

Chapter 1-A

1. For rule 12, substituted vide Correction slip No.23/Rules/IX.C.18., dated 19th June, 1980, prior to substitution, the rule read as under:-

12. Magistrates shall furnish in quarterly criminal statement No. II, explanations of delay in the disposal of cases pending over 4 months. In this connection also see paragraph 6 of Chapter 23-C, Volume IV.

2. For rule 13, substituted vide Correction slip No.24/Rules/IX.C.18., dated 25th September 1980, prior to substitution, the rule read as under:-

13. Magistrates shall submit history sheets containing abstract of orders passed in different dates in all cases pending over one year provided they are not stayed. When delay is said to be due to a transfer application pending in a higher court, it is the duty of the higher court concerned to look into and remark on the causes of delay and to expedite disposal of the transfer application.

Chapter 9-A

3. Rule 3, substituted vide Notification No.GSR-125/C.A. 2/74/S.312/Amd./76, dated 5th October 1976, prior to substitution rule reads as under:-

“27 Administration of Justice G. Criminal Courts-G.2 Others Charges-Diet and Road money of witnesses.” Deputy Commissioners are disbursing officers and District and Sessions Judges are controlling officers for allotments and expenditure under this head. Under paragraph 12.5 of the Punjab Budget Manual allotments for all heads including "Diet and Road money to witness" under the minor head “Criminal Courts” are placed at the disposal of District and Sessions Judges and they are at liberty to retain whatever amount they consider necessary at their own disposal, and to allot the balance to disbursing officers for expenditure.

4. Rule 3 para (i), substituted vide notification dated 23rd August, 1963 prior to substitutions, the rule read as under:-

(i) *Rates of subsistence allowance*, that is, allowance for each day's *necessary absence from residence and attendance* at Courts.

<i>Class</i>	<i>Rate per diem Rs. P.</i>
(a) For ordinary labouring classes ..	1.75
(b) For witnesses of somewhat higher standard	1.75
(c) For witnesses not included in (a) and (b) above	1.75
(d) For Municipal Commissioners, Income-tax payers and other respectable persons	2.00
(e) For other persons of higher standard	3.00
Special rates for witnesses not coming within the scope of the above mentioned classes	4.00

**Further substituted vide Correction Slip No. 30/General/II.D.4,
Dated 19th September, 1984**

Rates of subsistence allowance, that is, allowance for each day's necessary absence from residence and attendance at Courts.

<i>Class</i>	<i>Rate as per diem Rs. P.</i>
(a) For ordinary labouring classes	3.00
(b) For witnesses of middle classes	4.00
(c) For witnesses not included in (a) and (b) above	5.00
(d) For Municipal Commissioners, Income-tax payers and other respectable persons	7.00
(e) For other persons of higher standard Special rates for witnesses not coming within the scope of the above mentioned classes	10.00
(f) Special rates for witnesses not covered within the scope of the above-mentioned classes	15.00

5. Rule 3 para (ii) for the words “six annas a mile” wherever occurring, the “25 paise per kilometer” shall be substituted in the following paragraph vide Notification No. GSR-210-/Const./Art/227/63, dated 23rd August, 1963, prior to substitution the Rule reads as under:-

When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court, provided that the expenses incurred do not exceed **six annas a mile** and where a witness travels by a private motor car he may also be paid travelling expenses upto **six annas a mile**, provided that journey could not, with reference to the age, position and habits of life of the person have been made on foot.

In assessing the amount of actual expenses, the courts should bear in mind that the fares charged by motor buses do not generally exceed one anna per mile. To persons in classes (d), (e) and (f) a further sum may be allowed to cover the cost of carriage hire to and from the court on the days of attendance at Court

Further the figures and words “25 paise per kilometer” substituted with “45 paise per kilometer in Punjab, 50 paise in Haryana, and 75 paise in Chandigarh” vide correction slip No. 30/General/II. D. 4, Dated 19th September, 1984, prior to substitution the Rule reads as under:-

When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court, provided that the expenses incurred do not exceed **25 Paise per Kilometer** and where a witness travels by a private motor car he may also be paid travelling expenses upto **25 Paise per Kilometer**, provided that journey could not, with reference to the age, position and habits of life of the person have been made on foot.

In assessing the amount of actual expenses, the courts should bear in mind that the fares charged by motor buses do not generally exceed one anna per mile. To persons in classes (d), (e) and (f) a further sum may be allowed to cover the cost of carriage hire to and from the court on the days of attendance at Court

Further the words and figures “where a witness travels by a private motor car he may also be paid travelling expenses upto 45 paise per kilometre” substituted with “where a witness travels by a private vehicle he may also be paid travelling expenses upto one rupees per kilometre in case of travel by a motor car and upto thirty-five paise per kilometre in case of travel by a motor cycle or a scooter” vide Notification No. G.S.R. 40/C.A.2/74/S.312/Amd./87, Dated 30th April, 1987, prior to substitution the Rule reads as under:-

When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court, provided that the expenses incurred do not exceed 45 paise per kilometre in Punjab, 50 paise per kilometre in Haryana and 75 paise per kilometre in Chandigarh and **where a witness travels by a private motor car he may also be paid travelling expenses upto 45 paise per kilometre in Punjab, 50 paise per kilometre in Haryana and 75 paise per kilometre in Chandigarh**, provided that journey could not, with reference to the age, position and habits of life of the person have been made on foot.

In assessing the amount of actual expenses, the courts should bear in mind that the fares charged by motor buses do not generally exceed one anna per mile. To persons in classes (d), (e) and (f) a further sum may be allowed to cover the cost of carriage hire to and from the court on the days of attendance at Court

6. Rule 3, Note 4, substituted vide Notification No.GSR-125/C.A. 2/74/S.312/Amd./76, dated 5th October 1976, prior to substitution rule reads as under:-

Note 4.—According to Rule 2.80 of the Travelling Allowance Rules framed by the Punjab Government an officer of the Government who is summoned to give evidence of facts which have come to his knowledge or of matters with which he has had to deal in his public capacity in criminal case (including a case before a Court-martial) is entitled to draw travelling allowance from Government. Accordingly the Courts should not grant to Government officers, except in the two cases mentioned below; fees or expenses which may have been deposited in such cases for their travelling and halting or subsistence allowances. The amounts should be credited to Government under the head "XXI-Administration of Justice-Miscellaneous Fees and Fines."

Chapter 11-E

7. For rule I, (i), (ii), (iii), 2(a), (b), (c) & 3, substituted vide Correction slip No.31/Rules/II.D.4., dated 20th August 1992, prior to substitution, rule read as under:-

1. Property sent in by the Police is usually of three kinds:-

- (i) Articles including (a) counterfeit coins, together with implements for their manufacture, such as dyes, moulds, etc., and (b) implements such as dyes, moulds, etc. used in the forgery of currency notes, transmitted to the Magistrate, under section 170 of the Code of Criminal Procedure, with the Police report in cases sent up for trial.
- (ii) Property seized by the Police as stolen property or upon suspicion, and ordered by the Magistrate, under section 523 of the Code of Criminal Procedure, to be forwarded to headquarters.
- (iii) Property taken charge of by the Police under section 25 of the Police Act (Act V of 1861) and ordered by the Magistrate of the districts to be forwarded to headquarters.

2. (a) With regard to property referred to in rule custody

(1) (i) above, other than articles enumerated in (a) and (b) the Police Department will retain charge of it pending the disposal of the case. When the case is decided, the property, if not returned to the owner, will be made over to the Nazir for safe custody or otherwise disposed of, as the Magistrate may direct.

(b) Articles enumerated in 1 (i) (a) above will remain in the custody of the Police Department pending the disposal of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall send them to the Treasury or Sub-Treasury together with a short description of the case; and

(c) Articles enumerated 1 (i) (b) above produced in and confiscated by a Court shall remain in the custody of the Police Department during the trial of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall make the articles over to the Police Department for their destruction or for such other action as may be found suitable in accordance with the rules of that department.

3. Property of the second kind, when sent in the headquarters, will remain in the custody of the Police until the Magistrate makes an order for the issue of a proclamation under section 523 of the Code of Criminal Procedure, when it should be transferred to the custody of the Nazir, or otherwise disposed of as the Magistrate may direct.

Chapter 13

8. Rule 5 Added vide Notification No. GSR-210- /Const/Art/227/63, dated 23rd August, 1963.

9. Rule 6, substituted vide notification No. GSR-210- /Const/Art/227/63 dated 23rd August, 1963. Prior to substitution, the rule read as under

6. The confession should be recorded in the following forms : —

Form prescribed for recording confessions.

Form of recording confession made by an accused person before

Magistrate of the _____ Class.

Taluka _____ /Sub-Division _____ District _____

(i) The accused _____ is brought by Sub-Inspector _____

Police _____ before me at _____
Head Constable _____

Court _____ a.m.
my _____ at (here enter the time) _____ p.m.
Camp _____

to have his confession recorded, a letter

_____ from (here give the officer's designation) given Memo.

to me is dated _____ and is attached to the

Here enter the record. I have ascertained that the offence was name of place, committed at _____ on _____ day and hour _____ at _____ a.m. _____ of my peon

(ii) The accused is placed in custody _____ armed police (Sub) Inspector _____

_____ and the Police _____ is Constable _____ (Head) Constable _____

directed to leave the premises. I have satisfied myself that there is no policeman in the Court or in any place whence the proceedings could be seen or heard except such armed police constables not concerned in the investigation of the crime as are necessary to guard the accused:--

(iii) The accused is asked if he is disposed to make confession of his own free will.

He replies as follows:—

(iv) The body of the accused is examined without his objection. The result of the examination is as follows, namely:—

(v) The accused is asked to give details as to the length of time during which and the places where he has been in the custody of the police. He replies as follows : —

*State, time in accused's own language.	}	"I was arrested *	
Give place, time and day.			a.m.
		on_____in the	P.m.
Insert time in accused's own language also placed and day.		..	village
			town
			city.
		I was taken to_____at_____	
		on _____	
		I was sent to you from_____	
	J	at_____on_____."	

(vi) Herein give the question specified in clause (h) of the preceding paragraph as well as the answer given to each question by the accused.

Q. _____

A. _____

Q. _____

A. _____

Statement of accused.

_____ (Sd.),

Magistrate

I have explained to _____ that he is not bound to make a confession and that if he does so, any confession he may make may be used as evidence against him and I believe that his confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Dated.

(Sd.) Magistrate.

The accused has been forwarded to Sub-jail _____.

(Sd.) Magistrate.

10. Rule 16 (i) Clause (a) omitted and clauses (b) (c) renumbered as (a) and (b), vide notification dated 23rd August, 1963. Prior to deletion, the rule read as under:-

- (a) In order to ensure that a statement or confession under section 164 of the Code of Criminal Procedure is made voluntarily, the following precautions should be taken. Before the Magistrate proceeds to record the confession, he should arrange so far as is compatible with his safety and that of his staff and with the safe custody of the prisoner-that the latter is left for some time (say, for half an hour) out of the of hearing police officers or other persons likely to influence him.
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[¹][Part-BB]**[²][The Use of Electronic Communication and Audio-Video Electronic Means Rules, 2026].**

[¹][The procedure for Video Conferencing for Criminal Matters in Subordinate Courts shall be followed as prescribed in Part-H of Chapter-1 of Rules & Orders of Punjab and Haryana High Court, Volume-V titled as [²]"**The Use of Electronic Communication and Audio-Video Electronic Means Rules, 2026**"].

[¹] Vide correction slip No. 41 Rules/II.D4 dated 10.12.2021 Chapter-1 Part-BB was inserted as "Video Conferencing Rules for Subordinate Courts in the States of Punjab, Haryana and U.T. Chandigarh.

[²] Vide correction slip No. 45 Rules/II.D4 dated 10.04.2026, now the title i.e. "Video Conferencing Rules for Subordinate Courts in the States of Punjab, Haryana and U.T. Chandigarh" has been substituted with the title "The Use of Electronic Communication and Audio-Video Electronic Means Rules, 2026.

RULES AND ORDERS
OF
THE PUNJAB HIGH COURT

Volume III.-Instructions to Criminal Courts.

CHAPTER I.

Practice in the trial of *Criminal Cases.*

PART A.-GENERAL.

1. There shall be uniform Court timings and office timings in all Subordinate Courts of the States of Punjab, Haryana and U.T. Chandigarh w.e.f. 01.07.2018 as follows:-

Court Timings	-	10:00 A.M. to 04:30 P.M.
Office Timings	-	09:30 A.M. to 05:00 P.M.
Lunch Break	-	01:00 P.M. to 01:30 P.M.

However, second and fourth Saturdays of each month shall be observed as holiday.

{Rule 1 amended vide Correction Slip No. 37 dated 16.11.2018}

2. **Closing hour:-** The hearing of a case taken up before 4 p.m. (or whatever may be the closing hour of the court) may, if necessary, be continued for a short time after that hour, but no new case should be taken up after the hour when the court is timed to rise.
3. **Place of sitting:-** All trials when held at the headquarters of a district or sub-division should be conducted by officers at their Court houses only. The Honorary Magistrates or a Bench of Honorary Magistrates at Delhi shall, unless otherwise permitted by Government hold court in Municipal, Cantonment or Notified Area. Criminal cases should as a rule be taken Government or Government rented building within the limits of a up at the headquarters of a district or tehsil, but when it becomes necessary to take up a case on tour, care should be taken to see that the parties get due notice of the place and hour fixed for their attendance.
4. **Petition box:- (a)** A petition box shall be placed in the varandah of the Court house about one hour before the Court sits, an official being specially made to attend early for this purpose. It should be opened in the presence of the Magistrate about 15 minutes after the Court opens when all petitions shall be initialed by him. The Magistrate shall pass proper orders forthwith or inform the petitioner when orders will be ready after the necessary Kaifiyats have been put up. The box shall be replaced in the varandah and opened again shortly before the Court rises for luncheon in the presence of the Magistrate and the same procedure followed. It shall then be replaced once more in the varandah and opened for the last time 15 minutes before the time fixed for the rising of the Court and the procedure prescribed above followed. After the box has been opened for the third time, it shall not be replaced in the varandah but petitions may thereafter be presented up to the closing hour of the court to the Magistrate personally who shall receive them.

A list of all miscellaneous petitions, etc., on which orders cannot be passed forthwith, should be prepared and exhibited outside the Court room specifying the date fixed for the disposal of each petition.

(b) Urgent matters:-In urgent cases, however, the Magistrate may exercise his discretion and personally receive documents presented to him direct at any time.

(c) Ministerial staff not to receive petitions, etc.:- The members of the ministerial establishment are strictly forbidden to receive complaints, petitions or other documents direct from lawyers and their clerks or from litigant except when the Magistrate is on leave and no other Magistrate is in charge of his current duties. District Magistrates should, however, invariably make arrangements for the reception of complaints, petitioners, etc., by another Magistrate when a Magistrate is temporarily absent on leave, tour or otherwise. Where there is a single Magistrate at a station such as a Moffassil or outlying Court. District Magistrates should issue such orders as may be necessary in the peculiar circumstances of each case to ensure the convenience of the general public.

(d) Exceptions:- The above orders do not apply to applications put in by counsel for the inspection of records which may be represented to the Magistrate personally, nor do they apply to talhanas and stamped postal envelopes filed by litigants which should be received direct by the Ahlmad or the Moharrir and a receipt given for the same whether demanded or not.

(e) Bail applications:- A list, showing the hours at which bail applications and other miscellaneous applications are entertained shall be displayed outside the court room of each Magistrate. Urgent application may, however, be entertained outside the hours fixed for ordinary applications.

- 5. Courts to be Open:-** [Section 327 of the Code of Criminal Procedure contains the healthy rule that criminal Courts should ordinarily be open to the public. The proviso to this Section, however gives discretion to the presiding officer of the court to exclude the public generally or any particular person from the room or building used for holding the Court. It is for the presiding officer to decide for himself about the place where the court is to be held, but it should ordinarily be held in the usual Court room. In exceptional circumstances, however, for reasons of security for the accused or for the witnesses or for the presiding officer himself or for any other valid reason, he may either on his own motion or on the application of the prosecution or the accused, decide to hold the Court at any other place within the limits of his local Jurisdiction. When it is decided to hold the Court at a place other than the usual Court room, the presiding officer should pass a formal order giving reasons for his so doing and should ensure that neither the prosecution nor the accused is in any way prejudiced in the conduct of the proceedings, inquiry or trial, as the case may be, at that place. A copy of the order so passed should be sent to the High Court. If prior permission of any person or authority is needed for the use of any place or building as a Court room, the same should be obtained through the Sessions Judge, if that person or authority is in that Sessions Division and through the High Court in other cases. No permission need be sought in this regard, if use of any place, other than the usual Court room, for enquiry or trial, is decided upon by the presiding officer on a formal request made by the prosecuting agency.]

{Rule 5 Substituted vide Correction Slip No 27 Rules/XII.F.8 dated 09.10.1981.}

- 6. Speedy disposal of cases:-** Magistrates should as a rule give priority to Criminal cases over other work especially when an accused person is in custody. Attention is drawn to the new sub-

section (1) inserted in section 344 of the Code by the Code of Criminal Procedure (Amendment) Act, 1955 (No. 26 of 1955), according to which in every enquiry and trial the proceedings shall be held as expeditiously as possible. In particular, when the examination of witness has once begun the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, if the adjournment of the case beyond the following day is considered necessary the Court must record its reasons in writing. The new proviso to sub-section (1-A) further says that when witnesses are in attendance an adjournment or postponement cannot be granted without examining them, except for special reasons to be recorded. Adjournments when necessary should be as short as possible, according to the circumstances of the case. Special care should be taken in the trial of a person accused of a non-bailable offence who is in custody as according to the new sub-section (3-A) of Section 497 of the Code (as inserted by Act no.26 of 1955) if the trial is not concluded within sixty days of the first date fixed for taking evidence in the case, the person may have to be enlarged on bail. The Court has to record its reasons if it decides to keep the accused in custody beyond the period of sixty days mentioned in the said sub-section.

7. **Reasonable cause for postponement:-** It is not a reasonable cause of postponement under Section 344 of the Criminal Procedure Code, except for a short period, that there are other accused in the case for whose arrest it is considered by the Court desirable to wait in order that all the accused may be put on their trial together. Such an order consults the convenience of the Court and witnesses only, whereas every accused has a right to have the evidence against him recorded at as early a period as possible.
8. **Witnesses should not be produced on the date of presentation of the chalan:-** Section 251-A, inserted in the Code by Act No. 26 of 1955, lays down a new procedure for the trial of warrant cases instituted on police report. When the accused appears or is brought before the Magistrate, he has to satisfy himself that the documents referred to in sub-section (1) of Section 173 have been furnished to the accused as required by sub-sections (4) and (5) inserted in Section 173 by Act No. 26 of 1955. Sub-section (4) requires that the accused should have been furnished with these documents before the commencement of the inquiry or trial. It is, therefore, desirable that the accused should have a reasonable time to study these documents before the Magistrate proceeds to examine and hear the accused under sub-sections (2) and (3) of Section 251-A. If the court frames a charge and the accused does not plead guilty a date for the examination of witness for the prosecution will be fixed at that stage.
 These instructions do not, however, apply to such summons cases the trial of which can be completed forthwith and should not be delayed even for a few days. Now a summons case would be a case relating to an offence which is punishable otherwise than with death or with imprisonment exceeding one year.
9. **Relief to Courts:-** In criminal cases, in which the proceedings are likely to be protected, the proper course for the magistrate trying the case is to apply to the District Magistrate to be relieved of other work to such an extent as to enable him to deal promptly and efficiently with the case. If for any reason such cases have to be taken up by a District Magistrate or a Treasury Officer, it will usually be possible for such officers to be relieved of some of their ordinary work by other officers on the district staff. If, however, the ordinary staff is not sufficiently strong temporary assistance should be applied for.
10. **Adjournments caused by holidays etc.:-** On the occurrence of an

unexpected holiday or the unexpected absence of an officer, the Presiding Officer, before his departure or before finishing the work on the day preceding the holiday, should himself fix fresh dates of hearing in the peshi register for the cases fixed for the day in question. The register should then be made over to the reader of the court or in the case of a holiday to a selected reader who should be made responsible for informing all parties and witnesses of the adjournments given on their coming to attend the closed court or courts. On holidays the duty Magistrate at headquarters should check and supervise the work of the selected reader for the criminal courts at least once in the course of the morning.

- 11. Daily progress reports:-** The forms prescribed for reporting the daily progress of cases (see Volume VI-B, part III, form No, 176) should be used by magistrates without fail and a copy should be sent daily to the District Magistrate or Sub- Divisional Officer as the case may be.
- 12.** {All Judicial Officers shall furnish to the High Court, a statement of old Criminal Cases pending over one year every month before the 10th of the following month in the pro forma appended below together with their explanation where necessary and the comments of the Sessions Judge concerned thereon. The submission of the proceedings of the monthly meeting of Judicial Officer should accompany with the aforesaid statement.}

{Rule 12 Substituted vide Correction Slip No 23 dated 19.6.1980.}

PROFORMA 'B'

Consolidated Statement of more than one year old criminal Cases pending in the Judicial Courts, Judicial Magistrates of _____ District for the month of _____

Nature of Court	Nature of Criminal Cases	No. of cases pending at the end of the last month	No. of cases which became over one year old during the month	Total No. of cases	No. of cases dispose of during the month	Balance
1	2	3	4	5	6	7
	1. Police Challans 2. Complaints 3. Others (if any)					

- 13. History sheets:-** Magistrates shall submit history- sheets containing abstract of orders passed in different dates in six oldest cases pending over one year when delay is said to be due to stay of proceedings therein it is the duty of the higher court concerned to look into and give its remarks on the cause of delay and to expedite disposal of the case in which the order staying proceedings in the Lower Court was passed.

{Rule 13 Substituted vide Correction Slip No 24 dated 9.6.1980}

- 14. Fast and Secured Transmission of Electronic Records (FASTER):-** The e-authenticated copies of the interim orders, stay orders, bail orders and record of proceedings of the courts transmitted through Fast and Secured Transmission of Electronic Records (FASTER) system shall be valid for compliance of the directions contained therein.

{Rule 14 inserted vide Correction Slip No 42 Rules/II.D.4 dated 22.9.2022}

PART B.-INITIATION OF PROCEEDINGS

Section 190 of the Code of Criminal Procedure provides that a magistrate who is specially empowered in this behalf may take cognizance of any offence:-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) *upon a report in writing of such facts made by any Police officer;*
- (c) upon *information* received from any person other than a Police officer, or upon the *Magistrate's own knowledge or suspicion*, that such offence has been committed.

Note.--A magistrate of third class cannot take cognizance of an offence upon information or knowledge,

2. In most cases magistrates take cognizance either under clause (a) upon a complaint or under clause (b) upon the report of a police officer.

A magistrate taking cognizance of an offence under clause (c) must, before any evidence is taken, inform the accused person that he is entitled to have the case tried by another Court, and if the accused objects to being tried by such magistrate, the case must be committed to the Court of Sessions, or transferred to another magistrate (section 191).

3. Complaints of offence made in writing should be received during office hours on all days other than public holidays. Upon the institution of a complaint, the date of presentation should be immediately endorsed thereon, together with the name of the Magistrate to whom the case is to be sent for inquiry or trial under section 192 of the Code, and the complainant directed to appear before him either the same day or one of the following days for examination of the complaint and the witnesses present, if any. Similarly, if the complaint has not been *made in writing*, the magistrate should direct the complainant and his witnesses to the proper Court.

