CHAPTER TWO

SETTING JUSTICE IN MOTION: INTAKE PROCEDURES AND INVESTIGATIVE ACTIVITIES

- **The operation of criminal procedure begins with the reception of information about the commission of a crime.**
- **The information could reach police through different channels: complaint, accusation & the occurrence of flagrant offences.**
- **Once the criminal justice is triggered, it is often followed by investigation to substantiate the case with evidence to prove guilt.**
- **Arresting the suspect could also be made whenever the law requires or circumstances justify.**
- **The investigation may be made before the arrest of a suspect or after the arrest. The police are supposed to hear witnesses and gather other real evidences like exhibit, finger print, blood test, etc.**
- **The gathering of evidence sometimes requires search and seizure.**

Complaint, Accusation, and Flagrant Offences

- **In a predominantly accusatorial system, victims have the option of bringing private prosecutions, but compensation for damage caused to the victim has traditionally been (still largely remains) a matter for the civil courts.**
- **In England and Wales, the right to exercise private prosecution (on which the system of prosecution originally depended) is in practice little used today, but it is still a possible way of starting criminal proceedings and is open to every citizen. Any citizen has the right to prosecute, though in practice a private prosecution is usually brought by the victim.**
- **In Germany, the private complaint (privatklage) - a relic of the accusatorial system as it existed in ancient German law, and so as exception to the principle of State monopoly over prosecutions, belongs exclusively to the victim & applies only to minor offences involving interests that are essentially private. In such a case he has much the same rights as the public prosecutor, though not his powers of coercion, particularly with respect to the investigation.**

Prosecuting Criminal Offences Punishable only upon Complaint

- **Article 1 of the Criminal Code of the Federal Democratic Republic of Ethiopia 2004 states that the purpose of criminal law is "to ensure order, peace and the security of the state and its inhabitants for the public good."**
- **The code achieves this purpose by laying down prohibitions from acting or act whenever it is in the general interest. Whosoever commits a criminal offence by disregarding these prohibitions is answerable, therefore, to the community.**
- **There are offences, however, which do not jeopardize the order, peace and security of the state and its inhabitants but are contrary solely to the rights of a given individual. Their effect does not extend beyond the injured. In such cases, the prior consent of the injured party is required.**
- **The New Criminal Code does not specifically set out a complete list of offences punishable only on compliant and Article 212 confines itself to making reference to the special part of the code or any other law defining "offences of a predominantly nature which cannot be prosecuted except upon a formal accusation or request, or a complaint in the strict sense of the term."**
- **Whenever an offence is committed in violation of any such provisions, no action may be taken except at the initiative of the person qualified of making complaint.**
- **If the offence is a flagrant one, the offender may not, it seems, be arrested without a warrant unless a complaint is first made. See Art 21 of the Cr Pr Code.**

- **Regarding the manner in which offences punishable on complaint are to be prosecuted, the Criminal Code and Cri Procedure Code must be read together. Thus, the person against whom an offence punishable on complaint has been committed may set justice in motion by making a complaint in accordance with Article 212 of the Criminal Code and 13 ff. of the Cr Pr C unless the offender is a juvenile, in which case the provisions of Article 172 of the Cr Pr Code will apply.**
- **When the public prosecutor institutes proceedings with respect to an offence punishable on complaint, the ordinary provisions regarding the charge and the trial will apply (Articles 94 ff. of the Criminal Procedure Code) or, where appropriate, those regarding petty offences. (Article 67 - 170 of the same code).**
- **However, as the public prosecutor prosecutes only because the injured party has expressly requested him to do so, it follows that, where the complainant declares that he no longer wants the offender to be prosecuted (where he withdraws his complaint), the public prosecutor is compelled to withdraw the charge. The accused may not, as a rule, object to such withdrawal.**
- **Read Arts 11-21, 50, 150-153,165-166, Cr Pr. Code**

Summons and Arrest

Warrant or Summons Issued on the Complaint

- **Once the magistrate has determined from the complaint that there is probable cause to believe that an offense has been committed and that the defendant did it, it issues either a summons or an arrest warrant for the defendant's appearance in court. If the defendant is already before the court, no summons or warrant is necessary.**
- **Once the summons or warrant is issued, the law enforcement officer must serve the summons or execute the warrant by arresting the defendant and bringing him/her before a judicial officer as commanded in the warrant.**

Arrest

- **Where there is good ground for supposing, for instance, from the gravity of the charge that a summons would not suffice to secure the attendance of an accused person, he/she should be arrested, in order to bring him before a magistrate.**

(a) By warrant

- **Special authorization for arrest always takes in modern times the form of a written warrant.**

(b) Without warrant: (1) By a private person

- **At common law. Even when no warrant has been issued, the law often permits an arrest to be effected, a permission accorded not only to a constable but even to private persons.**
- **Firstly, at common law a private person, without any warrant, may arrest any person who, in his presence, commits a treason or felony or dangerous wounding. The law does not merely permit, but requires, the citizen to do his best to arrest such a criminal.**
- **Secondly, a private person may arrest without warrant any person whom he reasonably suspects of having committed a treason or felony or dangerous wounding, provided that it has been actually committed by someone (whether by the arrested person or not).**

