

# Template for School Child Protection Policy (SCPP) – 18 Feb. 2025

## Criminal Justice System, a Summary



### Criminal Justice System, a Summary

Also, refer to flowchart CJS-A on the last page of this summary.

**Disclaimer:** The summary is not a substitute for legal advice.

**Crime and laws - What is a Crime?:** A criminal offence or crime, like a robbery, is an intentional action described, defined, or codified in various criminal laws, such as the Bharatiya Nyaya Sanhita (BNS), 2023 (earlier called the Indian Penal Code - IPC), the Protection of Children from Sexual Offences (POCSO) Act, 2012 the Protection of Women from Domestic Violence Act, 2005, the Dowry Prohibition Act, 1961, the PoSH Act, 2013 the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, the Arms Act, 1959, etc. Criminal intent is established from the circumstances, evidence, and facts of the case under consideration. At times, criminal intent is determined at the discretion of the judge or magistrate. Unlike a civil offence, such as not paying rent to the landlord per the rent agreement, a criminal offence has a provision for jail term/imprisonment. **Amendments:** Laws for betterment, like the Constitution, are amended from time to time.

#### **Jurisprudence:**

**The Law in Retrospect:** It's rare for criminal laws to be applied in retrospect. This means that if a law became applicable, say on 14th November 2012, the crimes defined and codified in the law cannot be applied to incidents before 14th November 2012. POCSO Act and JJ Act cannot be applied in retrospect.

**Fair Trial:** The accused has a full right to defend themselves, and the legal system operates on the presumption of 'innocent until proven guilty'. However, it's important to remember that this presumption is not absolute and is exempted in specific laws like the POCSO Act.

In all criminal cases, the state (government) provides a lawyer (public prosecutor) to the victim or complainant. The victim or complainant can also hire a lawyer to assist the public prosecutor. The accused also has the right to hire a lawyer. If the accused cannot afford a lawyer, the state (government) provides one through the National Legal Services Authority, State Legal Services Authorities, or District Legal Services Authorities.

**Appellate System:** The appellate system plays a crucial role in ensuring justice. It allows any verdict by a court to be challenged in a superior court, from the District Court to the High Court and eventually to the Supreme Court.

**Misuse of law:** All laws have the potential for misuse, and this cannot be used as an argument against a law in court.

**Ignorance of law:** Ignorance of the law cannot be used as an argument in a court of law.

**Doli Incapax: No child below the age of 7 can be held guilty of any crime or tried under the criminal justice system in any circumstances.**

**Reporting in good faith:** Reporting in good faith under the law encourages individuals to come forward without fear of retaliation or legal consequences. It refers to providing information about an incident, suspicion, or concern with honest intent and without malice or an ulterior motive. It ensures that the individual making the report believes the information to be true to the best of their knowledge and is acting in the interest of justice or public safety, such as in the case of child sexual abuse.

**Criminal Offence Types:** Criminal offences can be broadly categorised into three types.

**Type 1 - Cognisable or Non-Cognisable:** Based on whether the offence is cognisable, meaning the police can arrest a person, or non-cognisable, meaning the police can neither register an FIR nor arrest a person without prior permission from the magistrate. Non-cognisable offences are **Minor offences** and as a **thumb rule** fall within the ambit of a society and institution's morals, values, and ethics rather than the criminal justice system. These offences are **compoundable**, meaning that the parties involved (i.e., the victim or

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complainant and the accused) can settle on their own. *Example: During a parent-teacher meeting in a school, a parent calls the police because classmates are bullying their child or because a teacher calls the child names for not completing homework. In such cases, the role of the police is to facilitate a compromise between the parties.*

**Type 2 - Petty, Serious Heinous:** Based on the gravity of a cognisable offence and the corresponding jail term (ranging from zero to life imprisonment and even death penalty) that can be awarded by a court to a convict.

**Petty (0 to 3 years and/or a fine):** a domestic worker like a maid or cook steals some money from a house and absconds. Thus, a court may impose a fine only and award no jail term for a petty offence as the minimum prescribed punishment is 0 year.

**Serious (3 to 7 years and a fine):** The domestic worker steals some money and is caught but retaliates by hitting hard on the head with a flowerpot.

