



BIHAR

Judicial Services Exam

CIVIL JUDGE

Bihar Public Service Commission

Volume - 4



BIHAR JUDICIAL SERVICES

CONTENTS

1.	The Code of Criminal Procedure 1973	(Pg. 1)
Part A		
Ch. I	Preliminary	1-5
Ch. II	Constitution of Criminal Courts and Offices	6-25 A
Ch. III	Power of Courts	26-35
Ch. IV A	Powers of Superior Officers of Police	36
Ch. IV B	Aid to The Magistrates and The Police	37-40
Ch. V	Arrest of Persons	41-60 A
Ch VI	Process to Compel Appearance	61-90
	A. Summons	61-69
	B. Warrant of arrest	70-81
	C. Proclamation and attachment	82-86
	D. Other rules regarding processes	87-90
Ch. VII	Process to Compel the Production of Things	91-105
	A. Summons to produce	91-92
	B. Search-warrants	93-98
	C. General provisions relating to search	99-101
	D. Miscellaneous	102-105
Ch. VII A	Reciprocal Arrangements for Assistance in Certain Matters and Procedure for Attachment and Forfeiture of Property	105 A-105 L
Ch. VIII	Security for Keeping the Peace and For Good Behaviour	106-124
Ch. IX	Order for Maintenance of Wives, Children and Parents	125-128
Ch. X	Maintenance of Public Order and Tranquility	129-148
	A. Unlawful Assemblies	129-132
	B. Public Nuisances	133-143
	C. Urgent cases of nuisance or apprehended danger	144-144 A
	D. Disputes as to immovable property	145-148
Ch. XI	Preventive Action of The Police	149-153
Ch. XII	Information to The Police and Their Powers to Investigate	154-176
Ch. XIII	Jurisdiction of Criminal Courts in Inquiries and Trials	177-189
Ch. XIV	Conditions Requisite for Initiation of Proceedings	190-199
Ch. XV	Complaints to Magistrates	200-203
Ch. XVI	Commencement of Proceedings Before Magistrates	204-210
Ch. XVII	The Charge	211-224
Ch. XVIII	Trial Before a Court of Session	225-237

Ch. XIX	Trial of Warrant-Cases by Magistrates	238-250
Ch. XX	Trial of Summons-Cases by Magistrates	251-259
Ch. XXI	Summary Trials	260-265
Ch. XXIA	Plea Bargaining	265A-265 K
Ch. XXII	Attendance of Persons Confined Or Detained In Prisons	266-271
Ch. XXIII	Evidence in Inquiries and Trials	272-299
Ch. XXIV	General Provisions as To Inquiries and Trials	300-327
Ch. XXV	Provisions as To Accused Persons of Unsound Mind	328-339
Ch. XXVI	Provisions as To Offences Affecting the administration of Justice	340-352
Ch. XXVII	The Judgment	353-365
Ch. XXVIII	Submission of Death Sentences For Confirmation	366-371
Ch. XXIX	Appeals	372-394
Ch. XXX	Reference and Revision	395-405
Ch. XXXI	Transfer of Criminal Cases	406-412
Ch. XXXII	Execution, Suspension, Remission and commutation of Sentences	413-435
Ch. XXXIII	Provisions as To Bail and Bonds	436-450
Ch. XXXIV	Disposal of Property	451-459
Ch. XXXV	Irregular Proceedings	460-466
Ch. XXXVI	Limitation for Taking Cognizance of Certain Offences	467-473
Ch. XXXVII	Miscellaneous	474-484

2.