(ii) By a police constable

- **A police constable, even when acting without a warrant, has powers still more extensive than of a private person. Moreover, as his official position renders it in all these cases a duty for him to make the arrest, it will, in any of them, be a duty, even for an innocent person, to submit to him & not resist arrest.**

Ethiopian Arrest Law: the Eclectic Approach to Codification

- **The immediate efficiency and utility of any system of criminal procedure must be measured according to two goals, each equally important to society: the extent to which the system facilitates the enforcement of the penal law, by bringing offenders to speedy justice, & the extent to which innocent citizens are left undisturbed.**
- **But, in no system will the selection process be completely accurate-some offenders will be left undisturbed, and some innocent persons will be mistakenly selected and subjected to the unpleasant ordeal of criminal proceedings. In recognition of this latter fact, most procedural systems provide various post-arrest "screening devices" the most rigorous of which is the trial hearing itself in order to "de-select" or sift out of the criminal process those who, because they are innocent, ought not originally to have been brought in to it.**
- **For example, Anglo-American system of criminal procedure ordinarily provide two post-arrest, pre-trial "screens" for the arrested accused in serious cases.**
- **First, an arrested person will immediately be brought before a court, which after a "preliminary hearing" may order his discharge if upon the evidence the court finds that there is no sufficient ground to believe him guilty of any crime.**
- **If at this stage the accused is not "de-selected" out of the criminal process he will either remain in custody or be released on bail until the public prosecutor decides whether or not to institute proceedings against him by framing a charge. This is the second opportunity, now at prosecutor's discretion, to secure the discharge of an innocent accused before trial.**

- **In the continental systems, too, post arrest-judicial screens play a vital part in serious criminal cases. In France, for example, there is not only a preliminary judicial hearing, to determine whether or not the accused should be committed for trial and on what charge, but a second screening by the "Chambre d'accusation" of the court of Appeals, which must ratify the examining magistrate's decision to commit.**

In Ethiopia

- **It is doubtful whether any post arrest judicial screen exists short of the trial itself. The Cr pr code is not very clear whether the court before which an accused is brought immediately after his arrest has the power to pass on the grounds for the arrest and to order the discharge of the accused should it find them inadequate; and it is fairly clear that the preliminary inquiry court lacks that power.**
- **Thus, whether legal case exists or not, once in custody, the innocent accused in Ethiopia possibly has no opportunity to win a discharge at any time prior to the trial itself, should the public prosecutor decide to institute proceedings.**
- **In such a case, during the months or possibly years which elapse between arrest and trial an innocent accused ordinarily might have no access to any judicial forum before which he might demonstrate his innocence, or the prosecution be compelled to justify his selection of innocence.**

Arrest by court warrant

- **The ordinary procedure for issuing warrants is prescribed by Article 53 and 54 Cr Pr Code.**
- **Recognizing the extreme gravity of the decision to order the arrest of an individual, the code has strictly limited that power.**
- **Although any court may issue a warrant, its power may be exercised only upon the application of an investigating police officer.**
- **And then the warrant may issue only if the police officer is able to demonstrate two facts to the court: [1] that it is absolutely necessary that the person whose arrest is desired appear before the court and [2] that his attendance before the court cannot be obtained in any other way.**

- **The meaning of these criteria and the method of proving their satisfaction in any particular case are not explained.**
- **Nor is there any foreign sources on point, for the language of Article 54 is apparently sui generic in the Code.**
- **In the absence of further legislative guidance, then, it is for the courts to decide how best to administer these requirements in keeping with the spirit of the Code and the Constitution.**

The criterion of absolute necessity

- **How can the court decide whether or not the attendance of a person before it is "absolutely necessary"? We must note at the outset that these words imply a very rigorous test, and in combination with the preceding word "only" clearly suggest that the court is to exercise a screening function; it is not supposed "automatically" to issue warrants to arrest whomever the police suspect of an offence.**
- **It is a fair inference that, as a minimum standard, the court must be satisfied that there is sufficient evidence to believe that the suspect has probably committed the offence.**
- **By requiring the applicant to produce some credible evidence to support that belief, the code has established an impartial judicial check on the weighty power of arrest.**

- **After the court is satisfied that the suspect is a proper target for criminal prosecution, then it becomes necessary for it to obtain physical jurisdiction and control over him.**
- **Once the suspect is before it, the court can take steps to ensure his continued availability to the judicial process: this is accomplished either by keeping him in custody or by granting him conditional liberty on bail.**
- **Therefore, in a sense it is "absolutely necessary" that every probable offender appears before the court.**
- **But where an investigating police officer applies for a warrant to arrest a person as to whom there is shown no substantial evidence of criminal activity, it follows that no prosecution in justified and, therefore, that his presence before the court is not [absolutely] necessary.**

