab Relief of Indebtedness Act, 1934).

For the execution of a decree against a partnership firm or its partners, the partnership property can be attached. The Court executing a decree against an individual can only attach his undivided share as a partner in the partnership firm and other partners can be asked to remit the share of that individual against profits or other amounts that are due to him (Order XXI Rules 49 and 50).

Attachment of a negotiable instrument is to be made by actual seizure and the instrument should be brought to Court and held subject to further orders of the Court. This is because any transferee without notice can become a holder in due course and entitled to realize the amounts due under the instrument, and prohibitory orders without seizure of instrument will not bind a holder in due course (Order XXI Rule 51).

2.11.15. Attachment of Immovable Property

The mode of attaching immovable property is by issuing a prohibitory order to the judgment debtor and to the public generally. It shall require the judgment debtor to attend Court on a specified date to note the date for settling the terms of the proclamation of sale. When the property is land assessed to revenue, three copies of the prohibitory order are to be prepared. In the case of other immoveable property, only two copies are necessary. Strict compliance with the provisions of law is necessary to make the attachment valid. The warrant, together with requisite copies of the prohibitory order, are to be delivered to the *Nazir* who either himself or through a subordinate, is required to affix copies on the immoveable property and proclaim the order, in accordance with the directions in the warrant. An endorsement is to be made by the *Nazir* on the warrant and it is to be returned duly endorsed within the specified time to the Court. The manner in which, the day and hour at which such act was done is to be submitted in a separate return by the executing person deputed by the *Nazir*.

Where the property is land situated in a cantonment, copies of the order are to be forwarded also to the Cantonment Board and to the Military Estate Officer in whose area that cantonment is situated. A copy of the attachment order is first to be affixed on the property and then upon the Court house. The Reader of the Court is required to record a note on the warrant of attachment or on file, of the requisite formalities having been actually complied with. The Presiding Officer is required to carefully scrutinize it and initial it in token of its correctness. An attachment gets terminated automatically when the decree is satisfied, or the decree is set aside (Order XXI Rule 55). When an execution application is dismissed for any reason after attachment, the Court should to make an order regarding continuation or ceasing of the attachment. If no direction is given, the attachment ceases (Order XXI Rule 57).

2.11.16. Precepts

Upon the application of a decree holder, the Court passing a decree may issue a precept to another Court to attach the judgment debtor's property (Section 46). Precepts are valid for two months unless extended by the Court passing the decree or the decree is transferred the Court executing the precept.

2.11.17. Adjudication of Claims and Objections

Objections to attachment of property are frequently filed. Such objections are at times collusive and are to be scrutinized with care and disposed of promptly. Adjudication of such objections or claims should be confined to the points indicated in Order XXI 58 and 59. Adjudication of any claim or objection is appealable like a decree.

2.11.18. Sale of Attached Property

In Order XXI sales generally are dealt with in Rules 64 to 73, while Rules 74 to 81 deal with sale of moveable property and Rules 82 to 104 deal with sale of immoveable property.

Sale of property is subject to tax arrears and also encumbrances if any created prior to attachment, which are binding on the decree holder also. A portion of the property could be also sold to satisfy the decretal amount.

The Court may call upon the Sub Registrar of the Sub District where the property is situated, to search his registers and report, before the date fixed for settling the proclamation, as to what encumbrances, if any, the property is liable, in respect of immoveable property (other than revenue paying or revenue free land). This is subject to payment of necessary fees by the decree holder. On the day fixed for settlement of a proclamation of sale, after examining the parties present and after making such further enquiry as the Court may consider necessary, the proclamation of sale is to be settled specifying clearly the description of the property (boundaries, if necessary), the name of judgment debtor, extent of interest of the judgment debtor in the property so far as it has been ascertained by the Court, the details of the encumbrances, if any, to which the property is liable.

Every proclamation is to be made and published as per Order XXI Rule 54(2) It can also be published in the Official Gazette or in a local newspaper or in both and costs incurred shall be deemed to be costs of the sale. Except for property of the kind described in the proviso to Order XXI Rule 43, no sale of property shall without the consent in writing of the judgment debtor, take place until after the expiration of at least fifteen days in case of immovable property and of at least seven days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed (Order XXI Rule 68).

Where a notice under Order XXI Rule 22 is served on the judgment debtor and he does not contest it, or contests it but does not raise certain pleas, he cannot raise any further pleas or questions in regard to the execution up to that stage in subsequent stages. Objections raised with regard to steps prior thereto can be ignored provided there is proper service of notice. If there is no service of notice or fraud in service of notice is pleaded, then the principles of *res judicata* cannot apply and Courts have to go into the question of fraud, and if it is held that there was a fraud committed, then it will have to go into further questions; but if it holds that there was no fraud, then further questions relating to that stage cannot be gone into.

At the stage of Order XXI Rule 66, an opportunity is again given to a judgment debtor to raise objections with regard to the events up to service of notice. At that stage, any irregularity or illegality of the attachment effected can be questioned. If no objections are raised or objections are raised but over-ruled, then those objections or any other objections which ought to have been raised but are not raised at that stage also cannot be raised in a petition to set aside a sale. Objections in regard to the steps taken thereafter alone can be raised at the stage of Order XXI Rule 90.

There is a need to issue a proclamation even in the case of sale of movable properties. The period between the date of proclamation and sale should be clear seven days. As far as immovable property is concerned, usually the property is sold at the place where it is situated and not at the Court. On the other hand, movable property is usually sold at the Court premises. In regard to movable properties attached and brought to Court, a day and place of sale has to be fixed by the Court. The normal practice is for an *Amin* calling the

bids and the Court ultimately makes a final order either accepting the bid and knocking down the sale or not accepting the bid in case the bids are not satisfactory but adjourning the sale for continuation or stopping the sale itself.

When a sale is knocked down, in the case of an immovable property 1/4th of the sale proceeds have to be deposited immediately, and 3/4th have to be deposited before the Court closes on the 15th day from the date of sale (Order XXI Rules 84 and 85). If the 1/4th amount is not deposited immediately, then the sale has to be cancelled and a fresh sale conducted forthwith at the risk of the auction purchaser, and whatever the loss sustained, it can be recovered from the auction purchaser who has bid at the auction but failed to pay the amount (Order XXI Rule 84).

A sale can be adjourned when the judgment debtor files a sale adjournment petition after giving notice to the decree holder or his advocate if they are present, and if they cannot be reached, the Court can pass orders after hearing the judgment debtor (Order XXI Rule 69).

With the consent of the judgment debtor, the sale can be adjourned for any length of time without a fresh proclamation, but without his consent it can be adjourned only for a period of not more than 30 days.

Order XXI Rule 68 of the CrPC provides for the minimum period that has to elapse between the time of proclamation and the time of sale. Originally it was 30 days in the case of immovable property but now it is reduced to 15 days and in regard to movable property, the period of 15 days is reduced to 7 days. But in Rule 69, which deals with the adjournment of a sale, it is stated that where a sale is adjourned under sub-rule (1) for a longer period than 30 days, a fresh proclamation under Rule 67 shall be made unless the judgment debtor consents to waive it.

The period of 30 days in Rule 69 is not amended and it continues to be the same, whereas in Rule 68 the period is reduced to 15 days. So the right of the Court to adjourn without a fresh proclamation is still 30 days, and is not reduced to 15 days. If an adjournment is to be made beyond 30 days, then the judgment debtor has to waive fresh proclamation and if he does not waive it, then a fresh proclamation has to be made.

As far as movable property is concerned, the sale consideration has to be deposited fully when the bid is knocked down as per Order XXI Rule 77. There is no question of paying 25% and the balance 75% within 15 days in the case of movable properties.

Special provisions are made for sale of agricultural produce, growing crops, negotiable instruments and shares in Corporations in Order XXI as per Rules 74, 75 and 76.

A sale of immovable property is to be confirmed as per Order XXI Rule 92 when no application is made under Order XXI Rules 89, 90 or 91 or if made, is disallowed. Previously when a sale was knocked down, then the date for confirmation was fixed after 30 days, as the period of limitation for filing petitions under Order XXI Rules 89, 90 or 91 was 30 days at that time. But now that the period of limitation is increased to 60 days from the date of sale, it is necessary that the confirmation date should be beyond 60 days from the date of sale.

On that date, it is the duty of the Court clerk to put up a note saying whether there is any application filed under Order XXI Rules 89, 90 or 91. If there is no pendency of any of such proceedings, and if the note also indicates that the sale consideration is deposited within 15 days then the sale has to be confirmed. If there are any such petitions pending, then the confirmation has to be postponed till the disposal of those applications.

Issue of sale certificate is provided under Order XXI Rule 94. After the confirmation of sale, a sale certificate is engrossed on general stamps and is delivered to the auction purchaser and thereafter he can seek delivery of possession as per Order XXI Rule 95 or 96 depending upon whether he is entitled to physical possession or symbolic possession. One year is the period of limitation from the date of confirmation for such an application for delivery of possession, and if the auction purchaser fails to apply for delivery within one year, then he has no redressal in execution, as Section 5 of the Limitation Act is not applicable to such applications and the only remedy is to file a suit on the basis of his title and recover possession.

2.11.19. Resistance to Delivery of Possession to Decree Holder or Purchaser

Any objector can make an application in resistance to delivery of possession to a decree holder or purchaser of the property sold in execution. Any person other than the judgment debtor dispossessed of immovable property in execution can move an application to the Court. The Court has to adjudicate upon such application (Order XXI Rule 97 and Rule 99). All questions (including questions relating to right, title or interest in the property) arising between the parties to an application under Rule 97 or Rule 99, and relevant to the adjudication of the application, are to be determined by the Court dealing with the application, and not by a separate suit. For this purpose, the Court has jurisdiction to decide such questions (Order XXI Rule 101). The Court has to pass orders upon determination of the questions referred to in Order XXI Rule 98 to 101.

Nothing in Order XXI Rule 98 and 100 is to apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person (Order XXI Rule 102). Orders made under Rules 98 and 100 of Order XXI shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree (Order XXI Rule 103).

Every order made under Rule 101 or Rule 103 is subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under Rule 101 or Rule 103 is made has sought to establish a right which he claims present possession of the property (Order XXI Rule 104). Order XXI Rule 105 provides for the procedure of hearing an application of the objector. Order XXI Rule 106 embodies the procedure for the setting aside orders passed *ex parte* etc.

2.11.20. Receivers

Where it appears to the Court to be just and convenient, it may by order appoint a receiver to any property, even after a decree is passed. The Court can also remove any person from possession or custody of the property and it can be committed to the possession, custody or management of the receiver. Powers that can be conferred on a receiver are embodied in Order XL Rule 1, while Order XL Rule 3 lays down the duties of a receiver. The failure of a receiver to submit accounts or for making payments or occasioning losses to the property by wilful default or gross negligence may call for the Court to take action, including attachment of the receiver's property, consequent sale of it and application of proceeds towards making good any amount found to be due from him or any loss occasioned by him (Order XL Rule 4). In some cases, the Collector may be appointed as a receiver (Order XL Rule 5). The remuneration to be paid for the services of a receiver is to be fixed by the Court (Order XL Rule 2).

In regard to execution and realization of the fruits of a decree, the Supreme Court has observed those litigants' woes start with the commencement of execution to realize a decree. Efforts required to obtain a decree are often much less than the efforts required for realizing a decree. Execution proceedings are more weighted in favour of a judgment debtor than in favour of a decree holder and therefore, the difficulty.

2.12. APPEAL

An appeal may be from an original decree or an appellate decree.

2.12.1. Appeal from an Original Decree

An appeal normally lies to the next higher Court to which such decree is appealable. An *ex parte* decree is no exception. However, no appeal lies from a consent decree. If an aggrieved party fails to appeal from a preliminary decree, it stands precluded from disputing its correctness in the course of an appeal from the final decree.

2.12.2. Rules and Orders

The form and contents of a memorandum of appeal are prescribed in Order XLI Rule 1. The nature of grounds that can be urged by an appellant is provided in Rule 2. Rule 4 provides that one of several plaintiffs or defendants may obtain the reversal of the whole decree on a common ground.

2.12.3. Stay of Proceedings and Execution

The filing of an appeal does not operate as a stay of proceedings or decree. However, a stay can be granted on the grounds given in Order XLI Rule 5(3) and upon conditions given in Rule 6. On the same grounds and conditions, an order made in the execution of a decree may be stayed under Rule 8 if that order has been appealed from.

2.12.4. Procedure

All appeals shall be registered in the Register of Appeals. The appellant may be asked to furnish security for costs and it is mandatory if the appellant is a foreign national not having any immovable property in India. If security is not furnished, in spite of order, the appeal may be rejected (Order XLI Rule 9 & 10). An appeal may be dismissed for non-prosecution also (Order XLI Rule 11(2)). Such order should be intimated to the lower Court. Rule 11(a) mandates that efforts be made to dispose civil appeals within 60 days. If the appeal is admitted, notice be issued to the respondents and the Court below calling for the trial court record.

The appellant has right to begin the arguments. The Court may dismiss the appeal even before hearing the respondent. If it does not, then it can hear the respondent. In such a case, right of reply is given to the appellant. It should be noted that for hearing appeals, there is no provision to give an opportunity to respondent to file a reply. After admission of the appeal, the same may be dismissed in default. On the date fixed, if the respondent is absent, *ex parte* orders can be passed.

Re-admission of appeal is provided after showing sufficient cause for such default. (Order XLI Rule 19). Likewise, respondent may pray for re-hearing, if he is *ex parte*. (Order XLI Rule 20).

2.12.5. Role of Respondent

A respondent in an appeal may support the decree or he may ask for a finding on any issue to be decided or he may file cross-objections. Cross-objections should be filed within 30 days. Cross-objections should be in the form of a memorandum of appeal (Order XLI Rule 22). After hearing the appellant, the Court may set-aside the Judgment and decree, give new findings on issues, remand the case or may dismiss the appeal on merits.

2.12.6. Reception of Evidence in Appellate Court

There is no right vested in any party to adduce evidence. But such evidence may be allowed, either oral or testamentary only if the trial Court had refused or the party was prevented from adducing the same despite due diligence (Order XLI Rule 27). This is called as additional evidence. The Appellate Court may receive or it may direct the subordinate Court to take such evidence on record on specific points (Order XLI Rule 28,29).

2.12.7. Judgment

Judgment may be pronounced on the conclusion of hearing, on the same day or on some future day of which notice shall be given to the parties or their pleaders. The Judgment shall be in writing and shall state:-

1. The points for determination.
2. The decision thereon.
3. The reasons for the decision.
4. Whether the decree appealed is reversed or varied, the relief to which an appellant is entitled.

At the time of pronouncement, the Judgment shall be signed and dated by the Judge.

2.12.8. Power of the Appellate Court

While determining an appeal, the Court has powers to pass a decree in terms of the Judgment against all the respondents. But it can not pass an order for costs under Section 35 –A, if the trial court had not granted it (Order XLI Rule 33).

2.12.9. Judgment Must Address all Grounds

The appellate Court must address every ground set out in the appeal. Sometimes, a counsel may give up some of the grounds; in such cases it must be recorded in the Judgment specifically which grounds in the appeal have not been pressed. If this is not done, complications may arise in a higher Court.