**Heinous (7 years or more and a fine):** instead of a flowerpot, jibes a knife in the heart.

The fine increases progressively from petty to heinous offences. Petty, serious, and heinous crimes are not always watertight compartments, as some crimes may overlap, and the prescribed punishment may range from 0 to 5 years or more.

**Type 3 - Bailable or Non-bailable:** Based on whether a cognisable offence is bailable, meaning the arrested person can secure bail at the police station itself by filling bonds and is not detained, or non-bailable, meaning the arrested person is detained in a police lockup but presented before a magistrate by police within **24 hours**, and the magistrate decides whether bail is to be granted. Petty offences are usually bailable.

When a child is accused of a criminal offence, though the accused child is categorised according to the above three types, the accused child is dealt with under the **Juvenile Justice (Care and Protection of Children) Act, 2015** (refer to [Annexure 4: JJ Act, a Summary](#)). Remember, Flowchart CJS-A of this annexure does not apply to children (persons below 18 years) who break the law.

**Journey of an incident reported to the police (refer to Flowchart CJS-A):**

A victim or any other person (complainant) can file a complaint with the police. Flowchart CJS-A illustrates the flow of a complaint or the path of an accused in the criminal justice system.

**Non-Cognisable Offence:** For non-cognisable (minor) offences, the police record the complaint in the complaint register. No investigation or arrest can occur, as the police have no power to do so without obtaining permission from the court/magistrate. The police action is called an **inquiry**.

**Cognisable Offence:** For cognisable offences, the police register an **FIR (First Information Report)**. The FIR sets the wheels of the criminal justice system in motion, and the police begin the investigation that may lead to an arrest. An **investigating officer (IO)** from the police conducts the **investigation** keeping in mind the offence type, i.e., petty serious-heinous and bailable or non-bailable. The strictness of processes followed by the police and the court depends on the gravity of the offence, i.e., petty, serious and heinous.

**Bailable Offence:** The arrested person can secure bail at the police station by filling bonds and is **not detained in the police station/lockup at night**.

**Non-bailable Offence:** The arrested person is detained in a police lockup but presented before a court/magistrate by police within **24 hours**, and the magistrate decides whether bail will be granted. Petty offences are usually bailable.

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**Police/ Judicial Custody:** In case the bail is not granted, the accused may be sent to police custody, but not for more **than 15 days** or Judicial custody till the trial under the court ends and a verdict, i.e., acquitted (found not guilty) or convicted (found guilty) is pronounced.

**Investigation and Chargesheet:** The police, **after completing the investigation**, must file a **Final Report, Chargesheet or Chalan** in the court **within 90 days**.

**Trail:** A trial in a court begins after the chargesheet has been submitted and the accused is termed an **undertrial**.

**Medico-Legal Case - MLC:** MLC refers to criminal cases that have both medical and legal implications. Typically, an MLC involves injuries, incidents, or situations where legal action or investigation is required, such as sexual assault, road traffic accidents, gunshots, etc. MLC plays a significant role in understanding the severity of the situation, making it a crucial starting point for police investigations in criminal cases.

**Bail:** Bail is an instrument or process under the criminal justice system used to avoid any arrest by an accused. A bail is applied in a court and can be accepted or rejected.

**Anticipatory Bail:** An anticipatory bail can be applied before any arrest happens. It can be applied even before the registration of the FIR. It is intended to be used when a person fears that they may be falsely accused.

**Regular Bail:** Regular bail can also be applied by the accused at any time after the arrest and before the final verdict.

**Interim Bail:** If the regular bail is rejected, the accused may also apply for Interim Bail for a shorter time. For example, an interim bail is applied when someone in the family of the accused has died, and the accused must perform the last rites.

**Flowchart CJS-A:** The flowchart represents the flow of an incident reported to the police or the journey of an accused under the criminal justice system. For cases under the POCSO Act, the following process unfolds under special fast-track courts, commonly called POCSO courts, rather than the regular courts meant for adults and the victim is handled by the Special Juvenile Police Unit (SJPU). For cases under the JJ Act, the following process unfolds under a board called the Juvenile Justice Board (JJB), or in some exceptional cases, Children's Courts rather than the regular courts meant for adults and the victim as well as the accused are handled by the Special Juvenile Police Unit (SJPU).

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### Flowchart CJS-A