- **It remains to consider by what means the applicant might demonstrate the reasonableness of suspecting a particular person to the court.**
- **Although on this point too the Code is silent it seems that the application for a warrant could be supported by the submission of various sorts of proofs.**
- **Some of these might be: (a) a copy of the accusation or complaint (as recorded under Article 14) ; (b) the presence in court of the party who signed the accusation or complaint, and his availability for questioning by the judge; (c) copies of any other statements obtained from witness during the police investigation (Arts. 24, 30(3)) (d), written statements of the results of any other investigatory activities conducted by police such as searches (Arts. 32, 33) and physical examinations (Art. 34).**

“Cannot otherwise be obtained” - The second requirement of Art 54

- **The second criterion which must be satisfied before the court may issue an arrest warrant: that the presence of the accused before the court cannot be obtained in any other way.**
- **The apparent basis of this reluctance to authorize arrest when there is some alternative way to get the accused before the court is that arrest, involving as it does the possible use before, is a drastic procedure, to be avoided if possible.**
- **Among the inherent disadvantages of arrest are (a) the use of time & energy on the part of the police who must physically go find the accused and bring him to court under supervision; (b) possible embarrassment to an innocent accused in being publicly arrested & escorted by the police; & (c) possibility of resistance to arrest with attendant injuries to the accused & others.**
- **For these reasons the Code prefers that the accused’s presence in court be obtained by “polite” means, reserving the use of arrest for those cases where it is the only practicable alternative. The preferred method is for the police to summon the accused “voluntarily” to appear at the police station.**

- **As a general rule, then, the court may not issue a warrant of arrest unless the accused has already been summoned without success. For, until a summons has been tried it is possible that the accused's attendance in court can "otherwise be obtained" and therefore resort to arrest is forbidden by Art 54.**
- **There are, however, cases imaginable in which the court would be justified in issuing an arrest warrant even though the summons method had not been tried.**
- **If, for example, by reliable evidence the court is convinced that summoning the accused would be completely futile because the latter had already planned or begun to flee the empire, or because receipt of a summons would likely induce him to flee, the court would be justified in ordering arrest because the accused's attendance could not "otherwise be obtained."**

Arrest without warrant

- **The third and last method by which physical custody over suspected offenders is obtained - arrest without warrant. The governing rules are found in both the Constitution and the Code.**

Flagrant Offences

- **The Cr Pr Code Art 19-21 and 50 define flagrant offences and declare that any person may arrest a flagrant offender.**
- **Having in Art 19 and 20 established the definition of "flagrant offence", the code goes on in Articles 21 & 50 to state the procedural consequences thereof: in the case of ordinary flagrant offences proceedings may be instituted without an accusation being lodged; &, both ordinary & compliant offences, if flagrant, subject the offender to arrest without warrant by any police officer or private citizen if the offence carries a possible maximum punishment of 3 months simple imprisonment or a more sever penalty.**
- **There are two other matters in connection with flagrant offences which deserve discussion, corresponding to the two elements which are central to the notion of flagrancy: immediacy in time and publicity.**

- **The first element is apparent in such phrases as “has just committed the offence, “after it has been committed, “the police are immediately called, and “a cry…has been raised.”**
- **The obvious crucial questions are: How long a time is “after”? How soon is “immediate”? If, two weeks after the commission of theft, the victim thinks he recognizes the offender walking on a public thoroughfare, may he legally invite passers-by to chase the suspect and arrest him? Or does “after it has been committed” in Art 19(2) mean “immediately after…? Does Art 19(1) (in combination with Art 50) authorize a police officer to arrest without warrant an offender who re-appears at the scene of the crime 12 hours after commission of the offence? 24? 48?**

- **Granted that "public" commission or consequences are essential to flagrancy, let us consider the application of Art 19 and 20 to a particular case.**
- **Suppose there is a disturbance during an authorized public meeting, and a police officer comes upon X and Y pushing and shouting at each other in the assembly. Three of four of the bystanders tell the officer that X is a trouble-making intruder, so the officer arrests him for having been "found committing" an offence under Article 490 of the Criminal Code, for which arrest without warrant is authorized by Art 19 and 50. Later it turns out that Y was the real intruder- X was really the meeting's chairman, who had been trying to eject Y when the policeman arrived and, owing to the false accusations of unsympathetic bystanders, arrested the wrong man. Was the arrest lawful?**
- **Should a police officer in the circumstances described above arrest peaceful on looker, simply for the unsatisfactory reason that the officer dislikes his appearance, the arrest cannot be justified under Art 50 even should it later develop that the arrestee was the ringleader of the intruders, and in fact guilty of an offence under PC Art 490. For, in order to protect innocent citizens, one cannot allow arrests which, from the point of view of the arresting party at the time of the arrest, were legally unjustifiable, even though subsequent developments justify prosecution and conviction of the arrestee. The proper test of the legality of any arrest under Art 50 must be the apparent, not actual, existence of a flagrant offence.**