2.12.10. Decree in Appeal

Decree of the Appellate Court should contain the following details:

1. The date of Judgment in appeal.
2. Appeal Number.
3. Description of parties to the appeal.
4. The adjudication made on specific points, the relief granted.

5. The amount of costs, the proportion and liability thereof.
6. The name, date and signature of the Judge.

A copy of the decree should also be sent to the subordinate Court.

2.12.11. Appeals from Orders

Order XLIII Rule 1 deals with Appeals from Orders. An appeal shall lie from the following orders under the provisions of Section 104, namely (either/or):

1. An order under returning a plaint to be presented to the proper Court;
2. An order rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
3. An order rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;
4. An order setting aside or refusing to set aside a sale;
5. An order refusing to set aside the abatement or dismissal of a suit;
6. An order rejecting an application made under Order XXI sub-Rule 106 (1);
7. An order under Order XXII Rule 10 giving or refusing to give leave;
8. An order rejecting an application for permission to sue as pauper;
9. Orders in interpleader suits;
10. An order under Order XXXVIII Rule 2,3 or 6;
11. An order under Order XXXIX Rule 1,2,2A,4 or 10;
12. An order under Order XL Rule 1 or 4;
13. An order of refusal to re-admit or re-hear an appeal;
14. An order remanding a case, where an appeal would lie from a decree of an appellate Court;
15. An order granting an application for review.

The provisions of Order XLI apply, so far as may be, to appeals from orders. If a suit is still pending, notice to the respondent or his advocate is necessary as provided in Rule 3.

2.13. MISCELLANEOUS

2.13.1. Death of Parties

Order XXII Rule 1 provides that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. In such a case, the legal representatives of the deceased have to be brought on record as parties and then the trial of the suit will proceed. If there is more than one plaintiff and one of them dies, the right to sue does not survive solely in the surviving plaintiff(s); the legal representative of the deceased plaintiff have to be made a party before proceeding with the suit.

If on the death of one or more defendants the right to sue does not survive against the surviving defendant(s) or the sole defendant or sole surviving defendant dies and the right to sue survives, the Court on application made in that behalf shall bring the legal representatives of the deceased defendant on record and proceed with the suit. If such legal representatives are not brought on record within the time prescribed by law and no intimation is given to the Court, notwithstanding the death of such defendant(s), the Court may proceed with the suit and pronounce order or Judgment, which shall have the same force and effect as if it had been pronounced before the death took place.

In case of a dispute as to whether any person is or is not a legal representative of the deceased plaintiff or deceased defendant, the Court will have to determine this question as a question of fact. A death occurring between the conclusion of a hearing and the pronouncement of Judgment will have no effect on the decision in the case.

2.13.2. Marriage of a Female Party

Marriage of a female plaintiff or defendant shall have no effect on her liability (Order XXII Rule 7(1)). However, if her husband is liable by law for the debt of his wife, the decree may be executed against him with the permission of the Court and, likewise, if the decree be in her favour the husband may be permitted by the Court to execute the decree on her behalf if the husband is by law entitled to the subject-matter of the decree (Rule 7(2)).

2.13.3. Plaintiff's Insolvency

The insolvency of a plaintiff in any suit being maintained by his assignee or receiver for the benefit of his creditors will not cause the suit to abate unless such assignee or receiver declines to continue the suit. The procedure to be adopted where the assignee fails to continue the suit or give security as provided in Order XXII Rule 8(1) is set out in Rule 8(2). If a suit is dismissed, a fresh suit cannot be brought on the same cause of action (Rule 9(1)). However, a legal representative of a deceased party or the assignee or the receiver may under Rule 9(2), apply for getting the order or Judgment in the case set aside.

2.13.4. Assignment, etc Before Final Order in Suit

The procedure in case of assignment, creation or devolution of any interest during the pendency of the suit is prescribed in Rule 10. This provision is applicable with necessary modification to appeals but not to the proceedings in execution.

2.13.5. Withdrawal and Adjustment of Suit

After instituting a suit the plaintiff may be permitted on suitable terms to withdraw his suit or abandon part of his claim as against all or any defendant, if the suit is bound to fail by reason of some formal defect. The Court may also permit the withdrawal if there are other sufficient grounds to allow the plaintiff to institute a fresh suit with the same claim or a part thereof. In either case permission may be granted to the plaintiff to institute a fresh suit. If a suit is withdrawn without permission of the Court, the plaintiff is not only liable to pay costs but will also be precluded from instituting a fresh suit. In such a case, the law of limitation will apply to the second suit as if the first suit has not been instituted (Order XXIII Rule 1).

2.13.6. Compromise

If the parties to a suit arrive at a lawful compromise, the Court shall record the compromise, agreement or satisfaction, and pass a decree in accordance therewith to the execution of a decree or order (Order XXIII).

2.13.7. Security for Costs

If the plaintiff(s) are residing outside India and they do not possess any immovable property in India, except the property in dispute, the Court shall ask him/them to furnish security for the costs incurred or likely to be incurred by any defendant. In case of default, the Court may dismiss the suit unless it is withdrawn sooner with the permission of the Court. The dismissal may, however be set aside later but after hearing the other party.

2.13.8. Interpleader Suit

Interpleader suits can be filed by a person in possession of any property or sum of money who claims no interest in the same but there are one, two or more claimants, so as to determine the rightful claimant, he can approach the Court. The procedure in this regard has been provided in Order XXXI of the CPC.

2.13.9. Special Case

If there is a difference of opinion between the two litigants on a question of fact or law, they may agree to refer such question to a Court having jurisdiction in the matter for its opinion. Such an agreement when filed in a Court is registered as a suit. It is then heard as if instituted in the ordinary manner. The Court may then pronounce Judgment after complying with the requirement of Order XXXVI. When Judgment is pronounced, a decree shall follow.

2.13.10. Arrest and Attachment Before Judgment

If it is brought to the notice of the Court that the defendant in a suit is likely to avoid the process of the Court or put the property in dispute beyond the reach of the Court, the Court may, if so satisfied, arrest the defendant and attach the property in terms of Order XXVIII Rules 1 to 13. Such attachment, however, will not affect the rights of a stranger to the suit.

3. PART III - CRIMINAL

Part III of this Handbook deals with the working of Criminal Courts in general with a brief introduction of various Criminal Courts in Chapter 3.1 TRIAL COURTS. Investigation, which is the origin of a criminal case, duties of investigating officers and powers of a Court during investigation can be gathered in Chapter 3.2 INVESTIGATION.

Chapter 3.3 ARREST AND APPEARANCE deals with the power, mode and manner of dealing with offenders. It further describes the role of the Court when an offender is arrested and control of investigation up to arrest.

The important part after arrest, namely, grant or denial of bail, the procedure and power and limitations of the Court is the subject matter of Chapter 3.4 BAIL. The following Chapter is the crystallisation of the offence, which is called a charge and what is to be made an accusation is discussed in Chapter 3.5 THE CHARGE.

Since the Cr. P.C. provides for different procedures for trial of offences, Chapter 3.6 THE TRIAL gives an insight to the legalities involved. It is followed by another chapter, namely, the recording of evidence to ascertain the guilt or otherwise of an accused and the specific mandate of law for taking evidence could be looked in Chapter 3.7 EVIDENCE.

Rules and guidelines governing decision making, the necessary procedure to be followed in handing down the formal opinion of a Court after closure of the entire case is explained in Chapter 3.8 THE DECISION.

After a Court gives its findings, factors that need to be considered while awarding punishment are discussed in Chapter 3.9 SENTENCING PROCEDURE. Various forms of sentences allowed under law is the subject of Chapter 3.10 TYPES OF SENTENCES.

Powers of the Court to make ancillary orders can be found in Chapter 3.11 ANCILLARY ORDERS. What succeeds is Chapter 3.12 MISCELLANEOUS PROVISIONS. A Chapter dealing with prevention of offences and how the CrPC is

envisaged for the purpose of empowering such officers is dealt with in Chapter 3.13 PREVENTION OF OFFENCES.

Powers of Sessions Courts in the matters of granting bail, pre-arrest protection, powers in appeals, and revisionary powers are specified in Chapter 3.14 SESSIONS/ADDITIONAL SESSIONS JUDGES.

The special Court to deal with delinquent juvenile and their powers are discussed in Chapter 3.15 JUVENILES.

Abbreviations:

1. CrPC: Code of Criminal Procedure
2. IPC: Indian Penal Code
3. Unless and until specifically mentioned all Sections are of the CrPC
4. In Chapter 3.15 all references to Sections are to Juvenile Justice (Care and Protection of Children) Act.

3.1. TRIAL COURTS

3.1.1. Criminal Jurisdiction

At present Delhi has only one Sessions Division, headed by the District and Sessions Judge. He is assisted by a number of Additional Sessions Judges from Delhi Higher Judicial Service (DHJS). He allocates cases to the Additional Sessions Judges.

Metropolitan Magistrates are appointed from amongst the members of Delhi Judicial Service. Chief Metropolitan Magistrate at District Courts, Tis Hazari and Additional Chief Metropolitan Magistrates at the other two Court Complexes allocate cases according to the territorial boundaries or according to the police stations depending upon the workload. The post of Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate is encadered to DHJS.

3.1.2. Powers of Magistrates

Offences under the Indian Penal Code, which are triable by Magistrates are set out in the sixth column of the First Schedule to the CrPC. Generally offences, where imprisonment up to three years and fine up to Rs.5,000/-, are triable by Metropolitan Magistrates. The Magistrates should look into the powers as provided under Section 29 of the CrPC.

3.1.3. Sources of Power

It is essential that all relevant Acts are available to the Presiding Officer. In addition to these primary sources, judicial officers should seek to ensure that they are kept informed of decisions of their superior courts. Specifically, they are encouraged to seek out and refer to the Rules and Orders of the High Court, which are published from time to time setting out instructions to criminal and civil courts.

3.1.4. Offences Affecting Administration of Justice

Procedure in cases affecting the administration of justice is dealt with by Sections 340 to S.352 CrPC. Caution is advised when effectively dealing with a class of offences in substance amounting to contempt. While dealing with such offences, the object must be to promote justice rather than to retaliate.

3.1.5. Adversarial System

The system under which the Courts in India function is adversarial. This system implies, so far as the criminal trials are concerned, that the Court's function is only to decide whether the person accused of an offence is guilty or not. If the Court is satisfied that the offence in question has been committed but the person accused before it is not the offender or there is a reasonable doubt about his involvement in the commission of the offence, it is not for the Court to find out who the offender may be. That is the duty of the police or that of complainant as the case may be.

Two advocates will assist the Court normally, one representing the prosecution and the other representing the accused. If an accused/under trial is unable to engage Counsel, the Court has to provide him a Counsel at State expense either from Legal Aid or appointing an advocate as *amicus curiae*. Sometimes, the complainant may also engage a counsel to represent him in a police case. The counsel are there to assist the prosecution with the permission of the Court, on the basis of their respective points of view. The Court should not attempt to make up the deficiencies of one side or the other. However, the Court may call for a document or a witness, if considered necessary for promoting the cause of justice.

3.1.6. Role of Advocates

Although the counsel is engaged by his client to present his case, he should not forget that he is also an officer of the Court. Counsel's duty is to present his client's case in the best possible light but remain within the framework of law and standards of professional conduct and etiquette. This means that he should render full assistance to the Court in the conduct of the case in which he is appearing. Counsel should show the Court and others respect and courtesy. Even in cross-examination where they are seeking to discredit a witness they should not bully them or be abusive.

3.1.7. Prosecuting Counsel

Counsel for the prosecution should place the case impartially before the Court. Whilst it is their duty to prosecute, not defend the accused they are also under a duty to assist the Court in arriving at a decision, which is consistent with truth and justice. This means all relevant facts should be placed before the Court. A prosecutor should not withhold a witness's name or any other evidence from the Court that comes to his notice even if it is detrimental to his case.

3.1.8. Individual Case Management

Management of the cases is the responsibility of the Presiding Officer. The Presiding Officer should be conscious at all times of the number of cases in his Court and the stage at which each case is. He should maintain the Court diary himself with details of the cases for each day and he must consult this before fixing any case to ensure that the case will proceed. If the accused is in custody, it is the Court's responsibility to ensure that he is not incarcerated unnecessarily. Even if on bail, the Court should remind itself that having a criminal case pending is an ordeal which should be resolved speedily.

3.1.9. Arrangement of the Cause List

It might be prudent of a Magistrate to ensure, as far as possible, that his list of cases is arranged in a manner that causes the least inconvenience to the parties. For example, the cases in which process is to be served on one party or the other may be taken up first and the cases in which evidence is to be recorded taken last. Where hearings involve production of the accused from jail or where witnesses are required to attend the case may taken up a little later in the day. It is always wise to have a routine to be followed. Each Presiding Officer should fix a schedule for his court work showing exactly what time is allocated for different types of cases or applications. This kind of schedule assists all Court users but it is important that the schedule is circulated and known, particularly by the advocates.

3.1.10. Overview of a Criminal Case

Where the liberty of a citizen is at stake, the primary duty of the Court must be to ensure that the case is processed as expeditiously as is practicable. When information about the commission of an offence is received, the police commence investigation. If an arrest is made, the question of a remand or bail will arise. If a remand is to be applied for, the Court must be informed and a decision of police custody must be addressed. When the investigation is complete, the Court will inspect the challan and if satisfied there is sufficient evidence to commence a trial the case will proceed. The accused is brought before the Court and the charge(s) framed. A plea is taken and if not guilty, the trial will proceed.

Magistrates must ensure that only those cases where there is sufficient evidence to proceed are taken forward. At any stage, where the Court is satisfied that no sufficient evidence exists the Court must acquit the accused. The Courts can save much time and effort by weeding out weak cases at the earliest stage.

3.2. INVESTIGATION

3.2.1. Generally

As per Section 2(h), investigation has a very wide connotation and is not limited to police investigation. It includes collection of evidence by a police officer or any other person (even a person who is not a police officer) authorised by a Magistrate to carry out an investigation. Some special statutes also confer the power of investigation on specified persons.

Investigation of an offence generally consists of:

1. Proceeding to the spot;
2. Ascertaining the facts and circumstances of a case;
3. Discovery and arrest of a suspected offender;
4. Collection of evidence relating to the commission of an offence, which may consist of:
    i. Examination of various persons (including an accused) and recording their statement, if the officer thinks fit,
    ii. Search of places or seizure of things considered necessary for the investigation or to be produced at the trial; and
5. Formation of opinion as to whether, on the basis of material collected, there is a case to place the accused before a Magistrate for trial, and if so, taking necessary steps for filing a charge-sheet under Section 173.

3.2.2. Power of the Police to Investigate

The public is duty bound to give information to the police about the commission of an offence. An investigating officer can require the attendance of persons acquainted with the facts and circumstances of a case under investigation (Section 160). He can examine witnesses and record their statements (Section 161). He has power to arrest, search and seize, but these powers are subject to reasonable restrictions and controls.

The CrPC prescribes a procedure for recording statements and confessions made during investigations. A woman or a male below the age of 15 years cannot be called to the police station.