Indian Evidence Act, 1872

(Pg. 165)

PART - I	: Relevancy of Facts	
	Ch I - Preliminary	1-4
	Ch II - The Relevancy of Facts	5-55
PART - II	: On Proof	
	Ch. III - Facts Which Need Not Be Proved	56-58
	Ch. IV - Oral Evidence	59-60
	Ch V - Documentary Evidence	61-90A
	Ch VI - The Exclusion of Oral by Documentary Evidence	91-100
PART - III	: Production and Effect of Evidence	
	Ch. VII - The Burden of Proof	101-114 A
	Ch. VIII - Estoppel	115-117
	Ch. IX - Witnesses	118-134
	Ch. X - The Examination of Witnesses	135-166
	Ch. XI - Improper Admission and Rejection of evidence	167

The Code of Criminal Procedure

The code of Criminal Procedure, 1973

- * CrPC has 37 Chapter, 484 Sections & II Schedules
- * Schedule I = Classification of offence
- * Schedule II = Form

Q. How many forms are there?

Ans. 56 forms

Q. What is the name of 1st form & last form?

Ans. 1st Form: Summon to an accused person

Last Form: Warrant of imprisonment on forfeiture of bond for good behaviour

Schedule - I is of two types

1. Which relate to IPC.
2. There are six columns.

Sec. No.	Offence	Punishment	Cognizable/Non-Cognizable	Bailable/Non-Bailable	Tri-able
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Wherever matter is of IPC, no consent can be made looking into' the punishment.

Refer Sec 500, Sec 377 in Schedule I

Wherever matter is of other law, there are 4 columns

Offence	C/NC	B/NB	Tri-able
(i) Wherever offence is punishable by death, life imprisonment or more than 7 yrs	C	NB	Court of Session
(ii) Wherever matter of 3 yrs to 7 yrs	C	NB	Judicial Magistrate 1 st Class
(iii) Wherever matter 0-3 yrs/fine	NC	B	Any magistrate

CrPC is divided into 7 parts.

(1) General Rules [Ch 1 – 7A] Sec 1 – 105 L	(2) Preventive Law [Ch 8 - 11] [Sec 106 - 153]	(3) Before Trial [Ch 12 - 16] [Sec 154 - 210]
(4) Charge and Trial [Ch 17 – 21 A] [Sec 211 – 265 L]	(5) Other Proceedings During Trial [Ch 22 - 26] [266 - 352]	(6) Judgment and Further Proceedings [Ch 27 - 32] [Sec 353 - 435]
(7) Supplemental Proceedings [Ch 33 - 37] [Sec 436 - 484]		

General Rules

(1) Ch 1 Preliminary Sec 1 - 5	(2) Criminal Courts and Offices Sec 6 – 25 A	(3) Power of court Sec 26 - 35	(4) 4A Power of Superior officers of police Sec 36 4B Assistance to Police or Magistrate Sec 37 – 40
(5) Arrest of Person Sec 41 – 60 A	(6) Process to Compel appearance of Person Sec 61 – 90	(7) Process to Compel Production of things Sec 91 – 105	

	6A Summon 61 – 69 6B Warrant 70 – 81 6C Proclamation & Attachment 82 – 86 6D Other Rules 87 - 90	7A Summon 91 – 92 7B Search Warrant 93 – 98 7C General Provisions 99 – 101 7D Miscellaneous 102 – 105 7A Reciprocal Arrangement Sec 105 A – 105 L	
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Long title of the Act: An Act to consolidate and amend the law relating to Criminal Procedure.

Q. What is the history of CrPC?

Ans.

Presidency Town	Provisional Area
CrPC, Supreme Court Act 1852 [Act No. 16 of 1852]	General CrPC, 1861 [Act No. 25 of 1861]
CrPC, High Court Act, 1865 [Act No. 12 of 1865]	General CrPC, 1872 [Act No. of 1872]
<p>In whole of India [Act No 10 of 1887]</p> <p>CrPC 1898 [Act 5 of 1898]</p> <p>CrPC 1973 [Act no 2 of 1974]</p>	

Apart from this few amendments have taken place due to various commissions.