4. The first duty of Magistrate taking cognizance of an offence on complaint is to examine the complainant and the witnesses present, if any, on oath, and to

Manner in which magis-trate may take cognizance of an offence.

Right of accused for transfer of a case taken up by a magistrate on information or knowledge.

Complaints how to be dealt with.

Oral examination of complainant and preliminary inquiry.

primary inquiry ant anc

record the substance of the examination in writing The same shall be signed by the complainant and the witnesses and also by the magistrate. Such examination of the complainant, etc., is not necessary where a complaint in writing is made (a) by a court or a public servant acting or purporting to act in the discharge of his official duties or (b) when a magistrate empowered under section 192 of the Code decides to transfer the complaint to a Subordinate magistrate. The duties of a magistrate receiving a complaint are detailed in sections 200 to 203 of the Code to the latter of which strict attention should be paid. Magistrate of the first and second classes, who alone have the power to direct an inquiry under section 202, should not refer complaints of non-cognizable offences to the Police for inquiry, except for every special reasons, and in all trials cases one of the other modes of inquiry permitted by the section should be adopted

When process
should issue
against
accused.

5. When the complainant and the witnesses present, if any, have been examined and any inquiry or investigation ordered under section 202 has been completed, the magistrate may dismiss the complaint, if, in his judgment, there is no sufficient ground for proceedings. If the Magistrate finds sufficient ground for proceeding he should issue process *for the* attendance of the accused. No summons or warrant shall, however, be issued against the accused -until a list of prosecution witnesses has been filed and in proceedings instituted upon a complaint made in writing the summons or warrant shall be accompanied by a copy of the complaint, (sub-sections (1-A) and (1-B) of section 204).

Importance of
examination of
complainant
before issue of
process.

6. The examination of complainants and the witnesses prescribed by the Code of Criminal Procedure is not a mere formality, as the result of this examination enables the magistrate to determine whether he will put the machinery of the Criminal Court in motion by issuing summons or warrant to cause the attendance of the accused before him. Section 203 lays down that if, in the judgment of the magistrate, there is no sufficient ground for proceeding, he shall dismiss the complaint. The preliminary examination, therefore, if properly made, will frequently result in the sum

person from the trouble and annoyance of appearing at the bar of a Criminal Court. In the interest of the Public, therefore, as well as with a view to the rapid dispatch of work, a careful observance of the law in this particular is incumbent upon magistrates.

7. The provisions of the law as to the procedure of the police in investigating offences and submitting reports in regard thereto are dealt with in this Volume in Chapter 11, Police. The power to hold a preliminary magisterial inquiry into cases reported by the Police, conferred by section 159 of the Code, should not be lost sight of. For the duties of magistrates in ordering remands to Police custody, Chapter II, referred to above, should be consulted. After completion of the investigation the police present a report (usually called a challan under section 173 of the Code and upon such report magistrate can take cognizance under clause (b) of Section 194. Section 173 has been recently amended by Act No. 26 of 1955 and the new sections (4) and (5) provide that before the commencement of the inquiry or trial the accused should have been furnished, free of cost, a copy of the report forwarded under sub-section (1)., of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, including statements and confessions, if any, recorded under section 164 and statements of all prosecution witnesses recorded under sub-section (3) of Section 161. Where copies of portions of the documents and police record mentioned above have been withheld by the police officer under sub-section (5) the magistrate shall at the commencement of inquiry or trial consider how far the police officer was justified in not supplying copies of these documents, etc., and may direct copies of parts excluded or portions thereof, as he thinks proper, to be supplied to the accused. Thereafter the magistrate shall proceed in warrant case instituted on police report according to the procedure laid down in Section 251-A of the Code as inserted by Act No. 26 of 1955.

8. The question of jurisdiction requires careful attention at the initial stage. Schedule II of the Code of Criminal Procedure shows the classes of Courts by which different offences are triable. In determining the

Presentation of
police report.
Changes in Law.

Inquiry into nature of
offence and other
preliminaries in order
to see whether the
Court has
jurisdiction.

nature of the offence, the facts ascertained by the examination of the complainant and his witnesses and the preliminary inquiry (if any), should be taken into consideration and importance should not be attached to the particular section specified or the offence alleged in the complaint, as complaints are often drafted by men ignorant of law, and there is also a tendency to exaggerate the nature of the offence. It should be also remembered that certain offences cannot be taken cognizance of at all except upon the complaints of certain persons or Courts or with the previous sanction of the Government (*vide sections 195-199-A, Criminal Procedure Code*).

9. The question of jurisdiction arises also with reference to the place of inquiry or trial. The general rule prescribed by section 177 is that an offence shall be ordinarily inquired into and tried by a Court within the local limits of whose jurisdiction it was committed but the subsequent sections create various exceptions to this rule.

10. When for instance it is uncertain in which of several local areas an offence was committed; or where an offence is committed partly in one local area and partly in another; or where the offence is a continuing one and continues to be committed in more local areas than one, or where the offence consists of several acts done in different local areas; it may be inquired into or tried by a Court having jurisdiction over any of such local areas. The same rule applies to offences committed on a journey, which may be inquired into or tried at any place through which the offender or property affected passed in the course of such journey.

11. If a magistrate finds that the offence disclosed is not triable by him, he should report the case to the District Magistrate for its transfer to a competent Court. He should take similar action when he finds that although he has jurisdiction to try the offence, he will not be able to impose an adequate sentence in the event of a conviction. (For further instructions on this subject see *para 8* of Chapter 1-D and Chapter 19, relating to sentences.)

Jurisdiction also depends on the place of commission of offence.

Cases where place of commission of offence is uncertain.

Procedure where magistrate thinks that he has no jurisdiction or cannot impose proper

Part BC**Electronic Filing (E-filing) Rules for Subordinate Courts in the States of Punjab, Haryana and U.T. Chandigarh.**

Pursuant to the ‘Model Rules on Electronic Filing (e-filing) sent by Hon’ble the Supreme Court of India, The High Court of Punjab and Haryana hereby makes the following rules :-

“The procedure for Electronic Filing (e-filing) in Subordinate Courts shall be followed as prescribed in Part-J of Chapter-1 of Rules and Orders of Punjab and Haryana High Court, Volume-V titled as ‘THE ELECTRONIC FILING (E-FILING) RULES”.

[Chapter-1 Part-BC inserted vide correction slip No. 44 Rules/II.D4 dated 07.02.2023]

PART C-(i) ATTENDANCE OF ACCUSED PERSONS

1. When a Magistrate taking cognizance of an offence is of opinion that there is sufficient ground for proceeding, he must decide whether a summons or a warrant should issue in the first instance for the attendance of the accused. The fourth column of the second Schedule of the Code shows, in regard to offences, whether a summons or a warrant should ordinarily issue.

When summons or warrants should issue.

Sub-sections (1-A) and (1-B) of section 204 require that no summons or warrant shall be issued against the accused until a list of prosecution witnesses has been filed and that where a proceeding is instituted upon a complaint in writing the summons or warrant shall be accompanied by a copy of the complaint.

2. ¹[Even where the law provides for the issue of a warrant in the first instance, a magistrate may, in his discretion, issue a summons/e-summons. On the other hand, a magistrate may, after recording his reasons for as doing, issue a warrant instead of a summons in a case in which the law provides for the issue to the first instance of a summons. Sections 90 and 204 of the Code should be referred to on this subject. The former section authorises the issue of a warrant instead of a summons (1) where the Court has reason to believe that the accused has absconded or will not obey the summons, or (2) if, after service of a summons, the accused fails to appear and offers no reasonable excuse for non-attendance. It should also be borne in mind that where process-fees or other fees are payable, a process should not be issued until such fees are paid and that in default of payment of the fees within a reasonable time, the magistrate may dismiss the complaint.]

Discretion of Magistrate to issue summons or warrants.

3. Great care should be taken not to issue a warrant when a summons would be sufficient for the ends of justice. Magistrates should remember that the issue of a warrant involves interference with the personal liberty of a person and should take care to see *that no* greater hardship is caused than is necessary. Under *section 78* of the Code, a Court has the discretion to make the warrantailable, and this discretion should be exercised with due regard to the nature of the offence, the position of the accused person and the circumstances of *the case*.

Warrant should not issue unless absolutely necessary.

Bail.

4. When the accused person appears before the Court the question of bail arises. In the case of a bail-able offence an accused person must be allowed to re-main at liberty if he can furnish bail for his appearance during the course of the trial. A magistrate has the discretion to allow bail even in the case of non-bailable offences in certain circumstances. (For detailed instructions on the subject,-vide Chapter 10. Bail and Recognizances.)

When
attendance of
accused may
be dispensed
with.

5. A criminal trial should be conducted in the presence of the accused. Sections 205 and 540-A (as amended by Act 26 of 1955) of the Code give a discretion to the Court to dispense with the personal attendance of the accused in certain circumstances

Service of
processes.

6. Detailed instructions as to the mode of issuing and serving processes of the Criminal Courts are contained in Volume IV, Chapter 8, "Processes". The provisions of the law relating to the service of processes on persons employed in the public service require special attention.

PART C.-(ii) ATTENDANCE OF PRISONERS IN CRIMINAL COURTS.

Attendance
prisoners
in Criminal
Courts.

Act No. 32
of 1955.

1. The attendance of any person confined in any prison may be required by any Criminal Court either:-

- (a) to give evidence, or
- (b) to answer a charge of an offence.

2. In case (a) above, any Criminal Court may make an order in the form set forth in the First Schedule of the Prisoners (Attendance in Courts) Act, 1955 (No. 32 of 1955) and directed to the officer-in-charge of the prison. In case (b) above, the order shall be made in the form set forth in the second Schedule of the said Act and shall, likewise, be directed to the officer-in-charge of the prison. Such orders of a Criminal Court inferior to the Court of a Magistrate of the first class shall not have effect unless counter-signed by the District Magistrate to whom that court is subordinate or within the local limits of whose jurisdiction the Court is situate.

Note. - Act No. 32 of 1955 extends to whole of India, except the State of Jammu and Kashmir.

3. (1) Prison includes :-

- (i) any place which has been declared by the State Government, by general or special order, to be subsidiary jails; and
- (ii) any reformatory, Borstal institution or other institution of a like nature (clause (b) of Section 2, *ibid*).

(2) State Government' in relation to a Union territory means the Lieutenant-Governor or, as the case may be, the Chief Commissioner of that territory. (Clause (c), of Section 2, *ibid*).

Exemptions.

4. Under section 4 of the Act, the State Government may, under the circumstances mentioned in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he/they may be confined. The provisions of section 3 shall not apply to such person or persons so long as any such order remains in force.

Officer-in-charge of a prison to produce the person confined before the Court;

5. On the delivery of any order made under section 3, the officer-in-charge of the prison in which the person named is confined shall cause that person to be taken to the court in which his attendance is required, on the date and time mentioned in the order. He shall cause that person to be detained in custody, in or near the court, until the presiding officer of the court authorises him to be taken back to the prison (Section 5, *ibid*).

6. The officer-in-charge of the prison shall abstain from carrying out an order made under section 3 under the circumstances mentioned in section 6 of the Act. He shall not, however, so abstain from carrying out the orders of a Criminal Court if the person named in the order is not declared in accordance with rules made in this behalf to be unfit to be removed from the prison in which he is confined or where the person named in the order is required to attend at a place which is not more than five miles distant from that prison.

When he may
abstain from
carrying out
orders of court.

Examination
on comm-
ission.

7. Save as otherwise provided in this Act and apply in relation to the examination on commission or otherwise of any person confined in a prison as they apply in relation to the examination on commission of any other person. (Section 8, *ibid.*)

Courts
orders to
issue in
time.

8. In order to avoid unnecessary delays in the trial of Criminal cases it is essential that all orders for the production of persons confined in a prison should be issued well in advance of the date fixed for the hearing of the case.

PART D**PROCEDURE IN ENQUIRIES AND TRIALS BY MAGISTRATES*****(a) General Remarks***

- 1. Procedure in the trial of cases:-** The Code of Criminal Procedure recognizes four distinct methods of procedure in the trial of criminal cases by magistrates, namely:-

- (a) the procedure prescribed for the trial of summons- cases;
- (b) the procedure prescribed for the trial of warrant- cases instituted on police reports;
- (c) the procedure prescribed for the trial of other warrant-cases; and
- (d) the procedure prescribed for summary trials.

As to the manner of recording evidence prescribed in regard to each of these forms of procedure reference should be made to Part E of this Chapter. Stated generally, there is, in the summons-case, ordinarily a memorandum of the substance of the evidence and defence and no more. As for other trials before a Court of Sessions or a magistrate and in inquiries under Chapters XII and XVII of the Code, section 356, as amended by Act 26 of 1955, enables the presiding officer to have the evidence of each witness taken down in writing, in the court language, from his dictation in open court. In cases where the presiding officer has taken down the evidence with his own hand or has caused it to be taken down in writing from his dictation in open court as laid down in sub-section (I) of section 356 he need not make a memorandum of the substance of what the witnesses depose; if the evidence is recorded in any of the other manners laid down, then in warrant cases and inquiries under Chapters XII and XVII of the Code, it may be necessary to have a double record as before. In a summary trial in which an appeal lies, the Magistrate or Bench shall in addition to the particulars mentioned in Section 263 of the Code record the sub-stance of the evidence and before passing any sentence, record a judgment in the case. The recent amendments of section 264 of the Code deserve attention.

The main differences in the procedure prescribed for conducting trials under each method will now be alluded to briefly.

¹[**“Rule1-A: Accused to be permitted to sit during the trial:-** The accused in a criminal trial shall be permitted to sit down during the trial, unless it becomes necessary for him to stand up for any specific purpose, such as identification or otherwise. Such facility accorded to the accused shall, however, be subject to the established convention followed in the Courts that everyone concerned should stand when the Presiding Officer enters and leaves the Court.

¹ Inserted vide correction slip No. 35/Rules/II D.4 dated 08.4.2016.

(B) Procedure in the trial of Summon Cases.

- 2. Summons cases and admission by accused:-** (1) In view of the amendment of the definition of 'warrant-case' by Act No. 26 of 1956, a 'summons- case' would now be a case relating to an offence which is punishable otherwise than with death or with imprisonment exceeding one year.
- (2) In a summons-case (Chapter XX of the Code), when the accused person is before the Court, particulars of the offence of which he is accused are stated to him and he is asked to show cause why he should not be convicted. No formal charge is prepared. (Section 242 of the Code.) If the accused admits that he has committed the offence, his admission should be recorded as nearly as possible, in his own words; and if he shows no sufficient cause why he should not be convicted, he may be convicted accordingly, (Section 243.)
- 3. Summons cases and denial by accused:-** If the accused denies that he has committed the offence, the complainant and his witnesses must be examined, the accused must be heard, and evidence produced by him taken. The parties are required to have their respective witnesses present at the hearing and it is open to them to apply to the Court, in sufficient time, to issue process to compel the attendance of any witness or the production of any document or other thing required in evidence. The cost of the processes and the reasonable expenses of witnesses should be paid by the parties, respectively. (Section 244.)
- 4. Conviction for a difference offence:-** When the parties and their evidence have been heard, the magistrate will pass an order of acquittal or conviction, as the case may be. (Section 245.) An accused person may be convicted of any offence triable as a summons-case of which he may be found guilty; whatever the nature of the offence specified in the complaint or summons. (Section 246).
- 5.** In a summons-case instituted on complaint, if the complainant fails to attend on any day fixed for hearing, the accused should be acquitted unless the magistrate thinks proper to adjourn the hearing to some other day. In view of the proviso to Section 247, as amended by Act 26 of 1955, the magistrate can also dispense with the complainant's attendance and proceed with the case. A summons-case may, with the permission of the Magistrate, and for sufficient grounds, be withdrawn at any stage before the order is passed and the accused acquitted (Section 248). Section 345 of the Code permits certain offences, some of which are summons-cases, to be compounded without the permission of the Court, and should be read with section 248. Other offences, including that of causing grievous hurt, punishable under section 325, Indian Penal Code, are compoundable with the

permission of the Court. Offences may, with the permission of the Appellate Court, be compounded after conviction, and, with the permission of the Court to which the case has been committed, after commitment. In a summons-case instituted otherwise than on complaint, the magistrate may for sufficient reasons to be recorded by him, stop proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused; but a magistrate of the second or third class can act in this manner only with the previous sanction of the District Magistrate. (Section 249.).

Adjournment for production of evidence:- It frequently happens that applicants for revision urge that no proper opportunity was given to them to call witnesses to rebut the evidence for the prosecution, and there is often nothing on the record to show that this allegation is not well founded. Under section 244 of the Code of Criminal Procedure, the accused, in a summons- case, is primarily responsible for the production of his evidence on the day of hearing; but even in these cases the Court should, as a matter of precaution, at the conclusion of the case for the prosecutions ascertain from the accused whether he has any witnesses, and should not refuse to give him a further opportunity of bringing or summoning witnesses who may not be present in Court unless it appears that their evidence is not material or that the accused has been wilfully negligent in the matter. In every summons-case in which no witnesses are produced for the defence, the Court should record either that the accused does not wish to call witnesses, or that for reasons stated he has been refused a further opportunity of doing so. In order that persons accused in summons-cases may have a better opportunity of knowing what the law expects of them, a clause has been added to the form of summons warning the person addressed that, unless he is prepared to admit the offence with which he is charged, he must bring his witnesses with him on the day fixed for hearing.

**(c) Procedure in the trial of warrant cases
instituted on Police Report.**

6. ^[1]**Warrant case on Police report – Police to furnish copies to accused before the trial commences:-**In a warrant-case (Chapter XIX of the Code of Criminal Procedure, 1973) the procedure would now depend on whether the case has been instituted on a police report or otherwise. Section 238 to 243 of Code of Criminal Procedure, 1973 govern the procedure in warrant cases instituted on police reports. When the accused appears or is brought before the magistrate, the magistrate should, at the commencement of the trial, satisfy himself that he has complied with the provisions of Section 207 Cr.P.C. Further, every accused should be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating

Officer in accordance with Sections 207 and 208 Cr.P.C.

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.”

^[1] ***Rule 6 substituted vide C.S. no. 40 Rules/ II.D4 dated 10.12.2021.***

- 7. Discharge of accused:-** The magistrate shall then consider all these documents and make such examination of the accused as he thinks necessary and after giving the prosecution and the accused an opportunity of being heard, make up, his mind whether he should frame a charge. It is not now necessary that any prosecution witnesses be examined before the charge is framed. If the Magistrate considers the charge against the accused to be groundless he shall discharge the accused. If the magistrate is of the opinion that there is ground for presuming that the accused has committed an offence which the magistrate is competent to try and can adequately punish, he shall frame in writing a charge against the accused.

^[2] The order framing charge shall be accompanied by a formal charge in Form 32, Schedule II, Code of Criminal Procedure, 1973 to be prepared personally by the Presiding Officer after complete and total application of mind.

^[2] ***Rule 7 amended vide C.S. no. 40 Rules/ II.D4 dated 10.12.2021.***

- 8. Course to be adopted when Magistrate is not competent to try case or is not able to adequately punish:-** If the magistrate is not competent to try the case as made out by the prosecution, or sees reason to think that he could not adequately punish the accused in case of conviction, he should, at this stage, take the orders of the magistrate to whom he is subordinate, or proceed under Chapter XVIII, if so empowered. The power of reference conferred by section 349 of the Code is limited to cases in which, after the trial is complete, a magistrate of the second or third class considers that he cannot adequately deal with the case. Sections 254 or 251-A (3) are of general application and require the magistrate to form an opinion before the charge is framed as to his being able to adequately punish the accused in case of conviction. Where it is clear at this stage that he cannot, in the event of conviction, adequately punish the accused, he should stay proceedings and refer the case to the District Magistrate for orders or, if competent, proceed to hold an inquiry with a view to committing the accused for trial.

- 9. Framing and joinder of charges:-** The provisions of Chapter XIX of the Code as to the framing of the charge should be carefully consulted. Sections 221 to 223 show the form in which a charge must be drawn up and the particulars which must be entered therein; and sections 233 to 239 show how charges may be joined, when they should be in alternative form, and what persons may be charged jointly. Special care is needed in the matter

of joinder of charges. It has been held by the Privy Council that misjoinder of charges against the express provision of law vitiates a trial (See 25 I.L.R. Madras, 61 P.C.). Section 235 is also important and should be read with Section 71 of the Indian Penal Code.

In all cases in which it is intended to prove previous convictions for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction should be set out in the charge.

- 10. Pleading of accused to charge:-** The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried. If the accused pleads guilty, the magistrate shall record the plea and may in his discretion convict him thereon; but it is to be remembered that a plea of guilty can only be recorded when the accused person raises no defence at all. If, for example, he admits material facts, but denies guilty knowledge or intention, the plea cannot be regarded as one of 'guilty'. If the accused refuses to plead or pleads 'not guilty' he should be called upon to enter upon his defence after the prosecution case is closed.

Statement of accused about previous conviction:- When previous convictions are included in the charge, the accused should also be asked whether he admits the convictions and his reply should be recorded. If he denies then the convictions must be proved in the manner prescribed in section 511 of the Code, after the accused is convicted of the offence with which he is charged (Section 255-A).

Completion of prosecution evidence:- If the accused does not plead as above or claims to be tried the magistrate shall fix a day for the examination of the witnesses for the prosecution. The magistrate may permit the cross-examination of any prosecution witness to be deferred until any other witness or witnesses have been examined and may recall any witness for further cross-examination.

- 11. Day to day hearings:-** After the charge has been framed the magistrates should insist on day-to-day hearings until the prosecution evidence is concluded. In this connection the instructions with regard to speedy disposal of cases contained in tiara 6 of Chapter 1-A and the recent amendments of the Code mentioned therein may be carefully studied. The recently inserted section 510-A now permits evidence of a formal nature to be given on affidavits; but the court may and if so required by the prosecution or the accused, shall summon and examine the person making the affidavit as to the facts contained therein. The remarks in this para apply also to defence evidence.

- 12. Examination of accused and his entering upon his defence:-** After all the

witnesses for the prosecution have been examined and before the accused is called on for his defence, the court must examine the accused and question him generally on the case as required by Section 342 of the Code, for the purpose of enabling the accused to explain any circumstances appearing in the evidence against the accused. An examination of the accused for that purpose can also be made at any earlier stage of the case but such examination at the conclusion of the prosecution evidence is mandatory. High Courts have on appeal set aside, as materially irregular, conviction in cases where such examination was not made at this stage in the trial of the case. In this connection see 1953 Supreme Court Reports 418. An examination of the accused under sub-section (1) of Section 342 shall be without oath.

If the accused puts in any written statement it shall be filed with the record. (Section 251-A (8) of 1898).

As regards the manner in which statements of accused persons should be recorded, detailed instructions will be found in Chapter 13.

- 13. Court to assist accused in conduct of the case:-**In a very large number of criminal appeals and in numerous petitions for revision, one of the principal grounds taken is the alleged existence of some special hostility to the accused on the part of the prosecution witnesses, or of some tie (whether of relationship or friendship) between them and the complainant in the case. Such points should doubtless be elicited by the accused in the Court of first instance in cross-examination; but few, except told offenders, understand the object of cross-examination. If, in addition to asking an accused person to cross-examine the witness, magistrates would, where the accused is not represented by counsel at the conclusion of each witness statement call on the accused to state what objection he has to make to the evidence given by him, such matters would be cleared up.