The Code: Art 51

- **We might note first that in contrast to the "flagrancy" provisions considered above, the various elements of Art 51 are derived from English-Commonwealth, not continental law.**
- **The immediate source of Art 51 is apparently section 23 of the Malayan Criminal Procedure Code, which in turn is closely based upon section 54 of the India Criminal Procedure Code.**

Real Time Dispatch

- **In France, toward the end of 1994, real time dispatch technique has been developed and progressively extended to the all French Police, Prosecution Offices and Courts with the view of reducing the length of criminal proceedings while securing the quality of decision-making.**
- **Adopting "next day justice" as called in the United Kingdom by 2006 will bring about a huge improvement.**
- **Real Time Dispatch is not a special procedure as such. It is rather a technique.**

Effect of Illegal Arrest

- **When is an arrest illegal?**
- **Although an illegal arrest does not affect jurisdiction to try an offender (the doctrine that the manner in which a defendant is brought to trial does not affect the power of the court to try him or her is known as the Ker-Frisble doctrine - Its principle was previously enunciated in the 1886 U.S. Supreme Court case of Ker v. Illinois), the exclusionary rule may affect the trial adversely.**
- **The exclusionary rule, as it relates to arrest, states that any evidence obtained by exploitation of an unlawful arrest will be inadmissible in court in a prosecution against the person arrested.**
- **Therefore, if the only evidence that the state has against an armed robbery suspect is a gun, a mask, and a roll of bills taken during a search incident to an unlawful arrest, the offender will very likely go free because these items will be inadmissible in court.**
- **A confession obtained by exploitation of an illegal arrest will also be inadmissible in court.**

- **In Brown V. Illinois *(1975)*, the defendant was illegally arrested in a manner calculated to cause surprise, fright, and confusion and taken to a police station. He was given Miranda warnings, & he waived his rights and made incriminating statements, all within two hours of the illegal arrest. The court said:**

  "The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by exploration of illegal arrest. But they are not the only factor to be considered. The temporal proximity of the arrest and the confession, the presence of intervening circumstances, … and, particularly, the purpose and flagrancy of the official misconduct are all relevant….And the burden of showing admissibility rest, of course, on the prosecution.

- **Many factors must be considered to determine whether a confession is obtained by exploration of an illegal arrest; thus, it is difficult to predict how a particular court will rule. For example, despite only a two-hour lapse between an illegal arrest and a confession, in People v. Vance, 185 Cal. Rptr. 594 (Cal. 1982), the court held the defendant's confession admissible because proper Miranda warnings were given, the defendant was confronted with information that tied him to the crimes, the defendant was allowed to speak privately with his common law wife, and there was no purposeful or flagrant police activity.**

Police Investigation

Pre Arrest Investigation

- **Various distinctions are used in grouping pre arrest investigatory procedures. Lawyer tends to group procedures according to the governing legal standards.**
- **Reactive investigations: police procedures aimed at solving specific past crimes.**
- **General purpose police agencies (e.g., local police departments), who employ over 85% of all police officers in the US, traditionally have devoted the vast majority of their investigative efforts to reactive investigations. This is an "incident driven" or "complaint-responsive" style of policing, including the neighborhood patrol and the 911 emergency telephone link. The police received a citizen report of a crime (typically from the victim or eyewitness), or they discover physical evidence indicating that a crime has been committed, and they then proceed to initiate an investigation responsive to that "known crime."**

- **This involves (1) determining whether there actually was a crime committed, (2) if so, determining who committed the crime, (3) collecting evidence of that person's guilt, and (4) locating the offender so that he can be taken in to custody.**

Post Arrest Investigation

- **The initial post-arrest investigation by the police consists of the search of the person (and possibly the interior of the automobile)…The extent of any further post arrest investigation will vary with the fact situation. In some cases, such as where the arrestee was caught "red-handed," there will be little left to be done.**
- **In others, police will utilize many of the same kinds of investigative procedures as are used before arrest (e.g., interviewing witnesses, searching the suspect's home, and viewing the scene of the crime). Post arrest investigation does offer one important investigative source, however, that ordinarily is not available prior to the arrest the person of the arrestee.**
- **Thus, the police may seek to obtain an eyewitness identification of the arrestee by placing him in a lineup, having the witness view him individually (a "show – up"), or taking his picture and showing it to the witness. They may also require the arrestee to provide handwriting or hair samples that can be compared with evidence the police have found at the scene of the crime.**
- **The arrest similarly facilitates questioning the arrestee at length about either the crime for which he was arrested or other crimes through to be related.**

- **Assuming the prosecutor decides to charge, pre-filing screening presents another important prosecutorial decision-setting the level of the charge.**
- **Although an arrest was made on a felony charge, the prosecutor may decide to go forward on a lesser charge.**
- **As might be expected, substantial variations are found among prosecutorial districts on the rate of reductions, particularly the reductions to a misdemeanor charge.**