A lawyer may remain present at the time of interrogation but he cannot interfere or create obstruction in the investigation. A statement to the police is not required to be signed and can be used only for contradicting a prosecution witness as indicated in Section 145 of the Evidence Act and for no other purpose.

3.2.3. Distinction Between Cognizable and Non-cognizable Offences

Police officers have the power and duty to investigate all cognizable offences, but they are enjoined not to investigate non-cognizable offences without an order of a competent Magistrate (Section 155(2)).

A Magistrate under Section 190 may order an investigation and direct the police to register a case and investigate it. When an order for investigation under Section 156 (3) is made, a proper direction to the police would be to register a case at the police station treating the complaint as the First Incident Report (FIR) and investigation into the same.

A Magistrate is not bound to accept the conclusions of a police report. A Magistrate can direct an investigation to be made by a person other than a police officer (Section 202(1)) and such a person shall have for that investigation, all the powers conferred by the CrPC on an officer-in-charge of a police station except the power to arrest without a warrant (Section 202(3)).

An investigation has to be carried out within the limits of the law, without causing any harassment to the accused and to the witnesses and it has to be completed without unnecessary or undue delay.

An investigation has to be speedy and just. When an offence is disclosed, an investigation into it must necessarily follow in the interests of justice and the Court will not normally interfere with an investigation. If, however, the materials do not disclose an offence, an investigation cannot be permitted, as in the absence of any offence, unnecessary harassment is caused to a party whose liberty and property may be put in

jeopardy. In a complaint, when a thorough investigation by the police is required, it can be referred by a Magistrate to the police for investigation (Section 156(3)).

3.2.4. First Information Report (FIR)

Any person can give information to the police relating to the commission of a cognizable offence and Section 154 provides for the manner in which it is to be recorded. A copy of the information has to be given to the informant. An FIR sets the criminal law into motion.

In case a police officer in charge refuses to record an FIR, there is a remedy under Section 154(3) to send by post the substance of information to the Superintendent of Police. An FIR is not substantive evidence but it can be used to corroborate an informant or to contradict him, if he is called as a witness to a trial. Even telephonic information to the police can be treated as an FIR. An FIR is not an encyclopaedia of the prosecution case

3.2.5. Role of Police in Non-Cognizable Cases

In case of a non-cognizable offence, information given to the police shall be entered in a book prescribed for that purpose and the police will refer the information to a Magistrate (Section 155(1)). The Magistrate is required to consider the totality of circumstances and decide whether it would be just and proper to ask the police to investigate a non-cognizable offence. When a Magistrate orders an investigation, a police officer can exercise the same powers as in the case of a cognizable offence.

3.2.6. Control of Delay in Investigation

It is trite law that an accused has to be produced before a Magistrate within 24 hours.

As per Section 167 (2) a period of 90 days (in cases punishable with imprisonment of 10 years or more) and 60 days (in cases punishable with imprisonment of less than 10 years) respectively are provided to the police for submitting a report. If the final report is not filed within the aforesaid period and the accused is in custody, he shall be released on bail, if he is prepared to and does furnish bail. Furthermore, an accused cannot remain in police custody beyond a total period of 15 days under any circumstances irrespective of

the gravity or seriousness of the offence. Bail granted under Section 167 (2) proviso (a) could be cancelled if the investigation reveals a serious offence and a charge-sheet is filed.

As per Section 173 (1) an investigation has to be completed without unnecessary delay. If a police report recommends discharge of an accused and the complainant objects, the Court has to give reasons. After the acceptance of a final report submitted under Section 173 (2) and once the trial has begun, a Magistrate cannot direct further investigation. A Magistrate cannot order further investigation after taking cognizance of an offence on the basis of a police report and after appearance of the accused.

3.2.7. Daily Diary

Section 172 (1) enjoins upon every police officer making an investigation to enter his proceedings in a Diary to show his day-to-day investigation. When an accused is produced before a Magistrate during an inquiry or a trial, the investigating officer should produce the case file having the complete daily diary. He has to specify the time during which he has investigated the case, the places visited by him as well as the statement of circumstances ascertained through investigation. A Court can use such diaries to aid it in an enquiry or trial. An accused is not entitled to see such diaries unless the police officer uses them for refreshing his memory or the Court uses them to contradict a police officer (Section 172 (3)). The entries in a police diary are required to be made with promptness mentioning all significant facts in a chronological order and with complete objectivity. Public interest demands that entries in the daily diaries are not made available to an accused for it might endanger the safety of an informant who has assisted the investigating agency. Failure on the part of an investigating officer to comply with the provisions of Section 172 is a serious lapse, which diminishes the value and credibility of an investigation.

3.2.8. Search

Under Section 165 an officer-in-charge of a police station or a police officer making an investigation is empowered to search any place within the limits of such station if he has reasonable grounds for believing that anything necessary for the purpose of investigation may be found. The procedure regarding general search is contained in Section 100. The processes to compel production of things are provided in the Chapter 7 of the CrPC.

A search warrant may be issued under Section 93, if there are reasonable grounds to believe that a person to whom summons or an order under Section 91 or a requisition under Section 92 is issued will not produce such document or thing as required or where such documents or things are not known to the Court to be in the possession of any person or if it appears that the purpose of any enquiry, trial or other proceeding under the CrPC would be served by a general search or inspection.

The Court has to be satisfied that things to be searched are in respect of which an offence has been or is suspected to have been committed or if these things will be evidence as to the commission of any such offence or these things are intended to be used for committing any such offence. A Magistrate has to apply his mind and should give reasons for issuance of search warrants because a search is a coercive method involving invasion of the sanctity and privacy of a citizen's home or premises. Therefore, the power to issue a search warrant should be exercised with all due care and circumspection. However, non-compliance of Section 100 and Section 165 is only an irregularity.

3.2.9. Search of Persons Wrongly Confined

Section 97 specifically confers powers on Magistrates to issue search warrants for a person illegally confined.

When a person who is illegally confined is found, he should be produced before a Magistrate who may pass appropriate orders.

Whenever illegal detention of any person is alleged before a Magistrate, he may issue search warrants.

3.2.10. Restoration of Abducted Females

In case of abduction/unlawful detention of a woman or a minor girl, a Magistrate may pass an order for restoring her liberty or to restore the female child to the custody of her husband/parent/guardian (Section 98).

3.2.11. Power to Record Confessions

Section 162 virtually disallows the use of any confessional statement made to a police officer during an investigation. However, Section 164 provides a special provision for recording a confession by a competent Magistrate after ensuring that the confession is made voluntarily and out of free will and is not made under any pressure or influence. A person making a confession must be cautioned that he is free not to make a confession and if he chooses to do so, it may be used against him in a trial. The recording of a confession is a very responsible duty of a Magistrate and must be taken seriously.

If an enquiry reveals a ground for believing that some extraneous influence has worked on an accused, a Magistrate should give time to the accused for reflection before he is asked to make his statement. In a case where a Magistrate did not ask any question whatsoever to ascertain whether the accused was making a confession voluntarily, it was held that such a confession was in utter disregard of the statutory provisions of Section 164 (2). Confessions are not to be recorded on oath.

3.2.12. Confession – Not Sponsored by the Investigating Officer

In Dhrambir Singh Vs. State of Haryana 2001 Crl. L.J. 567, the Supreme Court cautioned against recording the confessional statements of any person, unless sponsored by the investigating agency.

3.3. ARREST AND APPEARANCE

Article 21 of our Constitution guarantees the fundamental right to life and personal liberty and makes it clear that these cannot be taken away except in accordance with procedure established by law. The CrPC lays down the procedure, which has to be followed before a person can be deprived of his personal liberty. The right to personal liberty as envisaged in Article 21 is not confined to freedom from physical restraint or freedom from confinement within the bounds of a prison but also includes all varieties of rights, which go to make up the personal liberty of a person in a civilised society.

Article 22(1) of the Constitution provides that no arrested person shall be detained in custody without being informed, as soon as may be, of the ground of such arrest. It further guarantees that an arrested person has a right to consult and be defended by a legal practitioner of his choice.

3.3.1. Arrest - Role of a Magistrate

Under Article 22(2) every person who is arrested without a warrant has to be produced before the nearest Magistrate within 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court. The police are also under a duty to report to a Magistrate about the arrest of any person. An arrested person cannot be detained in police custody beyond the said period without the authority of a Magistrate. These rights have also been incorporated in Section 56, 57 and 58 and are intended to work as checks and balances on the otherwise wide powers of the police to arrest a person in a cognizable offence.

Article 22 of the Constitution read with Section 50 obliges the police to inform an arrested person of the grounds of arrest and to release him on bail in case of a bailable offence as a matter of right if he is prepared to give a surety. In case of a non-bailable offence, an arrested person may take such steps as he may be advised and apply for grant of bail after being informed of the grounds of his arrest.

A Magistrate is required to apply his judicial mind to the legality of the arrest of an accused, the regularity of the procedure adopted and on all questions of bail or discharge and to prevent detention with a view to extract a confession or as a means of compelling a person to give information and to prevent police stations being used as a prison.

Section 53 provides for the examination of an accused by a medical practitioner on the request of a police officer so as to collect evidence wherever the police believe that such medical examination will afford evidence.

3.3.2. Legal Representation

Every person/accused of having committed an offence has a constitutional right to be defended by a pleader of his choice. The Supreme Court has held that the right to free legal aid at State expense to persons who are indigent is a fundamental right under Article 21 of the Constitution as a fair trial is one of the important elements of personal liberty. Therefore, the State is bound to provide a lawyer at its cost to an arrested person who cannot afford to defend himself by appointing a lawyer of his choice. A similar right is also envisaged under Section 303, which provides free legal aid to indigent persons at the stage of trial of a case. The Court is duty bound to provide an advocate at State expense to an undertrial, who is unable to engage a Counsel due to poverty.

3.3.3. Police Custody

If it appears to an investigating officer that an investigation cannot be completed within 24 hours he may seek remand of an accused, either in police custody or judicial custody. In all circumstances, a Magistrate should not grant police custody for more than 15 days for investigation of an offence.

Before ordering remand beyond 24 hours, a Magistrate must satisfy himself that the accusation is well founded. He must look into the entries in the case diary and also question the investigating officer as to whether police custody is necessary and be satisfied that police custody is not sought only to harass an accused. A Magistrate in appropriate cases may grant police custody even after the 24 hours of permissible custody.

It must be granted only in cases where it has not been possible to collect all the incriminating facts/materials relating to an offence, at the instance of the accused, which is important for substantiating the allegations. If a Magistrate is not satisfied that further police custody is necessary, an accused may be remanded to judicial custody from time to time except when he is ordered to be enlarged on bail.

Some helpful guidelines in respect of police custody are: -

1. There must be an important or specific purpose connected with the completion of an inquiry in order to justify a remand to policy custody. A general statement that an accused may be able to give further information is not acceptable;
2. The period should be as short as possible; and
3. The case must be of a type that normally requires time to complete an enquiry.

Section 25 of the Evidence Act make it clear that a confession made by inducement, threat or promise is irrelevant in criminal proceedings and is acceptable only to the extent if there is a recovery of some incriminating materials/facts pursuant thereto. A Magistrate, while remanding an accused to police custody must record reasons keeping in mind the life and liberty of an accused.

3.3.4. Judicial Custody

The Court as a protector of the rights of an arrested person must ensure that the personal liberty of an accused is curtailed only in accordance with procedure established by law. The Supreme Court has, in a number of cases, insisted that a trial must be conducted without delay and the right to a speedy trial has been held to be one of the basic rights of an accused person.

Section 309 provides for an expeditious trial as far as possible and in particular when the examination of witnesses has begun.

The following are some other safeguards provided in the interest of an arrested person:

1. No Magistrate shall remand an accused person to custody for a term exceeding 15 days at a time.
2. After a challan/charge sheet in a case is submitted to the Court, a Magistrate is required to commence the trial at the earliest.
3. Ordinarily, a Magistrate should conduct a day-to-day trial so that all the witnesses are examined without delay.
4. A trial has to be conducted in the presence of an accused as far as possible.
5. A Magistrate must ensure that an accused is not prejudiced by delay and there should be a fair trial, which must be completed within a reasonable time.

3.4. BAIL

Grant of bail, while restoring the liberty of a person and protecting him from unnecessary detention, is also intended to ensure the presence of an accused person at his trial. It has always to be kept in mind that an accused person is presumed innocent until proved guilty.

3.4.1. Bailable Offences

When a person is arrested, detained or brought before a Court in a case of a bailable offence, the Court has no option but to grant bail or discharge the accused on his personal bond. Section 436 requires that such a person shall be released on bail. The officer-in-charge of a police station is also empowered to grant bail in respect of a bailable offence.

3.4.2. Non-bailable Offences

When a person is accused of a non-bailable offence, the Court may release him on bail (Section 437). However, in case of an offence punishable with death or imprisonment for life, bail ought not to be granted if there exist reasonable grounds to believe that the accused is guilty of the offence.

In case where the accused is:

1. Below the age of sixteen years, or
2. A woman, or
3. Sick, infirm or aged, the Court may release him on bail. However, before granting bail, the prosecution must be given notice to raise objections, if any. (Section 437 (1) (ii)).

3.4.3. Further Inquiry

In case a further inquiry is necessary before it can be held that reasonable grounds exist for believing that an accused is guilty of a non-bailable offence, the accused has to be granted bail (Section 437(2)). In such a case, the reasons for doing so must be recorded in writing.

3.4.4. Pre-arrest Bail

A person apprehending arrest in a non-bailable offence, may apply for anticipatory bail to the High Court or a Sessions Court, which may grant such bail with or without conditions. The tendency of granting stay against arrest in application for anticipatory bail has been criticized, so the Judge may ensure that instead of staying arrest the applicant may be ordered to be released on executing proper bail bond in the event of arrest.

3.4.5. Bail After Arrest

In a case of a non-bailable offence, if the trial before a Magistrate is not concluded within 60 days from the first day fixed for evidence, the accused shall be released on bail if he is in custody. If the Magistrate decides to deny this right, he shall write a reasoned order (Section 437(6)).

3.4.6. Cash Security in Lieu of Bond

The Court may accept cash security deposit in lieu of execution of bail bonds (Section 445.).

3.4.7. Grounds for Refusing Bail

Generally, bail may be refused if the Court is satisfied that an accused will abscond. There are other grounds for denial of bail, viz;

1. An accused will commit a further offence whilst on bail.
2. An accused may interfere with, or win over witnesses or obstruct the course of justice by tampering with evidence.
3. An accused may be subject to physical attack by others or by himself.

3.4.8. Cancellation of Bail

The High Court or a Court of Sessions (Section 439 (2)), or any other Court, which has released an accused on bail in a non-bailable offence, may order his arrest and remand him to custody, whenever a change in circumstances appear, and there is apprehension that the accused may abscond, or he has breached the terms of his bail, or committed other offences, interfered with witnesses or the administration of justice, or there are further grounds for his remand (Section 437 (5)).