Another frequent ground taken in appeal is that the accused did not understand what he was required to prove or disprove or was not asked what evidence he could give to rebut the case for the prosecution. These points should be as clearly explained to persons accused of criminal offences as are the issues to the parties in a civil suit, and all magistrates should devote particular attention to this matter.

- 14. Defence witnesses and cost of summoning them:-** The magistrate is bound to cause the production of and hear all witnesses whom the accused desires to call, and to consider any documentary evidence relied on by him. The only exception to this rule is where the magistrate considers that in naming any witnesses the object of the accused is to cause vexation or delay or to defeat the ends of justice. In case the magistrate refuses to receive any evidence required by the accused, he should record his reasons for such refusal in writing. In view of the proviso to sub-section (9) of Section

251-A the attendance of a witness should not be compelled at the request of the accused where he has cross-examined or has had the opportunity of cross-examining the witness after the framing of the charge, unless the magistrate is satisfied that it is necessary for the ends of justice.

Accused as a defence witness:-In view of Section 342-A of the Code, as inserted by Act 26 of 1955, an accused may now appear as a witness for the defence and may give evidence on oath in disproof of the charges made against him or a co-accused. He cannot, however, be so examined except on his own request in writing and his failure to do so cannot be made the subject of any comment by the parties or the court or raise any presumption against him or a co-accused.

The Magistrate may, before summoning any witness applied for by the accused, require the accused to deposit reasonable expenses for his attendance. In ordinary warrant-cases, however, the cost of causing the attendance of accused's necessary witnesses is usually borne by Government.

- 15. Cost of Adjournment:-** The attention of Criminal Courts is drawn to 20 P.R. 1904 (Cr.) in which it was held that the expression 'on such terms as it thinks fit' in section 344 (1A) of the Code gives the court power to award costs for an adjournment to the party to whom loss is caused by such adjournment. In exceptional circumstances when the accused is clearly at fault he may be ordered to pay costs (1953 Cr. L. J. 1479 and I.L.R. (1945) 1-Cal. 481), but generally when proceedings can be taken against him for the forfeiture of his bail bond for non-attendance on any hearing it would be improper to expose him also to a different penalty for payment of complainant's costs (A.I.R. 1948 Cal. 194).

The provisions of section 344 enabling a trial court to order costs for an adjournment are not applicable to courts of appeal or revision (1952 A.L.J. 614).

- 16. Finding an sentence:-** At the conclusion of the trial the magistrate must record his finding and, in case of conviction, pass a legal sentence.

(d) Procedure in the trial of other warrant cases.

- 17. Other warrant cases:-** In warrant cases instituted otherwise than on a police report, when the accused appears or is brought before the Court, the magistrate must at once proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution. The magistrate is further required to ascertain from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and must summon such persons and take their evidence. The absence of the complainant, where there is one, does not

affect the proceedings except in a case instituted upon complaint which may be lawfully compounded, and the Court can compel his attendance, if necessary. Thus, in a warrant case it is the duty of the magistrate to cause the production before him of all material evidence for the prosecution, and to hear it. In the exception above alluded to, the magistrate has power to discharge the accused on the complainant making default.

- 18. Discharge of accused:-** After taking the evidence and making such examination of the accused as he may think necessary, if no case is made out which, if unrebutted would warrant a conviction, the magistrate should discharge the accused, and record his reasons for doing so.

If, however, at any previous stage of the case the magistrate considers the charge to be groundless, he may record his reasons for that opinion, and discharge the accused.

- 19. Framing of charge:-** If a prima facie case is made out which the magistrate is competent to try and which he considers could be adequately punished by him, he should frame a charge. The instructions with regard to the framing of a charge in paragraph 9 above would apply in this case also. If the magistrate is not competent to try the case made out or considers that he cannot adequately punish the accused if convicted he should proceed as already indicated in paragraph 8 above.

- 20. Pleadings to charge:-** The charge should be read out, and explained to the accused, and he should be asked to plead to it. If the accused refuses to plead or pleads not guilty he should be required to state at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forth-with whether he wishes to cross-examine any of the witnesses for the prosecution whose evidence has been taken before the framing of the charge. If he says that he does so wish, the magistrate should proceed as directed by section 256 of the Code.

- 21. Procedure in later stages:-** After this stage the procedure for the trial would be very much the same as in a warrant case instituted on police report. In this connection please see Sections 252 to 259 of the Code.

(e) Summary trials

- 22. Summary trials:-** Summary trials can be held only by a District Magistrate or a magistrate of the first class empowered in that behalf, or a Bench of Magistrates empowered under either section 260 or section 261 of the Code. For detailed instructions on the subject see Chapter 2 relating to summary trials.

(f) Inquiries by magistrates in cases triable by the Court of Sessions or High Court, when instituted on police report.

- 23. Procedure in inquiries by committing Magistrate in Sessions cases:-** The procedure in inquiries preparatory to commitment of a case instituted on

police report, when the case is triable by a Court of Sessions, is given in section 207-A of the Code. At the commencement of the inquiry when the accused appears or is brought before the Magistrate, he shall satisfy himself that the accused has been furnished the documents mentioned in section 173. If this has not been done he shall, subject to the provisions of sub-section (5) of section 173, cause these documents to be furnished to the accused. The Magistrate shall then proceed to record the evidence of persons produced by the prosecution as witnesses to the actual commission of the offence alleged and if of opinion that it is in the interest of justice, may record the evidence of any other prosecution witnesses also. After examining the accused, the evidence recorded and the documents and after hearing the parties as provided in sub-section (6), if the Magistrate finds that a prima facie case triable by a Sessions Court is made out he shall frame a charge, copy of which shall be supplied, free of cost, to the accused. The accused is not asked to plead to the charge but is merely required to give a list of persons, if any, whom he wishes to be summoned to give evidence in his defence. (Sub-sections (8) and (9) of section 207-A.)

For detailed instructions on the subject see Part A of Chapter 24, relating to Sessions trials.

(g) *Inquiries in Sessions cases instituted otherwise than on police report.*

24. Procedure in inquiries by Committing Magistrates in Sessions cases:-

The procedure in inquiries by Magistrates into cases triable by Sessions Court, when the case is instituted otherwise than on a police report, is practically the same as in warrant cases similarly instituted - (Vide sections 208 to 220), but when a prima fade case is made out, a charge is framed and the case committed. The accused is not asked to plead to the charge but is merely required to give a list 1- D of persons, if any, whom he wishes to summon to give evidence in his defence. (Sections 210 and 211.)

For further instructions on the subject see Part A of Chapter 24 relating to Sessions trials.

(h) *Miscellaneous matters.*

25. Insane persons:- Directions for the conduct of cases when-

- (a) the magistrate has reason to believe that an accused person is incapable of making his defence by reason of unsoundness of mind; or
- (b) when the accused appears to be of sound mind at the time of inquiry or trial, but the magistrate finds reason to believe that he committed an act while he was of unsound mind, which, but for such unsoundness, would be an offence, will be found in Chapter 17, "Lunatics".

26. Procedure when the accused cannot be made to under the proceedings:-

- (i) If the accused, though not insane, cannot be made to understand the

proceedings, as in the case of persons who are deaf and dumb, the magistrate should proceed with the inquiry, and, in cases triable by the Court of Sessions or High Court, if a prima facie case is made out, should commit the accused for trial. In cases, triable by the magistrate himself, the trial should be proceeded with and a finding come to as to the guilt or innocence of the accused person. If the accused is committed or convicted, the proceedings should be forwarded to the High Court with a report of the circumstances of the case, for such orders as such Court may deem fit to pass (section 341 of the Code).

(ii) The magistrate is not authorised to stay proceedings until he has heard the whole of the evidence for the prosecution, and has come to a conclusion as to the innocence or guilt of the accused person. If a prima facie case is not established the accused will be discharged. If a prima facie case is established the magistrate will make an order of commitment or conviction (as the case may be) and then report the case.

27. Stating the case:- In all cases in which the public prosecutor or a member of the police prosecuting staff appears on behalf of the State in the magisterial courts, the presiding officer should call on him, at the beginning of the trial to state briefly the facts of the prosecution case.

PART E

RECORD OF EVIDENCE IN CRIMINAL CASES

1. Only relevant evidence should be recorded :- In recording evidence, magistrates should take care to see that it is relevant and admissible under the provisions of the Indian Evidence Act. If any objection is raised as to the admissibility of any evidence, the magistrate should endeavour to decide it forthwith and the particular piece of evidence objected to, the objection and the decision thereon should be clearly recorded.

2. Duty of Court to elucidate facts:-Magistrates should endeavour to elucidate the facts and record the evidence in a clear and intelligible manner. As pointed out in 23 P.R. 1917 a Judge in a criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence, but it is his duty to elucidate points left in obscurity by either side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. The wide powers given to the Court by section 165 of the Indian Evidence Act and section 540 of the Code of Criminal Procedure should be judiciously utilised for this purpose when necessary.

3.(i) Mode of recording evidence:- Section 272 to 283 of Chapter XXIII Part A of Code of Criminal Procedure, 1973 deals with mode of taking and recording of evidence in inquiries and trials.

3(ii). Procedure for Recording Evidence:-

a) The depositions of witnesses shall be recorded, in typed format, if possible. The record of evidence shall be prepared on computers, if available, in the Court on the dictation of the Presiding Officer.

Provided that in case the language of deposition is to be recorded in a language other than English or the language of the State, the Presiding Officer shall simultaneously translate the deposition either himself or through a competent translator into English.

b) The deposition shall be recorded in the language of the witness and in English when translated as provided in the sub-rule (ii) (a) above.

c) The depositions shall without exception be read over by the Presiding Officer in Court. Hard copy of the testimony so recorded duly signed to be a true copy by the Presiding Officer/court officer shall be made available free of cost against receipt to the accused or an advocate representing the accused, to the witness and the prosecutor on the date of recording.”

3(iii). Format of recording evidence of witnesses:-

a) The deposition of each witness shall be recorded dividing it into separate paragraphs assigning paragraph numbers.

b) Prosecution witnesses shall be numbered as PW-I, PW-2 etc, in seriatim. Similarly, defence witnesses shall be numbered as DW-1, DW-2, etc., in seriatim. The Court witnesses shall be numbered as CW-1, CW-2, etc, in seriatim.

- c) The record of depositions shall indicate the date of examination-in-chief, the cross-examination and re-examination.
- d) The Presiding Officers shall wherever necessary record the deposition in question and answer format.
- e) Objections by either the prosecution or by defence counsel shall be taken note of and reflected in the evidence and decided immediately, in accordance with law, or, at the discretion of the learned Judge, at the end of the deposition of the witness in question.
- f) The name and number of the witness shall be clearly stated on any subsequent date, if the evidence is not concluded on the date on which it begins.

3(iv) Exhibiting of material objects and evidence: -

- a) Prosecution exhibits shall be marked as Exhibit P-1, P-2 etc in *seriatim*. Similarly, defence exhibits shall be marked as Exhibit D-1, D-2, etc in *seriatim*. The Court exhibit shall be marked as Exhibit C-1, C-2, etc in *seriatim*.
- b) To easily locate the witness through whom the document was first introduced in evidence, the exhibit number shall further show the witness number of such witness after the exhibit number. If an exhibit is marked without proper proof, the same shall be indicated by showing in brackets (subject to proof).
- c) Explanation: If Prosecution witness no. 1 (PW1) introduces a document in evidence, that document shall be marked as Exhibit P-1/PW1. If proper proof is not offered for that document at the time when it is marked, it shall be marked as Exhibit P-1/PW1 (subject to proof). The Second document introduced by PW1 shall be marked as Exhibit P-2/PW1.
- d) c) The Material objects shall be marked in *seriatim* as MO-1, MO-2 etc.

3(v) Subsequent references to accused, witness, exhibits and material objects:-

- a) After framing of charges, the accused shall be referred to only by their ranks in the array of accused in the charge and not by their names or other references except at the stage of identification by the witness.
- b) After recording the deposition of witnesses, marking of the exhibits and material objects, while recording deposition of other witnesses, the witnesses, exhibits and material objects shall be referred by their numbers and not by names or other references.
- c) Where witness cited in the complaint or police report are not examined, they shall be referred to by their names and the numbers allotted to them in the list of witnesses attached with the complaint or police report.

3(vi) References to statements under section 161 and 164 Cr.P.C.-

- a) During cross-examination, the relevant portion of the statements

recorded under Section 161 Cr.P.C used for contradicting the respective witness shall be extracted. If it is not possible to extract the relevant part as aforesaid, the Presiding Officer, in his discretion, shall indicate specifically the opening and closing words of such relevant portion, while recording the deposition, through distinct marking.

- b) In such cases, where the relevant portion is not extracted, the portions only shall be distinctly marked as prosecution or defence exhibit as the case may be, so that other inadmissible portions of the evidence are not part of the record.
- c) In cases, where the relevant portion is not extracted, the admissible portion shall be distinctly marked as prosecution or defence exhibit as the case may be.
- d) The aforesaid rule applicable to recording of the statements under Section 161 shall mutatis mutandis apply to statements recorded under Section 164 of the Cr.P.C, whenever such portions of prior statements of living persons are used for contradiction/corroboation.
- e) Omnibus marking of the entire statement under Section 161 and 164 Cr.P.C shall not be done.

3(vii) Marking of confessional statements.- The Presiding Officers shall ensure that only admissible portion of Section 8 or Section 27 Indian Evidence Act, 1872 is marked and such portion alone is extracted on a separate sheet and marked and given an exhibit number.”

{ Rule 3 substituted vide C.S. No. 40 Rules/ II.D4 dated 10.12.2021 }

4. Comparison of memorandum with vernacular statement:- An omission to record the memorandum referred to above cannot be justified except under circumstances which render it impossible for the magistrate to record it. Want of time cannot be accepted as a valid excuse. In these cases the magistrate should be careful to follow the deposition of each witness, when it is read over to him in the vernacular in accordance with section 360 of the Code of Criminal Procedure, and observe whether his memorandum is in conformity therewith. Any apparent discrepancy between the vernacular statement and the English memorandum should be explained in a note by the magistrate under the memorandum. Considerable differences are often found between the English and vernacular records owing to a neglect to put these instructions into practice.

5. English Record:- The High Court expects every Sessions Judge, District Magistrate and Magistrate exercising powers under section 30 of the Code to be able to cause the evidence of each witness as it proceeds to be taken down in writing from his dictation in open court. Where it is necessary to make a memorandum of the evidence, it should be kept in English and be as full as possible. Magistrates are not considered eligible for enhanced powers under section 30 unless they are able to keep a proper record in English.

6. Evidence to be taken down in full :- Sessions Judges and Magistrates of Districts should see that the procedure above prescribed is followed strictly, and that in all criminal cases tried by magistrates the evidence is taken down in full by the magistrate who tries the case, where he is required to do so by law.

7. Statement of witness to be read over:- The statement of a witness must be read over to him in the presence of the accused, if in attendance, or of his pleader and corrected if necessary according to the provisions of Section 360 of the Code. In this connection please see I.L.R., 1927 Rangoon 53 (P.C.) A. I . R . 1927 Privy Council 44.

8. Evidence and judgments in summary trials:- In those summary cases in which an appeal would not lie no evidence need be recorded; but the magistrate should record the particulars mentioned in section 263 of the Code in the register prescribed for the purpose. But in summary cases in which an appeal would lie the magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall before passing any sentence, record a judgment in the case (Section 264).

9. Particulars of witnesses or parties to be noted:- Care should be taken to record the parentage, age, place of residence, and, except in the case of converts to Christianity, caste of parties and witnesses. At the request of the Punjab Government, judicial officers are directed to refrain in all judicial proceedings from adding any caste designation to the names of known converts to Christianity, unless such designation be absolutely necessary for the identification of the party referred to. When a person is known by two names, or his precise name is doubtful, both should be given or the doubt cleared up. It should also be noted whether a witness is called by the prosecution, or by the defence, or by the Court.

10. Cross-examination and re-examination to be distinguished by a note in the margin:- Care should be taken to distinguish the cross-examination and re-examination of witnesses by a note in the margin. If a witness is not cross-examined the record should show that the accused did not wish to do so.

11. Illegible record:- The memoranda of evidence, the depositions or statements should be carefully written in a legible manner. In cases forwarded to the High Court, in which from any cause the memoranda or deposition and judgments should be submitted with the record of the case.

12. Documents on record should be duly proved:- (i) Care should be taken to see that all documents placed on the record, for example, the first information report, plan of the spot, medical certificates, etc., are duly proved. As regards special rules of evidence please see Chapter XLI of the Code. Section 510 has been amended by Act 28 of 1955 and now besides the reports of the Chemical Examiners, the reports of the Chief Inspector of Explosives, the Director of Finger Print Bureau or an officer of the Mint upon any matter or thing duly submitted to any of them for examination or

analysis may be used as evidence in any proceeding under the Code. The Court may, and if so required by any party shall, summon and examine any such officers as to the subject-matter of the report.

Evidence on affidavits:- In view of the new Section 510-A evidence of a formal character may be given by affidavits, and subject to all just exceptions be read as evidence in proceedings under the Code. Here again the Court may, and if so required by any party shall, examine the deponent as to the facts contained in his affidavit.

13. Demeanour of witnesses:- Magistrates should not omit to make a note about the demeanour of a witness when such is noteworthy and affects their estimate of the value the evidence given by the witness (Section 363.)

14. Record to contain a brief note of all material orders passed:- Each record or memorandum of should be dated and the record of a case made by a magistrate or Sessions Judge should not only contain depositions or memoranda of evidence, according as the evidence is or is not recorded by him in full, but also, in its proper place, a short note of every material order made during the inquiry or trial, with the date on which such order was made. Every order of adjournment must be entered, and the date on which the inquiry was resumed should be apparent.

Notes – Orders to be written by the Magistrate in his own hand:- All notes and orders recorded by Presiding officer (e.g., orders of adjournment, notes regarding the presence of witness) other than depositions, orders deciding any matter in dispute and the final judgment, should be written by the Presiding Officer in his own hand- writing or from his dictation and signed and dated and appended to the record. Each 'order' or 'note' should be clearly marked as such.

Notification regarding Court language:- Punjab Government Notification No. 69 (243)-4J- 62/42280, dated the 28th September, 1962.

In supersession of all previous notifications issued in this behalf, the Governor of Punjab, in exercise of the powers conferred by section 558 of the Code of Criminal Procedure, 1898, is pleased to determine that for the purpose of the said code, the language of the Courts subordinate to or within the jurisdiction of the High Court shall be-

- (a) Hindi in Devnagri Script in the Hindi Region and Punjabi in Gurmukhi script in the Punjabi Region;
- (b) English and Urdu in Chandigarh Capital.

Provided that English shall continue to be used for those Court purposes within the State for which it was being used immediately before the aforesaid date.

Explanation.-The expressions 'Hindi Region' and Punjabi Region' shall have the meaning assigned to them in the Punjab Regional Committees Orders, 1957.

Note.-The language of the High Court is English (Vide Punjab Government notification No. 316-G, dated the 18th January, 1906.

PART F.-DISMISSAL OF CASES IN
DEFAULT.

Some magistrates are inclined to dismiss cases in default hastily.

Inclination to dismiss cases in default.

2. Before a case is dismissed by reason of the absence of complainant, the magistrates should carefully consider-

Reasons for dismissal in default should be recorded.

- (a) whether such an order is legal; and
- (b) whether it is justified by the circumstances.

In view of the proviso added to section 247 of the Code by Act 26 of 1955 even in summons cases the magistrate can proceed with the case on complainant's failure to attend when he considers that complainant's personal attendance is not necessary.

Reasons should always be recorded where a case is dismissed in default.

3. In applications for revision of orders dismissing complaints or cases instituted on complaint, by reason of the absence of the complainant, it is frequently urged-

Instruction to be observed in redissmissal of complaints, etc., by reason of the absence of the complainant.

- (a) that the complainant was not called;
- (b) that the case was dismissed very early in the day; or
- (c) that the magistrates being on tour, the complainant had no, or insufficient, notice of the place of sitting.

(ii) The magistrates' records often furnish no definite information on any of these points. The following instructions are accordingly issued for guidance to subordinate Courts: -

- (a) Magistrate should not dismiss complaints or cases instituted on complaint without giving complainants full opportunities for appearance. Ordinarily, if a complainant is absent

when his case is first called on, his case should be called on again later, and the time of dismissal should always be noted on the record.

- (b) When the magistrate is on tour, complaints or cases instituted on complaint should not be dismissed unless the complainant has had due notice of the place of hearing.
- (c) In carrying out these instructions magistrates should bear in mind that if a summons-case in which a summons has been issued, is dismissed on account of the absence of the complainant the accused must be acquitted, unless the magistrate decides to proceed with the case under the proviso recently added to section 247 of the Code. A warrant-case, in which proceedings have been instituted on complaint, can only be dismissed in the absence of the complainant, if the offence is one that can lawfully be compounded, or is not a cognizable offence. In the latter case the magistrate may, in his discretion, discharge the accused at any time before a charge has been framed, under section 259 of the Code of Criminal Procedure. If the offence is cognizable or is one that cannot lawfully be compounded, the magistrate is bound to proceed with the case and decide it on its merits.
- (d) Section 247 of the Code of Criminal Procedure does not apply when the entire evidence in a case has been concluded and the case has been adjourned only for judgment without the attendance of the complainant having been specially directed.

PART G.-MISCELLANEOUS MATTERS IN CONNECTION
WITH INQUIRIES AND TRIALS

(a) *Age of accused persons, complainants and witnesses to be carefully considered when the point is material.*

In criminal cases, in which the age of an accused person, complainant or witnesses, is material to the matter in issue, or is likely to affect the sentence, the Court should record a careful finding as to probable age of such accused person, complainant or witness, and should refer to, and comment on, any discrepancies which there may be in the evidence on the point. In cases of doubt, the opinion of a medical officer should be taken. The age of the accused as found or believed by the Court should be invariably stated in the judgment. A careful statement of the probable age of the accused is especially necessary in murder cases in which the person charged is a youth of is very advanced in years. But in every case in which a charge is framed the accused should, at the opening of his examination, be required to state his age; and in all cases in which the age of the accused appears to the Court to be under twenty or over fifty years, or to be material for any special reason, the magistrate should add a note expressing his own opinion as to the probable age of the accused.

NOTE-It has been brought to the notice of the High Court that owing to insufficient inquiry into the age of juvenile offenders youths of too advanced age are not infrequently sent to the Reformatory School. The Judges, *therefore, invite the* attention of all magistrates to the necessity of exercising care in the preliminary inquiry into the age prescribed in section II of the Reformatory Schools Act of 1897 and to the propriety of taking medical advice in doubtful cases.

(b) *Medical examination of persons for purposes of evidence.*

Neither the complainant, nor a witness nor an accused person can be compelled to submit to medical examination for the purposes of evidence. A criminal Court has by law no power to order any person, whether male or female, to be subjected to medical examination, though, where the consent of the person to be examined (or, in the case of a minor, or his or

her lawful guardian) has been obtained, such examination may be authorised. The practice of ordering the medical examination of a woman who has complained of an offence against her virtue is illegal without her consent.

