


# **Criminal Justice System & Human Rights**

**Dr. Bhavesh H. Bharad  
Dr. Arundhati P. Dasani  
Dr. Rekha Kumari R. Singh**



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# 13

## FRAMING OF CHARGE IN CRIMINAL CASES

— *Dr. Heena L. Makhija &  
Dr. Bhavesh H. Bharad*

### 13.1 Introduction :

Under the Code of Criminal Procedure, an accused should be informed of the offence of which he is charged. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the trial is not invalidated by the mere fact that the charge was not formally reduced to writing. The essential part of this part of the law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for.<sup>1</sup> The underlying principle of the Criminal law on informing the accused of the charge against him is to provide an equal opportunity to each and every individual to prepare his defence and avail justice. The accused should be informed of the charge against him so equal opportunity is provided to prepare his defence.<sup>2</sup> The purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of the accusation that the accused is called upon to meet in the course of a trial.<sup>3</sup>

*“Right of a man to be heard in his defence is the most elementary protection and is the essence of fair adjudication.<sup>4</sup> Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God “where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat”<sup>5</sup>*

Article 10 of the UDHR says that *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”*.<sup>6</sup> Article 11 (ii) *“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”*<sup>7</sup> Article 6(3) of the European convention on Human Rights provides everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. Everyone charged with a criminal offence has the following minimum rights:

*“To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*

*(a) to have adequate time and facilities for the preparation of his defence;c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”<sup>8</sup>*

### **13.2 Trial Process in Criminal Proceeding :**

Whenever the commission of offence occurs either Police is informed or complain is made to Magistrate. Police checks whether the offence is cognizable or Non- cognizable. If offence is cognizable Police will register the F.I.R and if it is non- cognizable N.C.R. report is registered. If offence is of serious nature Police can arrest without warrant and can start to investigate without the permission. Police starts to investigate the case by collecting of Evidence, Statement of Witnesses, interrogation statement of accused, filing of F.I.R. Once the investigation is completed and Police feels that no offence is committed by the accused. Police will file the closure



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