3.5. THE CHARGE

A fundamental principle of law is that an accused should know the exact nature of the charge brought against him. Before the prosecution evidence is recorded, a person must be formally charged, that is, informed of the offence alleged to have been committed by him. The Court must ensure that an accused has been provided with all the relevant documents relied by the prosecution viz. charge-sheet, etc. as provided in Section 207 before framing a charge. The charge has to be framed in accordance with the provisions of Section 211 to 224

When the charge-sheet, filed under Section 173(2), discloses commission of several offences, an accused must be charged for each offence separately.

The Trial Court must go through and have an over–all view of the case from the report under Section 173 and documents filed with it, thereby enabling it to discharge an accused, if necessary, in accordance with Section 227 or 239, as the case may be. The Trial Court must consider the evidence on record to form a presumptive opinion as to the existence of the facts constituting the offence alleged before framing the charge. If the charge is groundless or there are no sufficient grounds for proceeding against the accused, the case must be shut out at the very outset.

3.5.1. Roles of the Judge and the Counsel

Framing of a charge in criminal trial is not just a formality but also a fundamental requirement of law. Thus, the Trial Court has a responsibility to frame a charge with precision, giving all necessary particulars required by law. The charge framed against an accused defines the scope of the trial. The prosecutor and defence counsel are expected to assist the Court in framing the charge.

3.5.2. Language and Content

The charge must include the name of the offence, where it has a specific name, with particulars of the acts, which constitute the offence, and also the name of the person against whom the offence was committed. The purpose of framing a charge is that accused is not prejudiced or taken by surprise at the trial. Section 211 and Section 212

respectively provide what a charge shall contain and what particulars are required to be given. Sometimes nature of the offence is such that particulars required to be given as per Section 211 and Section 212 do not give sufficient notice of the offence with which the accused is charged. In such cases, the manner of commission of the offence must also be mentioned. The charge has to be written in the language of the Court.

3.5.3. Previous Conviction to Be Specified

If an accused has a previous conviction, which will make him liable for enhanced punishment or punishment of a different kind, the fact, date and place of the previous conviction must be set out in the charge. The accused should be asked if he admits it, and his reply should be recorded. However, if he denies the conviction, it must be proved according to the provisions of Section 298 after the accused has been convicted of the offence that he is charged with. If the conviction has been inadvertently omitted, it may be added at any time before passing the sentence. This is one of the exceptions to the general rule that previous convictions are only relevant after conviction. Magistrates must be careful not to allow this knowledge in any way to predetermine any finding of guilt in respect of the actual offence charged.

3.5.4. Joinder of Charges

As a general rule, for each offence there shall be a separate charge and each charge shall be tried separately except in the following cases:

1. When a person is accused of more offences than one of the same kind committed within a span of twelve months, he may be charged with and tried at one trial for, any number of them not exceeding three (Section 219).
2. If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person he may be charged with and tried at one trial for every such offence (Section 220 (1)).
3. If the alleged acts fall under two or more separate definitions of any law in force, the person accused of them may be charged with and tried at one trial for each of such offences (Section 220(3)).

4. If several acts of which one or more than one would only by itself be an offence, constitute when combined a different offence the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts (Section 220(4)).

Thus, in certain circumstances a person can be charged with and tried at one trial for different offences. Similarly, two or more persons may be charged with and tried together (Section 223).

3.5.5. Variance in Charge and Evidence

Where an accused is charged with one offence but the evidence adduced reveals that he is guilty of another offence under which he might have been charged, the accused may be convicted of the other offence subject to limitations detailed in Section 221. For example, if a person is charged with the offence of theft but in evidence it appears that he committed an offence of receiving stolen goods, he may be convicted of the said offence, though he was not charged with such offence.

3.5.6. Effect of Error

Though a charge must be accurate, clear and precise, any error or omission in the charge will not vitiate the trial or be considered material, unless by such error or omission, the accused is shown to have been misled or prejudiced in his defence and it has occasioned a failure of justice (Section 215 and 464).

Moreover, by making a suitable alteration or addition, any defect in the charge can be cured at any time before judgment is pronounced.

3.6. THE TRIAL

3.6.1. Introduction

The procedure to be followed in a trial differs according to the quantum of punishment provided and the Court where the trial has to take place. The following Chapters/Sections deal with trials:

(i) Section 204 to 224

Deals with pre-trial stage. Chapter XVI (Section 204 to Section 210) deals with procedure to be followed before framing the charge. This also empowers the Magistrate to dispose cases summarily in case of petty offences (Section 206) by granting exemption to an accused from appearance (Section 205). Chapter XVII (Section 211 to 224) deals generally with the aspect of charge.

(ii) Section 225 to Section 237

Prescribes the procedure of trial before the Court of Sessions. No Court inferior to the Court of Sessions can follow this procedure.

(iii) Section 238 to Section 250

Deals with trials before a Magistrate in case of warrant cases. Warrants cases are those cases where the punishment prescribed is more than two years. Warrant cases can arise from police reports and also on complaints directly filed in Court.

(iv) Section 251 to Section 265

Deals with the summary procedure to be followed while dealing with offences carrying a punishment up to two years only. No formal charge is to be framed. The accused is given a notice of the accusation against him.

3.6.2. Supply of Statements and Documents to an Accused

In all cases prosecuted by the police, copies of the police report, the FIR, statements of all witnesses recorded under Section 161 and Section 164 and the documents forwarded by an investigation officer, shall be supplied to an accused, free of cost without any delay

(Section 207). An exception to this exists where disclosure of a statement or part thereof, would be inexpedient in public interest.

3.6.3. Framing of a Charge

A case proceeds after a charge is framed. If it is not possible to proceed with the case immediately after framing the charge or altering a charge, the trial may commence at a subsequent date to be fixed by the Court. The trial may commence immediately if it does not prejudice the accused in his defence.

Any delay in conducting a trial should be scrupulously avoided. Therefore, the Court should ascertain from the prosecution whether any exhibits are to be produced, if so, check if they are available. In appropriate cases, a short adjournment at this stage may save much time later.

3.6.4. Non-appearance of Complainant

When a summons is issued upon a complaint and the offence is compoundable or is not a cognizable offence, if the complainant fails to appear on the day of hearing or any subsequent day following an adjournment, the Magistrate may discharge the accused (Section 249).

3.6.5. Dispensing with the Presence of Accused

The Court may dispense with the attendance of an accused in Court when a lawyer represents him. However, the Court should record reasons why an accused is incapable of being present. The Court may direct his attendance at any later stage of the proceedings (Section 205).

3.6.6. The Plea

The charge shall be read out and explained to an accused. He shall then be asked if he pleads guilty or claims to be tried (Section 240). The Court should satisfy itself that the accused understands the charge.

3.6.7. Mental Illness

Where a Magistrate believes that an accused is mentally ill and consequently incapable of making his defence, he should arrange for the accused to be examined. A medical officer designated by the State Government should carry out the examination. The Court should record the medical officer's report and opinion. If the Magistrate is satisfied that the illness is such that an accused is incapable of defending himself, he should postpone the case and record his finding. The Court may grant bail if it is satisfied that he will be taken proper care of and will not injure himself. If the Court is not so satisfied, then the accused may be detained in an appropriate place of safe custody. The Court must report what action has been taken to the State Government (Section 328 to Section 330).

If the medical illness of an accused is temporary, the accused may be brought back to Court at a later date when found to be fit. The trial may then proceed (Section 331 and 332).

3.6.8. Acquittal on Ground of Lunacy

Section 333 enables the Court to acquit a person if it comes to the conclusion that at the time of commission of offence, the said accused was incapable to know the consequences of offence. Such a person, though mentally cured later and brought before the Court, if such defence is taken, the Court is to find out what was his mental status at the time of commission of offence (Section 333 & 334.

If an accused is acquitted on the ground of lunacy, the Court must order him to be detained in a place of safe custody and report the action taken to the State Government. Section 335 to 339 set out the steps to be taken thereafter.

3.6.9. Guilty Plea

If an accused pleads guilty, the admission shall be recorded as nearly as possible in the words used by him. If the accused has pleaded to the charge as framed without any qualifications or reservation and shown no sufficient cause why he should not be convicted then the Court may proceed to record a conviction (Section 252).

Great caution is required and a plea of guilty can only be recorded when the accused person raises no defence at all. Situations have arisen where the plea may not be an honest one. For example, an accused person may be trying to shield someone else or may have some other reasons best known to him to admit his guilt. If there is the slightest doubt about the plea at any stage, the Court should call upon the prosecution to prove the case.

3.6.10. Not Guilty Plea

If the plea entered is not guilty, the trial shall proceed and the Court will hear the evidence of the prosecution and defence. If the accused makes no admission, admits the charge partially or has a defence to advance, for example, an alibi, grave and sudden provocation, etc., the Court should record the plea as not guilty. The defence may later bring out its case during the trial.

3.6.11. Presumption of Innocence

A person is presumed innocent unless and until he is proved guilty. This is a very important presumption, which is not diluted by the fact that an accused has a previous conviction. He may have been earlier convicted of several offences, but that does not mean that he is guilty in the case now before the Court. Therefore, this presumption should never be taken as an idle indulgence to the accused.

3.6.12. Persons Convicted/Acquitted May Not Be Tried For the Same Offence

The general principle is that a person convicted or acquitted of an offence is not liable to be tried again for the same offence or for a different offence based on the same facts. This is also called the rule of 'Double Jeopardy' and is preserved by Article 20(2) of the Constitution. One may read Section 300 and the illustrations following the section. This is a preliminary issue that should be considered at the first opportunity.

3.6.13. Standard of Proof

In a criminal case, the prosecution has to prove the charge against the accused beyond all reasonable doubt. That is the reason why the benefit of the doubt, which means a reasonable doubt, is given to an accused.

In a criminal case, it is the duty of the Court to review the entire evidence that has been produced by the prosecution and the defence. After examination of the whole evidence, if the Court is of the opinion that there is a reasonable possibility that the defence put forward by an accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt, not as a matter of grace, but as of right, because the prosecution has not proved its case beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt.

3.6.14. Burden of Proof

The burden to prove every element of the charge against an accused is entirely on the prosecution. However, if the accused takes a plea of alibi or self-defence, the burden of proving such a defence lies on him. Whilst the burden of proof shifts to the accused, the standard of proof is not as heavy as that of the prosecution. For example, in a case where the accused pleads self-defence, the accused does not have to prove that he acted in self-defence beyond reasonable doubt; he only needs to establish he so acted on the balance of probabilities. If he succeeds in showing to the Court that he was acting in self-defence, he is entitled to be acquitted. However, the prosecution may rebut his evidence and must then prove beyond reasonable doubt that he was not acting in self-defence.

3.6.15. Legal Aid

The CrPC prescribes a mandatory legal aid to be given at state expenses before the Court of Sessions where the accused has no means to engage a Counsel (Section 304). Now Legal Aid is considered as a fundamental right and non-extension of the same to the needy accused is viewed seriously. Hon'ble Apex Court is of the view that free legal assistance at state cost is a fundamental right of a person accused of an offence before

any Criminal Court provided he is unable to engage a Counsel due to poverty or indigence etc. (Hussainara Khatoon vs. Home Secretary, State of Bihar AIR 1979 SC 1369)

3.7. EVIDENCE

3.7.1. Prosecution Evidence

The prosecution evidence has to be presented by the prosecutor, which is subject to challenge by the defence. The relevance or otherwise of a piece of evidence, whether oral or documentary, has to be judged on the basis of the criteria laid down in Chapter II of Evidence Act. It is the duty of the prosecutor to set out the prosecution case clearly through the presentation of evidence. The most common form of evidence is testimony, i.e., oral evidence of witnesses given in court, on oath or on affirmation.

3.7.2. Examination-in-Chief

It is the burden of the prosecutor to disclose the case against the accused by examination-in-chief of the witnesses. The witness, in examination-in-chief, tells the Court his or her version of the facts. No leading questions should be put to the witness. No gaps should be allowed to be filled by the prosecutor by making suggestions, indications or prompting the witness. The witness should be led through his evidence by the prosecutor keeping the witness focused on relevant, admissible disclosures concerning the crime and circumstances of its commission. The prosecution evidence should lead logically to prove each element of the charge. The evidence given 'in-chief' is then subject to challenge by the defence by way of cross-examination (Section 137 Chapter 10- of Evidence Act.)

3.7.3. Cross Examination

Cross-examination is the valuable right of an accused whereby he may demolish the case of the prosecution. The defence may confront or ask leading questions. Any question concerning the identity, veracity or character of the witness is lawful, with reasonable grounds (Section 146 to 150 of Evidence Act). Scandalous indecent questions not related to the facts in issue and are un-necessary be not permitted. (Section 151 and 152 of Evidence Act).

3.7.4. Re-examination

After the cross-examination the prosecution has the right to re-examine the witness. This becomes very necessary to explain matters, which may have come out for the first time in cross examination, requiring explanation. It is confined therefore; to matters raised in the cross examination and fresh matters must not be raised. Again, leading questions are not permissible. Whenever new matter is introduced in re-examination with the permission of the Court, the adverse party may further cross examine only upon that.

3.7.5. Permission to Cross-examine Own Witness

The Court may permit a party to cross-examine his own witness and put questions generally allowed in cross-examination (Section 154 of Evidence Act).

3.7.6. Question By the Court

The Court may at any stage ask any questions to any witness or a party or own for production of a document or a thing and no party can object such exercise of power. The adverse party can only cross-examine with the permission of the Court.

3.7.7. Consideration of Evidence

When the Court comes to the point of making a decision in the case, no part of the examination-in-chief or the cross examination should be considered in isolation, the evidence as recorded has to be considered as a whole. In the course of recording evidence, the Court should distinguish examination-in-chief, cross-examination and re-examination. Further, the Court should note any matters concerning the demeanour of witnesses, if noteworthy and if it affects the weight or credibility, the Court attaches to the evidence adduced.

3.7.8. Court's Power to Summon and Examine Witnesses

Under Section 311, the Court has the power to summon any persons as a witness or examine any person already in attendance. Similarly, a Court has the power to recall and re-examine any such person. However, these powers have to be exercised only to promote the cause of justice. The parties have the right to cross-examine such a witness.

3.7.9. Relevance and Admissibility

The prosecution or defence should not be allowed to ask irrelevant questions. Further, admissibility of evidence depends upon whether its prejudicial effect out weighs its probative value. The Court has discretion to exclude such evidence. However, the Court can be in a difficult position to make an immediate decision as to its relevance or admissibility. It may well be that defence counsel starts a line of questioning which, may be "putting" the defence case to the witness in cross-examination or seeking to adduce evidence to attack a witnesses' credibility that cannot be done without setting out certain circumstances. In these situations, an objection will normally be raised by the other party, who will insist the Court make a ruling immediately. The reality is that this is not always possible.

A Judge or Magistrate is the sole decision maker in respect of facts and law. Any evidence necessary and properly called and admitted during the trial is in fact before the trial Judge for all purposes of the trial. It is the Judge's duty, so long as that evidence remains on the record, to give such weight to it on the question whether it may be relevant for just decision of the case.

If a leading question is put in examination-in-chief the mater can be dealt with immediately and the Court should get the question rephrased. If in cross-examination a party objects to a question as being irrelevant or inadmissible, the preferred course is to note it and dispose of it forthwith. If it is more complex, it should be noted and the decision can be deferred until an overall view of the case emerged. However, it will be important that the Court records and announces its decision in respect of that submission.