(c) Distinction between cases of Assault and Hurt.

1. It has come to notice that junior magistrates are apt to confuse sections 352 and 323 of the Indian Code and to issue process and convict under the former section in cases in which the complaint is laid under section 323, and the evidence for the prosecution establishes that fact of violence having been actually used.

2. In view of the amendment of the definition of a 'warrant-case' both cases would now be triable as a summons-case. The magistrates should not, therefore, be led away by the impression that they must have to follow a complicated procedure if an offence under section 323 of the Indian Penal Code is made out against the accused.

3. Section 352 of the Indian Penal Code would not apply to cases where the offender uses criminal force which actually causes hurt to a person. Such cases would fall under section 323 of the said Code.

4. It has been ruled that section 304-A is inapplicable to cases in which an assault, however, petty, is deliberately made and death ensues. Such cases fall either under section 302, section 304, or section 335, section 325 or section 323.

(d) Death of complainant.

Criminal proceedings once instituted whether upon a complaint or otherwise do not terminate or abate merely by reason of the death of the complainant or person injured (See 2 I.L.R. Lahore 27).

(e) Exhibits.

(i) Sessions Judges and Magistrates should ordinarily pass orders under section 517(1) of the Code of

Criminal Procedure for the disposal of exhibits on the conclusion of the trial. The time at which such an order is to be carried out is governed by sub-sections (3) and (4) of section 517 of the Code of Criminal Procedure. The order remains in force, unless it is modified, altered or annulled under section 520 of the Code of Criminal Procedure. If such orders are made on the conclusion of the trial, the inconvenience of giving directions at a later time, when the matter is no longer fresh in the mind of the Court, and the possibility of a legal difficulty in making orders long after the conclusion of the trial will be avoided.

(ii) Instructions relating to the sending of exhibits to the High Court in Sessions cases are contained in paragraphs 47, 48 and 49 of Chapter 24-B, of this volume. In respect to magisterial cases, exhibits, other than documentary exhibits, should not be sent to the High Court unless the High Court calls for them, or unless the Magistrate, considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal or revision to the High Court.

THE JUDGMENT

1. Contents of a judgment:-

(i) ^[1] In all cases a judgment must be drawn up containing (1) the point or points for determination, (2) the decision thereon, and (3) the reasons for the decision. In case of a conviction, the judgment should separately indicate the offence involved and the sentence awarded. In case there are multiple accused, each of them should be dealt with separately. In case of acquittal and if the accused is in confinement, a direction should be given to set the accused at liberty, unless such accused is in custody in any other case.

^[1] **Rule 1(i) substituted vide correction slip no. vide C.S. no. 40 Rules/II.D4 dated 10.12.2021.**

^[2] (i-a) Every judgment should contain the following:-

- a) Start with a preface showing the names of parties as per **FORM 'A'** appended at the end of this chapter.
- b) A tabular statement as per **FORM 'B'** appended at the end of this chapter.
- c) An appendix giving the list of prosecution witnesses, defence witnesses, Court witnesses, Prosecution Exhibits, Defence Exhibits and Court Exhibits and Material Objects as per **FORM 'C'** appended at the end of this chapter.

(i-b) In the judgment the accused, witnesses, exhibits and material objects should be referred to by their nomenclature or number and not only by their names or otherwise. Wherever, there is a need to refer to the accused or witnesses by their name, the number should be indicated within brackets."

^[2] **sub-rule (i-a) and (i-b) inserted vide C.S. no. 40 Rules/II.D4 dated 10.12.2021}**

(ii) **Judgment should be dated, signed and pronounced in the presence of the accused:-** The judgment should be written in the language of the Court or in English; it should be pronounced in open Court, and dated and signed by the presiding officer at the time it is pronounced. Except where the attendance of the accused has been dispensed with during the trial, and the sentence to be passed is one of fine only or when the judgment is one of acquittal the accused should be in attendance when judgment is pronounced. No Court has power to alter or review a judgment once signed except for the purpose of correcting a clerical error, or for the purpose of revising a sentence of whipping under sections 394 and 395 of the Code.

(iii) **Judgment not written by the Magistrate:-** When the judgment is not written by the presiding officer with his own hand every page of it shall be signed by him.

(iv) **Pronouncement of judgment before a spell of holidays:-** All cases in which an accused person is likely to be convicted and sentenced to imprisonment before a spell of four or more holidays should be decided at least two days before the commencement of the holidays and arrangements should be made for supply, free of cost, of copies in such

cases forthwith to the person convicted to enable him to apply for bail before the commencement of the holidays.

(v) Judgments not be written at home:- Magistrates should not write judgments at their houses during court hours even though they have no cases fixed for hearing.

(vi) Copy of judgment to be supplied to accused free of cost in some cases:- The judgment must be explained to the accused. In view of sub-section (4) of Section 371, Whenever an accused person is sentenced to imprisonment, then, without prejudice to the provisions of sub-sections (1) and (2) of that Section, a copy of the finding and sentence shall be given to the accused, free of cost, soon after the delivery of the judgment.

(vii) Accused sentenced to death to be informed about the right and period of appeal:- When the accused is sentenced to death and an appeal lies the Court should inform the accused of the period within which, if he wishes to appeal his appeal should be preferred.

(viii) ^[1] Numbering of paragraphs:- The judgment should be written in paragraphs and each paragraph should be numbered in seriatim. The Presiding Officers, may, in their discretion, organize the judgment into different sections.

^[1] Rule (viii) substituted vide C.S. no. 40 Rules/ II.D4 dated 10.12.2021 }

(ix) Sentences:- The question of sentence requires careful consideration in each case. The presiding officer should see that the sentence passed is legal and appropriate. For detailed instructions on the subject see Chapter 19, Sentences.

2. Criminal powers of the courts should be noted in the record and final order:- Every judicial Officer hearing, conducting or deciding a criminal proceeding, trial or appeal is responsible that the record and the final order in such criminal proceedings, trial or appeal shall disclose the criminal powers which such officer exercised in hearing or deciding such proceeding, trial or appeal.

3. Powers of various criminal court:- The powers referred to in the above rule are the following:-

- (a) Magistrate, third class.
- (b) Magistrate, second class.
- (c) Magistrate, first class.
- (d) Magistrate, empowered under section 30 of the Code of Criminal Procedure.
- (f) Additional District Magistrate. (f) District Magistrate.
- (g) Additional Sessions Judge.
- (h) Assistant Sessions Judge.
- (i) Sessions Judge.
- (j) Special Judge appointed under the Criminal Law Amendment Act,

1952 (XLVI of 1952).

- (k) Special Magistrates of first, second or third class.
- (l) Bench of Magistrates, first, second or third class.

4. **Special powers to be noted on the record and final order:-** When an officer exercises powers specially, conferred, -for example, the powers to try cases summarily, or the power to pass sentences of whipping in the case of a magistrate of the second class, the record and final order in any criminal proceeding or trial shall disclose the fact that such officer is specially empowered in that behalf.
5. **Separate judgments in riot cases:-** In riot cases in which members of opposite factions are separately tried, separate judgments should be record-ed. (For detailed instructions see Chapter 4, Trial of Riot Cases.)
6. **Criticism on the conduct of police and other officers:-** It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant to the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct, of any Government servant he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular letter No. 920-J- 36/14753, dated the 15th April, 1936. Similarly, Sessions Judges shall also send a copy of their judgment containing criticism of the work and conduct of police officers to the District Magistrate. They shall also send a copy of the judgment direct to the High Court accompanied by a covering letter giving reference to the High Court circular letter No 1585-Gaz. / XXXI-2, dated the 14th February , 1936.

Award of Compensation and Costs.

7. **Award of Costs:-** Certain of the costs incurred by a complainant in a complaint of a non-cognizable offence may be recovered from a convicted accused in the manner provided in section 546-A of the Code. The costs incurred in enforcing an order of a magistrate for the removal of a nuisance

may be recovered from the person against *whom the* order is made in the event of his disobeying the order. [Section 140(2)]. The costs incurred by any party in the proceedings relating to dispute as to immovable property under Chapter XII of the Code, may be awarded to him against any other party by the magistrate. [Section 148 (3)], and may be realised as if the amount awarded was a fine. (Section 547). The costs incurred in proceedings under sections 87 to 89 of the Code, in dealing with the property of persons absconding to avoid process, may be recovered from such property. (Section 89).

8. Application of fine towards costs and compensation:- When a fine is imposed by a criminal court, the Court may order the whole or any part of the fine recovered to be applied:-

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for any loss or injury caused by the offence committed, where substantial compensation is, in the opinion of the Court; recoverable by civil suit.

(bb) in compensating the heirs of a person whose death has been caused by the offence tried when such heirs are entitled to recover damages under the Fatal Accidents Act, 1855, from the person convicted for the commission or abetment of the offence.

(c) in compensating a bona *fide* purchaser of stolen property (Section 545).

Compensation not to be paid until appeal decided:- If the fine is imposed in a case which is subject to appeal, the compensation must not be paid away until the period for appeal has elapsed, or, if an appeal is presented, before it is decided. Cases have occurred when the lower court has paid the compensation in ignorance of the fact that an appeal has been lodged and later on when an appeal the amount has been reduced or remitted, it has become impossible to obtain a refund from the complainants. Therefore, the lower courts should not pay compensation to the complainant until they are satisfied by examining the records of the case and making a reference to the appellate court that no appeal or revision has been lodged. Compensation so awarded must be taken into account in any subsequent civil suit relating to the same matter (sections 545 and 546 of the Code).

9. Award of compensation to accused:- (i) In the case of any offence triable by a magistrate and instituted upon complaint or upon information given to a Police Officer or to a magistrate, if the Court discharges or acquits all or any of the accused and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Court by its order of discharge or acquittal, (a) if the complainant or informant is present, may call upon him forthwith to show cause why he should not pay compensation to

such or each of such accused or, (b) if he is not present, may direct the issue of a summons to him to appear and to show cause.

(ii). After recording and considering any cause, which may be shown, the magistrate if satisfied that the accusation was of the character aforesaid, may, for reasons to be recorded; direct the complainant or informant to pay to the accused or to each or any of them compensation not exceeding one half of the amount of fine that the magistrate is empowered to impose.

(iii). Simple imprisonment not exceeding thirty days may also be ordered in default of payment. An order for payment of such compensation shall not exempt the complainant or informant from any civil or criminal liability incurred by him by reason of his complaint or information, but any amount paid in obedience to such order must be taken into account in any subsequent civil suit relating to the matter.

(iv). An appeal is provided for in cases where the order is by a magistrate of the second or third class and where any other magistrate has ordered the payment of compensation exceeding Rs. 50. Where no appeal lies the amount of compensation shall not be paid to the accused person or persons until the expiration of one month from the date of the order. In other cases it shall not be paid until the period allowed for appeal has elapsed or the appeal has been decided. (Section 250 of the Code as amended by Act 26 of 1955).

(v). If this provision of the law is enforced with discretion, it may be expected largely to reduce the number of groundless and frivolous complaints filed. In fixing the amount of compensation awarded, the Court should be careful to consider the position of the accused as well as that of the complainant. Excessive amounts should not be awarded.

Compounding of offences

10. Acquittal of accused when offence is compounded:- The compounding of an offence under section 345 of the Code of Criminal Procedure, with or without the permission of the Court, has, the effect of an acquittal. In such cases, no judgment on facts is needed, but the statement of all the parties concerned must be recorded and in cases where permission of the Court is necessary for compounding the offence the reasons for granting permission should be stated in the order directing the acquittal of the accused.

Act 26 of 1955 has added certain offences to the table given in sub-section (2) of Section 345 of the Code so that a much larger number of offences can now be compounded with the permission of the Court. Thefts and Criminal breaches of trust of property of a value not exceeding rupees two hundred and fifty and fraudulent executions of deeds and dispositions of property to save it from creditors or for other ulterior purposes and mischiefs to cattle and animals where the value is small and certain other offences may now be compounded with the Court's permission.

11. Compounding of cases of grievous hurt should be discouraged:- There is

a growing tendency to allow cases of grievous hurt to be compounded, and from inquiries made it appears that in most districts magistrates are too prone to allow cases of the kind enumerated in section 345(2) of the Code of Criminal Procedure to be compounded, when the complainant asks for it. In some instances this may be due to ignorance of the fact that the law allows the Courts discretion to grant or refuse permission to compound, but there are indications that it is sometimes due to the desire of magistrates to get the cases disposed of as quickly as possible. The effect of this practice must clearly be bad, and in districts where the people are naturally turbulent and addicted to settling their disputes by force it must encourage crimes of violence.

12. Points to be remembered before a compromise is permitted:- The facts of the each case require careful consideration before a compromise is permitted. In particular, the following points should be considered:-

- (a) Whether the assault was premeditated.
- (b) Whether it, was provoked in any way by the complainant?
- (c) The nature and extent of the injury inflicted.
- (d) The nature of the weapon or means used.
- (e) Whether the compromise is the result of a genuine reconciliation, or caused by undue pressure on the complainant.
- (f) The relationship, if any, between the parties.
- (g) The extent to which violent crime is prevalent in the locality.

In districts where crime of violence are common, the interests of society demand that permission to compound should ordinarily be refused when serious Injury has been caused, and a deterrent sentence of imprisonment should be awarded, except when the assault has been provoked by any act of the person injured. In every case in which a magistrate allows the parties to compromise, his reason should be recorded in his order.

FORM 'A'

IN THE COURT OF Present: Sessions Judge [Date of the Judgment] [Case No...../20...]	
(Details of FIR/Crime and Police Station)	
COMPLAINANT	STATE OF..... OR NAME OF THE COMPLAINANT
REPRESENTED BY	NAME OF THE ADVOCATE
ACCUSED	1. NAME WITH ALL PARTICULARS (A1) 2. NAME WITH ALL PARTICULARS (A2)
REPRESENTED BY	NAME OF THE ADVOCATES

FORM 'B'

Date of Offence	
Date of FIR	
Date of Chargesheet	
Date of Framing of Charges	
Date of commencement of evidence	
Date on which judgment is reserved	
Date of the Judgment	
Date of the Sentencing Order, if any	

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428, Cr.PC

FORM ‘C’

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1		
PW2		

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1		
DW2		

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1		
CW2		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW1	
2	Exhibit P-2/PW2	

B. Defence:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/DW1	

2	Exhibit D-2/DW2	

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	
2	Exhibit C-2/CW2	

D. Material Objects:

Sr. No.	Material Object Number	Description
1	MO1	
2	MO2	

{ Form ‘A’, ‘B’ and ‘C’ inserted vide C.S. no. 40 Rules/ II.D4 dated 10.12.2021 }

CHAPTER 2

Summary Trials

1. Summary trials can be held only by a District Magistrate or a Magistrate of the first class empowered in that behalf, or a Bench of Magistrates empowered under either section 260 or section 261 of the Code. Only offences specified in these sections may be tried by this procedure. The amendments made by Act 26 of 1955 in Section 260 of the Code to enlarge its scope may be noted. In view of the amended definition of 'warrant case' it would not now be true to say that all summons cases can be tried summarily. According to clause (a) of Section 260(1) offences not punishable with death; imprisonment for life or imprisonment for a term exceeding six months can be so tried. In summary trials the procedure to be followed at the hearing is that of summons-case in the trial of summons cases and of warrant-case in the trial of warrant cases (Section 262) subject to the modifications made by sections 263 and 264 of the Code as to the record required.

Magistrates competent to try and the procedure to be adopted.

2. No sentence of imprisonment exceeding three months may be passed on a conviction under the summary procedure prescribed in Chapter XXII of the Code [sub-section (2) of section 262]. Where the sentence passed is not appealable (section 413) the particulars required under section 263 of the Code may be recorded. In appealable cases, however, the Court shall record the substance of the evidence and also the particulars mentioned in section 263 and shall before passing sentence also record judgment in the case (section 264). No other record is required. Particulars required under section 263 include full information as to the nature of the offence alleged and proved, the plea of the accused and his examination, if any; the finding and in case of conviction; a brief statement of the reasons therefore and the sentence or other final order.

Sentence and judgement.

3. In all summary trials in which the order of the Magistrate is final; no evidence need be recorded;

Evidence.

but the Magistrate should enter the particulars mentioned in section 263 of the Code in register No. XVII given in Part B-IV of Volume VI-B. Columns 7 to 14 of this register should be filled in by the Magistrate himself. If, however, a sentence is passed which is appealable; the substance of the evidence, in addition to the particulars mentioned in Section 263, should be recorded

Acquittal of
accused in
warrant
cases.

4. The question has been raised whether an accused person; tried summarily for warrant offence; under Chapter XXII of Code of Criminal Procedure, and not convicted, is to be shown in the statement as 'discharged' or 'acquitted'. This question is disposed of by the provisions of section 262 of the Code; which enacts that; in summary trials; the procedure for warrant-cases, shall be followed in respect of warrant-cases; with certain exceptions which concern only the manner of record.

Oral charge.

5. Accordingly, the distinction between an acquittal and a discharge, shown in sections 253 and 258 of the Code, holds good in all warrant-cases tried summarily; the only difference being that under the ordinary procedure the charge must be prepared in writing; while under the summary procedure it is made verbally. A discharge in a summary trial no more bars the revival of prosecution for the same offence than it does in a case conducted under the rules of ordinary procedure.

Final order
should show
whether accused
has been
discharged or
acquitted.

6. The final order or judgment in warrant-cases tried summarily, when the accused is not convicted; should invariably show whether the accused person has been discharged or acquitted; the test being whether, after hearing the evidence for the prosecution, the Court has called upon the prisoner to plead to a definite charge or not, and the accused in such cases should be shown in the periodical statements as discharged or acquitted, according to the final order of the magistrate.

Summary trial of
cases against
Government
servants.

7. In the trial of cases against Government servants, summary procedure should not, as a rule, be adopted.

8. It has come to the notice of the Honourable Judges that summary cases entered in the relevant registers only when the accused appears in Court, with the result that a large number of such cases escape the notice of Courts. It is of the utmost importance that as soon as a summary case is received in Court, it should be entered in the Register No. 1 (Part B-IV of Volume VI-B, High Court Rules and Orders). When the accused appears the case should then be entered in Register of summary cases (Form No. XVII). Magistrates exercising summary powers should prepare a statement every month showing the actual number of summary cases received in the Court and the progress made in the disposal of such cases. A Summary of this statement should be given in the remarks column of Register No. 1 at the close of each month so as to show at a glance the actual number of summary cases received, disposed of and pending in the Court. [High Court Circular letter No. 3003-Genl./XVIII-D-20 (C)(1), dated the 19th March, 1964.]

Sentence
and
judgement.

CHAPTER 3

Security Cases

1. The provisions of Chapter VIII of the Code of Criminal Procedure, defining the circumstances under which persons may be called upon to furnish security to keep the peace (otherwise than on conviction) or for good behaviour, and laying down the procedure to be adopted in the trial of such cases, do not appear to be generally understood or observed.

Introduction

2. Cases under sections 107 and 110 of the Code of Criminal Procedure are the most common and it generally in respect of these that neglect of the provisions of the Code has come to notice. In the first stage of the proceedings in this class of cases, and before actual enquiry is made in the presence of the accused, three points need attention; viz:-

Important preliminaries.

- (1) the information (sections 107 and 110),
- (2) the order thereon, including the substance of the information (section 112),
- (3) communicating the same to the accused (sections 113 and 115).

3. The information is the foundation of the whole proceeding, and the fact that the Magistrate is acting upon information should be recorded. No information should be acted upon unless it comes from a trustworthy source and is sufficient, if substantiated and not rebutted; to justify a finding that the person is himself likely to commit breach of the peace or disturb the public tranquillity or to do any wrongful act that may occasion a breach of the peace or disturb public tranquillity (section 107) or answers to one or more of the specific descriptions given in section 110. In regard to proceedings under section 107, it should be borne in mind that a person in the exercise of a lawful right cannot be bound over merely because other persons object to the exercise of such right and there is likelihood of their causing a breach of peace

Preliminary enquiry.

(cf. I.L.R. 7 Lahore 482). Applications under section 107, Criminal Procedure Code, are sometimes of a frivolous and vexatious character, intended to bring pressure upon the opposite party to settle which is really a dispute of a civil nature. Care should, therefore, be taken to ascertain by such preliminary enquiry as may be necessary that there is sufficient ground for proceeding under the section.

Contents of
the order to
proceed
against.

4. If the Magistrate deems it necessary to proceed against the person against whom information has been received, he should record an order setting forth the several matters required by section 112 of the Code of Criminal Procedure. The substance of the information received should be stated in the order with sufficient fullness to enable the accused person to understand clearly the matter he has to meet in his defence. In recording particulars of the security required the provisions of the proviso to section 118 of the Code should be borne in mind.

Jurisdiction

5. Sub-section (2) of section 107 of the Code has been amended by Act 26 of 1955. Proceedings under the Section can now be taken before any magistrate empowered to proceed under sub-section (1) when either the place where breach of peace or disturbance is apprehended is within the local limits of the Magistrate's jurisdiction or there is within such limits a person who is likely to commit such breach beyond such limits.

Security
pending
inquiry.

6. In proceedings under section 107, Criminal Procedure Code, a Magistrate has the power, in cases of emergency when a breach of the peace is imminent, to order the accused person to furnish security pending the completion of enquiry (*vide* section 117(3), Criminal Procedure Code). He must in such cases record his reasons in writing.

Order to
proceed to be
communicated
to accused.

7. The order recorded under section 112 of the Code of Criminal Procedure should be communicated to the accused person, if he is present in Court, by reading the same to him, and, if he so desires, by explaining the substance thereof to him. If the accused person is not

present in Court, a copy of the order should be annexed to the process requiring his attendance, and delivered to him by the serving officer with the process.

8. Section 114 of the Code provides that the process to be issued requiring the appearance of an accused person shall be a summons, unless the person is in custody, in which case warrant will issue to the person in whose custody he is. If the Magistrate is satisfied that there are reasonable grounds for apprehending a breach of the peace and that it cannot be otherwise prevented, he may issue a warrant for the arrest of a person and in custody. In every such case, the Magistrate should record the grounds which render the issue of a warrant necessary.

Form of
process.

9. After the preliminary proceedings are completed and the accused appears before the Court the enquiry commences as to the truth of the information upon which the magistrate has acted. Such inquiry shall be made as nearly as may be practicable in the manner prescribed for conducting trials and recording evidence in summons cases whether the order requires security for keeping the peace or for maintaining good behaviour. (Sub-section (2) of Section 117 as amended by Act 26 of 1955). No charge is to be framed and the question of recalling witness for further cross-examination does not arise. Care, however, is necessary to see that the accused shall have a full opportunity of making his defence and supporting it by witnesses an adjournment being granted, if necessary, for that purpose.

Procedure after
the commence-
ment of the trial.