(1) J L Kapoor

(2) Malinath Committee

(3) Justice J S Verma Committee

Assent of President – 25th January, 1974

It came in force – 1st April, 1974

Q. Where CrPC not apply? [Sec 1, 5]

Ans. Not apply on following places:

In Nagaland & tribal areas except Ch 8, 10, 11

Q. What is a tribal area?

Ans. Following are tribal area

- * Such area which before 21 Jan 1972 was tribal area of Assam and which is mentioned in Schedule 6 Para 26 of constitution. And it excludes municipality of Shillong.
- * Sec 5 not apply on Special law and local law or any other form of procedure prescribed
- * Not apply where special power or jurisdiction is conferred.

Section 4: All offences in IPC shall be investigated inquired and tried shall be according to CrPC.

- * Wherever offence under any other law then inquiry, investigation shall be according to CrPC, Subject to that Act. [The manner can be regulated. E.g. : SC/ST Act = Special Court]
- * Criminal Law (Amendment) Act, 2013 came into force on 3 Feb, 2013.

Section 2:

a Bailable/Non Bailable Offence	b Charge	c Cognizable offence	d Complaint	e High court
f India	g Inquiry	h Investigation	i Judicial Proceeding	j local Jurisdiction

k Metropolitan Area	l Non-cognizable offence	m Notification	n Offence	o Officer in charge of Police Station
p Place	q Pleader	r Police Report	s Police Station	† Prescribed
u Public Prosecutor	v Sub-division	w Summon Case	x Warrant case	y The words not here used from IPC.

<p style="text-align: center;"><u>Bailable Offence</u></p> <ul style="list-style-type: none"> * <u>Sec 2 (a):</u> * Such offences which is shown as bailable in I Schedule or any other law in force * Here person has right * Refer sec 436 	<p style="text-align: center;"><u>Non-Bailable Offence</u></p> <ul style="list-style-type: none"> * <u>Sec 2 (a):</u> * Such offences which is shown as non-bailable in I schedule or any other law in force * Discretion of court * Refer sec 437
<p style="text-align: center;"><u>Cognizable</u></p> <ul style="list-style-type: none"> * <u>Sec 2 (c):</u> * Such offences which is shown in I schedule as cognizable or any other law for the time being in force * Police officer can arrest without warrant. 	<p style="text-align: center;"><u>Non-Cognizable</u></p> <ul style="list-style-type: none"> * <u>Sec 2 (L):</u> * Such offences which is shown in I schedule as non cognizable or any other law for the time being in force * Can arrest without warrant.

Q. What do you understand by charge?

Ans. Sec 2(b): Formal acquisition by court that all formalities to declare Act as offence is complete. It can have more than one heads [sections]

Q. What is Complaint? [Sec 2 (d)]

Ans. Written or oral allegation to magistrate.

- * With the view of taking action
- * That any known or unknown person has committed any offence.
- * Does not include police report.

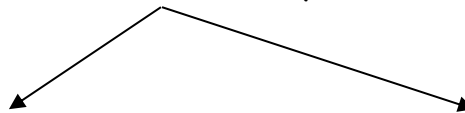
Q. When does police report becomes complaint?

Ans. Sec 2 (d): Where police officer after investigation comes to know that non-cognizable offence has occurred then police report becomes complaint and police officer becomes complainant.

Complaint	FIR
<ul style="list-style-type: none"> * Always to magistrate * Cognizable and Non-cognizable * Magistrate himself inquire or ask police inspector to investigate [156 (3)] * No need for magistrate to give copy * No need to give a copy to complainant. 	<ul style="list-style-type: none"> * Always to Police * Only in cognizable matter. * Police officer shall investigate * A copy of FIR to magistrate * One copy free of cost to the informant.

2 (e) (a) Wherever matter of State then high court of that state.