3.7.10. Hearsay

Hearsay evidence is based on what the person testifying has not seen or heard himself. It is not based on personal knowledge or observation. As a general rule, hearsay evidence is inadmissible. Hearsay evidence can never be admitted to prove any fact. The exceptions to this general rule of exclusion are:

1. Dying declarations
2. Declarations against interest, pecuniary or moral
3. Act or declaration about pedigree
4. Family reputation or tradition regarding pedigree
5. Common reputation
6. Part of *res gestate* (Latin: things done)
7. Entries in the course of business
8. Entries in official records
9. Commercial lists and the like
10. Treaties and
11. Testimony at a former trial

3.7.11. Acquittal at Any Stage

At any stage of trial, if the Magistrate thinks that there is no case for the accused to answer, the charge is groundless or there is no probability of the accused being convicted of any offence, then the Magistrate may, after hearing both the sides and recording his reasons, acquit the accused. The Court should consider whether the prosecution has established that there is a case to answer before asking the accused if he wishes to give evidence on oath or call evidence in support of his defence.

3.7.12. Power to Examine the Accused

At any stage of the inquiry/trial, without any previous warning to the accused, the Court may put questions to the accused. The purpose is to enable the accused to explaining circumstances in the evidence against him, the accused shall not be sworn, and therefore he may refuse to answer any of the questions and he cannot be prosecuted for that. However, the Court may draw such inference from such refusal or answers, as it thinks fit. The answers should be recorded. These may be taken into consideration in relation to the trial before the Court and put in as evidence for or against, in any other trial or inquiry in relation to another offence (Section 313.).

There must be no influence, promise, threat or inducement to the accused to disclose or withhold any matter. All the material factors and circumstances brought on record and appearing against the accused have to be specifically put to him, and answers be recorded in the words of the accused. Additionally, he has to be asked why the witnesses are making statements against him. Finally, whether he has anything further to say. His statement has to be certified by the Court. Suggested questions may include; “Why the case is against you?” “Why have the witnesses said against you?” “Do you wish to call anyone as a witness in your defence?”

3.7.13. Accused Giving Evidence on Oath

The accused is a competent witness and may give evidence on oath in his defence (Section 315.). The accused should be asked whether he wishes to give evidence on oath, and he should be warned of the implications. Those are that he may be cross-examined, and whilst he is under no obligation to answer any question which may incriminate him in respect of any other offence he has committed or this offence or is of bad character. He will lose this protection in three circumstances; similar fact evidence is admissible i.e. proof of other offences will show his guilt in respect of this offence, he has attacked the credit of a prosecution witness, or he has given evidence against a co-accused. In these circumstances, he must answer incriminating questions or if he refuses, the prosecution may call evidence to prove the substance of the questions put to him.

If he elects not to make a statement on oath, this fact shall not be held against him; no adverse inference should be drawn, as there is a constitutional right against self-incrimination.

3.7.14. Defence Evidence

The accused should be asked if he wants to produce evidence in his defence. The accused may lead evidence in support of his specific defence plea of alibi or self-defence, etc., or to contradict the prosecution evidence or merely to prove his good character. The defence evidence, including the testimony of the accused recorded on oath, is subject to cross-examination. When the evidence in defence has been closed, the stage is set for arguments.

3.7.15. Closing Submissions

Where the accused has led his evidence in defence, he has to present his submissions first to which the prosecutor has the right to reply. That will be the end of the submissions. However, if the defence has chosen not to adduce evidence at all, the prosecutor should open with his submissions followed by the defence counsel's right to reply and close the arguments (Section 314.).

At the stage of closing submissions, no fresh evidence can be brought on record. Counsel for prosecution and defence will seek to persuade the Court to accept their respective points of view on the basis of the evidence on record. It is important to remind oneself that these are submissions only.

3.7.16. Process to Compel Production of Documents

The duty of Magistrates in relation to the process of compelling the production of documents, are described in detail in Chapter 7. The provisions enable the Magistrates to compel not only the production of documents but also other movable property also concerned with the case before the Court.

3.7.17. Medical Expert

Provision is made for depositions of civil surgeons, other medical witnesses or other expert witnesses, taken and attested by a Magistrate in the presence of the accused or taken on commission, to be given in evidence in the absence of the witness. However, the Court may call for the attendance of such witness if it thinks fit.

3.7.18. Absconding Accused

If the accused is absconding, evidence may be taken by way of deposition from witnesses and used in evidence in the case subsequently when the absconder is arrested and the witness is not available for any good reason (Section 299.).

3.8. THE DECISION

While concluding the guilt or innocence of an accused, the Judge should not be swayed by the fanciful or sham demeanour of a clever witness. The evidence of such a witness should be meticulously analysed. The personal knowledge of a Judge based on extraneous influences should never creep into his or her decision.

A Judgment should be webbed in such a manner so that all relevant facts including the plea of defence are interwoven in it. The points to be determined should be transparent; the evidence should be analysed and appreciated precisely in the light of the points of determination. The relevant and admissible part of a deposition or testimony should form the basis of a decision. The Court should separate the grain from the chaff on a careful and scrupulous analysis of evidence. The whole transcript of the evidence should never be reproduced in the Judgment. A Judge should express his opinion in a temperate language, usually associated with and reflecting the impersonal dignity of judicial restraint. No disparaging or libellous remarks should be made against any person who had no opportunity of defending himself and who had not appeared as a witness.

The opinion of a witness other than an expert witness cannot be made the basis of guilt or innocence of an accused. The opinion of an expert witness is admissible in evidence because such witness by reason of his training or experience is qualified to express opinion whereas an ordinary witness is not competent to do so. The evidence of an expert witness cannot be taken as a substantive piece of evidence but only for corroborating with other evidence (Section 45 to 51 of the Evidence Act).

A Judgment should be precise and compact so as to contain only relevant material. It should be written in a lucid and unambiguous language so that the parties to it get a crystal clear picture of the reasons for the decision arrived. When a decision is subject to appeal or revision by the appellate Court it must be reasoned, detailed and exhaustive.

3.8.1. Structure of a Decision

i. The Elements of the Offence

The source and ingredient of the offence must be mentioned. Each and every ingredient of the offence must be proved for a decision of conviction.

ii. What is Admissible Evidence?

Oral testimony, documentary, expert opinion (Section 45 of the Evidence Act) or a report of a scientific expert (Section 293) are different forms of admissible evidence. A confession or admission is evidence against its maker, if its admissibility is not excluded by some provision of law (Section 24 to 30 of the Evidence Act and Section 162 and 164). A confession cannot be used against an accused person unless the Court is satisfied that it is voluntary.

A free and voluntary confession deserves highest credit, because it is presumed to flow from the highest sense of guilt. An accomplice may be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice (Section 133 of the Evidence Act).

In case of circumstantial evidence, all the circumstances from which a conclusion of guilt is to be drawn should be fully and cogently established. Defence witnesses are entitled to equal treatment with those of the prosecution. Any person accused of an offence shall be a competent witness for the defence and may give evidence on oath. However his failure to give evidence shall not give rise to any presumption against him (Section 315).

iii. What Are the Matters in Issue?

The facts and the matters in issue along with relevant facts are to be identified. The primary facts in issue are:

a. What was the conduct of the accused before commission of the offence and what was his subsequent conduct?

b. Who was the aggressive party?

c. Whether the injury was inflicted intentionally or while acting in self-defence?

d. What was the motive?

iv. Does an Accused Have a Case to Answer?

If the essential element and necessary ingredient of an offence is not established or the evidence is found to be shaky and unreliable, then the Court should acquit the accused.

v. Is The Case Proved?

It is the bounden duty of the prosecution to prove all ingredients of an offence against an accused. An accused person is not required to prove his innocence during a trial. In most of the cases it is not necessary for him to establish a defence. But there are some exceptions, for example, Section 304B of the Indian Penal Code and offences of strict liability. An accused is required to discharge a burden to prove certain issues where he raises a defence. The burden of proving the plea of alibi (Section 11 of the Evidence Act) undoubtedly lies on the accused. When an accused person pleads a bar to his trial (Section 197), it his for him to establish the facts which brings that section into operation.

It is the duty of the Court to require the prosecution to prove every part of its case affirmatively by sufficient and legal evidence and it is not possible to convict an accused person on the ground of any weakness in his defence.

vi. What Is the Standard of Proof?

The prosecution has to discharge its onus of proving its case against an accused beyond a reasonable doubt. The standard of proof beyond a reasonable doubt, though is a higher standard, it is not an absolute standard. The degree of probability, which would amount to "proof", is an exercise particular to each case. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial arising from the evidence or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. The cardinal principle to be observed in the trial of a criminal case is that the accused should always be considered innocent till the criminal acts alleged against him are affirmatively and satisfactorily proved. Upon considering the entire case of the prosecution, if two views are possible, the view in favour of an accused should be adopted to extend the benefit of doubt in his favour.

3.8.2. Statutory Requirements

Chapter 27 sets out the requirements as to the mode of delivering a Judgment, its language and contents. A judgment shall be pronounced or the substance of a judgment shall be explained in open Court and in the language of the Court or in some other language, which is understood by the accused or his pleader. If the accused is in custody, he shall be brought up to hear the judgment. If the accused is not in custody, he must be present to hear the judgment, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted. The judgment shall be written in the language of the Court and shall contain:

1. The points of determination
2. The decision thereon
3. The reasons for the decision
4. Be signed and dated on every page by the Presiding Officer in open Court.
5. The offence, section and punishment to which the accused is sentenced;

Once a judgment is signed, it should not be altered or revised, except to correct a clerical error. A copy of judgment, in case of a conviction, shall be delivered to the accused immediately (Section 363).

3.8.3. Acquittal or Conviction

The conclusion of a trial will result in the acquittal of an accused or his conviction. If the prosecution fails to bring home the guilt of an accused beyond reasonable doubt, the benefit of doubt should go to the accused and he should be acquitted. The judgment of acquittal should state what the offences are of which the accused is acquitted and should direct that he be set at liberty (Section 354). It is necessary, in a case of conviction, that the judgment should distinctly specify the offence or offences of which the accused is convicted.

3.8.4. Copies of Judgment and Orders

Where an accused is sentenced to imprisonment, a copy of the Judgment shall be given immediately free of cost (Section 363).

Any person aggrieved by a judgment or any order passed by a criminal Court shall be provided a copy of the order, deposition of witnesses or other part of the record on payment of the required fee.

3.9. SENTENCING PROCEDURE

The complex question of determination of nature and quantum of sentence comes before the Court after the conviction of an accused. The quantum of punishment depends on various relevant factors relating to the nature of offence, the manner of its commission and the gravity of the same. The horizontal and vertical competing interest between society and individual, the victim and accused and the aspiration of 'object to be sought' and the limitations of law require accurate analysis and harmonization of remedial, reformative and preventive steps.

In Giassudin Vs. State of Andhra Pradesh AIR 1977 SC 1932 it was held that "a proper sentence is the amalgam of many factors such as the nature of offence, the circumstances extenuating or aggravating – of the offence, the prior criminal record, if any, of offender, the age of offender, the record of offender as to employment, the background of offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of offender, the prospects for rehabilitation of the offender, the possibility of return of offender to normal life in the community, the possibility of the treatment or training of offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence".

Before passing an order on sentence, the Magistrate should always refer to the punishment provided by statute for particular offence. The sentence should strictly in accordance with the limit of legislative mandate and the jurisdiction vested in the Court. For some offences, minimum or maximum sentences have been provided whereas for some offences fine and imprisonment both are made mandatory. For some offences particular type of imprisonment i.e. (simple or rigorous) has been given. Therefore, before any order of sentence, Magistrate should bear in mind the relevant provisions of substantive and procedural law, the High Court rules and the decided cases by the superior Courts.

3.9.1. Sentencing Provisions

For reference, following provisions should be referred:

a. CrPC: –

i. Section 28 – Sentences which High Courts and Session Judges may pass.

ii. Section 29 – Sentences which Magistrate may pass.

Metropolitan Magistrate may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding Rs.5, 000/- or both.

iii. Section 30 - Sentence of imprisonment in default of fine.

iv. Section 31 – Sentence in cases of conviction of several offences at one trial.

v. Section 354 – sub clauses (3)(4) & (5)

It is specifically pointed out that under Section 354 (4) it has been provided that when the punishment for an offence is imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till rising of the Court, or unless the case was tried summarily under the provisions of the code.

vi. Section 357, 358 & 359 – deals with the award of compensation in different kinds of cases.

vii. Section 360 – order to release on probation of good conduct or after admonition. Provisions of Probation of Offenders Act should also be observed.

viii. Section 361 – special reasons to be recorded in certain cases – it is pointed out that under this Section, Court should give special reasons where an accused is covered in the category of Section 360. or under the Juvenile Justice Act or any other law for the time being in force for the treatment, training or rehabilitation of youthful offender, but Court deems the question of sentence otherwise.

ix. Court while passing the sentence should also bear in mind the provisions relating to a particular offence with reference to Schedule-I.

b. Indian Penal Code - Chapter-III – "OF PUNISHMENTS" should be gone through.

c. Delhi High Court Rules - Chapter-XIX – "Sentence" Part-III instructions to Criminal Courts in Delhi (Vol. III of High Court Rules and Orders) should also be gone through.

3.9.2. Punishment Greater than can be Imposed

Where the Magistrate is of the opinion that the punishment should be greater than he can impose.

Under Section 325., it has been provided that whenever the Magistrate is of the opinion, after hearing evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind, form, or more severe than that which Magistrate is empowered to inflict, he may submit his proceedings after recording his opinion and forward the accused to the Chief Metropolitan Magistrate to whom he is subordinate.

3.9.3. Principles of Sentencing

Social experience and judicial research has contributed to the development of principles of sentencing. There are four accepted principles of sentencing, which are described as follows. Although with the fast pace of changing society and the nature of crime, other principles are also being propounded and debated so far, but the same still need recognition before their application in practical sense. Following are the theories of punishment:

i. Retribution – The theory of retribution is the punishment given to the offender on behalf of the community to mark its disapproval of the offence.

ii. Deterrence – This theory of punishment is propounded to deter the offender and other persons of the community in similar situation from breaking the law again.

iii. Prevention-The aim of this principle of sentence is to limit the opportunity to commit offences. One of the severe forms of prevention is custody in prison. The other forms, may be certain type of disqualifications attached to a particular of category of offence and the persons, e.g., the cancellation of driving license in Motor Vehicle related offences or creating bar to participate in the electoral process relating to the offences of elections.

iv. Rehabilitation – This theory is most advocated and favoured by the social scientists and the jurists of liberal democracies, which aims at the reformation and rehabilitation of offenders and try to find out the ways and means to bring back the offenders to the main stream of life.

Although in given circumstances of a particular case, one or more principles of sentencing may be found comparatively more suitable or appropriate but all the above theories in one or the other context is equally important.

There cannot be any strict compartmentalization for application of one or the other principle of sentencing. Court should consider each principle in reference with the nature of offence, circumstances of its commission, circumstances of the offender, the legislative intention and the expectations and welfare of victim as well as the society. The Court may then assess the suitability of one or the more principles consistent with the object sought to be achieved.

