



Criminal Trial Process

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Aim of Criminal Laws

- Striking balance between the prerogative of the state and liberties of an individual.
- Twin tasks- The 'control' task of preventing the criminal acts and the task of ensuring that a 'just and fair' procedure is adopted by the state in its actions.
- Control task is identification of the human behaviour that constitute deviance/crime and the appropriate sanctions that are deemed appropriate for serving the 'control' function.
- The 'just and fair' procedure task has witnessed movement from 'Trial by ordeal' and 'Trial by Battle' to the most sophisticated fair criminal trial procedures which reflects shift from punitive control to preventive control.



Challenge of Balancing the Twin Tasks:

- The 'control' and the 'fair' and 'just' procedure tasks are often in conflict with each other due to their inherent conflicting interests.
- Owing to this, the criminal justice system remain perpetually busy in balancing the one against the other.
- 'Principle of Legality' and 'Presumption of Innocence' are some indicators of 'fair' and 'just' procedure. However, the emergence of 'crime control' consideration and 'efficiency' rather than 'credibility' produced tangible outcomes like larger number of arrests and better conviction rates, making the crime control model more suitable to advance the state's interest.
- Police as an agency is seen with an increasing role in the criminal justice administration in the 'control' task and the task of achieving 'fair' and 'just' procedure is left in the hands of the judiciary.



Inheritance of the Colonial Criminal Law Legacy:

- ◆ The evolution of Indian criminal law can be traced back to the time of British rulers establishing effective colonial governance in India in mid-19th century.
- ◆ Article 372 of the Constitution of India- “all the laws in force in the territory of India immediately before the commencement of the constitution shall continue in force therein until altered or repealed or amended by a competent Legislative or other competent authority”.
- ◆ The British colonial model of criminal laws had become acceptable and credible as it epitomised the best principles of the adversarial system of criminal justice.
- ◆ The colonial legacy of criminal laws is constituted primarily by the Indian Penal Code, 1860, the Criminal Procedure Code, 1861 (1882 and 1898), the Police Act, 1861 and the Indian Evidence Act, 1872. The colonial criminal laws were enacted mainly to enforce and strengthen the administration in India.
- ◆ Although enormous gains were made by inheriting a ready-made system of criminal laws, the responsibilities for making the criminal laws appropriate for the changed times falls squarely on alert criminal law reform institutions.



BASIC CONSIDERATIONS of Cr.PC, 1973

- ◆ Just, fair and reasonable trial including investigation, post trial including appeal.
- ◆ Avoid delay in investigation and trial;
- ◆ Fair deal to the poor and the marginalized communities.
- ◆ Bail is a rule and jail is an exception.
- ◆ Sentence hearing.
- ◆ Zero tolerance to torture or cruel and inhuman and degrading treatment.



BAIL AND REMAND PROCESSES

- ◆ Bail and remand are important phases investigation of crimes.
- ◆ For the purpose of bail, offences are classified into two categories- bailable and non-bailable. Chapter XXXIII of CrPC deals with questions of bails and bonds.
- ◆ Sections 436, 437, 438 and 439 specifically deal with bails under different situations and circumstances.
- ◆ Section 436 deals with bail in bailable offences; Section 437 deals with bail in non-bailable offences; Section 438 deals with anticipatory bail; and Section 439 deals with special powers of High Court or Sessions court regarding bail.
- ◆ Section 167(2) mandates the investigating police to release the accused person on bail when they are unable to complete the investigation of a case within the stipulated time vide the Section 167(2) (a) (i) and (ii) CrPC.
- ◆ In granting or refusing bail, courts generally take into consideration the following points (1) the nature of the accusation; (2) the nature of the evidence in support of the accusation;(3) the severity of the punishment which the conviction will entail; and **(4)** whether the accused, if released on bail, is likely (a) to tamper with the prosecution evidence, or (b) to get up falls evidence in support of the defence.