Confession

The Right to Remain Silent (Common Law)

- **The right to remain silent is at the heart of common law criminal procedure. The Fifth Amendment to the U.S. Constitution puts it this way: "No person…shall be compelled in any criminal case to be witness against himself…."**
- **Thus the states must prove its case without the help of the accused if the accused chooses not to give that help.**
- **At its most basic level, the right to remain silent is designed to protect individuals against forced confessions obtained through torture, threats, or other undue pressures.**
- **It also means, however, that the accused can remain silent throughout the pretrial or trial phase of his or her criminal proceedings. In other words, the state must prove that an individual is guilty with out the help of that individual.**

The Right to Remain Silent (Civil Law)

- **In addition to requiring the presence of an attorney, French law requires that the accused be informed of his or her right to remain silent during the pretrial proceedings.**
- **This right, so integral to the adversarial system, represents another modification of the inquisitorial procedure.**
- **However, it does not have the stature that the similar right has in common law countries, and the presumption on the part of all parties is that the accused will cooperate in the investigation by answering questions and raising points that might help in the defense.**
- **Except in minor cases, the accused has to be proven guilty through the entire process of developing a dossier and going through a trial. If the accused chooses to make a statement at trial, he or she is not under oath, as in common law procedure, and is not subject to cross-examination. Any confession in the pretrial or trial process is treated as part of the evidence included in the dossier.**
- **This is a major difference from many common law countries, especially in the United States, where plea bargaining is the norm.**

Police Interrogation

- **False confessions do not only occur where the suspects are physically threatened.**
- **A study by psychologist G.H Gudjonsson (The psychology of interrogations, confessions and testimony, 1992) found that there were four situations in which people were likely to confess to crimes they did not commit.**
- **First, a minority may make confessions quite voluntarily, out of a disturbed desire for publicity, to relieve general feelings of guilt or because they can not distinguish between reality and fantasy. Secondly, they may want to protect someone else, perhaps a friend or relative, from interrogation and prosecution. Thirdly, they may be unable to see further than a desire to put the questioning to an end and get away from the police station, which can, after all, be a frightening place for those who are not accustomed to it.**

The Privilege against Self-Incrimination

(a) The Schmerber Case (Schmerber v. Cal. (1966))

- **The court upheld the taking of a blood sample by a physician at police direction from a defendant over his objection after his arrest for drunken driving. Among the grounds upon which the defendant challenged the admission of this sample in evidence against him was that it violated his Fifth Amendment privilege not to "be compelled in any criminal case to be a witness against himself."**
- **The court, in a 5-4 decision, rejected this contention and held that "the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the state with evidence of a testimonial or communicative nature." As the court later put it, the privilege only protects one from being compelled to express the "contents of his mind."**

(b) Application to pretrial identification

- **The dissenters argued that Schmerber was wrongly decided, in that the privilege is designed to bar the government from forcing a person to supply proof of his own crime, and that even assuming the correctness of Schmerber the instant cases were distinguishable because each defendant was required "actively to cooperate to accuse himself by a volitional act."**
- **Other courts have followed the majority view and have thus held the privilege inapplicable to such other identification procedures as fingerprinting or examination by ultraviolet light.**

(c) Consequences of failure to cooperate

- **Although not protected by the Fifth Amendment, some identification procedures (such as speaking or writing for identification) require the active participation of the suspect. But, what if the suspect will not cooperate?**

(d) Change in appearance

- **If a suspect drastically alters his appearance between the time of the crime and of identification procedures, this is admissible at trial as an indication of consciousness of guilt.**
- **Also, the identification procedure my be conducted in such a way as to simulate the defendant's prior appearance**

Fruit of Poisonous Tree Doctrine

- **The exclusionary rule is not limited to evidence that is the direct product of illegal police behavior, such as a coerced confession or the items seized as a result of an illegal search.**
- **The rule also requires exclusion of evidence that is obtained indirectly when one's constitutional rights are violated.**
- **This type of evidence is sometimes called derivative evidence or secondary evidence.**

- **The essence of forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible.**
- **If knowledge of them is gained from independent source they may be like any others, but the knowledge gained by the government's own wrong can not be used by it in the way proposed.**
- **Thus, the prosecution may not use in court evidence obtained directly or indirectly from an unconstitutional search.**
- **The prohibition against using this derivative or secondary evidence is often called the rule against admission of "fruit of the poisonous tree." The tree being the illegal search and the fruit being the evidence obtained as an indirect result of that search.**

- **Although the rule against the admission of fruit of the poisonous tree was originally developed in applying the exclusionary rule to unconstitutional searches, it has been applied equally to evidence obtained as the indirect result of other constitutional violations.**
- **Thus, evidence may be inadmissible if it is acquired indirectly as a result of an illegal stop, an illegal arrest, an illegal identification procedure, or an involuntary confession.**
- **The doctrine applies only when a person's constitutional rights have been violated. Neither the exclusionary rule nor the fruit of the poisonous tree doctrine applies when a violation of rights is not of constitutional dimensions.**

