

compoundable offences under section 320 Cr.P.C.

Under the Cr.P.C. Section 321 accused can also be withdrawn from prosecution at any stage of trial with the permission of the court. If the accused is allowed to be withdrawn from prosecution prior to framing of charge, this is a discharge, while in cases where such withdrawal is allowed after framing of charge, it is acquittal.

The above aforesaid is the process how a trial takes place for dispensation of a criminal case. Although this six stepped procedure looks plain and simple, it suffers from many inherent lacunas which become the reasons for delay and hampers an expeditious trial. Not to forget the option of appeal is again there where the state or the criminal has option to appeal to appellate court and as well as seek a permission to file a special leave petition to the Supreme Court where in again all this process is repeated except for the fact that the Supreme Court only deals with cases where there is a substantial question of law involved.

### **FIRST INFORMATION REPORT (FIR)**

First Information Report (FIR) is a written document prepared by the police when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report. It is generally a complaint lodged with the police by the victim of a cognizable offence or by someone on her/his behalf. Anyone can report the commission of a cognizable offence either orally or in writing to the police. Even a telephonic message can be treated as an FIR.

### **Importance of FIR**

An FIR is a very important document as it sets the process of criminal justice in motion. It is only after the FIR is registered in the police station that the police takes up investigation of the case. So anyone who knows about the commission of a cognizable offence can file an FIR. It is not necessary that only the victim of



the crime should file an FIR. A police officer who comes to know about a cognizable offence can file an FIR himself/herself. Any one can file an FIR. If you are the person against whom the offence has been committed; you know his self about an offence which has been committed; you have seen the offence being committed.

### **The Procedure of First Information Report**

The procedure of filing an FIR is prescribed in Section 154 of the Criminal Procedure Code, 1973. When information about the commission of a cognizable offence is given orally, the police must write it down. It is right as a person giving information or making a complaint to demand that the information recorded by the police is read over to you. Once the police has recorded the information, it must be signed by the person giving the information. It is duty of the police officer to provide the copy of FIR to the informant free of cost.

### **Cognizable Offence**

A cognizable offence is one in which the police may arrest a person without warrant. They are authorised to start investigation into a cognizable case on their own and do not require any orders from the court to do so.

### **Non-Cognizable Offence**

A non-cognizable offence is an offence in which a police officer has no authority to arrest without warrant. The police cannot investigate such an offence without the court's permission.

The police may not investigate a complaint even after the Registration of a FIR, when;

- i. the case is not serious in nature.
- ii. the police feel that there is not enough ground to investigate. However, the police must record the reasons for not conducting an investigation and in the latter case must also inform you.
- iii. He should sign the report only after verifying that the



information recorded by the police is as per the details given by you.

- a. People who cannot read or write must put their left thumb impression on the document after being satisfied that it is a recorded correctly.
- b. Complainant should ask for a copy of the FIR, if the police do not give it to you. It is his right to get it free of cost.
- c. Complainant should mention these basic information in the FIR:
  - a) His name and address;
  - b) Date, time and location of the incident he are reporting;
  - c) The true facts of the incident as they occurred; Names and descriptions of the persons involved in the incident;
  - d) Refusal to register an F.I.R. is not only in cognizable offence but also punishable.
  - e) Witnesses, if any. Police & Inspector General of Police and bring his complaint to their notice.

The complainant can send her/his complaint in writing and by post to the Superintendent of Police concerned. If the Superintendent of Police is satisfied with her/his complaint, she/he shall either investigate the case herself/himself or order an investigation to be made.

(ii) The Complainant can file a private complaint before the court having jurisdiction. One should not do:

- Never file a false complaint or give wrong information to the police. He can be prosecuted under law for giving wrong information or for misleading the police.
- Never exaggerate or distort facts. Never make vague or unclear statements.

## **DETENTION**

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Any form of imprisonment where a person's freedom of liberty is removed can be classed as detention, although the term is often associated with persons who are being held



without warrant or charge before as him/her have been raised  
Being detained for the purposes of a drugs search is tantamount  
to a temporary arrest, as it is not yet known whether charges can  
be brought against an individual, pending the outcome of the search.  
 The term 'detained' often refers to the *immediacy* when  
 someone has their liberty deprived, often before an arrest or  
 pre-arrest procedure has yet been followed. For example, a  
shoplifter being pursued and restrained, but not yet informed she/  
he is under arrest or read her/his rights would be classed as  
'detained'.