10. (i) On the conclusion of the enquiry, the Magistrate must consider the order to be passed. The first point to consider is whether the information against the accused is proved to be true. In cases under section 110, if the accused is proved to be a person falling within any of the descriptions stated in that section, the Magistrate should record a distinct finding of the specific description which he considers

Proof required
add exercise of
discretion with
caution.

proved. If the finding is insufficient, as occasionally occurs, namely, that the accused is a bad character or a notorious thief, the final order based upon it will be open to reversal, so also if the finding be that he is a habitual thief (or as the case may be), and the finding is not supported by evidence that the misconduct is 'habitual'. The words 'by habit' or 'habitually' which occur in all the clauses of Section 110, imply that the accused person has done the alleged acts repeatedly, or persistently and this should be capable of proof by adducing definite evidence under section 117(4). Evidence of general repute is admissible, but mere suspicion of complicity in this or that isolated offence is not sufficient to satisfy the requirements of section 110 (*vide I.L.R. 9 Lah. 133, 586*),

It is to be feared that section 110 is resorted to at times merely for securing punishment of persons who are suspected but not proved to have committed an offence and Magistrates should see that the section is not abused to annoy individuals in this manner. It has been noticed that security is at times taken from persons who have once been accused and convicted of an offence but who have got off on appeal. It cannot be too firmly impressed on all Magistrates acting under Chapter VIII of the Code that when a conviction "fails on appeal", it is no conviction at all. The fact that the first Court wrongly convicted a person is nothing if he succeeds in establishing his innocence on appeal.

(ii) The second point to be considered is, whether it is necessary to take security. In cases under section 110 proof of habitual misconduct will ordinarily justify the conclusion that security is necessary, but the Magistrate has a discretion in the matter. In exercising this, it should be remembered that the object of the proceedings is to deter and not to punish. A convict just released from jail should not, as a rule, be put upon security until there has been a fair opportunity of judging whether the punishment he has already undergone is not in itself a sufficient deterrent against relapse into evil courses.

11. If the Magistrate decides that security is necessary, the next step is to determine—

Nature, amount and period of security.

- (1) the amount and nature of security to be given;
- (2) the period for which it is to be given.

In considering these points the Magistrate should be careful to refer to the original order to see that the security and the period therein specified are not exceeded. Further as the, amount of the bond is to be fixed with due regard to the circumstances of the case and is not to be excessive, it should appear upon the record that the security demanded is not disproportionate to the ability of the accused person to furnish it, having regard to his status in life, (Section 118 of the Code).

12. When the appearance of the accused leaves it doubtful whether he is minor, his age should be ascertained.

Age of accused.

13. If it is not proved that security is necessary, the Magistrate will act under section 119, according as the person is in custody, for the purpose of the enquiry merely or is not in custody.

Action to be taken when security is not necessary.

14. When the final order is made under section 118, it should state clearly—

Final order should state full particulars about bonds required.

- (1) the amount of the bond;
- (2) whether it is to be with or without sureties, and the number of such sureties;
- (3) the period for which security is to be given.

If the proceedings are in English, the order must be translated into the vernacular and signed by the Magistrate.

15. It is frequently found that-

- (i) several persons are proceeded against jointly, although there is little or no evidence that they are really associated together for the

Joint trials and period of security.

purposes of any of the crimes referred to in section 110 of the Code of Criminal Procedure;

- (ii) security is demanded for a period exceeding one year without any reason, such as previous convictions for serious crime, or previous taking of security, being assigned for the step.

The irregularity of the first proceeding has been pointed out in more than one published decision of the High Court, and as regards the second point, the Judges *are* of opinion that the period for which security is demanded should not in ordinary cases exceed one year, and where special reasons exist for enlarging the period, these should be duly set forth in the order.

Bond should be single and no stamp is required.

16. It has also been noticed that in many Courts the practice is to require the accused person to execute one bond, and the sureties separate bonds (sometimes for separate amounts). This is not in accordance with law. The person from whom security is taken and his sureties should all execute only one joint bond, in the form prescribed in the Code of Criminal Procedure, Schedule V (Form XI).

The bond is exempt from stamp duty, as regards the sureties, under Government of India Notification No. 4650, dated 10th September 1889, and as regards the principle under section 19; clause XV of the Court Fees Act, 1870.

Commencement of period of security, suspension of order and form of warrant when security is no furnished.

17. When the person from whom the security is required is not under sentence of imprisonment, or undergoing such a sentence, the period commences to run from the date of order, unless the Magistrate, for sufficient reasons fixes a later date [Section 120(2)].

If the Magistrate has reason to believe that the person required to give security will do so if a short time be allowed for that purpose, the Magistrate should defer execution of his order by suspending it and thus

obviate the necessity for requiring such person to at once suffer imprisonment. If however, the requisite security is not given on the date fixed, the person from whom the security is required must be committed to prison under section 123, with a warrant in Form XIII or XIV of Schedule V of the Code of Criminal Procedure, if the period fixed does not exceed one year. When the period exceeds one year, the form must be varied so as to bring its last clause into conformity with the second clause of section 123, and the proceedings must be laid, as soon as conveniently may be, before the Court of Sessions. [Section 123 (2)]

18. Care must be taken that the record is complete by filing either the security-bond or a copy warrant of commitment before consigning to the record room.

Kind of imprisonment in default of security.

Imprisonment in default of furnishing security under section 107 or section 108 must be simple, while under section 109 and section 110, it may be simple or rigorous at the discretion of the Magistrate. (Section 123 (5) and (6) as recently amended).

19. In other matters relating to proceedings under sections 106, 109 and 110, Magistrates are referred to the provisions of the Code, in Chapter VIII and to the Forms X to XV, inclusive; in Schedule V of the Code. They are recommended to have their Codes besides them, and to refer to them in all proceedings under this Chapter, as errors and irregularities, which might be avoided by reference to the Code, can only be regarded as wholly inexcusable.

Errors and irregularities have to be avoided.

20. (1) Proceedings under section 110 of the Code of Criminal Procedure shall not be taken against Lambardars or Inamdars without the special order of the District Magistrate.

Security cases against zaildars, etc

(2) When such proceedings are instituted against a person of one of the classes named, he shall be dealt with when practicable by the District Magistrate himself.

Right to
appeal

21. Under section 406 of the Code, as recently amended any person who has been ordered under section 118 to give security for keeping, the peace or for good behaviour has a right of appeal, to the court of Sessions. Section 406-A gives a right of appeal to any person aggrieved by an order refusing to accept or rejecting a surety.

Restriction or-
der instead of
security may
be proper in
certain cases.

22. The provisions of the Restriction of Habitual Offenders (Punjab) Act, 1918 (Punjab Act V of 1918) should be carefully studied. This Act permits an order of restriction being passed in lieu of or in addition to an order under section 110 of the Code and may be utilised, in appropriate cases when there is no chance of security being furnished and an order of restriction would serve the object in view.

Appeals from
orders under
section 118 do
not lie to
District
Magistrates.

23. The first proviso to section 406 of the Code which authorised the State Government to direct by notification that appeals from orders under section 118 passed by Magistrates other than a District Magistrate shall lie in any district to the District Magistrate and not to the Court of Sessions has been omitted by the Code of Criminal Procedure (Amendment) Act, 1955 (No. 26 of 1955.)

CHAPTER 4

Trial of Riot Cases

1. Whenever force or violence is used by an un-lawful assembly or by any member thereof in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting. (Section 146 of the Indian Penal Code).

Rioting
defined.

2. Riots resulting in serious injuries or even death are of frequent occurrence in this State and cases relating to such riots require very careful handling. A large number of persons is generally involved and the evidence is often entirely of a partisan character. There is moreover, great danger of innocent persons being implicated along with the guilty, owing to the tendency of the parties in such cases to try to implicate falsely as many of their enemies as they can.

Careful
handling
required.

3. The parties generally give widely divergent versions of the riot and in such cases the Police usually prosecute members of both the parties and place the divergent versions and the evidence in support before the Court. It is for the Court to ascertain in such cases which of the two versions is correct and the Court cannot shirk this duty on the ground that the Police did not ascertain which of the stories was true (cf. 2 P.R. 1913).

Court's
duty to
ascertain
the true
version.

4. When both parties deliberately engage in a fight no question of the right of self-defence arises. But, otherwise, the question as to which of the parties was the aggressor and which was acting in self-defence becomes of vital importance and the court must do its best to arrive at a finding thereon for the party acting in self-defence cannot be held to be guilty of any offence unless the right of private defence is exceeded (see sections 96-106, Indian Penal Code).

Right of self-
defence.

5. When both parties to a riot are prosecuted two cases must be tried separately and evidence in the one case cannot be treated as evidence in the other.

Separate trials
when both
parties are
prosecuted.

even with the consent of the parties (IV. I.L.R, Lahore 376). Similarly judgments in such case should be written separately and care should be taken to see that the evidence in the one case is not imported into the judgment in the other. Sometimes Courts consider it convenient to dispose of such cases in a single judgment, but doing so they are liable to mix up the evidence in the two records. Even when the Lower Courts are careful enough not to mix up the evidence, the mere fact of their having written one judgment furnishes the convicts with a ground of appeal that the directions of their Lordships of the Privy Council in *Madat Khan v. The King Emperor* (I.L.R. VIII Lahore 193), have not been followed. Such objections have to be heard, examined and decided and a good deal of the time of the appellate Court is thus wasted.

Case of each accused should be separately sifted.

6. In recording evidence in riot cases, care should be taken to bring out distinctly as far as possible the connection of each of the accused with the crime and the actual part played by him. In the judgment the evidence against each of the accused should be discussed separately along with the evidence produced by him in defence, (if any) and should be scrutinised with care. The possibility of innocent persons being falsely implicated should be always borne in mind. The mention or omission of the name of an accused person in the First Information Report, when such report is made promptly by an eye-witness and the presence or absence of injuries on his person are worthy of consideration in this respect, though these are of course by no means conclusive.

An unlawful assembly, its common object and use of violence must be proved.

7. A charge of rioting pre-supposes the existence of an unlawful assembly with a common object as defined in section 141 of the Indian Penal Code. No charge of rioting can be sustained against any person unless it is proved that he was a member of such an unlawful assembly, and that one or more members of the assembly used force or violence in prosecution of its common object. It is, therefore, advisable to refer to the unlawful assembly, its common object, and the use or force or violence in the charge, so that the essential ingredients of the offence are not lost sight of.

A lucid statement of the law of unlawful assembly and riot by Plowden, J., will be found in 4 P. R. 1889.

8. Section 149 of the Indian Penal Code, which makes every member of an unlawful assembly constructively liable for offences committed by other members, in prosecution of the common object of the assembly, deserves careful study. Before Section 149 can be called in aid, the Court must find with certainty that there were at least five persons sharing the common object. It is not essential that five persons must always be convicted before Section 149 can be applied. In this connection please see 1954 Supreme Court Reports 145, A. I. R. 1954 Supreme Court 648 and I. L. R. 1954 Punjab 813. If there is uncertainty as to the required number having participated in the crime, joint liability may still arise by virtue of Section 34 of the Indian Penal Code, if it is found that the act constituting the offence was committed in furtherance of the common intention of all. As regards the precise scope and effect of section 149 and section 34, Indian Penal Code, 1954, Supreme Court Reports 904 and I.L.R. 1954 Punjab 813 may be consulted. When no joint liability can be established, each accused person can be held responsible only for his own acts.

Joint
liability of
accused.

9. When a number of offences are committed by members of an unlawful assembly in the course of the riot in prosecution of their common object, each member is guilty not only of rioting but of every other offence committed by himself or by the other members of the unlawful assembly. Under Section 35 of the Criminal Procedure Code he is liable to be punished separately for each of such offences, subject to the provisions of section 71 of the Indian Penal Code. As regards the bearing of the latter section on the question of separate sentences where a series of acts of violence is committed in the course of the riot, a Full Bench ruling of the Punjab Chief Court-4 P.R, 1901 may be consulted. Section 35 of the Criminal Procedure Code enables the Court to make the sentences for two or more of such offences concurrent. The appropriate sentence in the case of each accused person must, of course, be determined in view of all the circumstances of the crime and the actual part played by him.

Sentences
when several
offences are
committed.

CHAPTER 5

Cases under special and Local Acts.

PART A.--THE INDIAN ARMS ACT, 188

1. The definition of 'Arms' in the Indian Arms Act is not exhaustive and the question whether a particular weapon does or does not fall within the scope of the Act must be decided in view of all the circumstances of each case; neither the length, the breadth or the form of the blade of a weapon nor the handle afford any certain test. Whatever can be used as an instrument of attack or defence and is not an ordinary instrument for domestic purposes falls within the purview of the Act. Takwas intended primarily for domestic or agricultural use are not arms. (c.f. 191 Indian Cases 323, 16 P. R. 1900. 32 P. R 1918 and I. L. R. 2 Lahore 291).

Definition of Arms.

2. The question whether a case falls under section 19 or section 20 of the Indian Arms Act, 1878, is at times difficult to decide; but each case of concealment of arms must be decided on its own facts. For a conviction under section 20, there must be some special indication of an intention that the possession of arms was being concealed from a public servant or a railway servant. (c.f. 8 P. R. 1915 I.L.R. 7 Lahore 65)

Concealment of arms.

3. 'Kirpans' possessed or carried by Sikhs are exempt from the operation of the Arms Act but the exemption does not extend to manufacture of Kirpans by a Sikh (I.L.R. 3 Lahore 427). The word 'Kirpan' has not been defined in the Act or the rules framed thereunder. It has been held in I.L.R. 5 Lahore 308 that it can only be understood and read as meaning a 'sword' and there is no warrant for holding that it must be of a particular type or that it must not exceed any particular dimensions.

Kirpans.

4. An Article which comes within the definition of 'Arms' in the Act would not cease to be so by the fact that it is used for religious purposes. In I.L.R. 1941

Lahore 789 a spear having the appearance of a spear and capable of being used as spear was held to fall within the definition and the facts that it as called by a different name or was electroplated and used for religious purposes were held not to be material.

5. The possessions of "arms" by a person after the expiry of his licence and before its renewal was held to be in contravention of Section 14 and therefore an offence punishable under Section 19 (f) of the Arms Act in I.L.R. 1943 Lahore 756. The period of grace allowed for the making of an application for the renewal of a licence does not mean that the quondam licence-holder is entitled as of right to have the licence renewed on payment of the fee mentioned.

6. For cases in which an arm is found to be in possession of control of two or more persons the observations of a Full Bench of the Lahore High Court in A. I. R. 1944 Lahore 339 would be found useful.

PART B.-THE PUNJAB EXCISE ACT, 1914

1. In awarding punishment for an offence under the Excise Act the Courts should bear in mind that illicit distillation implies a good deal of preparation and results not only in loss of excise revenue, but also in drunkenness. Judicial experience also shows that the offence often escapes detection, and it is, therefore, necessary to impose a sentence which will have a deterrent effect.

Deterrent sentences.

2. Although section 562 of the Code of Criminal Procedure (as amended by Act XVIII of 1923) applies also to persons who are found guilty of an offence under a special or local Act, its provisions should not ordinarily be applied to a person convicted of an offence under section 61(1) of the Excise Act which implies previous preparation and often escapes detection (I.L.R.7 Lahore 32).

Application of section. 562 Cr.P.C., not advisable for offences

3. The amendments made in the Punjab Excise Act, by Punjab Acts No. IX of 1948 and 35 of 1956 may be carefully studied. A person found in possession of a working still for the manufacture of an intoxicant is punishable under section 61 (1) with a minimum sentence of six months imprisonment and fine of two hundred rupees and this offence has been made non-bailable. In certain other cases the law provides that the offender shall be punishable with imprisonment and fine. This means that a sentence of imprisonment, however short, must be awarded. Section 68-A provides an enhanced sentence for repetitions of such offences. Section 69-A authorises the Court to require a person, at the time of conviction for certain offences, to execute a bond, with or without sureties, for abstaining from the commission of those offences for a period not exceeding three years. The form of bond is given in Schedule II of the Act.

Minimum punishment in certain cases. Enhanced Sentences

PART C.—THE INDIAN OPIUM ACT, 1878

1. Charges of offences under section 9 of the Indian Opium Act should specify not merely section 9 which prescribes the penalty for the breach of various rules under the Act, but also the particular rule which the accused is alleged to have broken and so rendered himself liable for punishment under section 9 (c.f. 10 P. R. 1888: 19 P. R. 1891).

Rule broken should be specified.

2. There is no authority conferred by the Opium Act upon a Magistrate to distribute fines amongst person who may have helped in the detection of an offence under the Act. (*see* 13 P.R. 1894).

Distribution of fines among informants and helpers.

3. Section 9 of the Opium Act does not specify the kind of imprisonment that may be awarded on a conviction under the Act. In view of clause (27) of Section 3 of the General Clauses Act, 1897, imprisonment can be of either description defined in the Indian Penal Code.

Imprisonment may be of either description.

4. The court should try to decide cases of Opium smuggling speedily. The seizures of dangerous drugs have to be reported by the Government of India to the United Nations who have also to be kept informed of the final outcome of each case. The question is also included every year on the agenda of the United Nations Narcotics Commission. The delay in the prosecution of these cases leads to unfavourable criticism by the members of this international body. The courts should, therefore dispose of these cases as expeditiously as possible. [Punab Government letter No. 4437-J(C) 56 /48654, dated the 11th/23rd June, 1956].

Opium cases should be decided expeditiously.

PART D.—THE INDIAN RAILWAYS ACT, 1950

Magistrates should give precedence to Railway prosecutions in cases of the kind under notice and should dispose of them as early as possible at the sitting of the Court on each day on which there happen to be any fixed for hearing. A Magistrate should, except on Sundays and gazetted public holidays, be always available and sitting in Court during proper hours to take up such cases.

Priority to
Railway
cases.

2. The Railway Police should, in non-cognizable cases taken up under section 132 of the Indian Railways Act, in which the accused person has been released on security (and in which it would cause inconvenience to refer to the Magistrate in the first instance to fix a date), at once fix and inform the accused person and witnesses of the date on which their attendance will be required before the Magistrate.

Police to fix
the first date
and inform
accused and
witnesses.

3. Whenever it is possible to do so, without causing serious inconvenience, the Railway Police authorities should request the Magistrate to fix a date and to inform those whose attendance is required accordingly.

Magistrate
may fix date
in certain
cases.

4. As a general rule and where no special reasons exist to the contrary, Railways Police cases should be tried at the headquarters of districts or sub-divisions or at places within easy access from the Railway Line.

Cases to be tried
at headquarters
or other places
within easy ac-
cess from the
Railway line.

5. All money recovered by Courts as excess fares under sections 112, 113 and 115 of the Act should be paid into the Treasury to be credited to the Railways Department through the Exchange Accounts and intimation sent to the Audit Department of the Railways Administration concerned. In no case should any money be paid to the party representing the Railways in Court.

Money recovered to
be credited in the
Treasury.

PART E.—THE PUNJAB LAWS ACT.

Attention is invited to certain provisions of law peculiar to this State, e.g., the track law, slaughter of kine, etc., which are embodied in the Punjab Laws Act,

Laws peculiar to this Province as embodied in the Punjab Laws Act, 1872.

CHAPTER 6

Cases against Government Servants

PART A—GENERAL

1. ¹[A Judicial Magistrate taking cognizance of an alleged offence against a servant of the Government or of a Local Body shall report, without delay, to the Chief Judicial Magistrate to whom he is subordinate, the commencement of such proceedings together with brief details of the case, and endorse a copy of the same to the District Magistrate shall forward a copy to the Departmental Officer Incharge of the department to which the accused belongs. A further report will be sent in the same way on the termination of the proceedings, stating whether they have terminated in conviction, discharge or acquittal.

Cases against public servants or local bodies should be reported to District Magistrates.

In cases of convictions, a copy of the judgment shall also be forwarded.]

District Magistrate as trying officer should send a report to the departmental officer of the official concerned.

2. Should, however, a District Magistrate him-self take cognizance of such case, he is to follow the same procedure and send the local departmental officer of the official concerned a brief report of the facts of the case for his information.

3. Copies of judgments or orders, or English translations of vernacular judgments or orders, convicting, acquitting or discharging Government servants, including a person subject to Military law or a civilian in military employ of criminal offences shall be supplied free of charge to the Heads of Departments or Offices concerned,—vide rule 3 of Chapter 17, High Court Rules and Orders, Volume IV.

Copies to be supplied free to departmental officers.

1. Substituted vide Correction Slip No. 7 Rules/X.Z.20 dated 19.05.1965

PART B.—CRIMINAL CASES AGAINST POLICE OFFICERS

1. For judgments criticising the conduct of Police see Chapter 1-H, paragraph 6.

Criticism of
Conduct of Police
officer in
judgments.

2. Attention is also invited to Rules 16.38 (5) and (6) of Punjab Police Rules, 1934, which run as follows:—

Action to be taken
on such criticism.

- "(5) In all criminal cases in which strictures are passed on the conduct of the Police by a criminal court, whether in a judgment or by means of a separate note, a copy of the judgment or note must be sent to the District Magistrate. When such strictures are passed by a Magistrate's court or by a Sessions or High Court otherwise than as sub-rule (6) below, the procedure indicated in sub-rules (1) and (2) above shall be followed.
- (6) If a Session Court or the High Court in passing such strictures records its opinion that a special enquiry is necessary, the District Magistrate, on receipt of a copy of the opinion of the court, shall consider whether to order judicial proceedings or not. If he is of opinion that immediate proceedings before a criminal court are likely to be unsuitable or infructuous, he shall refer the case to the Inspector-General of Police, who will in consultation with the Chief Secretary, nominate two officers to hold the special enquiry."

PART C.—CRIMINAL CASES AFFECTING PERSONS
BELONGING TO THE ARMED FORCES

I. Criminal cases against persons belonging to the Armed Forces should only be taken up by District Magistrates or Magistrates of the first class and his direction should be strictly observed.

Cases to be tried only by District and Ist class Magistrate.

II. When a person belonging to the Armed Forces is convicted of any offence by any magistrate, information in the form given below shall be furnished by such magistrate to the superior officer of the person so convicted:—

Copy of judgment to be sent to superior officer of accused.

Name(and rank) of convicted	Military person	Officer of which convicted	Sentence	Date

III. Whenever a soldier is committed to jail whether for trial or under sentence, his military rank shall always be stated in the warrant of commitment, in order that due notice may be given to the military authorities of the day on which, and hour at which, the imprisonment of such person will expire.

Military rank of accused to be sent to superior officer of accused.

IV. Whenever a military pensioner is convicted and sentenced to imprisonment for a criminal offence, a copy of the judgment or the heads of charge to the jury and final orders, as the case may be, shall be sent to the Controller of Military Accounts and Pensions. The place where the pensioner last drew his pension shall be stated in the covering letter. The copies shall be prepared free of charge in the office of the Court and not by the copying department.

Information of conviction of pensioned officers.

Information of conviction of Indian Army reservists.

V. Whenever a reservist of the Army is sentenced by a Criminal Court to imprisonment for any term exceeding three months, the facts are to be reported without delay to the Commandant of the appropriate regimental Centre, in the manner prescribed in Para II above.

Dual Jusisdiction of Court-Martial and Civil Court.