Involuntary Confessions and Art 35, Cr Pr C

Coercive interrogation: ineffective and unlawful

- **Ethiopian law frowns severely upon the use of coercion against persons being investigated under suspicion of crime.**
- **The CPC states quite clearly that "no police officer or person in authority shall offer or use or make or cause to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police."**
- **Violation of this command subjects the police officer to both civil and penal sanctions. And, of course, the courts do not allow into evidence confessions which have been obtained by force.**

- **But, it must be asked, are the exclusion of coerced confessions and the threat of sanctions having their intended effect?**

What is the purpose of Art 35 of the Cr Pr Code?

- **In view of its strong similarity to section 164 of the Indian Code, it is unquestionable that the drafters of Ethiopian's Code were to some extent looking towards the Indian system.**
- **In Indian law, the reason why the magistrate is given power to record confessions is that only confessions so recorded are admissible in evidence at trial.**
- **It was the intention of drafters of our CPC, one can say, to require all confessions which the police wish to have proved at trial, recorded and certified "voluntary" under Article 35.**
- **Confessions not so recorded should be inadmissible against the accused, as they are in India.**

Miranda v. Arizona

- **The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court.**
- **This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it.**
- **It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege.**
- **In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him.**

- **On March 13, 1963, Ernesto Miranda was arrested at his home and taken in custody to a Phoenix police station. He was there identified by the complaining witness. The police then took him to "Interrogation Room No. 2" of the detective bureau.**
- **There he was questioned by two police officers. The officers admitted at trial that Miranda was not advised that he had a right to have an attorney present. Two hours later, the officers emerged from the interrogation room with a written confession signed by Miranda.**
- **At the top of the statement was a typed paragraph stating that the confession was made voluntarily, without threats or promises of immunity and "with full knowledge of my legal rights, understanding any statement I make may be used against me."**

- **At his trial before a jury, the written confession was admitted into evidence over the objection of defense counsel, and the officers testified to the prior oral confession made by Miranda during the interrogation.**
- **Miranda was found guilty of kidnapping and rape. He was sentenced to 20 to 30 years' imprisonment on each count, the sentences to run concurrently.**
- **On appeal, the Supreme Court of Arizona held that Miranda's constitutional rights were not violated in obtaining the confession & affirmed the conviction.**
- **In reaching its decision, the court emphasized heavily the fact that Miranda did not specifically request counsel.**

- **Then he appealed to the Us Supreme Court, which finally reversed the decision of the lower courts. The US supreme Court said:**

  From the testimony of the officers and by the admission of respondent, it is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings the statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights.

Search and Seizure

- **Search and seizure is a legal procedure used countries whereby police or other authorities who suspect that a crime has been committed, do a search of a person's property and confiscate any relevant evidence to the crime.**
- **Most countries have provisions in their constitutions that provide the right to be free from "unreasonable" search and seizure.**
- **It is based on the premise that everyone is entitled to a reasonable right to privacy.**
- **Though interpretation may vary, this right usually requires law enforcement to obtain a search warrant before engaging in any form of search and seizure.**

Effect of Illegal Search and Seizure

- **The most important effect of an illegal search or seizure is the exclusion of the evidence obtained from use in court against the person whose rights were violated.**
- **When crucial evidence is suppressed, the prosecution's case may be lost, and the person charged with the crime may go free.**
- **Another possible effect of an illegal search and seizure is the civil or criminal liability of the officer conducting the search and seizure.**
- **As with an illegal arrest, the consequences for the officer depend on the circumstances of each case, including the officer's good faith, the degree of care used, the seriousness of the violation, and the extent of injury or intrusion suffered by the defendant.**

The Continuation or Discontinuance of the Prosecution

- **Once the police have instituted proceeding, it is the duty of the CPS to take them over. When the CPS receives the file it then makes a decision as to whether to continue the proceedings, or to drop them.**
- **The power to discontinue a prosecution under section 23 of the prosecution of offences Act is only one of several ways in which it is possible for a prosecution to be dropped.**
- **Other methods include the prosecutor inviting the court to allow him not to proceed with the case, and offering no evidence-thereby forcing the court to acquit.**

Procedural Decisions

- **Unilateral dispositions - Several different actors in the process have a unilateral power to bring the proceeding to an end.**
- **First, the police can drop the case in the early stages. They may decide to caution the offender instead of prosecuting him or, more simply, they may decide to take no further action.**
- **Secondly, once the file has reached the hands of the CPS, the CPS may decide to drop the proceedings by issuing a 'notice of discontinuance' under section 23 of the prosecution of offences Act 1985. In addition to this, at common law the prosecution may also drop the case ahead of trial by obtaining the leave of the court to withdraw the charge.**
- **Finally, at common law the prosecution may also halt the proceeding by simply refusing to call evidence usually at the outset of the trial, but occasionally even after it has begun.**