(b) Wherever matter of Union Territory



High court of state which is extended by law e.g. Chandigarh	Highest court of Criminal appeal in that territory other than SC E.g.: Superior court.
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Investigation 2 (h)	Inquiry 2 (g)	Trial X
Police Officer or Person authorized by magistrate with the purpose of collecting evidence.	Proceeding done by magistrate or court which is other than trial and object to see whether prima facie case made out or not.	Proceeding done by court or magistrate whose object to determine criminal liability

Proceedings by police officer or other person	Magistrate or court	Magistrate or court
Extra Judicial Proceeding	Judicial Proceeding	Judicial Proceeding
Result : final report or police report or police report	Result : Penalty, cognizance or discharge	Result : Acquittal or convicted
As report	As order	As judgment
Further Proceedings : Cognizance * Zahira Habibhulla Sheikh Vs State of Gujarat. * Case related to defective investigation	Further proceedings Discharge, penalty	Further proceedings Appeal, revision reference.

Discharge	Acquittal
<ul style="list-style-type: none"> * After inquiry * When prima facie case not made out * It is both in preventive and punitive law. * There can be second trial 	<ul style="list-style-type: none"> * After trial * After appreciation of evidence no matter found * Only in punitive law. * Generally there can't be second trial. * Except in exceptions of Sec 300 CrPC

Q. What do you understand by offence?

Ans. Sec 2(n): Any act or omission which is made punishable by law in force.

* Includes complaint under Sec 20 catel trespass Act.

Summon Case	Warrant Case
* Sec 2 (w) * Such offence in which punishment 2 yrs or less or fine. Refer Ch : 20	* Sec 2 (x) * Such offence in which death penalty life imprisonment or more than 2 years Refer Ch : 19

Sec 2 (wa): Such person who has suffered loss or injury by act or omission of accused

* Includes guardian and legal heir also.

Sec 3:

State

Metropolitan Area	General Area
* MM	* JM I, JM II
* CMM	* CJM (Chief Judicial Magistrate)
* Old times	

(a) JM I → JM I

JM II → JM II

JM III ↗

(Chief Presidency magistrate – Chief Metropolitan Magistrate) (b) PM – MM

(Presidency Magistrate)

CPM – CMM

Magistrate First Class = JMI

Judicial Magistrate	Executive Magistrate
<ul style="list-style-type: none"> * RJS * Which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial. 	<ul style="list-style-type: none"> * IAS/RAS * Which are administrative or executive in nature. Such granting of license the suspension or cancellation of license. * Sanctioning a prosecution * Withdrawing from prosecution.

Criminal Courts and Offences

			JM	MM	(Executive Magistrate)	Prosecution
6	9	Court	11	16	20	24
		Boss	12	17	X	25
7	10	Special	13	18	21	25A
		Local Jurisdiction	14	X	22	
8		Subordination	15	19	23	

Chapter - 2

Sec 6: Except HC & Court established in any other law in force, there shall be following court:

- a. Court of session
- b. JMF I and in metropolitan area MM
- c. JMS II
- d. Executive Magistrate

Sec 7: State shall be divided into session division.

- * There can be one or more districts.
- * Metropolitan area shall be considered as different session division.
- * State govt. after consultation with HC can alter the boundaries and divide district into sub-divisions also.

Sec 8: Such area whose population is more than 10 lakh, then state govt. can issue notification.

In enactment following are declared

(i) Ahmedabad (ii) Bombay (iii) Kolkata (iv) Madras

- * If population less than 10 lakh, then also it shall continue.
- * Population = last census

Court of Session

Sec 9: State Govt. in every district shall establish Court of Session.

- * Presiding officer shall be appointed by high court.
- * Assistant – Session Judge & Additional Session Judge are appointed by HC.
- * Wherever post of session judge is vacant and urgent matter is to be disposed then by following :
 - (a) Additional Session Judge
 - (b) Assistant Session Judge
 - (c) Chief Judicial Magistrate

One session Judge can be given charge of other session division. In such division he shall act as Additional Session Judge.

The general rule is that judge shall sit at the place which is declared by HC. But he can sit at difference place also considering convenience of party and witness, with consent of accused and prosecutor also.