VI. ¹[In exercise of the powers conferred by subsection (1) of section 475 of the Code of Criminal Procedure, 1973 (2 of 1974), and in supersession of the Criminal Courts and Court martial (Adjustment of Jurisdiction) Rules, 1952, the Central Government hereby makes the following rules for the trial of the persons subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union by a Court to which the said Code applies, or by a Court-martial, namely:-

1. These rules may be called the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978.

2. In These Rules, unless the context otherwise requires:—

(a) "Commanding Officer",

- (i) in relation to a person subject to military law, means the Officer Commanding the unit to which such person belongs or is attached;
- (ii) in relation to a person subject to naval law, means the Commanding Officer of the ship or naval establishment to which such person for the time being belongs; and
- (iii) in relation to a person subject to air force law, means the officer for the time being in command of the unit to which such person belongs or is attached;

(b) "competent air force authority" means the Chief of the Air Staff, the air or other officer commanding any Command, Group,

Wing or Station in which the accused person is serving, or where such person is serving in a field area, the Officer Commanding the forces or the air forces in the field;

(c) “competent military authority” means the Chief of Army Staff or Officer Commanding the army, army corps, division, area, sub-area or independent brigade in which the accused person is serving, and except in cases falling under section 69 of the Army Act, 1950 (46 of 1950) in which death has resulted, the officer commanding the brigade or sub-area or station in which the accused person is serving;

(d) “competent naval authority” means the Chief of the Naval Staff or the Flag Officer Commanding in-Chief, Western Naval Command, Bombay or the Flag Officer Commanding-in-Chief, Eastern Naval Command Vishakhapatnam or the Flag officer Commanding, Southern Naval Area. Cochin or the Flag Officer Commanding, Western Fleet or the Flag Officer Commanding, Eastern Fleet or Senior Naval Officer where the accused person is serving.

3. Where a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force is brought before a Magistrate and charged with an offence for which he is also liable to be tried by a Court-martial, such Magistrate shall not proceed to try such person or to commit the case to the Court of Session, unless—

- (a) he is moved thereto by a competent military, naval or air force authority; or
- (b) he is of opinion, for reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority.

4. Before proceeding under clause (b) of rule 3, the Magistrate shall give a written notice to the Commanding Officer or the competent military, naval or air force authority, as the case may be, of the accused and until the expiry of a period of fifteen days from the date of service of the notice he shall not—

- (a) convict or acquit the accused under section 252, sub-sections (1) and (2) of section 255 sub-section (1) of section 256 or section 257 of the Code of Criminal Procedure, 1973 (2 of 1974), or hear him in his defence under section 254 of the said Code; or

- (b) frame in writing a charge against the accused under section 240 or sub-section (1) of section 246 of the said Code; or
- (c) make an order committing the accused for trial to the Court of Session under section 209 of the said Code; or
- (d) make over the case for inquiry or trial under section 192 of the said Code.

5. Where a Magistrate has been moved by the competent military, naval or air force authority, as the case may be, under clause (a) of rule 3, and the commanding officer of the accused or the competent military, naval or air force authority, as the case may be, subsequently gives notice to such Magistrate that, in the opinion of such officer or authority, the accused should be tried by a Court-martial, such Magistrate if he has not taken any action or made any order referred to in clauses (a), (b), (c) or (d) of rule 4, before receiving the notice shall stay the proceedings and, if the accused is in his power or under his control, shall deliver him together with the statement referred to in sub-section (1) of section 475 of the said Code to the officer specified in the said sub-section.

6. Where within the period of fifteen days mentioned in rule 4, or at any time thereafter but before the Magistrate takes any action or makes any order referred to in that rule, the commanding officer of the accused or the competent military, naval or air force authority, as the case may be, gives notice to the Magistrate that in the opinion of such officer or authority, the accused should be tried by a Court-martial, the Magistrate shall stay the proceedings, and if the accused is in his power or under his control, shall deliver him together with the statement referred to in sub-section (1) of section 475 of the said Code to the officer specified in the said sub-section.

7. (1) When an accused has been delivered by the Magistrate under rule 5 or 6, the commanding officer of the accused or the competent military, naval or air force authority, as the case may be, shall, as soon as may be, inform the Magistrate whether the accused has been tried by a Court-martial or other effectual proceedings have been taken or ordered to be taken against him.

(2) When the magistrate has been informed under sub-rule (1) that the accused has not been tried or other effectual proceedings have not been taken or ordered to be taken against him, the Magistrate shall report the circumstances to the State Government which may, in consultation with the Central Government, take appropriate steps to ensure that the accused person is dealt with in accordance with law.

8. Notwithstanding anything in the foregoing rules, where it comes to the notice of a Magistrate that a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force has committed an offence, proceedings in respect of which ought to be instituted before him and that the presence of such person cannot be procured except through military, naval or air force authorities, the Magistrate may by a written notice require the commanding officer of such person either to deliver such person to a Magistrate to be named in the said notice for being proceeded against according to law, or to stay the proceedings against such person before the Court-martial if since instituted, and to make a reference to the Central Government for determination as to the Court before which proceedings should be instituted.

9. Where a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force has committed an offence which in the opinion of competent military naval or air force authority, as the case may be, ought to be tried by a Magistrate in accordance with the civil law in force or where the Central Government has, on a reference mentioned in rule 8, decided that proceedings against such person should be instituted before a Magistrate, the commanding officer of such person shall after giving a written notice to the Magistrate, concerned, deliver such person under proper escort to the Magistrate.

(Government of India Notification No. S.O. 488, dated the 09th February, 1978).

VII Dual Jurisdiction In this connection also please see Sections 124, 125, and 126 of the Air Force Act, 1950 (No. XLV of 1950), and Sections 125, 126 and 127 of the Army Act, 1950 (No. XLVI of 1950).

CHAPTER 7

Maintenance Cases.

PART A.—PROCEEDINGS UNDER SECTION 488,
CRIMINAL PROCEDURE CODE.

Proceedings under section 488 of the Code of Criminal Procedure are of a criminal character, and its provisions must be strictly followed. The section is not intended to provide for all possible cases in which a wife may be entitled to receive separate maintenance from her husband and it in no way overrides the Civil law or excludes the jurisdiction of the Civil Courts. A Magistrate exercising jurisdiction under this section is bound to exercise it in accordance with its terms and not otherwise: and especially not to deviate from them into orders which may appear to him to be better adapted to secure a fitting support to the wife, but are not warranted by the section.

Application of
Section
488,Cr.P.C.

2. When a husband appears in obedience to a summons issued on the application of a wife for a maintenance order the complaint and statements of the wife in her examination should be read and explained to him, and he should be called on to answer the claim.

Complaint to
be explained
to husband.

3. Before a maintenance order in favour of the wife can be made, it must be made to appear, first that the applicant is the wife of the husband at the time when the order is made secondly that the husband has sufficient means to maintain her, and, thirdly, that he refuses or neglects to maintain her.

Points to be
proved.

4. If the marriage is denied, the question must be inquired into and decided by the Magistrate.

Proof of
marriage.

5. An order of maintenance must be refused, if it appears either:-

Ground on
which order
may be
refused.

- (1) that the wife is living in adultery; or
- (2) that without any sufficient reasons she refused to live with her husband; or

(3) that she and her husband are living apart by mutual consent [sub-section (4) of Section 488]

With regard to clause (2) above, attention is drawn to a proviso added to sub-section (3) of section 488 by Act IX of 1949, which provides that if a husband has contracted marriage with another wife or keeps a mistress it shall be considered to be just ground for his wife's refusal to live with him. Act IX of 1949 has been repealed by Act XLVIII of 1952 but in view of Section 4 of the Repealing Act the substantive portions incorporated in the Code became a part and parcel of the Code and are not affected by the Repealing Act (*vide* A.I.R. 1955 Punjab 141). Attention may also be drawn here to Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956 (No. 78 of 1956), which makes special provision for the right to separate residence and maintenance under certain circumstances in the case of Hindu married women.

Ordinarily, it will not be necessary to enter into any of these matters unless an objection is taken on one of the above grounds by the husband.

Maintenance order to be refused in certain cases.

6. It follows, that if it should appear that the petitioner never was the wife, or has ceased to be the wife of the respondent, as, for instance, that she had only lived with the respondent as his mistress; or that the husband has validly divorced her before an order of maintenance is made, the application must be dismissed.

Means of husband to be considered.

7. If the magistrate is satisfied that the wife is entitled to an order for maintenance, he should further satisfy himself before making the order: what the actual means of the husband are and what other persons, if any, are lawfully dependent upon him.

The word 'means' in section 488 includes earning capacity. Hence when a man is healthy and able bodied he should be taken to have the means to support his wife.

(*Vide A.I.R. 1955 All. 320, A.I.R. 1944, Lahore 392, A.I.R. 1939 Lahore 24*).

8. In fixing the allowance payable by the husband, regard must be had to all these matters as well as to the needs and the social position of the wife.

Needs and social position of wife to be considered.

9. An order for maintenance must be for a sum of money, payable as a monthly allowance, from the date of the order or from the date of the application for maintenance. The maximum limit has been raised from rupees one hundred per month to rupees five hundred per month by Act No. 26 of 1955. The allowance should be made payable to the wife or to such other person on her behalf as the Magistrate may in his order direct. Under ordinary circumstances it should be made payable to the wife herself.

Order must be for a cash monthly allowance not exceeding Rs. 500 a month.

As it is found that irregularities are frequently committed in making this order, a form of order of maintenance has been prescribed by the High Court (Form No. 65 in Part B-I of Volume VI. High Court Rules and Orders). This form should be used in all ordinary cases.

Form of order.

10. The law does not warrant an order that the allowance be paid wholly or partly in grain either monthly or annually; nor that clothing be allowed, nor that the husband provide a house in addition to the allowance; nor an order conditional on the wife living in a house provided by her husband, or in any particular place, not an order for payment of cash as an alternative for payment in some other manner.

Maintenance order should be unconditional and for cash allowance only: Other conditions cannot be imputed even by consent of parties.

(*Vide 13 P. R. 1876, 3 P.R. 1887, 31 P.R. 1887, A.I.R. 1943 Lahore 59*).

There can be no objection to the parties compromising before a Magistrate in a proceeding under section 488 by agreeing between themselves as to what is the proper rate of maintenance. This agreement may in itself be sufficient proof of neglect or refusal to

maintain on the part of the husband. Where however, the compromise is with respect to other matters as well which do not come within the purview of Section 488 or where the compromise amounts to an agreement to live separately by mutual consent then the compromise cannot be given effect to in a Criminal Court. But if a husband and wife agree to the rate of maintenance without adding conditions which cannot form a part of the order under section 488 the Magistrate, may award a monthly allowance in terms of the compromise; but no other order for maintenance can be made by the Magistrate on the ground that the parties consent to it (*vide A.I.R. 1932 Lahore 349(2)*).

Security from husband cannot be taken even by agreement.

11. Similarly, if the wife, as sometimes happens, either of her own accord or upon her husband's offer to maintain her, agrees to live with him, provided, that he gives security for her good treatment. The Magistrate has no authority under this section either to require security from the husband or to accept it if offered by him. The wife must be referred to a separate proceedings under section 107 of the Code of Criminal Procedure if she desires security to be taken from him for keeping the peace.

Order permissible.

12. In short, the only final order a Magistrate can properly make on an application by the wife for maintenance is (1) an order granting a monthly cash allowance unconditionally, or (2) an order either dismissing the application or, for sufficient cause, permitting the wife to withdraw her application, which would have the same effect as an order of dismissal.

Ex parte trial procedure.

13. As to procedure, the Magistrate should ordinarily insist upon the personal attendance of both the wife and the husband at one of the preliminary hearings and should examine them fully in order to ascertain the true facts, but if the Magistrate is satisfied that the husband is wilfully avoiding service or wilfully neglects to attend the Court, he may proceed to hear and determine the case *ex-parte*.

The evidence taken should be recorded in the manner prescribed in section 355 of the Code of Criminal Procedure for summons-cases, that is, by the

Magistrate making a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(Sub-section (6) of Section 488).

14. At the close of the proceedings, a judgment should be written in the language of the Court or in English, which should state briefly the points for decision, the decision thereon and the reason for the decision. When the application for maintenance is granted, the form prescribed should be filled up and attached to the judgment as the formal 'order of maintenance'.

Contents of Judgment.

15. In view of Section 490 of the Code a copy of the said order shall be given without payment to the person whose favour the order is made or to his guardian, if any, or to the person to whom the allowance is to be paid. Such order can be enforced by any magistrate in any place where the person against whom it is made may be after the magistrate has satisfied himself about the identity of parties and the nonpayment of the allowance.

Enforcement of order.

16. No warrant can issue for the recovery of any amount due as maintenance under Section 488 unless application is mad to the Court within a period of one year from the date on which the amount became due.

Enforcement of order.

[Second proviso to sub-section (3) of Section 488]

17. The mode of enforcement of an order of maintenance is prided n sub-section (3) of section 488 of the Code of Criminal Procedure. If the husband offers to maintain his wife on condition of her living with him, and she refuses to live with him, the magistrate may consider any grounds of refusal stated by her and enforce the maintenance order notwithstanding such offer if he is satisfied that there is just ground for so doing.

Ditto

PART B.-ENFORCEMENT OF MAINTENANCE ORDERS
BETWEEN INDIA AND OTHER COUNTRIES ON
RECIPROCAL BASIS

I. The Maintenance Orders Enforcement Act, 1921 (XVIII of 1921), which was originally enacted to facilitate the enforcement in India of Maintenance Orders made in His Majesty's Dominions and Protectorates and vice versa has been amended by Act XLVII of 1952. Now, under the amended Act arrangements can be established for the enforcement of Maintenance Orders on a reciprocal basis between India and any other 'reciprocating territory' outside India.

II. 'Reciprocating territory' is defined in the amended Act as any country or territory outside India in respect of which the Act for the time being applies by virtue of a declaration under Section 3 of that Act. Section 3, as substituted by Act XLVII of 1952 provides that if the Central Government is satisfied that legal provision exists in any country or territory outside India for the enforcement within that country or territory of maintenance orders made by courts in India, the Central Government may by notification in the official Gazette, declare that the Act applies in respect of that country or territory and thereupon it shall apply accordingly.

III. In exercise of the powers conferred by Section 12 of the Maintenance Orders Enforcement Act, 1921 (XVIII of 1921), and in supersession of the notification of the Government of India in the late Home Department, No. F. 120-22, dated the 22nd September, 1923, the Central Government has made the following rules, namely :—

1.(1) These rules may be called the Maintenance Orders Enforcement Rules, 1955.

(2) They extend to the whole of India except the State of Jammu and Kashmir.

2. In these rules the expression "the Act" means the Maintenance Orders Enforcement Act, 1921 (XVIII of 1921)

3. The Officer to whom copies of maintenance orders shall be sent under sub-section (1) of section 4 of the Act shall be, in the case of a High Court, the Registrar of such Court and in the case of a Court of summary jurisdiction, the presiding officer of such Court.

4. When such copy is received by the Registrar or Officer the contents thereof shall be entered in a register maintained for the purpose in the form shown in the Schedule to these rules.

5. The notice referred to in sub-section (4) of section 6 of the Act shall be issued to the person who applied under sub-section (1) of that section; it shall contain particulars of the further evidence which is required by the Court in the reciprocating territory and shall also state the date when the further evidence will be taken.

1. The Officer of a Court of summary jurisdiction to whom the documents referred to in sub-section (1) of section 7 of the Act may be sent under the provision of that sub-section shall be the presiding officer of such Court.

2. (1) When an order has been registered under rule 4, the party in whose favour the order has been made shall be entitled to appear, either in person or by pleader or duly authorised agent before the High Court or Court of summary jurisdiction in which the order has been registered or as the case may be, before the Civil Court named by such High Court under subsection (1) of section 8 of the Act and to move such Court to enforce the order.

(2) If within a period of one month from the date of the registration of the order, or as the case may be, of its transfer to the Civil Court named by the High Court no such appearance has been made, the High Court, Civil Court or Court of summary jurisdiction as the case may be, shall appoint an officer of the Court to apply for execution of the order as such officer shall be entitled to obtain execution

thereof on behalf of the person in whose favour the order has been made and shall pay into the Court any monies realised in execution of the order.

Provided that the appointment of such officer shall cease to have effect in the event of the subsequent appearance under sub-rule (1) of the party in whose favour the order has been made.

8. A Court of summary jurisdiction shall exercise in respect of a maintenance order registered or confirmed by it under the Act the powers conferred on it by sub-section (3) excluding the proviso thereto and sub-section (7) of section 488 of the Code of Criminal Procedure, 1898, in respect of an order passed by it under sub-section (1) of that section.

9. (1) During the pendency of proceedings under the Act or these rules with reference to a maintenance order made in reciprocating territory, whether such order be provisional or otherwise, the person against whom the order has been made shall without delay notify the Court in which such proceedings are pending of any change in his address.

(2) The Court shall at the outset of all such proceedings give notice to such person of the obligation imposed by sub-rule (1).

10. The charges referred to in section 9 of the Act, and the sum in rupees required for the purchase of a draft for the amount of the sum awarded as maintenance in sterling or other non-rupee currency shall be assessed by the Court at the time of the registration or confirmation of the order as the case may be and any sum recovered in excess as the result of such assessment from the person against whom the order has been made shall be refunded to such person.

11. Any payment required by a Court to be made in respect of a maintenance order registered or confirmed by it shall be made through the Court unless the Court otherwise directs.

12. A Court recovering any one on account of maintenance in accordance with a maintenance order registered or confirmed by it under the Act shall forthwith cause the said sum to be remitted by the local

from the applicant for the rescission or variation of where there is no such local head office or branch; by head office or branch of the State Bank of India, or, any other agency which the Court considers suitable to the Clerk of the Court from which the order has been received or such other officer or person as may be specified by that Court for that purpose.

13. (I) For every summons requiring the attendance of a witness or the production of a document which is issued by a Court of summary jurisdiction in the course of proceedings under section 6 or section 7 of Act, there shall be charged to the person at whose instance the summons is issued such fee as would be chargeable for the issue of a like summons in a proceeding under section 488 of the Code of Criminal Procedure, 1898.

(2) For any process issued in the course to proceedings taken in pursuance of section 8 of the Act there shall be chargeable in the case of proceedings in a High Court or of a subordinate Civil Court named by a High Court such fee as would be chargeable for the issue of a like process in the course of the execution of a decree of such Court and in the case of proceedings in a Court of summary jurisdiction such fee as would be chargeable for the issue of a like process in the course of proceedings under section 488 of the Code of Criminal Procedure, 1898.

(3) Fees of the nature referred to in sub-rule (2) shall not be chargeable, in advance but the amount thereof shall be added to the amount to be recovered from the person against whom the order has been made.

(4) The amount of the actual expenditure incurred in sending a certified copy of the record to the Central Government under sub-section (6) of section 7 of the Act and in its subsequent transmission to the Court which made the provisional order, shall be recovered that order as confirmed and the confirming Court may decline to send the copy for transmission until the payable amount of such expenditure has been deposited by the applicant.

Provided that any excess of an amount so deposited over the actual expenditure shall be refunded to the applicant.

14. When a Court of summary jurisdiction has under sub-section (4) of section 7 of the Act confirmed with or without modification a provisional maintenance order made by a Court in a reciprocating territory has decided not to confirm such order, notice of such confirmation or decision as the case may be, shall be sent to the Court from which the order, issued and to the Central Government.

SCHEDULE

(Referred to in Rule 4)
Register of maintenance orders made by Courts outside India for enforcement in India (except the States of Jammu and Kashmir)

Serial No.	Name of the Court making the order	Nature of the order with particulars as to parties	Name and address of the person against whom the	Amount recoverable	Dated of order	Dated of receipt of the order by Court in India	Date of issue of notice or order	Dates of recovery of any amount due under the order	Date of despatch of money for remittance under rule 12

(Government of India, Ministry of Law, Notification No. S.R.O. 1618, dated the 25th July, 1955.)

IV. The Central Government has by notifications in the official Gazette, issued under Section 3 of the Act declared the Act to apply to the following countries and territories:-

(1) Colony of *Mauritius*.

(Government of India, Ministry of Law, Notification No. S.R.O. 3389, dated 6th November, 1954, published in Gazette of India of the same date).

(ii) *Zanzibar Protectorate*.

(Government of India, Ministry of Law, Notification No. S.R.O. 3425, dated 8th November, 1954, published in Gazette of India, dated October 2, 1954)

(iii) *Somalil and Protectorate*.

(Government of India, Ministry of Law, Notification No. S.R.O. 3425, dated 8th November, 1954, published in Gazette of India, dated November 20, 1954).

(iv) *Colony and Protectorate of Kenya*.

(Government of India, Ministry of Law, Notification No. S.R.O. 818, dated 4th March, 1954, published in the Gazette of India, dated March 13, 1954)

(v) *Uganda Protectorate*

(Government of India, Ministry of Law, Notification No. S.R.O. 2411, dated 16th July, 1954, published in Gazette of India, dated July 24, 1954).

(vi) *Colony of Sevechelles*.

(Government of India, Ministry of Law, Notification No. S.R.O. 2, dated 21st December, 1956, published in the Gazette of India, dated January 1, 1955).

(vii) *Northern Rhodesia.*

(Government of India, Ministry of Law, Notification No. S.R.O. 6, dated 23rd December, 1954, published in Gazette of India, dated January 1, 1955).

(viii) *Colony of Singapore.*

(Government of India, Ministry of Law, Notification No. S.R.O. 1768, dated 12th - August, 1955, published in Gazette of India, dated August 13, 1955).

(ix) *Federation of Malaya.*

(Government of India, Ministry of Law, Notification No. S.R.O. 1869, dated 27th August, 1955, published in Gazette of India, dated September 3, 1955).

(x) *Nyasaland.*

(Government of India, Ministry of Law, Notification No. S.R.O. 3523, dated 16th November, 1955, published in Gazette of India, dated November 26, 1955).

(xi) *Southern Rhodesia.*

(Government of India, Ministry of Law, Notification No. S.R.O. 1075, dated 8th May, 1956, published in the Gazette of India, dated May 8, 1956).

(xii) *Union of Burma.*

(Government of India, Ministry of Law, Notification No. S.R.O. 673, dated 16th March, 1956, published in the Gazette of India, dated 24th March, 1956).

(xiii) *Colony of Sarawak.*

(Government of India, Ministry of Law, Notification No. S.R.O. 1891, dated 27th August, 1956, published in the Gazette of India, Part II, Section 3, dated September 1, 1956).

V. The Central Government had by orders passed under old section 3 (before its substitution by Act XLVII of 1952) extended the Act to the following parts of His Majesty's Dominions and British Protectorates, besides the territories mentioned in Para IV above :--

- (i) England and Ireland.
- (ii) Western Australia.
- (iii) New South Wales.
- (iv) Basutoland, the Bechuanaland Protectorate and Swaziland.
- (v) Victoria.
- (vi) Commonwealth of Australia.
- (vii) Union of South Africa.
- (viii) Colony of Ceylon.

CHAPTER 8

Cases relating of Offences affecting the Administration of Justice and Contempt of Court.

PART A—OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

1. Under section 195 of the Code of Criminal Procedure, no Court can take cognizance of the offences mentioned in that section, except on the complaint in writing of the public servants or Courts mentioned in the section. The institution of proceedings does not now depend on the discretion of a private individual as was the state of law before the amendment of this section by Act XVIII of 1923.

Only Court or public servant can file complaint.

2. Sections 476 and 479-A are supplementary to Section 195. The Civil, Revenue or Criminal Courts can take action either suo motu or on application. The power to make a complaint is conferred on the Court and not on the particular officer who presides over the Court. Consequently the successor of a Magistrate or Judge is competent to direct prosecution in respect of an offence committed before his predecessor. (*Vide I.L.R* 4 Lahore 58 and section 559 of the Code).

Successor of an officer before whom offence was committed can lodge complaint.