While determining the quantum of sentence, the Judge/Magistrate should not be influenced by his personal bias or strong dislikes relating to particular category of offences or the class of offenders. Sometimes, if the sentencing Judge fails to recognize and to eliminate his personal prejudice, the whole object of the sentence given by him may not only lose its sanctity but also its object.

1. Matters of flexibility and personal bias are equally important even when the penalty of fine is imposed because a disproportionate penalty of fine may lose the object of punishment.

2. In order to guard against any influence of personal bias, by giving full attention to the principles of sentencing and the above-mentioned principles of law, judicial officers should achieve a pattern of consistency in sentencing. Consistency must not be confused or equated with uniformity. Consistency really means the approach to sentencing, although the actual penalty imposed in each case on the same charge may be different.

Apart from the consistency of ones own, consistency must always be observed in reference to the pattern of sentencing by other judicial officers.

Sentencing is the most difficult exercise of discretion, which must be governed by sound principles of sentencing, legal provisions and a consistent pattern.

Discretion can never be the personal whims. Discretion is a judicial approach to a particular decision based on the facts and circumstances of a particular case. Even if a Court is dealing with a simple minor offence requiring only a fine or a more complex case, the judicial act of sentencing must not lose sight of sound principles of sentencing and the consistency in its approach.

3.9.4. The Sentencing Approach

The question of ascertaining the right kind of sentence needs the analysis of above mentioned various factors, which come into the picture after conviction of an accused. In some cases, the required information relating to relevant factors comes on record during the trial, but in most cases it does not reflect from the record particularly, when accused is convicted by summary procedure or merely on the basis of his plea of guilt. It is always important that Judge should not try to elicit information relevant to the adjustment of punishment prior to conviction because there is always a danger that an accused may perceive that even prior to his conviction, a Judge has made up his mind to convict him. The mitigating circumstances, as far as the offence is concerned, should always be taken on record specifically after the conviction either through the counsel of accused or otherwise. The reports from Probation Officer attached to the Court can be called for, before passing an order on sentence.

3.9.5. The Prevalence of the Offence

Most of the time, it is found desirable to raise the level of penalty for an offence more prevalent with an aim to deter the commission of it. It should be done only by those who have sufficient experience of work and only after consultation with other senior officers because such notions of recurrence of particular offences sometime may be misconceived.

3.9.6. Principles or Guidelines Issued By the Superior Courts

The Judge should always be aware about the decisions of the superior courts for guidelines for determination of its approach and quantum and kind of sentence in particular offences.

3.9.7. Previous Conviction - Relevance.

A previous conviction must be relevant to the offence which is dealt with. An earlier conviction for arson would have no relevance to the offence of driving a vehicle without driving license, and therefore, it should be completely ignored. As a rule of prudence, the offence committed by accused many years ago should be disregarded or less weight should be given to it. If accused had been in prison for the intervening years, the sentencing Judge may be justified in paying some attention to his previous conviction. Previous convictions act as an aggravating circumstance where the Court is satisfied about the pattern of its commission and visualize or anticipate its repetition in future.

A previous conviction should not be considered merely to increase the penalty because it will amount the punishment for the previous offence also for which an accused has already suffered the punishment.

3.10. TYPES OF SENTENCES

3.10.1. Death Penalty

Death penalty is imposed by Court of Sessions, with provision for confirmation by High Court (Section 366.). High Court has the power to enquire into the matter, re-appreciate the evidence when reference of death penalty is made for confirmation. High Court has power to:

1. Confirm the sentence or annul conviction (Section 368.).
2. Confirm or give a new sentence (Section 369.).
3. Direct further inquiry or taking additional evidences (Section 367).

3.10.2. Capital Punishment Has been Provided in Six Principal Offences

1. A. Treason, i.e. waging war against Government of India (Section 121.). B. Abetment of mutiny (Section 132).
2. Perjury resulting in conviction and death of an innocent person (Section 194).
3. Murder (Section 302 and 303).
4. Abetment of suicide of minor or insane (Section 305 I.P.C.).
5. Attempt of murder by life convict (Section 307 I.P.C).
6. Dacoity with murder (Section 396 I.P.C.].

3.10.3. Death Penalty – Appropriateness

Death penalty is included in criminal law to provide deterrence for potential offenders. Lately, in some countries death penalty is less preferred. In 1973 an amendment was made to CrPC, whereby Sub Section 3 was added to Section 354, which mandated that the Court has to give special reasons when death penalty is to be awarded. Doctrine of 'rarest of rare' propounded in the case of Bachhan Singh Versus State of Punjab AIR

1980 SC 898 was later on further reiterated in Machhi Singh Versus State AIR 1983 SC 957, Kuljit Singh Versus State AIR 1981 SC 1572.

Earlier the doctrine followed for death penalty was 'Murder Most Foul' enumerated in various cases by Courts of law. Of late, doctrine of 'rarest of rare' had shifted the emphasis from crime to criminal. Overall background of criminal is to be looked upon, not only the act charged upon. If there is any possibility of reformation, rehabilitation etc., leniency has to be shown. Death penalty should be awarded only to hardened criminals, terrorists, etc. of whom there is no possibility of reformation and rehabilitation.

3.10.4. Life Imprisonment

Life imprisonment means imprisonment for life, however discretion is provided to State or Central Government under Section 55 I.P.C. to commute the sentence for a term not exceeding fourteen years. Release by Government is not a matter of right. A convict cannot claim it; it is a welfare measure to be decided by the Government.

Commutation of sentence life imprisonment is provided under:

1. Constitution of India–Article 72 and 161 giving discretionary power to the President and the Governor.
2. CrPC – Section 433.

3.10.5. Nature of Sentence

Imprisonment may be simple or rigorous or partly simple and partly rigorous, depending upon the offence committed (Section 60 I.P.C.). When an accused is convicted for more than one offence, sentences provided are to run consecutively i.e. one after the other, unless Court orders them to run concurrently.

Solitary confinement is provided under Section 73 I.P.C. It is to be used very rarely in most heinous of offences, not to be exceeded by three months. Cases for reference are Munnuswami Versus State 1980 Cri.L.J 1099 SC & Sunil Batra Versus State 1980 Cri.L.J. 1099.

3.10.6. Fine

Fine can be imposed with imprisonment and separately also. Amount of fine is unlimited unless provided otherwise, however the amount should be commensurate with nature of offence and paying capacity of offender. It should not be excessive (Section 63 I.P.C.);

3.10.7. Imprisonment in Default of Payment

A term of imprisonment in default of payment of a fine is not a "sentence". In respect of an offence punishable with fine only, imprisonment in default shall be simple, and limited in duration (Section 67 I.P.C.) as under:

AMOUNT OF FINE	IN ANY OTHER CASE
• Period of imprisonment in default • 50 Rupees • 100 Rupees	• Not to exceed two months • Not to exceed four months • Not to exceed six months

3.10.8. Preventive Detention

Preventive detention is an exception to the right of liberty enshrined in Article 21 of Constitution. Preventive detention can be made with an objective to conserve peace and public tranquillity, in apprehension of commission of cognizable offence and injury to public property etc. (Section 151).

3.10.9. Probation of Offenders Act, 1958

Probation is also a welfare measure provided to give relief to first offenders and persons without criminal background. The Court can after examination of facts and circumstances of the case, direct for release of a convict on probation for a period not exceeding three years under which he is subjected to good behaviour. If a convict fails to fulfil the condition of probation order, release is revoked and he is bound to present himself for getting the sentence already awarded. Following sections of the Probation Offender Act, 1958 are important.

1. Section 4: Power of Court to release certain offenders on probation of good conduct.
2. Section 5: Power of Court to release offenders after payment of compensation and cost by them.
3. Section 6: Restriction upon imprisonment of offenders under 21 years of age.
4. Section 7: Variation in conditions of probation. It is done with public interest in mind along with interest of offender.
5. Section 9: Procedure to be followed when offender failed to fulfil conditions of release on probation.
6. Section 11: Competent Court to pass such order is High Court or Trial Court. In appeal higher sentence is not to be provided.

Judicial guidelines in this regard have been laid down in Abdul Qayum Versus State of Bihar AIR 1972 SC 214, Jogi Nayak Versus State AIR 1965 Orissa 106, State of Maharastra Versus Nasim Khan AIR 1971 SC 381.

3.10.10. Considerations for Grant of Probation

Different considerations are taken into account by Courts for granting or not granting benefit of release on probation. Some of them are listed below: -

1. Age, sex or maturity of offender.
2. First or habitual offender.
3. Family and educational background.
4. Nature of crime and circumstances of the offence, whether acted under provocation.
5. Seriousness of offence.
6. Risk to society if offender is released.
7. Report of probation officer.
8. Short term imprisonment is to be usually avoided by giving probation.

Offences in which courts have generally refused to grant probation are:

1. Theft which could flare of in a communal violence like theft of idol from temple.
2. Sexual offences.
3. Offence punishable with death penalty or life imprisonment.
4. Socio-economic offences or white collar crimes.

3.11. ANCILLARY ORDERS

3.11.1. Compensation

When a Court holds a person guilty of an offence, it is followed by a verdict on quantum of sentence on convict. When Court imposes sentence either in the form of fine or substantive sentence, including a sentence of death, with fine, such Court may at the time of passing judgment, order the whole or part of fine recovered be applied to meet expenses incurred in the prosecution of case, to pay compensation to victim for any loss or injury caused by the offence and to compensate to the *bona-fide* purchaser of property restored to its original possession, being subject matter of offence of theft, criminal breach of trust and cheating. However, when Court imposes substantive sentence exclusively, that is when fine does not form part of sentence, the Court may order in judgment for payment of compensation to the person who suffered loss or injuries by the convict. Such order for compensation for loss or injuries may be passed if the Court forms an opinion that compensation is recoverable in Civil Court, or as damages under the Fatal Accident Act 1855, when offence is of death (Section 357).

In case the trial Court does not award compensation for loss or injuries to the person directly injured by the offence, then Appellate Court or High Court or Court of Sessions may exercise its power of revision (Section 357 (4)).

The power of Court to award compensation is not ancillary to other sentences but it is in addition thereto. This power is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is indeed a step forward in our criminal justice system. It is thus recommended to all Courts to exercise this power liberally so as to meet the ends of justice in a better way. However, payment by way of compensation must be reasonable and period of payment of compensation may be ordered by instalments, if necessary. What is reasonable, depends upon circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, justness of claim by victim and ability of the accused to pay. The criminal justice would look hollow if justice is not done to the victims of the crime.

Since, 'persons in conflict with law' (as per the Juvenile Justice (Care and Protection) Act, are kept at observation homes and they are not sentenced, the provisions of compensation or damages, does not apply to such cases.

In a complaint case of a non-cognizable offence, on conviction of the accused, the Court may, in addition to penalty imposed, order the convict to pay, whole or in part, costs incurred in prosecution of complaint, to the complainant and if convict fails to pay such cost then he can be ordered to undergo simple imprisonment not exceeding 30 days (Section 359.).

When any person causes any police officer to arrest another person and it appears to the Magistrate that there was no sufficient ground for causing such arrest, the Magistrate may award him compensation of amount not exceeding Rs.100/- payable by the person who caused such arrest. (Section 358).

3.11.2. Expenses of Complainant and Witnesses

Complaint cases are initiated at the instance of the complainant. As per Section 204(4), the process fees and other fees are payable by the Complainant, failing which complaint is liable to be dismissed. Thus expenses for witnesses are to be borne by the complainant. However, such expenses may be defrayed in terms of Section 357 and 359.

The Criminal Court may order for payment of reasonable expenses, on the part of Government, of the complainant or witnesses attending for the purpose of any inquiry, trial or other proceedings before such court, however, subject to rules made by State Government. (Section 312 and Chapter-9 Part-A 'Witnesses – Criminal Courts' of Volume- III High Court Rules and Orders).

Generally, in all State prosecutions the expenses of summoning the witnesses for the prosecution shall be paid by the Government. However, defence witnesses on behalf of the accused would be summoned at the expense of the accused. The expenses of complainant and witnesses may be considered on the basis of their status, age, distance travelled and mode of transport.

3.11.3. Disposal Of Case Property

The trial court has to adjudicate in respect of case properties during the trial as well as subsequent to the trial, which were seized by the police or other local bodies [Section 451 to 459 & Part E of Chapter 11-E of Volume-III Delhi High Court Rules and Orders].

Property subject to speedy and natural decay may be sold immediately (Section 459 and 67(2) of Delhi Police Act).

The Court may during the inquiry or trial by appropriate order, make proper custody of the property and on conclusion of such inquiry or trial, the property may be disposed of by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof (Section 451 and 452.). Immovable property may also be restored to be person dispossessed thereof (Section 456.). If none claims the property within six months, it can be disposed of by the Government (Section 458.).

The Court must act with imagination in an innovative way to watch and protect the interest of all concerned namely the prosecution, the complainant, the accused and the interest of public at large to avoid any incidental harm to any of them. Accordingly it is expedient in the interest of justice that a photocopy of currency notes may be taken by copying branch on the date fixed in court. Thereafter the amount may be given to the complainant on furnishing security of the amount by way of extra precaution.

In pending cases, the Court should exercise its power expeditiously and judiciously. The Court is required to pass appropriate orders immediately and articles are not to be kept for a long time at a police station, in any case, for more than 15 days to one month.

There are special provisions in special laws like Section 6A Essential Commodities Act, 1955; Section 10 of Explosive Act 1884; Section 52A of N.D.P.S. Act 1985; Section 110 of Customs Act 1962; Sub-Section 65/66 of Copyright Act, Section 14 and 33K of Drugs and Cosmetics Act 1940 which provide for disposal of such properties.

3.12. MISCELLANEOUS PROVISIONS

3.12.1. Irregular Proceedings

Minor mistakes, irregularities and certain acts out of the ambit of powers do not vitiate the proceedings if they are taken in good faith as listed in Section 460. Those irregularities that vitiate proceedings i.e., the action taken by the Magistrate shall be void, are set out in Section 461. Proceedings in the wrong place are not fatal unless it occasions a failure of justice (Section 462.). Chapter XXXV of CrPC sets out the effects of other non-compliances with specific sections of the CrPC. Magistrates need to read them carefully.

3.12.2. Local Inspection

Sometimes the circumstances of a trial or inquiry demand that the Court visit or inspect a certain local area for better understanding of the facts of the case. In such circumstances, the Court may visit or inspect the area in question under Section 310. and make a memorandum of such visit or inspection.

3.12.3. Investigations into Non-cognizable Offences

In a non-cognizable offence, the information received by Police will be entered into a special register kept for this purpose and intimation be sent to the area Magistrate (Section 155. While in a cognizable case, the Police can investigate without permission from the Magistrate. In a non-cognizable one, the police cannot. However, a Metropolitan Magistrate, having power to try such a case, may order investigation. Further, the procedure to be followed in case the commission of a cognizable offence is suspected and the role of a Magistrate in such a case is given in Section 159.

3.12.4. Cognizance of Offence by Magistrate

Apart from the police, a Metropolitan Magistrate may take cognizance of any offence under Section 190

3.12.5. Power of Summary Trials

A first class Magistrate specially empowered by the High Court in that behalf may summarily try the offences enumerated in Section 260. How a summary trial should proceed is given in Section 262 to 265, which should be read together to understand the details of such procedure.