Bails in Bailable Offences

- ◆ In case of bailable offence under Section 436, a police officer has no discretion to refuse bail if the accused is prepared to give bail or execute bond.
- ◆ The Magistrate gets jurisdiction to grant bail during the course of investigation when the accused is produced before him and should grant bail to the accused when he is prepared to give bail or ready to execute personal bond.
- ◆ When bond with surety or sureties is to be executed heavy amount should not be demanded as surety amount and the accused economic back ground has to be considered
- ◆ Only the court is vested with power to re-arrest the person arrested by canceling the bail for any valid reason
- ◆ **Bail to an under Trial Prisoner:-** Code of Criminal Procedure (Amendment) Act, 2005, Section 436A has been inserted to entitle a person who has, under gone detention for a period extending up to one-half of the maximum period of imprisonment shall be released on personal bond.
- ◆



Bail in Non-Bailable Offences

- ◆ Section 437 CrPC deals with bails in non-bailable offences. Bail under the section is after arrest. Unlike in bailable offence, in non-bailable offence bail is a matter of judicial discretion.



Circumstances for granting or refusing Bail

- ◆ Reasonable ground for believing that the applicants are guilty of the offence;
 - ◆ Nature and gravity of the offence;
 - ◆ Severity and the degree of the punishment
 - ◆ The chances of accused absconding if released on bail;
 - ◆ The danger of the witnesses being tampered with;
 - ◆ Opportunity to the accused to prepare for their defence;
 - ◆ Larger interests of the public;
- The Magistrate should record his reasons in writing for release of accused person.



REMAND PROCESS

- ◆ Remand signifies a process of committing and detaining of a person accused of a crime in judicial custody under the authority of law for the purpose of investigation and trial of the case.
- ◆ Section 167 of CrPC refers to the process of remand of the accused during investigation of crime. Law makers contemplated that the investigation should be completed in the instance within 24 hours under Section 57 or, if not, under Section 167 within 15 days from the date when the person arrested was first produced before the Magistrate.
- ◆ The law obviously does not favour detention in the custody of the police, and even in the case of an accused person, such detention can be allowed only in special cases and for reasons to be stated in writing and not as a matter of course, whenever it may be asked for by investigating police.
- ◆ Under Section 57 of CrPC no police officer is authorized to detain in custody a person arrested without warrant for a longer period not exceeding 24 hours. If the investigation cannot be completed within that period, the police must forward the accused to the nearest Magistrate under sub-section (1) of Section 57 of CrPC.



Duration of detention u/s 167 of CrPC

- ◆ Sub section (2) of Section 167 of CrPC empowers the Magistrate to detain accused person for a total period not exceeding 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; and 60 days.
- ◆ Right to be released on bail under the Proviso (a) to sub-section (2) of Section 167 will cease only if the charge sheet has been filed in the court within the period of 60 days or 90 days.
- ◆ If the investigation is completed but the charge sheet is not filed within the stipulated period, the accused is entitled for bail under the Proviso. However, the accused shall continue to be in judicial custody until he furnishes bail.
- ◆ However, under some special and local laws the period of detention in judicial custody allowed is more than 90 days. For example, under the Unlawful Activities (Prevention) Act, 1967, (as amended in 2008) the period of detention in judicial custody is 180 days.





Legal aid: Constitutional requirement

- Flows from **Articles 14, 21, 22(1) and 39-A.**
- **Article 22(1) states:** “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”
- **Section 304(1)** of the Cr.PC indigent accused is to be provided with a pleader in the Court of Session; and



Legal aid: Constitutional requirement

- **Art.22(1) Sec.304(1) Cr.PC.**
- **Section 304(3)** the State Government is empowered to extend this facility to trials before other courts as well.
- Article **39-A** "equal justice and free legal aid"
Hussainara Khatoon (IV) v. State of Bihar
- ***Khatri v. State of Bihar***
- ***Suk Das v. State of Arunachal Pradesh***
- ***Legal Aid in Police Station, Prison & Court.***



◆ THANK YOU.