- **Lastly, the court itself has various powers that enable it to terminate the proceedings. One of these is the common law power to terminate the proceedings for what is called ‘abuse of processes’. This is an important case law development that has taken place since the mid 1960s.**
- **The court’s other power is to terminate the proceeding where, at the end of the prosecution case, the court accepts a defence submission of ‘no case to answer’.**

Agreement between the victim and the accused

- **An agreement between the victim and the accused can result in the prosecution being dropped. This only occurs, however, where the police and the crown prosecution service are prepared to discontinue the prosecution.**
- **The victim has no right to prevent them from continuing with the prosecution even if he or she wishes to put an end to it.**

Initiating Prosecution

- **French criminal procedure, like English criminal procedure, works on the basis of discretionary prosecution. The public prosecutor has the task of initiating the prosecution, and he must evaluate not only the legal basis of the case, but also the appropriateness of prosecution.**
- **Exceptionally, a preliminary complaint may be required (for example, that brought by the administration in tax cases, or by the victim regarding defamation). The victim also has the power to initiate a prosecution when he either makes a complaint and constitutes himself partie civile, or by issuing a summons (citation direct).**
- **The judge concerned (juge d'instruction or trial judge) must then give a ruling, whatever the demands of the public prosecutor may be.**

Termination of the Procedure

Termination of the Procedure

- **The decision to drop the charges on legal grounds is pronounced by the public prosecutor if the proceedings for the offence alleged are legally unfounded [absence of the constituent elements] or procedurally barred [time- barred, death of the accused, unknown perpetrator, and so on].**
- **Dropping a case does not finally dispose of it unless and until the prescription period elapses Secondly, it provides for the adjustment of the sentence and develops sentencing with suspended sentences and conditional release.**

The Discretion to Prosecute

- **A key feature of the English system is the discretion to prosecute. It is not, and has never been, the case in England that the authorities are obliged to prosecute for all the offences that come to their attention.**
- **One of the reasons for the creation of the CPS was to make sure that the discretion to prosecute was exercised in a consistent way from one part of the country to another.**
- **A consequence of the division of functions between the police and the CPS is that the discretion to prosecute is exerted in two stages: once by the police when they decide whether or not to institute proceedings. And again by the CPS when they consider whether or not to continue with the case.**

Decision to Charge

(a) Limitations upon the charging decision

- The American prosecutor traditionally has had broad discretion in determining whether to initiate formal charges and in selecting among possible charges.
- The Supreme Court has frequently recognized the freedom of individual jurisdictions to grant immense charging discretion to the prosecutor.
- Nonetheless, the Court has also noted that the prosecutor's charging discretion must be exercised consistent with the equal protection guarantee and the due process prohibition against "vindictiveness.

(b) Grand jury or preliminary hearing review of charge

- **Under the Fifth Amendment, a federal prosecutor cannot proceed on a decision to charge for a felony ("an infamous crime") unless a grand jury affirms that charging decision by indicting the defendant for that offense or the defendant waives his right to be proceeded against only by indictment.**
- **Although states are not constitutionally required to provide for independent screening of the prosecution's decision to charge by grand jury or preliminary hearing, once such a procedure is imposed under local law, it cannot be conducted in a manner that denies equal protection.**

Post Filing Prosecutorial Screening

- **Post filing prosecutorial review of the charging decision is inherent in the many post-filing procedures (e.g., the preliminary hearing) that require the prosecutor to review the facts of the case.**
- **If the prosecutor should determine that the charge is not justified, a dismissal will be obtained through a nolle prosequi motion (noting the prosecutor's desire to relinquish prosecution), which ordinarily will be granted in a perfunctory fashion by the court.**
- **Similarly, if the prosecutor considers the charge to be too high, a motion can be entered to reduce the charges.**
- **In deciding whether to make such motions, the prosecutor will look to basically the same grounds that might justify a pre-filing rejection or reduction of the charge.**

- **In Ethiopia, the decision to prosecute or not has now been left to the public prosecution office.**
- **Anyone aggrieved has to follow the hierarchical channel till the attorney general at the federal and regional levels.**
- **It appears that there is no judicial review. The possibility for court intervention in the process is debatable.**
- **The CPC contains provisions regulating the manner of deciding whether to charge or not.**

- **There is no law clearly empowering the public prosecutor to drop charges. Art 122 of the CPC has been repealed by Proclamation No. 39/93.**
- **Art 23/3 of Proclamation No. 471/2005 allows withdrawal based on a law. It implies that there is another law defining the conditions necessary to terminate the prosecution.**
- **There is up to now no law allowing that. But, this law permits automatic interruption of an investigation for good cause. Once a charge is filed, it does not seem legal to drop charges.**
- **Art 16/2/b/2 of Proc No. 587/2008 also contains similar provisions regarding interruption of investigation & charges pertaining to revenues and customs related offences.**