This means that the arrested person has right to hire a legal  
 practitioner to defend himself/herself. Every person who has been  
 arrested would be produced before the nearest Magistrate within  
24 hours. The custody of the detained person cannot be beyond  
the said period by the authority of Magistrate. The Article 22 (1)  
and 22(2) as constitution of India make the above provisions.  
 However, Article 22(3) COI says that the above safeguards are  
 not available to the following: If the person is at the time being an  
 enemy alien. If the person is arrested under certain law made for  
 the purpose of "Preventive Detention", the first condition above is  
 justified because when India is in war, the citizen of the enemy  
 country may be arrested. But the second clause was not easy to  
 justify by the constituent assembly. This was one of the few  
 provisions which resulted in stormy and acrimonious discussions.  
 Under Preventive Detention Laws a person can be put in jail /  
 custody for two reasons. One is that he has committed a crime.  
 Another is that he is potential to commit a crime in future. The  
 custody arising out of the later is preventive detention and in this,  
 a person is deemed likely to commit a crime. Thus Preventive  
Detention is done before the crime has been committed.

Every case of preventive detention must be authorized by law  
 and not at the will of the executive. The Preventive detention  
 cannot extend beyond a period of 3 months. Every case of  
 preventive detention must be placed before an Advisory Board  
 composed of Judges of the High Court (or persons qualified for



Judges of the High Court). The case must be presented before the Advisory Board within 3 months. A continued detention after 3 months must be having a "favour of the Advisory Board". The person will be given opportunity to afford earliest opportunity to make a representation against the preventive detention. No person can be detained indefinitely. Article 22 (7) provides exception to the above provisions. This Article mandates that: When parliament prescribes by law the circumstances under which a person may be kept in detention may be kept in detention beyond 3 months without the opinion of the advisory board. Parliament by law can also describe under the same law, the maximum period of detention.

The public have a number of rights if detained by the police at a police station. The rules and rights of how the police can behave are set down in codes of practice and legal Action can be taken if these rights are abused.

### **Reasons for Arrest**

There may be a number of reasons why the police will detain a person at the police station. It could be that they have arrested a person on suspicion of committing an offence or Actually caught a person committing an offence. The police may also suspect that a person has previously committed an offence. Other reasons may be that they have arrested a person to prevent the person from injuring themselves or they suspect personal details are false or suspicious.

### **The Arrest Procedure**

If the police decide that they are going to arrest a person they will need to inform the suspect that they are under arrest. Before the arrest, the police are also required to give a verbal caution after the arrest, they also need to inform the suspect why they are being arrested. This will usually happen at the police station. Once arrested the suspect should be taken immediately to the police station. There may be times, such as in the case of robberies,



when the police will actually retrace where the suspect has been  
before proceeding to the station.

### **Rights at Police Station**

There are a number of rights that the police must make the  
suspect aware of once they have entered the station. These rights  
will include the right to obtain legal advice from a solicitor and the  
right to inform someone of the detained person's whereabouts.

There may be certain situations where the police can delay  
informing certain parties of the suspect's whereabouts. They may  
do this if they suspect that informing someone else could lead to  
the tampering of evidence.

### **Detainment at the Police Station**

The detained person should be made aware of this delay of  
informing other people, and the delay can only be for a maximum  
of 24 hours. If someone does enquire about the detained person's  
whereabouts the police should give details of the detainment.

### **Taking Legal Advice**

Every detained person has the right to take legal advice. This  
advice should be free from a Legal Aid Advocate but this could  
depend on the detained person's financial circumstances. The  
detained person has the right to see their own solicitor if the  
offence is a serious one. Once you have asked for legal advice  
you have the right not to answer anymore questions from the  
police. In fact, the police should not ask any more questions if you  
have had legal advice.

If you have been detained and any of these procedures have  
not been followed then there are legal consequences that can be  
applied. Complaints can be made against the police if the public's  
rights are infringed or breached. The police can be sued,  
disciplined or prosecuted for the abuse of rights or misconduct. It  
is very important that legal advice should be taken when arrested  
and detained by the police.