3. The main point which the Court has to consider in initiating proceedings under section 476 of the Code is whether it is expedient in the interests of justice that an inquiry should be made and a complaint filed (*vide*, 1954 Supreme Court Reports 1144). The mere fact that there is reason to believe that an offence has been committed is not sufficient to justify a prosecution. It is equally well settled that prosecution should not be ordered unless a *prima facie* case is made out and unless there is a reasonable chance of conviction. It must be borne in mind in this connection that indiscriminate institution of prosecution does not promote the "interests of justice" as failure of such cases is apt to encourage rather than discourage the offences. Section 476 of the Code gives the Court power to make a preliminary inquiry and this power should be freely used. Notice should ordinarily be given to the persons concerned and any explanation and evidence given by them should be carefully considered before ordering prosecution.

Expediency and interest of Justice the main consideration.

Speedy
procedure for
perjury, etc.

Order not
appealable.

Bar to
Proceed-ing
under Ss. 476
to 479.

Stay
during
appeal.

Powers of
appellate
court.

Opportunity
of being
heard.

Gross cases
to be
brought to
book.

4 Section 479-A has been inserted by Act No. 26 of 1955 to provide a speedy procedure in cases of offences of intentionally giving false evidence in any stage of a judicial proceedings or intentionally fabricating false evidence for the purpose of being used in any stage of a judicial proceeding. When the Court is of the opinion that any person appearing before it as a witness has committed any of the offences mentioned and that for the eradication or the evils of prejury and fabrication of false evidence and for the interests of justice, it is expedient that the witness should be prosecuted for the offence, the court should at the time of the delivery of the judgment or final order record a finding to that effect. The Court should also state the reasons for its opinion. The Court may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint in writing over its signatures setting forth therein the evidence which, in the opinion of the court, is false or fabricated. No appeal lies from any finding recorded or complaint made under sub-section (1) of this section. No proceedings can be taken under sections 476 to 479 of the Code against a person who can be proceeded against Section 479-A. If an appeal has been preferred against the decision arrived at in the judicial proceeding in which the matter has arisen, the hearing of the complaint shall be adjourned until such appeal is decided. The Appellate Court, after giving the person against whom a complaint has been made an opportunity of being heard, may, if it so thinks fit, direct the withdrawal of the complaint. The appellate court, may where the court from whose decision the appeal has been filed has not made any complaint, exercise the powers conferred on the subordinate court for making such a complaint. Where the appellate Court makes such a complaint the provisions of sub-section (1) shall apply and no such order shall be made without giving the person affected thereby an opportunity of being heard.

5. The offences of giving and fabricating false evidence are unfortunately very common in the courts and it may not always be possible to prosecute every person who is guilty of these offences. It is, however, expedient in the interests of justice that all gross or

serious cases of such offences are properly taken notice of and brought to book. The Judges consider that the law against perjury and allied offences should be fully vindicated against all persons who are convicted and Magistrates should impose deterrent sentences when convictions are obtained.

Deterrent sentences

6. When a witness appears to be giving false evidence and there is possibility of his being prosecuted, special care should be taken in recording the evidence in a precise and clear manner reading it over to the witness and bringing it in conformity with what he declares to be the truth. For, ambiguities in the statement often furnish loopholes for plausible explanations and results in failure of justice. It should be noted that when contradictory statements are made before different Courts and it is difficult to decide which of the two statements was false the person making such statements can be charged in the alternative [Vide section 236, Criminal Procedure Code, illustration (b)].

Special care to be taken in recording evidence where a witness appears to be giving false evidence. Contradictory statements and liability of being charged.

7. As stated already, Courts are now required to file a regular complaint when a prosecution is ordered in respect of an offence specified in section 195. Section 487 of the Code precludes the Court from taking cognizance of the offences itself. As in the case of a complaint by a private individual, the complaint must set forth all the material facts constituting the alleged offences. Section 200 of the Code dispenses with the examination of the presiding officer of the Court making the complaint in such cases.

Complaint must set forth or material facts. No examination of complainant.

8. Section 195 provides that when any offence of the kind mentioned therein is committed in or in relation to proceedings in a Court, cognizance of the offence can be taken either on the complaint of that Court or some other Court to which such Court is subordinate. It is laid down in sub-section (3) of that section that for the purposes of the section a Court is to be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such Court and in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal court of original jurisdiction. It is further provided that where appeals lie

Complaints can be lodged by the court or by appellate court.

to more than one Court the appellate Court of inferior jurisdiction is the Court to which the Court making the complaint is to be deemed to be subordinate for the purposes of the section. As a result, a Subordinate Judge from whose decrees appeals lie to the Senior Sub-Judge as well as the District Judge must be deemed to be subordinate to the former for the purposes of section 195 (c.f, I.L.R. 2 Lahore 57). Similarly a Magistrate empowered under section 30 of the Code from whose decisions appeals lie to the Sessions Court as well as the High Court, would be deemed to be subordinate to the Sessions Court.

It may, however, be pointed out that in view of the new section 479-A, the provisions of law mentioned above have ceased to be applicable to cases of perjury and fabrication of false evidence which may be proceeded against only under the new section.

Appeal
when court
files or
refuses to
file a
complaint

9. Section 476-B provides an appeal to the aggrieved party when the court files or refuses to file a complaint under Section 476. Section 479-A, however, provides that there shall be no appeal from a finding recorded and complaint made under sub-section (1) of that Section and the provisions of the later Section would override the provisions of Sections 476, 476-A, 476-B, 478 and 479 in cases of giving and fabricating false evidence mentioned in Section 479-A.

Complaint of
offence
committed
in course of
commitment
proceedings.

10. When an offence is discovered or is alleged or suspected to have been committed in the course of commitment proceedings the Committing Magistrate should leave the matter in the hands of the Sessions Judge or should at least refrain from taking any, steps until the case is decided by the Court of Sessions.

Prosecution of
Commissioner
appointed by
Court.

11. When any person, who is a Commissioner, appointed by a Court under the provisions of the Code of Civil Procedure, 1908, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner, no court shall take cognizance of such offence except with the previous sanction of the court which appointed him as Commissioner. (Section 197-A, deemed to have been inserted in the Code by Punjab Act No. XXVIII of 1949).

PART B-CONTEMPTS OF COURT

"Contempt of Court" is not defined either in the Indian Penal Code or in the Criminal Procedure Code. Section 480 of the latter Code, however, deals with certain offences under section 175, 178, 179, 180 and 228 of the Indian Penal Code, which are in the nature of 'Contempt of Court' when such offences are committed in view and presence of the Court. The Court has the power to try such offences itself, but the punishment is limited to fine up to two hundred rupees or simple imprisonment in default of payment up to one month. The procedure laid down in section 481 of the Code should be very carefully followed. If the Court considers that the offender should receive a higher penalty, it has descretion to send the case to another Magistrate,—(vide section 482). An appeal lies in every case of conviction for contempt to the Court which appeals from the decrees or orders of the convicting Court ordinarily lie. In the case of a conviction by a Court of Small Causes an appeal lies to the Sessions Court.

Court can try the offence itself or send the case to another court. Appeal from conviction.

2. Every case in which a person is punished summarily for contempt of court by an officer exercising less than full magisterial powers should be sent, on the completion of the proceedings in which the contempt occurred, to the District Magistrate for inspection. District Magistrates should carefully consider the cases thus submitted to them, and make such comments thereon as appear called for, or if necessary, report the case for the consideration of the High Court on the revision side.

Cases tried by magisterial courts should be sent to District Magistrates for examination.

3. It must be distinctly understood that it is not intended to lay down that the power given to Courts by the Code of Criminal Procedure to punish contempts summarily is never to be resorted to. It is the duty of every Court to maintain the order and dignity of its proceedings, and some times this can only be affected by the punishment of the offender. In this connection, however, it is pointed out that a distinction may well be drawn between a disrespect committed by an ignorant villager, who hardly understands the impropriety of his conduct and disrespectful behaviour on the part of a person higher up in the

Contempt by ignorant people.

scale of society. In the case of an ignorant rustic, a Court may often be content to pass over without punishment an act which would properly call for punishment if committed by a person of higher education and fuller knowledge of what is due to the dignity of a Court of Justice.

High courts
powers in
respect of
Subordinate
Courts.

4. No Court except the High Court can take cognizance of "Contempts out of Court" such as for example comments in news papers on pending cases, etc. Under Section 3 of the Contempt of Courts Act, 1952 (XXXII of 1952), the High Court has and exercises the same jurisdiction, powers and authority in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself.

The High Court cannot, however, take cognizance of contempts alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

Defamations
of public
servants

5. Complaints for defamation of public servants in respect of their conduct in the discharge of public functions can also be made under Section 198-B of the Code of Criminal Procedure as inserted by Act No. 26 of 1955, It may, however, be pointed out that if the accusation by the public servant is found by the Court to be false and frivolous or vexatious, the public servant can be ordered by the court to pay compensation to the accused, up to an amount of one thousand rupees. -

Non –
attendance
of witnesses

6. Section 485-A provides a summary procedure for punishing a witness for non-attendance in obedience to a summons issued for his appearance before a criminal Court. If the Court before whom the witness was to appear is satisfied that it is expedient, in the interests of justice, to try the witness summarily, the Court may take cognizance of the offence and after giving the witness an opportunity of showing cause why he should not be punished, sentence him to fine not exceeding one hundred rupees. The Court should, so far as practicable, follow the procedure prescribed for summary trials in cases in Which an appeal lies.

CHAPTER 9

Witnesses—Criminal Courts
PART-A.--EXPENSES

(a) Rules made by the Punjab Government under the powers conferred by Section 544 of the Code of Criminal Procedure, 1898, regulating the payment of subsistence and travelling allowance to witnesses attending trials, etc., in Subordinate Courts.

RULES

1. The Criminal Courts are authorised to pay. at the rates, specified below; the expenses of complainants or witnesses—(1) in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service, (2) in all cases entered in column 5 of Schedule II appended to the Code of Criminal Procedure, as not bailable, (3) in all cases which are cognizable by the Police, and (4) of witnesses in all cases in which they are compelled by the Magistrate, of his own motion, to attend under section 540 of the Code of Criminal Procedure.

Cases in which Government is to pay the Expenses.

2. No payment shall be made by Government to witnesses summoned at the instance of the complainant under section 244 of the Code of Criminal Procedure, unless the prosecution appear to the Magistrate to be in furtherance of the interests of public justice, but under this section the Magistrate may require the complainant to pay their expenses'.

Expenses of witnesses in summons cases.

3. The expenses of witnesses in trials before courts of Sessions shall like ordinary contingent expenditure be met by the Sessions Judge himself out of his permanent advance, the expenditure on his account being recouped when necessary from the grant under the head

Expenses of witnesses in Session trials

[3]"214-Administration of Justice-(d)Criminal Courts". Chief Judicial Magistrates at the District headquarters and Judicial Magistrates posted outside the district headquarters, if there be only one, and the senior most of them, if there be more than one, are drawing and disbursing officers and Districts and Sessions Judges are Controlling Officers" for allotments and expenditure under this head. Under paragraph 12.5 of the Punjab Budget Manual, allotments for all heads including "Diet and Road money to witness" under 'sub-head (d) Criminal Courts' are placed at the disposal of District and Sessions Judges and they may retain whatever amount they consider necessary at their own disposal, and to allot the balance to disbursing officers for expenditure.]

In cases tried by Additional Sessions Judges, payment to witness should be made by Additional Sessions Judge concerned himself-

- (a) out of his own permanent advance, if he is an ex officio Additional Sessions Judge,
- (b) otherwise, out of an advance placed at his disposal by the Sessions Judge of the District from his own permanent advance.

(a) Will result in expenditure on account of one district being debited to the allotment of another district, but will be in accordance with the spirit of the rule laid down in Rule 8.23 of the Punjab Financial Rules, Volume I, which requires that expenditure incurred by an officer on behalf "of another officer of the same department should be treated as an expenditure of his own office."

^[4](i) *Rates of subsistence allowance*, that is, allowance for each day's *necessary absence from residence and attendance* at Courts.

Class	Rate per <i>diem</i> Rs. P.
(a) For ordinary labouring classes	5.00
(b) For witnesses of somewhat higher standard	6.00
(c) For witnesses not included in (a) and (b) above	7.50
(d) For Municipal Commissioners, Income-tax payers and other respectable persons	10.50
(e) For other persons of higher status	14.00
(f) Special rates for witnesses not covered within the scope of the above-mentioned classes	18.00

(ii) *Add the following as Note under (i):—*

"Note.—These rates have been sanctioned by the Punjab Government in their letter No. 7549-JJ 50/3664, dated the 1st August, 1950, and Endt. No. 15679-4J-60/1232, dated the 19th January, 1961, and apply to Criminal Courts in the Punjab. The rates sanctioned by the Delhi Administration for Criminal Courts at Delhi are different and have not been incorporated in this Chapter as they are revised almost every year."

Note 2.—A technical witness, such as a draftsman who appears to give evidence in a criminal case and is required by the Court to prepare a site plan, etc., may be allowed a separate fee for this purpose. The fee for preparing a plan should be commensurate with the work done and should not ordinarily exceed Rs. 50 including the cost of tracing cloth, etc. If, for any special reason, it is considered necessary to pay more than Rs. 50 for the preparation of a plan the sanction of the High Court should be obtained.

The Court which a complainant or witness appears shall determine the class under which the complainant or witness shall be ranked. It has come to notice of the Honourable Judges that Courts have been progressively over generous in classifying witnesses in the 'special' class and in the assessment of what a witness is entitled to receive as expenses. The necessity of a more careful scrutiny in these matters should be impressed upon all Courts.

(ii) Travelling rates.

When the journey is made by rail, for classes (a). (b) and (c) third class fare.

For classes (d) and (e) second or their class fare at the discretion of the Court: —

Provided that second class fare shall not be allowed unless the Court is convinced that the witness is actually in the habit of travelling by that class. For class (f) the fare actually paid.

Note.—Retired Military Officers who were commissioned, gazetted or in pay as officer at the time of retirement shall be included in class (f) and those who retired as Junior commissioned officers or warrant officers shall be included in class (d).

[5] When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court, provided that the expenses incurred do not exceed 45 paise per kilometre in Punjab, 50 paise per kilometre in Haryana and 75 paise per kilometre in Chandigarh and where a witness travels by a private vehicle he may also be paid travelling expenses upto one rupee per kilometre in case of travel by a motor car and upto thirty-five paise per kilometre in case of travel by a motor cycle or a scooter, provided that journey could not, with reference to the age, position and habits of life of the person have been made on foot.

In assessing the amount of actual expenses, the courts should bear in mind that the fares charged by motor buses do not generally exceed one anna per mile. To persons in classes (d), (e) and (f) a further sum may be allowed to cover the cost of carriage hire to and from the court on the days of attendance at Court;}

(iii) Fees for searching for and copying documents required for production in criminal cases shall be allowed to witnesses according to the following scale:—

SEARCH FEES

(a) For documents not easily accessible.	Rs. 5 per document.
(b) For documents easily traced such as cheques	Rs. 2 per documents do not exceed two in number and Re. 1 for each such document beyond that number.

COPYING FEES.

(c) For copying documents other than entries in Account Books	At Court rates.
(d) For certified copies of entries in Account Books.	Rs. 5 per ledger folio or part of ledger folio where the number of such folios does not exceed four and Rs. 2-8-0 per ledger folio or part thereof after the first four folios.

Note 1.—When a minor of tender age is required to attend Court as a witness and such a witness cannot safely travel alone, the attendant who accompanies the minor may also be paid expenses at the ordinary rates prescribed for witnesses.

Expenses of
minors' attendant.

Note 2. —These rules intentionally allow the Criminal Courts a discretion as to the payment of witnesses. The circumstances of cases differ, and there are many criminal proceedings in which the prosecution is not called for on public grounds. It is not in every case that the State has undertaken, and is bound to provide the cost of the prosecution. In many instances, moreover, witnesses live at such a short distance from the Court that their being summoned to give evidence cannot be considered to entitle them to remuneration. At the same time, doubtful cases should be interpreted liberally, and in no case should it happen that complainants and witnesses who have been put to trouble and inconvenience in the prosecution of offenders, should be denied their legitimate expenses.

Discretion of
Courts.

Note 3.—It is the duty of the magistrate to ascertain in each case how far the witness has to travel to and from the Court and how many days it takes the witness to travel to the Court to give evidence and to return to his home. Every endeavour should be made to avoid delay in payment of the expenses of

Payment should be
made personally
by the Court and
without delay.

witnesses. As soon as the evidence of the prosecution witnesses in cases launched by the State has been recorded the Magistrate should have the memorandum of costs of witnesses made out and forwarded to the Nazir from whom he should receive and personally disburse the amount to the witnesses before leaving the Court.

Expenses of
Government
servants.

[6] (*N o t e* 4.—According to Rule 2.80 of the Travelling Allowance Rules framed by the Punjab Government an officer of the Government who is summoned to give evidence of facts which have come to his knowledge or of matters with which he has had to deal in his public capacity in criminal case (including a case before a Court-martial) is entitled to draw travelling allowance from Government. Accordingly the Courts should not grant to Government officers, except in the two cases mentioned below; fees or expenses which may have been deposited in such cases for their travelling and halting or subsistence allowances. The amounts should be credited to Government under the head "A-0650 Other Administrative Services A. Administration of Justice (3) (iii) Services and Service Fees (for fees) Fines and Forfeitures.")

In the case of employees of the Central Government sums on account of road and diet money will be deposited into the Treasury to the credit of Department concerned in the receipt Schedule of Central Departments. In the case of Railway Employees the amount is creditable to the accounts of Railway concerned under the head adjusting account with Railways in the States Section of the Accounts.

Exception—When a Government servant is summoned to give evidence at a Court situate not more than 5 miles from his headquarters or to give evidence of facts which came to his knowledge in his private capacity and is, therefore, not entitled to any travelling allowance under the ordinary rules from Government the Court may, if it considers necessary, pay him the actual travelling expenses incurred.

The practice, prevailing in some districts of requiring the parties to pay the subsistence allowance of a Government servant at the rate of pay of official concerned, is illegal. A Government servant is entitled only to his subsistence allowance at the rates prescribed above for other witnesses.

In all cases in which an officer of Government is summoned to give evidence the Courts should give him a certificate in the prescribed form (A) specifying the dates on which the officer was required to attend and the amount, if any, paid by the Court. The certificate will be attached by the officer concerned to any travelling allowance bill which he may submit under the rules quoted above.

Court
Certificate.

‘A’

Form of certificate to be *given by the* Court to an officer of Government summoned to give *evidence at a* Court.

In the Court of the _ in the
_ District.

1. Certified that _ *was summoned to give
Public
evidence in this Court in his _ capacity in the case
of _ private
of _ and was required to attend for a period
of _ days, that is, from the _ to the _ 19—

**2. He was paid the following amounts in accordance with the rules of the Courts:—

3. The amount of _____ has been
_____ will be
_____ Treasury
deposited in the local _ on (date) _
_____ Sub-Treasury

***To be cut
out when
nothing in
paid.

Note 5.—Individuals subject to the military traveling allowance rules when they are detailed or summoned either as witnesses or accused, to attend a Civil Court in criminal case, are entitled to payment of travelling expenses by the Court only when they are not entitled to free conveyance at the expense of the

Expenses of
persons
subject to
Military
Travelling
Allowance
rules.

*Here enter the name and official designation of the officer;

**Paragraph 2 is only required in the following cases namely:—

In cases in which Government servants have to give evidence at a Court situated not more than 5 miles from their headquarters or in their private capacity actual travelling expenses incurred by them may, when the Court considers it necessary, be paid to them.

Army under paragraph 201-II of Passage Regulations, India which is reproduced as under : —

"paragraph 201-II.—Witnesses attending Civil Courts.—An individual detailed or summoned either as a witness or as an accused to attend a Civil Court in a criminal case involving the interests of the State, provided that in the case of a witness the facts as to which he is to give evidence have come to his knowledge in the discharge of his public duties, will be entitled to free conveyance. When such conveyance is provided, a witness may not accept any payment on account of travelling or subsistence allowance from the Court. Any fees which may be deposited in the Court for the travelling and subsistence allowance of the witness must be credited to Government.

If the Court in which he gives evidence is situated within 5 miles (or 10 miles in the case of a mounted officer) of his headquarters and no travelling allowance, is, therefore, admissible for the journey, he may, if he be not in receipt of permanent travelling allowance, accept such payment of actual travelling expenses as the Court may make.

Note.—(1) An individual summoned to give evidence while on leave is entitled to the concessions described in the Rule.

(2) When a witness attends a Civil Court in his private capacity, he is only entitled to such travelling and subsistence allowances as are admissible in accordance with the rules of the Court. If the court pays him any sum as subsistence allowance or compensation, apart from travelling expenses, he must credit that sum to Government before drawing full pay for the day or days of absence. An individual ordinarily eligible to travel on warrant will be entitled to receive advance of travelling expenses for both the forward and the return journeys which will be refunded as soon as such charges are paid to him by the court."

Note 6.—Under the orders of Government, the attendance of the Civil Surgeon at the Criminal Courts of the station for the purpose of giving evidence, is one of his ordinary official duties, and he is not entitled to claim, nor are the Courts authorised to grant a fee: for this duty. When a Civil Surgeon is required to proceed more than five miles beyond the limits of

Expenses of
a Civil
Surgeon.

his station, he is entitled to travelling allowance under the ordinary rules relating to such allowances.

Note 7.—Fees for medico-legal work not falling within the ordinary duties of medical officer, not being a Civil Surgeon or an officer in medical-charge of a civil station shall be rupees sixteen for conducting a *post mortem* examination and rupees ten for conducting a medico-legal examination other than a *post mortem* examination, in cases not falling within the ordinary discharge of his duties, whether or not he is required to give evidence in a Court of Justice in connection with such examination. It is, however, to be distinctly understood that, when such an officer is required, under these circumstances to give evidence in a Court of Justice he shall not be entitled to any remuneration in addition to the fee above sanctioned other than the usual expenses paid to a witness. This Rule applies only to officers of commissioned rank. A fee of rupees four will be paid to a medical subordinate for conducting such examinations when they do not fall within the ordinary scope of his duties. It is however; to be understood that medical subordinates lent by the Government to Municipalities or Dispensary Committees will be required to perform these examinations as a part of their regular duties without further remuneration. (*Government of India, Resolution No. 3050, dated the 11th August, 1882, and letter No. 90 (Home Department), dated the 21st February, 1884.*)

Fees for
medico-legal
work.

Note 8.—Civil Surgeons, Assistant Surgeons and Hospital Assistants should, when summoned to attend a Court in their official capacity, be paid the actual expenses incurred by them on account of carriage hire, when their attendance in Court entails such expenditure. Actual travelling expenses should be paid to an officer who travels in his own car to appear as a witness in a Court.

Expenses of
Civil Assistant
Surgeons and
Hospital Assis-
tants.

Note 9.—The Punjab Government have entered into a reciprocal arrangement with the Himachal Pradesh Government in regard to the payment of the expenses of Government servants summoned by Criminal Courts in Punjab and Himachal Pradesh to give evidence in their official capacity on the following terms and conditions:—

- (i) In criminal cases to which State on the Union is a party, a Government servant giving evidence regarding facts of which he has official knowledge will, on production of the certificate

of attendance issued by the summoning court, be paid travelling allowance by the Government under whom he is serving.