The Preliminary Inquiry

- **Following first appearance, the next scheduled step in a felony case ordinarily is the preliminary hearing (sometimes called a preliminary "examination"). All but a few of our fifty-two jurisdictions grant the felony defendant a right to a preliminary hearing, to be held within a specified period.**
- **Where the charges are not dismissed, two additional decisions-one by the prosecutor and one by the defense-can sharply reduce the number of preliminary hearings.**
- **First, in almost all jurisdictions, if the prosecutor obtains a grand jury indictment prior to the scheduled preliminary hearing, the preliminary hearing will not beheld, as the grand jury's finding of probable cause has rendered irrelevant any contrary finding that the magistrate might make at the preliminary hearing.**

- **Second, even where the preliminary hearing is made available to the defendant, there nonetheless may not be a preliminary hearing because the defendant prefers to waive the hearing and move directly to the trial court.**
- **That is often the strategy employed where the defendant intends to plead guilty.**
- **Where the preliminary hearing is held, it will provide, like grand jury review, a screening of the decision to charge by a neutral body.**
- **In the preliminary hearing, that neutral body is the magistrate, who must determine whether, on the evidence presented, there is probable cause to believe that defendant committed the crime charged.**

- **If the magistrate concludes that the evidence presented establishes probable cause, she will "bind the case over" to the next stage in the proceedings.**

Grand Jury Review

- **Although almost all American jurisdictions still have provisions authorizing grand jury screening of felony charges, such screening is mandatory only in those jurisdictions requiring felony prosecutions to be instituted by an indictment, a charging instrument issued by the grand jury.**
- **In a majority of the states, the prosecution is now allowed to proceed either by grand jury indictment or by information at its option.**

Function of the Preliminary Hearing

(a) Screening

- **The prosecution in an open and adversary hearing must establish that there is sufficient evidence supporting its charge to "bind the case over" to the next stage in the process (either review by the grand jury or the filing of information in the trial court).**
- **In determining whether the prosecution has made such a showing, the magistrate provides an independent screening of the prosecution's decision to charge.**
- **Preliminary hearing screening serves to prevent hasty, malicious, improvident, & oppressive prosecutions, to protect the accused from open and public accusations of crime, to avoid both for the defendant and the public the expense of a public trial, and to save the defendant from the humiliation and anxiety involved in public prosecution, & to discover whether or not there are substantial grounds upon which a prosecution may be based.**

(b) Discovery

- **In meeting the evidentiary standard for a bind over, the prosecutor will necessarily provide the defense with some discovery of the prosecution's case.**
- **The defendant may obtain even more discovery by cross-examining the prosecution's witnesses at the hearing and by subpoenaing other potential trial witnesses to testify as defense witnesses at the hearing.**

(c) Future impeachment

- **the preliminary hearing may be of value of the defense even though there is little likelihood of successfully challenging the prosecution's showing of evidentiary sufficiency and little to be gained by way of discovery.**
- **That is because, as the Supreme Court has noted "the skilled interrogation of witnesses (at the preliminary examination) by an experienced lawyer can fashion a vital impeachment to for use in cross-examination of the state witnesses at the trial."**

(d) The Perpetuation of testimony

- **Preliminary hearing testimony traditionally has been admitted at trial as substantive evidence, under the "prior testimony" exception to the hearsay rule, where the witness is not available to testify at trial.**
- **Thus, the hearing perpetuates the testimony of witness, ensuring that it may be used even if the witness should die, disappear, or otherwise become unavailable to testify.**

(e) Other functions

- **In a particular jurisdiction the preliminary hearing may be utilized to serve other incidental functions, such as to gain release.**
- **This is particularly true where bail is set at the initial appearance largely on the bases of a schedule tied to the defense charged, and the preliminary hearing provides the magistrate with his first extensive examination of the facts of the individual case.**
- **It also may serve as an integral part of the plea bargaining process, particularly where negotiations have been undertaken prior to the hearing.**

- **The hearing in some jurisdictions offers the initial point at which the constitutional validity of police acquisition of evidence may be challenged, and under some circumstances, it may offer sufficient advantages over the pretrial motion to suppress that defense counsel will insist upon a preliminary examination for this purpose alone.**
- **It also may be utilized to establish mitigating circumstances that can then be presented at sentencing through the preliminary hearing transcript.**

- **In Ethiopia, the Cr Pr C recognizes this procedure. Its main purpose is preservation of evidence. Other purposes can also be inferred from the provisions of the law.**
- **But, it is not a screening mechanism used by the courts found in other jurisdictions. The criminal bench entertaining a preliminary hearing cannot decide whether there is sufficient evidence against the suspect.**
- **In fact, the primary responsibility of the court is notifying the purpose of the preliminary hearing to the suspect at the earliest possible opportunity before starting taking evidence. So, the preliminary hearing is undertaken for various purposes. In our country, its functions are limited.**