Sec 10: All assistant session judges shall be subordinate to session judge.

SJ - He shall distribute the work.

If session judge is absent then additional session judge, assistant session judge and CJM shall dispose.

<p><u>Sec 11:</u></p> <ul style="list-style-type: none"> * State Govt. in every district which is not metropolitan after consultation with HC, establish court. * Presiding officer shall be appointed by HC. * HC can empower civil judge with power of JM I/II [In Raj. this] [Civil Judge + JM] 	<p><u>Sec 16:</u></p> <p>= 11</p>	<p><u>Sec 20:</u></p> <ul style="list-style-type: none"> * State Govt. in every district shall appoint executive magistrate and make one district magistrate out of them. * Similarly ADM * Clauses 5 ; State Govt. can give power of EM to police commissioner [Jaipur & Jodhpur this only] * The state govt. may appoint 1 EM to be in charge of a
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		sub-division and he shall be called as sub-divisional magistrate.
<p><u>Sec 12:</u></p> <ul style="list-style-type: none"> * In district, HC shall appoint 1, JM I as CJM : * HC shall appoint additional CJM also. * In every sub-division there can be sub divisional judicial magistrate. * Every JM shall be subordinate to CJM except additional CJM. 	<p><u>Sec 1:</u></p> <p>= 17</p>	
<p><u>Sec 13:</u></p> <ul style="list-style-type: none"> * On request of central & state govt., HC can appoint any person who was or is in govt. post and empower him with power of JM I/II * Such person should have legal experience and qualification. * Appointment once for one year [Renew] 	<p><u>Sec 18:</u></p> <p>= 13</p>	<p><u>Sec 21:</u></p> <ul style="list-style-type: none"> * State Govt. for any special function or area can appoint any EM as Special Executive magistrate. * For any period of time * He shall have all the power of EM.

<p><u>Sec 14:</u></p> <ul style="list-style-type: none"> * Subject to the control of HC, CJM magistrate can use all or any of his power in his jurisdiction. * Generally his power shall be in whole district. 		<p><u>Sec 22:</u> DM Shall have power in whole district.</p>
<p><u>Sec 15:</u> Session Judge</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">CJM</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">JM</p>	<p><u>Sec 19:</u> SJ</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Additional chief Metropolitan Maglistrate/CMM</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">MM</p>	<p><u>Sec 23:</u></p> <p style="text-align: center;">DM/Additional District Magistrate</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Sub Divisional Magistrate</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">EM</p>

Sec 24: Central or State Govt. after consultation with HC can appoint PP in HC & Adolitional Public Prosecutor also.

- * Central or State govt. can appoint PP in district courts and APP also.
- * Appointment is by two manners :

<p>(1) District Magistrate after consultation with session judge shall appoint PP</p>	<p>(2) Wherever there is a regular cadre then by promotion in that cadre. [In Raj : this only]</p>
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- * For PP experience of 7 yrs as advocate.
- * For Special PP experience of 10 yrs.
- * Victim can appoint advocate of his own choice who shall assist PP.

Sec 25: For the courts of magistrate state govt. or central govt. shall appoint APP.

- * Wherever there is no APP, then ask any person for prosecution. For this DM shall give order.
- * Whether Police Officer can become APP?

In following condition can't be made

- (a) Who has participated in investigation?
- (b) Not below the rank of inspector.

Sec 25 A: State govt. shall make prosecution directorate

- * In such directorate, there shall be 1 director prosecution and deputy director prosecution.
- * There must be experience of 10 yrs for both and concurrence of CJ of HC.
- * It shall be under administrative control of HOD (Home of Directorate) Home Department.

Director of Prosecution (HC) – PP, Add PP, Special PP

Deputy Director of Prosecution (Dist) – PP, Add PP, Special P, And Assistant Public Prosecutor.

- * Does not include advocate general.
- * Amended in 2005, Came into force in 2006.