3.12.6. Bonds

Except in the case of a bond for good behaviour, it is permissible to deposit a sum of money or government promissory note in lieu of executing a bond [Section 445.]. When a bond stands forfeited or a surety dies or becomes insolvent, the procedure to be followed is given in Section 447. Since a minor is not competent to execute a bond, a surety or sureties, may be allowed under Section 448. to execute the required bond. All orders passed under Section 446. by a Magistrate may be appealed against to the Sessions Judge under Section 449.

3.12.7. Forfeiture of Bond

Section 446 sets out the procedure to be followed. Once a bond is forfeited, the penalty is to be imposed and recovered from the surety.

3.12.8. Inquiries and Trials

The procedure with regard to inquiries is the same as in the case of trial except that an inquiry will culminate only in a report or recommendation but not in acquittal or conviction. All the principles of fairness and justice will equally be applicable in inquiries. However, the general provisions for determination of the venue or those relating to the issuance of summons or warrants, etc., are given in Section 177 to 189 The condition requisite for initiation of proceedings and the provisions for allied matters are contained in Chapter XIV.

3.12.9. Miscellaneous Provisions in Respect of Women

No woman can be called by the police officer making an investigation at any place other than the place where she resides (Section 160(1). The practice of calling a woman to

police station is a flagrant contravention of provision to Section 160 (1). Whenever a woman has to be searched, another woman shall perform the search with strict regard to decency Section 51(2).). In respect of the execution of a search warrant, under Section 47 if the women's quarters in building are to be broken open, it is necessary that any women occupying those quarters be given an opportunity to leave. If they do, arrangement be made to allow them to leave. A woman accused of non-bailable offences may be released on bail. A woman sentenced to death who is found to be pregnant would have her sentence postponed, may be commuted to life imprisonment by High Court (Section 416.).

3.12.10. Special Provisions Regarding Children

The Juvenile Justice Act, 1986 has been amended recently in 2000. Boys and girls under 18 years of age are considered to be juveniles.

Aim of the Act is:

1. Trial of young offenders to be held by the Juvenile Board.

2. Juvenile offenders be reformed and not punished.

Special Provisions regarding juveniles in IPC and CrPC

i. Section 82 IPC provides that child below 7 years of age is incapable of committing a crime.

ii. Section 83 IPC provides that nothing is an offence, which is done by a child between 7 to 12 years of age who has not attained sufficient maturity to understand the nature and consequences of his conduct.

iii. Section 360 provides that first offender under 21years of age be released on probation of good conduct instead of sentencing him at once to any punishment.

iv. Section 27 provides that if a person under 16 years of age commits offence not punishable with death penalty or life imprisonment, he is not to be tried in a regular criminal Court but by a special Court empowered under the relevant law providing for treatment, training and rehabilitation of youthful offenders.

3.13. PREVENTION OF OFFENCES

Under the provisions of Probation of Offenders Act, convict/accused can be released on probation for keeping peace and good behaviour for maximum period of three years. In addition to furnishing a bond, accused can be also kept under the supervision of the Probation Officer who also can impose certain restrictions upon the accused. In case of default of any condition imposed upon a convict by Court while releasing him on probation, the accused can be summoned and to show cause why he be not punished according to law for the offence he had already convicted.

Mainly Executive Magistrate deals with the matters pertaining to apprehended breach of peace or disturbance of public tranquillity as per various provisions of CrPC. This duty is not required to be given to Metropolitan Magistrates.

3.13.1. Offences Committed in the Presence of a Magistrate

If an offence is committed in the presence of a Magistrate, he has the power to arrest the offender himself or through any person. Similarly Metropolitan Magistrate has power to issue arrest warrants against an escaped convict, proclaimed offender or person accused of a non bailable offence who a fugitive. The power to arrest cannot be exercised ordinarily beyond the local limits of the area of the Magistrate, however in case of area beyond his jurisdiction this power can be exercised with the help of local authorities. In case of emergency where help of local authorities cannot be taken in time or without giving chance to offender to escape then this power can be exercised but offender should be brought before the local authorities for further action immediately.

3.13.2. Public Nuisance and Dispute over Immovable Property

Matters relating to the public nuisance and dispute over immovable property which may create breach of peace comes within jurisdiction of Executive Magistrate as per provisions of CrPC.

3.14. SESSIONS/ADDITIONAL SESSIONS JUDGES

3.14.1. Powers

Sessions and Additional. Sessions Judges try the offences of serious nature as enumerated in Column No. 6 of the First Schedule of CrPC. A Sessions Judge or an Additional. Sessions Judge is empowered to pass any sentence authorised by law, but in case of sentence of death passed shall be subject to confirmation by the High Court (Section 366). The Sessions Judge/Additional Sessions Judges can also hear appeals from orders and sentences passed by subordinate Courts as per provisions of Chapter XXIX and hear revisions under provisions of Chapter XXX. The Court of Sessions or High Court may set-aside or modify the conditions imposed by a Magistrate (Section 439(1)(b))

3.14.2. Pre-arrest Bail by Sessions Court

Pre-arrest bail can be granted by Sessions Judge or Additional Sessions Judges in accordance with provisions of Section 438. It can be granted to a person who has reason to believe that he may be arrested on accusation of having committed a Non-Bailable Offence. Provisions of Section 438 do not apply in cases where the allegations are in respect of a bailable offence only. On account of local State amendments provisions of Section 438 are omitted from the CrPC in some States. This provision can be used even in cases where Non Bailable Warrants have been issued against accused by a Court of law.

3.14.3. Bail after Arrest

Section 439 provides special powers to High Court and Court of Sessions in respect of bail after arrest. Gravity of offence, previous involvement of accused in similar matters and likelihood of availability of accused during trial are some of considerations to be kept in mind at the time of granting bail after the arrest. Likelihood of the accused tampering with prosecution evidence when on bail has also not to be lost sight of. Some special Acts for example, Section 37 N.D.P.S. Act do restrict power of the Sessions Court to grant bail in such like offences.

While Section 439 empowers the Court of the Sessions to grant bail after arrest, Section 439 (2) empowers the Court of Sessions to cancel the bail of a person who had been so admitted to bail. Considerations for refusal of bail and cancellation of bail already granted are quite different.

3.14.4. Trial

Procedure of trial before a Court of Sessions is enumerated in Chapter XVIII (Section 225 to 237). Besides provisions of Chapter XVIII, provisions of Chapter XXIII regarding evidence in enquiries and trial and general provisions as to enquiries and trial mentioned in Chapter XXIV also need to be considered by Court of the Sessions during course of trial.

3.14.5. Lack of Power for Habeas Corpus

There is no provision in CrPC for directions of the nature of Habeas Corpus being issued by Court of Sessions in India. Courts can issue summons for production of document or other things under Section 91 subject to limitations of Section 92. Search warrants in this regard can be issued under Section 93 CrPC. Warrants for search of persons wrongfully confined or to compel restoration of abducted females can be passed by District Magistrate, SDM or Metropolitan Magistrate (Section 97 and 98 CrPC). No specific power in this regard has been given to Sessions Judges under CrPC.

3.14.6. Appeals

As per Section 372 no appeal shall lie from any judgment or order of a Criminal Court except as provided for by the CrPC or by any other law for the time being in force.

An appeal against orders requiring security or refusal to accept or reject surety for keeping peace or good behaviour can be made to Court of Sessions under Section 373.

3.14.7. No Appeal when Pleaded Guilty

As per provisions of Section 375 no appeal lies in certain cases when accused pleads guilty. However, appeal lies only to the extent of legality of sentence in such matters.

Section 376 restricts appeal in respect of petty cases. It deals with matters where sentence of the imprisonment for a term not exceeding three months or fine not exceeding Rs.200/- is passed. No appeal lies if a Magistrate of First Class passes only a sentence of fine not exceeding Rs.100/- or in a case tried summarily the Magistrate passes a sentence of fine not exceeding Rs.200/-. However, an appeal may be brought against such sentence if any punishment is combined with the same.

As per Section 380 where more persons then one are convicted in one trial and an appealable Judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right to appeal.

Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader and every such petition shall be accompanied by the copy of Judgment or order appealed against (Section 382)

If the appellant is in jail he may present the petition of appeal through Officer In Charge of the Jail (Section 383) In case the Appellate Court considers that there are no sufficient grounds for interfering with the impugned order, the Appellate Court can dismiss the appeal summarily after giving the appellant reasonable opportunity of being heard. (Section 384) In case the appeal is not summarily dismissed, then provisions of Section 385 be followed. Powers of the Appellate Court to interfere with, stay arrest or uphold the impugned order/Judgment are provided under Section 386.

3.14.8. Appeal Against Acquittal

The State Government may (subject to provisions of Section 378) direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other High Court or an order of acquittal passed by Court of Sessions in revision. No appeal against acquittal lies before the Sessions Judge or Additional Session Judge under CrPC. The Appellate Court is competent to reverse, sustain or remand back the case for further trial; in case the Court holds the accused guilty, then an appropriate sentence according to law would be passed.

3.14.9. Powers of Revision

A Sessions or Additional. Sessions Judge has the power to call for and examine the record of any proceeding before any subordinate Criminal Court situate within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed (Section 397). While calling for such record the Court of Sessions can direct that execution of any sentence or order be suspended and if the accused is in confinement may be released on bail.

3.14.10. Power of Sessions Judge to Transfer Cases & Appeals

The Sessions Judge may order that any particular case be transferred from one Criminal Court of any other Criminal Court in the Sessions Division (Section 408) Sessions Judge may also withdraw any case or appeal from, or recall any case or appeal which has been made over to any Assistant Session Judge or Chief Judicial Magistrate (Section 409).

3.14.11. Bail in Appeals

The Appellate Court may, for the reasons to be recorded, suspend the execution of the Judgment/order appealed and also release the appellant on bail during the pendency of appeal [Section 389].

3.14.12. Further Evidence

Appellate Court may take further evidence or direct it to be taken by a Magistrate (Section 391). The evidence so recorded by Magistrate, he shall certify the same and forward it to Appellate Court and such appellate Court shall thereupon dispose off the appeal.

3.15. JUVENILES

3.15.1. Jurisdiction

The Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000) provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles.

The State Government has been authorized by the Juvenile Justice Act, 2000 to constitute for a District or a Group of Districts one or more Juvenile Justice Boards. It provides that the Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class and two social workers of whom at least one shall be a woman.

3.15.2. Definition of Child

"Juvenile" or "child" means a person who has not completed 18 years of age at the time of commission of a Criminal Offence (Section 2 (K)), The Juvenile Justice Board conducts an inquiry to ascertain the age of the Juvenile or the child after taking such evidence as may be necessary in this regard (Section 49).

3.15.3. No Joint Trial of a Child and Adult Person

No juvenile can be charged with or tried for any offence together with a person who is not a juvenile. In the event cognizance of a case has been taken against both juvenile and an adult by any Court and both have been charged or being tried together, the Board after taking cognizance of the offence shall direct separate trials of the juvenile and the other person (Section 18).

3.15.4. Procedure for Juvenile Justice Board/Restricted Access and Reporting

The procedure of functioning of the Board is set out in Section 4 and 5 of the Act. No Magistrate is appointed as a member of Board unless he has special knowledge or training in child psychology or child welfare. Similarly, a social worker to become a

member, is one who has been actively involved in health, education or welfare activities pertaining to children, for at least 7 years, (Section 4). Newspaper, magazine, news-sheet or visual media has been prohibited to disclose the name, address or school or any other particulars which may lead to identification of the juvenile in conflict with law nor they can publish any picture of such juvenile (Section 21). The contravention of the said Section by any person is a penal offence.

3.15.5. Dispensing with Attendance of the Child

If, at any stage during the course of an inquiry, a competent authority is satisfied that the attendance of the juvenile is not essential, it may dispense with his attendance and proceed with the inquiry in his absence (Section 47).

3.15.6. Probation Officer's Report

When a juvenile is arrested the officer in charge of the police station or the special juvenile police, besides informing the parent or the guardian of juvenile about the arrest, shall also inform the Probation Officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile (Section 13). The report of the Probation Officer or social worker shall be treated as confidential (Section 15);

3.15.7. Arrest & Bail

As soon as a juvenile in conflict with law is apprehended by police he is to be placed under the charge of the special Juvenile Police unit or the designated police officer who shall immediately report the matter to a member of the Board (Section 10) and produce him before an individual member of the Board, when the Board is not sitting.

For the purposes of bail of juvenile, the Act does not make any distinction between bailable and non-bailable offences. Whenever any person accused of a bailable or a non-bailable offence, who apparently is a juvenile, is arrested or detained or appears or is brought before the Board, then such a person notwithstanding anything contained in the CrPC or in any other law for the time being in force, is to be released on bail with or without surety.

However, he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or shall expose him to moral, physical or psychological danger or that his release would defeat the ends of justice (Section 12(1)).

3.15.8. Restrictions on Remand in Custody

Whenever a juvenile is not released on bail, then the officer in charge of the police station shall keep him in an observation home till he is produced before the Board. If the Board does not grant bail to a juvenile, then it shall make an order of sending the juvenile to an observation home or a place of safety for such period as may be specified in the order during the pendency of the inquiry (Section 12(3)).

The Act makes it mandatory for the Board to complete the inquiry in respect a juvenile within a period of four months from the date of its commencement, unless the period is extended by the Board in special circumstances of the case but after recording the reasons in writing for such extension (Section 14). Where a Board is satisfied on inquiry that a juvenile has committed an offence then, notwithstanding anything contrary contained in any other law for the time being in force, the Board, may if it thinks so fit:

1. Allow the juvenile to go home after advice or admonition, OR
2. Direct the juvenile to participate in group counselling, OR
3. Order the juvenile to perform community service; OR
4. Order the parent of the juvenile or the juvenile himself to pay a fine if he is over 14 years of age and earns money: OR
5. Make an order directing the juvenile to be sent to a special home;

   (i) In case of juvenile is over 17 years but less than 18 years of age for a period of not less than two years,

   (ii) In the case of other juvenile for the period until he ceases to be a juvenile (Section 15).

3.15.9. Release on Probation

After conducting a due inquiry where the Board is satisfied that a juvenile has committed an offence it may also direct the juvenile to be released on probation of good conduct and place him under the care of any parent, guardian or other fit person on their executing a bond with or without surety for any period not exceeding 3 years (Section 15(c)).

Besides, such juvenile may also be directed when released on probation to be placed under the care of any fit institution for the good behaviour and well being of the juvenile for a period not exceeding three years. (Section 15(f)). If at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise that the juvenile in conflict with law has not been of good behaviour during the period of supervision and after making such inquiry it may order the juvenile to be sent a special home.

3.15.10. Restrictions on Orders that may be Passed in Respect of a Child

A juvenile in conflict with law can not be sentenced to death or life imprisonment or committed to prison in default of payment of fine or in default of furnishing security. Provided where a juvenile who has attained the age of 16 years and the Board is satisfied that the offence committed is serious in nature or that the conduct and behaviour of the juvenile is such that it would not be in his interest or in the interest of other juvenile in a special home the Board may order to keep such a juvenile in a place of safety and shall report such a case for the order of the State Government (Section 16(I)).

