

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Criminal Procedure
Semester- IV (Batch: 2020-25)

End Semester Online Examination: May 2022

Date: 11th May, 2022

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 10 Marks: 700-800 words.

Attempt all the questions. All carry equal marks. Originality in answers is expected. Do not copy or plagiarize your answers. Cite suitable case laws in support of your answers, even when specifically not asked. The code/Cr.P.C should be read as Criminal Procedure code 1973. Cite provisions of law from the portion studied.

Marks

- Q.1 In one of the case of M.C. Mehta vs Union of India & Ors, which was a public interest litigation in which the Supreme Court, after noticing the precedents, held that when a cognizable offence is reported to the police, they may after investigation take action under Section 169 or Section 170 of the Code. If the officer-in-charge of the police station forms an opinion that there is not sufficient evidence against the accused, the officer-in-charge may, under Section 169 of the Code, release the accused from custody or, if the officer forms an opinion that there is sufficient evidence, he may, under Section 170 of the Code, forward the accused to a competent Magistrate. (10)

Similarly, in certain other cases above mentioned, the Apex court opined, that there is a clear-cut and well-demarcated sphere of activities in the field of crime detection and crime punishment. Investigation of an offence is the field reserved for the executive through the police department, the superintendence over which it vests in the State Government. The executive is charged with a duty to keep vigilance over law and order situations. It is obliged to prevent crime. If an offence is committed allegedly, it is the State's duty to investigate the offence and bring the offender to book. Once it investigates through the police department and find an offence has been committed, it is its duty to collect evidence for the purposes of proving the offence.

While the Supreme Court, mentioned very clearly the role of the executive to make the investigation, some objections were raised to the role the courts play in issuing the search warrants under Section 93 of the code. It was objected in the hon'ble court that issuing of the search warrant under Section 93 of the code is not in consensus with the above mentioned Section 165 of the code as the latter is the more appropriate method for the investigation, but in almost all matters the police involve the courts to issue search warrants.

In light of the above-mentioned aspects related to the power of the investigation and search, discuss and critically analyze the correlation between Sections 93, and 165 of the code.

Q.2 In a recent judgment by the Apex court in the matter of Rajendra Singh Parmar vs. State of Madhya Pradesh, 2020 SCC Online MP 1834, as decided on 31-08-2020, it was mentioned, (10)

- “(i) that, the police may resort to the extreme step of arrest only when the same is necessary and the applicant fails to cooperate in the investigation.
 (ii) that, the applicant should first be summoned to cooperate in the investigation. If that applicant cooperates in the investigation then the occasion of his arrest should not arise.”

Similarly, the hon'ble courts have mentioned several times in cases like Arnesh Kumar vs State of Bihar, (2014) 8 SCC 273, Birendra Kumar Rai vs Union of India, Medha Patkar vs State Amandeep Singh Johar vs State of N.C.T. of Delhi and Anr. etc that the arrest should be a tool for effective investigations and not otherwise. Yet one can see that such arrests have not stopped.

Explain by citing suitable provisions and case laws how this situation of illegal or unwarranted arrest can be checked with the proper application of the provisions of the code.

Yet we cannot ignore the importance of interrogation and investigation in criminal matters. While the arrest is necessary the illegal arrests need to be prevented. Critically analyze in your own words how these two antilogies can be well adjusted in a polity like that of India.

Q.3 Consider the following excerpts from the judgements of the Apex courts on the law of Section 144 of the code. (10)

The first major challenge to the law was made in 1961 in 'Babulal Parate vs State of Maharashtra and Others'. A five-judge Bench of the Supreme Court refused to strike down the law, saying it is “not correct to say that the remedy of a person aggrieved by an order under the section was illusory”.

This was challenged again by Dr Ram Manohar Lohia in 1967 and was once again rejected, with the court saying “no democracy can exist if ‘public order’ is freely allowed to be disturbed by a section of the citizens”.

Yet another challenge in 1970 ('Madhu Limaye vs Sub-Divisional Magistrate'), a seven-judge Bench headed by then Chief Justice of India, M Hidayatullah said the power of a magistrate under Section 144 “is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny”. The court, however, upheld the constitutionality of the law.

Despite the fact that activists and victims have reached again and again to the court for the removal of the provisions of the Section 144 CrPC, its importance has never been ignored. Critically analyse this provision of the code by citing suitable case laws as to

how this existing antagonism can be diverted to the larger betterment of our society. Refrain from writing anything that have any political orientation.

- Q.4 Cite the correlation of Section 378(3) and Section 372 of the code on the matters involving the law of appeal. Whether ignoring the compliance of the two relevant sections of the code amount to illegality in certain matters? Analyse it critically. (10)
- Q.5 Write a short note on: (10)
- a) Development of law on Anticipatory Bail
 - b) Powers of High Courts under Section 482 of the code.