3.15.11. Committal to Sessions Court

Where it appears to a Magistrate that the offence is exclusively triable by the Court of Sessions, he shall commit the case to Sessions, send the accused and the record to the Sessions Court and notify the Public Prosecutor in this regard (Section 209 CrPC)

3.15.12. Transitory Provisions

Under the Juvenile Justice Act 1986 the definition of male juvenile covered juveniles up to the age of 16 years, which has been now raised to 18 years in the Juvenile Justice (Care and Protection of Children) Act, 2000. As for the pending matters, it has been provided in Section 26 of the new Act that the proceeding before any Court will continue and if the Court finds that the juvenile has committed the offence, it shall record such finding and forward such juvenile to the Juvenile Justice Board to deal with him as per provisions of this Act.

4. PART IV - ADMINISTRATION

4.1. ADMINISTRATIVE RESPONSIBILITIES

4.1.1. Administering the Court

The Presiding Officer of a Court, both civil and criminal, ought to function in premises which are congenial, convenient, dignified and secure for the Judge, Court staff, lawyers, litigants and others concerned or involved in the administration of justice. In order to achieve the required standards, the Judges must constantly pay attention to all that can be done.

A Presiding Officer should closely monitor and supervise Court staff and the process serving agencies to ensure that they comply with the requirements of law and directions of the Court. Corruption, abuse of the process and inefficient performance of duties should not go unnoticed and unattended. The ultimate responsibility for whatever goes on in the offices of the Court is that of the Presiding Officer.

Judges are required to inspect in detail the work of the ministerial staff and the registers and in particular, look through the oldest files pending and see whether unnecessary delay has occurred.

4.1.2. Supervision by Controlling Courts

District Judges are not responsible merely for the proper distribution of work amongst the Courts, and for the disposal of appeals. They are required to ensure that district Court follows the prescribed procedure in all their proceedings and are given guidance in matters where it is needed. The supervision exercised should be both active and continuous in all matters affecting judicial administration.

4.1.3. Financial Management and Budget

The Presiding Officer of every Court is responsible for regular inspection of registers and accounts. Money passing through the Court must be duly accounted for and should be verified weekly. Special vigilance is called for in supervising money transactions, which should be inspected frequently and carefully. Any irregularity must be reported to the District and Sessions Judge.

The Judges empowered or required must attend to timely preparation of budgets of the Courts, control expenditure and periodically inspect and verify the accounts. This will require foresight, imagination and leadership in taking care of the needs of the Courts, planning and development of the Court complexes in future.

Demands for supply for the ensuing years must be incorporated into budget estimates. Budget forms should be submitted on due dates.

4.1.4. Court Buildings

Court buildings include the District and Sessions Judges Courts, Sessions Houses, Courts of Small Causes and Subordinate Judges Courts and all subsidiary building attached to them. Inspection reports should include the state of the Courthouse, whether it is in good repair, properly kept and provides adequate accommodation. Library facilities must be inspected to ensure that they comply with the minimum prescribed standards by the High Court.

4.1.5. Facilities for Litigants and Counsel

Bar Rooms that are part of the building are included in Court Buildings. Inspections should not only include arrangements for the Bench but whether accommodation for the Bar is sufficient. Budgets need to be prepared for works to be carried out in respect of buildings and local arrangements will need to be known as to where these should be submitted and in what form. In some cases they should be submitted first to the High Court for sanction before calling on Public Works Departments.

4.1.6. Interference with Judicial Discretion or Powers

Sessions Judges and Magistrates should immediately report any attempt made by any person of influence or authority directly or indirectly interfering with the exercise by them of their judicial discretion or power. The report should be made in confidence to the Registrar General of the High Court.

4.1.7. Trial in Family and Rent Cases

While trying family disputes, labour, rent and motor accident claim cases, the Presiding Officer is not a Court in the strict sense. The formalities of law and procedure do not bind them. What is to be addressed is fairness in proceedings and a reasonable opportunity to the parties to present their case.

4.1.8. Citizen Court Liaison

Resources permitting, appropriate arrangements should be made to facilitate litigants in seeking and obtaining adequate, accurate and timely information and guidance with regard to Court procedures and requirements.

4.2. CONDUCT RULES

4.2.1. Court Holidays and Working Hours

Normal holidays and court hours are observed in the High Court and Courts Subordinate to it as follows:-

Court holidays

Holidays in Court are observed in the High Court of Delhi and courts Subordinate to it as per the Court calendar issued by the High Court of Delhi every year.

Court hours

High Court

10.30 AM to 1.15. PM

1.45 PM to 4.15 PM

Registry hours:

Registry remains open from 10.00 AM to 5.00 PM with lunch break from 1.15 PM to 1.45 PM

District & Subordinate Court

10.00 AM to 4.00 PM with lunch break from 1.15 PM to 1.45 PM

The offices of District and Subordinate Courts remain open from 10.00 AM to 5.00 PM with lunch break from 1.15 PM to 1.45 PM

4.2.2. Establishment

The appointment and conditions of service of the employees working in the District and Subordinate Courts, Delhi are governed by the Rules contained in Chapter 18, Part A, High Court Rules and Orders Volume – I and the Rules relating to the Appointment and Control of Clerks of Court to the District & Sessions Judge. These Rules being very old are being replaced by new comprehensive Rules.

However, In respect of pay, leave, pension, superannuation, and all other matters not expressly provided for in these Rules, employees of the District and Subordinate Courts are governed by such Rules and regulations as are applicable to the employees of National Capital Territory of Delhi.

4.2.3. Oath of Allegiance

Every member of service, unless he has already done so, shall be required to take oath of allegiance to India and to the Constitution of India as by law established.

4.2.4. Change of Name

Every Government servant goes by his name as entered in the first page of his Service Book, which in turn is based on the name as entered in the School Certificate, produced by him at the time of recruitment. If a Government servant desires to adopt a new name or to effect modification in his existing name, the following procedure has to be gone through:-

All cases of addition / deletion or change in name / surname:-

- A Government employee wishing to adopt a new name or to effect any modification in his / her existing name may do so, formally by a Deed changing his / her name.
- The execution of the Deed should be followed by publication of the change in a prominent local newspaper as well as in the Gazette of India at the Government employees' own expense.

Addition / change in surname only on account of marriage / re-marriage of a female Government employees:-

- If the Government employee desires a change, she should give a formal intimation to her appointing authority of her marriage and request for a change in her surname.
- Particulars of the husband may be given for making necessary entries in the Service Book.

Deletion of surname or reversion to maiden name on divorce / separation or death of the husband of female Government employee:-

- an intimation to the appointing authority regarding change in marital status; and
- a formal request for reversion to her maiden name.

4.2.5. Date of Birth

Declaration of date of birth – Every person newly appointed to a service or a post under Government shall, at the time of the appointment, declare the date of birth by the Christian era with as far as possible confirmatory documentary evidence such as a Matriculation Certificate, Municipal Birth Certificate and so on. If the exact date is not known, an approximate date shall be determined in the following manner:-

- If he is unable to State his exact date of birth but can State the year or year and month of birth, the 1st July or the 16th of the month, respectively, shall be treated as the date of his birth.
- If he is only able to State his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.
- When a person who first entered Military employ is subsequently employed in a Civil Department, the date of his birth for the purpose of the Civil employment shall be the date stated by him at the time of attestation, or if at the time of attestation he stated only his age, the date of birth shall be deducted with reference to that stage according to (b) above.

Entry of date of birth in service records – The actual date or the assumed date determined in the manner stated above shall be recorded in the Service Book, or any other record that may be kept in respect of the Government servant's service under Government and, once recorded.

4.2.6. Permission Under Conduct Rules

Every non gazetted Court servant is required to give intimation in respect of transaction of Rs.10,000 and above and every gazetted Court servant of Rs.15,000 and above. Intimation regarding transactions in respect of movable property should be given within 30 days of the transaction. However, immovable property may be acquired or disposed of with the previous knowledge of the concerned authorities.

Activities requiring prior permission/sanction – Prior permission of the prescribed authority is necessary in respect of the following activities:-

1. To own or conduct or participate in the editing or management of any newspaper or any other periodical publication.
2. To publish a book by himself or through a publisher or contribute articles to a book.
3. To participate in a radio broadcast or contribute Article to such broadcast.
4. To give evidence in connection with any enquiry conducted by anybody other than the Central / State Government or Parliament or a State Legislature or a Judicial authority or a Departmental authority subordinate to the Government.
5. To accept contributions for fund or to associate with raising of any funds or other collections in cash or in kind in pursuance of any object whatsoever.
6. Acceptance of employment in a foreign organization by a family member.
7. To accept gift from the members of the staff at the time or retirement.
8. To accept membership of book clubs run by Foreign Agencies. If membership of the book club entitles the Government servant to receive books by way of gifts, the acceptance of such gifts is governed by Rule 13 of CCS (Conduct) Rules, 1964.
9. To receive ay complementary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour or in honour of any other Government servant.

10. To engage directly or indirectly in any trade or business or negotiate for or undertake any other employment – To participate or associate in a sponsored (TV/Radio) programme.
11. To undertake a part time job of lectureship in an educational institution on regular remunerative occupation basis.
12. To negotiate for commercial employment while in service.
13. To acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name or any member of the family.
14. To acquire or dispose of any immovable property situated outside India by lease, mortgage, purchase, sale, gift, or otherwise either in his own name or in the name of any member of his family.
15. To approach the Court of Law or Press for the vindication of any official Act which has been the subject matter of adverse criticism or an attack of a defamatory character.
16. To stay as guest with foreign diplomats or foreign nationals aboard.

4.2.7. Activities Which are not Totally Permissible

1. Government servants should so conduct themselves in public as to leave no room for an impression to arise that they are likely to favour persons belonging to any particular religion, in their official dealings. Therefore, participating in proselytizing activities or the direct or indirect use of official position and influence in such activities on the part of the Government servant would invite disciplinary action.
2. Government servant should not be a party to a joint representation relating to matters of common interest.
3. Using official position or influence directly or indirectly to secure employment for any member of his family in any company or firm.

4. Dealing with any matter or giving or sanctioning any contract to any company or firm or any other person if any member of his family is employed in that company or firm or under that person or interested in the matter or contract. In such cases the Government servant shall refer every such matter or contract to his official superior and his orders complied with in such cases.

5. Being a member of or associated with any political party or any organization which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity. Canvassing or otherwise interfering with or using his influence in connection with an Election is also prohibited.

6. Proposing or seconding the nomination of a candidate at an Election or acting as a Polling Agent.

7. Joining or being a member of an association the objects of which are prejudicial to the interests of the sovereignty and integrity of India, or public order or morality.

8. Participating in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of Court, defamation or incitement to an offence.

9. Resorting to or abetting any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government servant.

10. Making any statement to Press or for a broadcast in radio or in a public utterance which -

    - has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government;
    - is capable of embarrassing the relations between the Central Government and the Government of any State or a foreign country.

11. Communicating, otherwise than in a good faith of performance of official duties, directly or indirectly, any official document or any part thereof to any Government servant or any other person to whom he is not authorized to communicate such document or information.

12. Private or personal correspondence on official matters with Foreign Embassies / Missions/ High Commissions.

13. Collection of subscription for the Jawaharlal Nehru Memorial Fund from others.

14. Acceptance of passage money and hospitality by officers of Government from foreign contracting firms not permissible.

15. Canvassing business for Insurance Agency, Commission Agency owned or named by members of his family shall be deemed to be a breach of sub-rule (1) of Rule 15 of CCS (Conduct) Rules.

16. Frequent purchase or sale or both, of shares, securities or other investments.

17. Making himself, or permitting any member of his family or any person acting on his behalf to make, any investment which is likely to embarrass or influence him in the discharge of his official duties.

18. Lending or borrowing or depositing money with any person or firm or private company within the local limits of his authority or with whom the Government servant is likely to have official dealings or otherwise place him self under any pecuniary obligation to such person or firm or private company.

19. Lending money to any person at interest or in a manner whereby return in money or in kind is charged or paid.

20. Bringing or attempting to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under Government.

21. To give or take or abet the giving or taking dowry.

22. To demand directly or indirectly, from the parent or guardian of a bride or bridegroom, as the case may be, any dowry.

23. Entering into or contracting a marriage with a person having a spouse living. However, the Central Government may permit a Government servant to enter into or contract any such marriage, if such marriage is permissible under the personal law applicable to the Government servant ad the other party to the marriage.

24. Being under the influence of any intoxicating drink or drug during the course of duty. Non observance of any law relating to intoxicating drinks or drugs in force. Consumption of such drinks or drugs in public places and excessive consumption are also prohibited.

5. ATTACHMENTS

5.1. ACKNOWLEDGEMENTS

5.1.1. Judicial Contributors to the Case Management Manual

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5.2. CASE REFERENCES

Constitution of India - ARTICLES

Civil Procedure Code - SECTIONS

Civil Procedure Code - ORDERS

Criminal Procedure Code - SECTIONS

Indian Penal Code - SECTIONS

5.3. TABLES

5.3.1. Frame of Suit

NATURE OF SUIT	PLACE OF SUING
Every Suit	Court of the lowest grade competent to try it. (Section 15)
Suits for: • Recovery of; OR • Partition of; OR • Foreclosure, sale or redemption of mortgage or charge upon OR • Determination of any other right to or interest in; OR • Compensation for wrong to: IMMOVABLE PROPERTY	Court within whose jurisdiction the IMMOVABLE PROPERTY is situated (Section 16 (a) to (e))
Recovery of movable property under actual distraint or attachment	Court within whose jurisdiction the movable property is situated. (Section 16(f)).
• Relief respecting; OR • Compensation for wrong to immovable property held by or on behalf of the defendant, where the relief sought can be entirely obtained through his personal obedience.	Court within whose jurisdiction: • the property is situated; OR • the defendant resides or carries on business or personally works for gain. (Proviso to Section 16).
• Relief respecting; OR • Compensation for wrong to immovable property situated within the jurisdiction of different	Court within whose jurisdiction any portion of the property is situated, provided that the entire claim is within the pecuniary jurisdiction of such Court (Section 17).
Where it is uncertain within the jurisdiction	Any of those Courts, provided that the

NATURE OF SUIT	PLACE OF SUING
of which of the two or more Courts any immovable property is situate.	Court has pecuniary jurisdiction and jurisdiction as regards the subject matter of the suit (Section 18).
Compensation for wrong to: • person, OR • moveable property If the wrong is done within the jurisdiction of one Court and the defendant resides or carries on business or personally works for gain within the jurisdiction of another Court.	In either of the Courts at the option of the Plaintiff (Section 19).
Any other suit	• Where the cause of action wholly or partly arises; OR • the defendant resides, carries on business or personally works for gain; OR • where there are two or more defendants, where any of them resides, carries on business or personally works for gain, provided that: either the leave of the Court is obtained; OR the defendants, who do not reside, carry on business or personally work for gain (Section 20).

5.4. SUGGESTION FORM

Please send your valuable suggestions, so that we may incorporate the same in the next version:

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