- (ii) In criminal cases to which State is not a party, a Government servant giving evidence regarding facts of which he has official knowledge will be paid travelling allowance by the summoning court according to the rules under which he draws his travelling allowance for a journey on tour, and the charges will be borne by the Chief Commissioner, Himachal Pradesh or the Government of the Punjab according as the court is situated in Himachal Pradesh or in the State of the Punjab.
- (iii) When a Government servant serving in a Commercial Department or when any other officer is summoned to give evidence as a technical or expert witness the pay of the Government servant concerned for the period of his absence from his headquarters and travelling allowance and other expenses due to him will first be borne by the Government under whom he is serving and will subsequently be re-covered from the Government in whose jurisdiction the court in which he is summoned to give evidence is situated.

Note 10.—Rules for payment of fees to expert witnesses summoned in Criminal Courts.

I. When any Court has to form an opinion upon a point of foreign law or science or art or upon the identity of handwriting or finger impressions a person who is called to give an opinion in view of his special skill in such foreign law, science or art or in question of identity of handwriting or finger impressions, is an expert witness and his evidence is expert evidence_

Explanation.—The question whether evidence is expert or not must be judged *by* the purpose for which the witness is called and the nature of the facts to which the witness testifies in examination in chief. Evidence is not to be classed as expert merely on the strength of cross-examination. If the witness is called primarily to testify to facts observed by him in his ordinary or in his professional capacity, his evidence is ordinary evidence. If, however, he is called primarily to give an opinion based on, his special knowledge or skill but not on any previous acquaintance with the facts of the particular case which is before the Court, his evidence is expert evidence.

Examples—(i) A doctor who is called on account of his special knowledge to give an opinion on the question whether a particular person is physically capable of doing an act which is attributed to him gives expert evidence. If he is called to describe injuries which he has himself seen or to attest a certificate of injuries which he has supplied, his evidence is not expert evidence, and it does not become expert evidence even if in the course of his examination he uses technical terms in describing the injuries or if he is asked to give an opinion regarding the effect of the injuries on the constitution of the injured person.

(ii) A goldsmith who was called on account of his technical knowledge to advise the Court where a particular ornament was made would be giving expert evidence, if the opinion was one which could be given by a goldsmith, but it would not be expert knowledge if he was merely identifying an ornament made by himself.

(iii) A small arms expert called from a Government arsenal to state whether the marks on a bullet could be caused by the rifling of a particular kind of rifle or revolver or whether a shot could travel a particular distance gives expert evidence.

II. Subject to the provisions of rules III to V below expert witnesses who happen to be Government servants are bound by the ordinary rules relating to payment of travelling allowance and subsistence allowance to Government servants called as witnesses. These rules are contained in Travelling Allowance Rules 2.80 to 2.81.

III. In any case in which it is absolutely necessary to summon either the Chemical examiner or his Assistant to give evidence in Court, the following fees shall be paid : —

	FOR EACH APPEARANCE IN COURT	
	At station of posting	Outside station of posting
Chemical Examiner	Rs. P. 16 00	Rs.100 with first class railway fare and all travelling expenses.
Assistant Chemical Examiner	10 00	Rs.50 with second class railway fare and all travelling expenses.

In cases in which the above fees are payable to the Chemical Examiner or his Assistant by Government, no payment shall be made. He will draw travelling allowance at the usual rates admissible under the travelling allowance Rule. In other cases in which travelling allowance is admissible under the Travelling Allowance Rules and fees are payable by private persons; such fees should be credited to Government.

IV. The following scale of fees has been prescribed for medical men of different classes summoned as expert witness:

	For giving evidence in a criminal case in a station where he resides	For giving evidence in a station other than the one in which he ordinarily resides
	Rs A P	
1. Civil Surgeon or other medical officer of equivalent standing	16 0 0 to 50 0 0	Rs 16 to Rs 50 per diem <i>plus</i> travelling allowance at tour rates
2. Assistant Surgeon ..	10 0 0 to 25 0 0	Rs 10 to Rs 25 per diem <i>plus</i> travelling allowance at tour rates
3. Sub-Assistant Surgeon	4 0 0 to 10 0 0	Rs 4 to Rs 10 per diem <i>plus</i> travelling allowance at tour rates
4. Private medical practitioner	16 0 0 to 32 0 0	Rs 16 to 100 per diem provided that the sanction of the High Court is obtained to any fee over Rs 32 per diem plus actual travelling allowance

- (1)) If a Government medical officer is summoned by the Court at the instance of the state, he should be treated as being on duty and he should be allowed to draw his travelling and daily allowance under the Punjab Travelling Allowance Rules; if the Court is situated away from his headquarters, if the Court is situated at his headquarters, he should not be paid anything.
- (2)) If such an officer is summoned by the Court at the instance of a private person or party, such attendance in the Court should be regarded as private practice of the nature of expert evidence and should be regulated as follows : –
 - (i) The Officer may accept the fee within the limit Prescribed above with the sanction of the Court concerned. If, however, in any individual case it is considered necessary by the Court that a fee

in excess of the prescribed limit should be allowed, this should be done with specific sanction of Government in each cases, which should be obtained through the Head of the Department in which the officer, is serving.

- (ii) The apportionment of the fees realized from private persons or parties between Government and the medical officer would be in the ratio of 50 : 50 but the accounting purpose it would be. in the first instance, necessary that the full amount realized should be credited to Government, the share of the officer being Thereafter drawn from the Treasury on a refund bill.
- (iii) The officer's travelling and subsistence allowance should be paid by the private person or party at whose instance he may have been summoned.

V. In the case of certain other particular experts special fees have been fixed as follows:—

	For giving evidence in a criminal case in a station where he resides	For giving evidence in a station other than the one in which he ordinarily resides
1. Government examiner of Questioned Documents		see Annexure.
2. Officials of the Finger Print Bureau	No fees	No fees.
3. Non-official handwriting experts	R s n P 16 00 to 32 00	Rs 16 to Rs 100 per diem provided that the sanction of High Courts is obtained to any Payment at rates exceeding Rs 32 per diem <i>plus</i> actual travelling expenses.
4. Registered Accountants as defined in rule 12 of the Auditor's Certificate Rules, 1932	Rs 50 to 150 according to the profes- sional stand- ing of the witness, for each day spent in attendance	Rs 50 to Rs 150 according to professional standing of the witness for the day of evidence provided that the sanction of the High Court shall be necessary to the payment of any fees over Rs 75. He will further be entitled to actual travelling expenses, as also to an amount of R s 25 to Rs 75 Per diem for travelling on a working day other than the da y of evidence.

Note-- The Auditor's Certificate Rules, 1932, are published at page 299 of the Gazette of India, part I, dated the 20th March, 1932.

VI. In order that payments may be easily checked in audit a clear distinction should be drawn between amounts paid as subsistence allowance and amounts paid as travelling allowance.

*ANNEXURE

(REFERRED TO IN RULE V, NOTE 10).

Rules Regulating Applications for, and payment of the Services of the Government Examiner of Questioned Documents.

1. Applications should be sent direct to the Government Examiner of Questioned Document. Intelligence Bureau, Ministry of Home Affairs. "Dormers"; Simla-1.

2. (i) Applications received direct from private individuals will not be entertained.

(ii) Applications received from Police Officers below the rank of Superintendent of Police will not be entertained.

3. Acceptable applications fall into two classes.

A. Official applications from-

- (i) State Governments (including Part C States), and offices subordinate to them,
- (ii) Presiding officers of Criminal Courts (including Sessions Courts), High Court, Courts Martial, etc.,
- (iii) Ministries of Government of India and their attached and subordinate offices,
- (iv) Railway administrations under the Ministry of Railway (Railway Board).

B. Other applications. These include-

- (i) Cases from private parties in civil suits in Indian Union Courts. These will be accepted only on the requisition of the court in which the case is being heard. The party concerned must move the Court and it will rest with the court to take the further step necessary to obtain the services of the Government Examiner of Questioned Documents.

*Punjab Government endorsement No. 7206-H-53/62203, dated the 28th August. 1953, on letter No. 41/3/50-Police-II, dated the 6th July, 1953, from the Government of India, Ministry of Home Affairs, to all State Governments.

Explanation-Reference made by a court suo motu in civil cases in which the State is not a party will be deemed to be cases from private parties for the purposes of these rules.

- (ii) Cases from Municipal Corporations, District Boards, Municipalities, and other local bodies and from Universities, Railway Administrations (not under the Ministry of Railways of the Government of India) from autonomous corporation and quasi-Government Bodies, e.g., D.V.C., D.T. 8, etc., with Indian Union.

Applications from recognized universities will be received direct. Applications from Railway Administrations (not under the Ministry of Railway, Government of India) should be submitted through the Agent of the Railway concerned. Applications from municipal corporations will be received direct but from other local bodies will be accepted only if received through the local district magistrate who should satisfy himself, before forwarding the application that it is desirable that the Government Examiner of Questioned Documents should be consulted.

- (iii) Complaint cases, revenue cases, Tenancy Act cases, and other miscellaneous Act cases from Indian Union Courts.

These cases will be accepted only if forwarded by presiding officers of courts.

4. Applications falling under classes A and B will ordinarily be accepted but may be refused at the discretion of the Government Examiner of Questioned Documents if they cannot be undertaken without detriment to his other work.

5. An inclusive fee will be charged in each case in which an opinion is given and will normally cover the opinion, the cost of photographs and the giving of evidence (limited in class B cases to one day). The inclusive fee for class A cases (see rule 3) will be Rs 220 and for class B cases Rs. 250 (This fee does

not cover travelling allowance which is governed by rule 15 below).

Where one Class A case is split up in Court into several cases, a fee of Rs. 150 (one hundred and fifty) will be charged for each split up cases. Similarly, where one Class B case is split up in court into several cases, the fee will be Rs. 200 (two hundred) for each split up case.

6. Subject to the exception stated at the end of this rule, the fee is payable in advance in all cases and each application should be accompanied by a certificate in the following form: —

two hundred and twenty (Rs. 220)

"Certified that sum of rupees_____

two hundred and fifty (Rs. 250)

has been deposited in the _____ Treasury on _____
on account of the Government Examiner of Questioned Documents' fee in case/suit No. _____ and
that this amount has been shown under Head :

XXIII—Police-Central-fees, fines and forfeitures, in the
Cash Account of Central Subject for the month of _____ and
appears at item No. _____ in the
relevant Receipt Schedule.

Countersigned.

Signature of Treasury Officer

Signature of officer submitting the case."

In special circumstances, which should be stated in application, class A will be accepted without this certificate, but the certificate should be forwarded as soon as possible.

7. In cases where the cost of photographs is exceptionally heavy, the fee will be Rs. 180 plus actual cost of the photographs in class A cases and in class B cases, Rs 200 *plus* the actual cost of the photographs.

In class B cases the authority submitting the case will be informed of the extra cost involved before it is incurred and will be required to certify that it has been deposited before the Government Examiner of Questioned Documents proceeds with the case.

8. (A) No fees are chargeable by the Government Examiner of Questioned Documents for the

cases investigated by the Special Police Establishment and also for cases arising in-

- (i) the main Ministries of the Central Government;
- (ii) their attached offices; and
- (iii) Union Territories namely—Delhi, Himachal Pradesh, Tripura, Manipur, Andaman and Nicobar Islands and Laccadive, Minicoy and Amindivi Islands.

(B) Fees are, however, chargeable in all other cases.

9. (i) In cases in which no opinion is given but photographs are taken, only the actual cost of the photographs will be charged, subject to a minimum of Rs. 35.

(ii) In cases in which examination has been completed but no opinion could be expressed, a consolidated fee of Rs. 100 will be charged,

10. No reduction in the fee will be allowed if evidence is not required or is taken on commission:

11. (i) In class B cases an additional fee of Rs. 200 will be charged for each day after the first day on which evidence is given, whether in court or on commission, or on which the officer is detained. The presiding officer or the Commissioner will be requested to certify, before the second and each subsequent day's work is begun, that the fee for that day and also for any intervening day or days of detention has been deposited, and subsequently to furnish a certificate in rule 6 above.

(ii) A fee of Rs. 250 will be charged in class B cases even for the first day's evidence if evidence is taken upon an opinion expressed on the same documents when they formed part of a criminal case.

12. In cases falling under class B, the Government Examiner or his Assistant will be prepared to attend courts provided that he can do so without detriment to his other work. When evidence is taken on commission, the commission should be issued to the Senior Sub-Judge, Simla, and normally should be so worded that either the Government Examiner or his Assistant can give evidence.

13. Presiding Officers of courts are requested to detain the Government Examiner of Questioned Documents or his Assistant for the least possible time compatible with the requirements of the case. They are also requested to accept, so far as possible, the time and dates for attendance offered by these officers, because the latter frequently have to attend several courts in the course of one tour.

14. The Government of India in the Ministry of Home Affairs reserve the right to impose an extra charge in any case in which they consider that the usual fee is incommensurate with the time and labour spent on the case.

15. When the Government Examiner of Questioned Documents or his Assistant is required to travel in order to give evidence or for any other purpose the authority or party employing his services will be required to pay travelling allowance at the rates laid down in the Supplementary Rules of the Government of India for journeys on tour. Travelling allowances will also be payable for the class IV servant accompanying the officer at the rates fixed for Government of India, class IV servants. These payments will be adjusted as directed in the Home Department (now Ministry of Home Affairs) letter No. 128/VII/27- Police, dated the 12th January; 1928 (see Appendix).

In class B cases the presiding officer of the court concerned will be required to certify that the cost of travelling allowance has been deposited before the Government Examiner of Questioned Documents or his Assistant undertakes the journey.

APPENDIX

Procedure for the payment and audit of travelling allowances drawn by the Government Examiner of Questioned Documents or his Assistant during tours,—(vide Home Department letter No. F-128/VII-27, Police, dated the 12th January; 1928).

1. (1) The Examiner or his Assistant should submit his travelling allowance bills to the Accountant-General, Central Revenues, for audit and payment.

(2) As soon as a journey is completed, that is, in respect of any complete journey from headquarters, to headquarters, the Examiner or his Assistant should send a statement to the Accountant-General, Central Revenues, showing the total amount of travelling allowance claimed or drawn and the distribution of the entire amount among various courts for recovery.

(3) In cases where several courts are attended, the cost should be distributed between them in proportion to the distance by rail from headquarters.

(4) As the travelling allowance is debitable to the various local Governments or the Parties concerned, the recoveries should be treated as follows:—

- (i) recoveries from the various State Governments should be taken in reduction of expenditure, provided they are effected within the Accounts of the same year, if not, they should be shown as receipt, and
- (ii) recoveries from parties such as local boards, local bodies and private persons should be taken as receipts under the Head XXIII-Police-Central-Fees, fines and forfeitures.

2. The principles laid down above apply to the payment and audit of the travelling allowance of the peon accompanying the Examiner or his Assistant.

3. If after the Examiner or his Assistant has actually commenced a tour, intimation is received from a court included in the tour to the effect that his evidence would not be required on the date originally fixed, the court shall pay the difference between the total expenditure actually incurred on the tour and the expenditure that would have been incurred if attendance in that court had not been included in the tour. This shall be specifically made clear when the bill is sent to the court for acceptance.

4. The Examiner and his Assistant shall observe the provisions of Supplementary Rule 30 when they frame their programme for tour.

- (b) **Rules made by the Punjab Government, under the powers conferred by section 544 of the Code of Criminal Procedure, regulating the payment of subsistence and travelling allowance to complainants and witnesses attending trials before the High Court, in the exercise of its original criminal jurisdiction.*

RULES

Disbursing
officer

1. All disbursements on account of the expenses of complainants and witnesses attending criminal trials before the High Court, will be made by the Committing Magistrate, and will be adjusted by him.

The Committing Magistrate will determine the class to which each complainant and witness belongs.

In the case of a Cantonment Magistrate committing a case for trial by the High Court, the disbursement of expenses and the payment of advances should be made by the District Magistrate of the district.

Travelling by
road not
allowed

2. Except for any special reason in any particular case, complainants and witnesses travelling at the public expense will not be allowed to travel by road and charge accordingly, when the journey can be accomplished more cheaply and expeditiously by rail.

Committing
Magistrate
dispatch
witness to
high Court

3. The Committing Magistrate, when despatching complaints and witnesses to the High Court will instruct them to report themselves to the Registrar of the Court, on their Arrival at Chandigarh, and will at the same time report to that officer-

- (a) the name of each complainant and witness;
- (b) the class to which he belongs;
- (c) the date of his departure to attend at the High Court;
- (d) whether any, and, if so, what advances have been made to such complainant or witness to enable him to reach Chandigarh.

*These rules also printed in Chapter
4—C, High Court, Rules and Orders, Volume
V.

4. When the trial in which the complainant/witnesses have appeared in the High Court is concluded. The Registrar of that Court will intimate to the Committing Magistrate the date of the arrival of the complainants, witnesses at Chandigarh and the date on which it was possible for them to quit the station. The subsistence allowance at Chandigarh will cease as soon after the conclusion of the trial as the means of quitting the station become available.

Registrar to inform Committing Magistrate departure of witnesses

5. The Committing Magistrate may make reasonable advances to complainants and witnesses to enable them to reach Chandigarh, and when necessary the Registrar of the High Court will make advances to them at Chandigarh to enable them to return to their homes. Care should be taken in making these advances that a larger sum is not paid to any complainant or witness than he is entitled to receive under these rules, and before making advances to witnesses for the defence, the Committing Magistrate should satisfy himself that such witnesses are material.

Payment in advance

6. Advances made by the Registrar of the High Court under the preceding rule will be recovered at once from the Committing Magistrate; who will include the amount of such advances in his bill.

Recovery of advances made by Registrar

7. When all the expenses to which complainants and witnesses are entitled under these rules have been paid, the Committing Magistrate will submit a bill for the same, supported by the necessary vouchers, to the Registrar of the High Court for countersignature. The Registrar's countersignature will be sufficient authority to support such charges in the Public Accounts.

Submission of bill by Committing Magistrate

8. These rules apply mutatis mutandis in case of trials held by the High Court elsewhere than at Chandigarh.

Application of rules trials held elsewhere.

9. In the event of a witness being summoned to attend the High Court in a criminal case, Other than a trial before the High Court in exercise of its original criminal jurisdiction; the expenses of such witness

Expenses of witnesses in other cases

will be paid by the Registrar or District Magistrate at such rates as the Court may direct.

Fees of
Superin-
tendent,
Mental
Hospital.

Notes.—(1) The Superintendent of the Mental Hospital, being the Government specialist in lunacy, is not entitled to any fee for giving expert evidence on behalf of Government in High Court.

Fees of
Chemical
Examiner.

(2) The Chemical Examiner or the Assistant Chemical Examiner when summoned to give evidence before the High Court shall be entitled to recover the following fee for each appearance :—

	Rs.
Chemical Examiner	10
Assistant Chemical Examiner	10

(3) As charges under rule 7 are debitable to audit contingencies, vouchers for sum above Rs 25 should accompany the bill sent to the Accountant-General, for audit.

(Punjab Government, *Home /Judicial Department Notification No. 5034-J-56/8467. dated the 13th November, 1956.*)

PART B.—INSTRUCTIONS FOR THE GUIDANCE OF THE NAZARAT
AND PRESIDING OFFICERS IN ORDER TO CHECK
FRAUD AND EMBEZZLEMENT WITH RESPECT TO THE
DISTRIBUTION OF DIET AND ROAD MONEY OF
WITNESSES.

The following instructions have been issued by the Punjab Government for the guidance of the Nazarat officers and the Presiding Officers of the Courts with a view to the prevention of frauds and embezzlement in the expenses of diet and road money of witness : —

Instructions for prevention of frauds, etc, in expenses of diet money and road money

- (1) The Nazarat officer should be provided with Specimen signatures of all Presiding Officers for whose courts he has at any time to pay bills or diet money of witnesses, etc.
- (2) The Nazarat officer will be expected to satisfy - himself that the signatures on the bills placed before him conform to the specimen signatures received by him. Should any loss be occasioned by the neglect of this rule, the Nazarat officer will be held responsible.
- (3) At the same time the Nazir should be informed that he is responsible for all money transactions entrusted to his charge, and that if the Naib-Nazir or any other of his assistants is utilised for disbursement work; the Nazir will remain responsible for supervising them and their work. On no account should a Chaprasi or a menial be employed for the payment of any Government money.
- (4) Criminal Register XVIII appearing in Part B-IV of Rules and Orders, Volume VI-B, showing the amount of diet and road money of witnesses for which memoranda have been issued should be maintained in each Magistrate's court and comparison should be regularly, though not necessarily daily; made with the Nazarat Register by the Presiding Officer, who should initial in the column provided for the purpose in token of his having made the comparison.

Specimen signatures should be kept

Comparison of Specimen signatures

Responsibility of Nazir, Menials or Peons not to make payments

Criminal Register XVIII part B-IV, Volume VI-B

Outlying Courts.

This register should also be maintained in the Courts of Sessions Judges; who should compare it with the register of contingent expenditure at least once a week and put their initials in column 10 in token of their having done so. The diet money and travelling expenses of witnesses examined before a Court of Sessions should be paid in the presence of the Sessions Judge.

The following instructions are laid down in regard to checking of entries in the register maintained by outlying courts :—

- (a) When *the outlying court (or if there is more than one court, the naib-nazir appointed at the place) holds an advance from the district nazir.*

In case there is only one Court, no comparison of the entries in the register of road and diet money paid to witnesses is necessary. If there are several courts, it is presumed that the payments are made by the naib-nazir under the supervision of one presiding officer as is the case at district headquarters. In that case the entries in the register of road and diet money paid to witnesses should be compared with those in the contingent register maintained by the naibnazir. No further comparison with the district nazir contingent register is necessary.

- (b) *When the outlying court holds no advance,*

The payments are made by the district nazir on receipt of the written orders of payment direct from such outlying courts, In such cases a comparison with the entries in the contingent register of the district nazir is necessary and may be effected by the issue of fortnightly memoranda by the outlying courts to the Nazarat officer.

(5) Steps should be taken to see that security is actually taken in all cases where the rules lay down that an official should furnish it.

Security
officials

(6) The Nazir should not be allowed to keep in his possession any sum received by him in the form of a deposit, but such money should be deposited in the Treasury without delay.

Nazir should not
keep money
deposits.
Inspection by
Deputy
Commissioners.

It is hoped that Deputy Commissioners will make occasional inspections of the Nazir's accounts and satisfy themselves that these and other instructions relating to the Nazarat are being properly observed.

PART C.—Commission

1. The provisions of the Code with regard to issue of Commissions in criminal cases have undergone important changes during the last few years. Now any Magistrate can issue a commission for the examination of a witness under the circumstances mentioned in sub-section (1) of Section 503 of the Code as substituted by Act 1 of 1951 and then amended by Act No. 26 of 1955. It is not now necessary that an application should be made for the purpose to the District Magistrate.

All magistrates can now issue commissions for examination of witnesses

Where the examination of the President or the Vice-President or the Governor of a State as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such witness. (Proviso to section 503).

President Governors, etc, to be always examined on commission.

2. If the witness is within the territories to which the Code extends, the Commission shall be directed to the District Magistrate or the Chief Presidency Magistrate within the local limits of whose jurisdiction the witness is to be found. [Section 504(1)].

Commissions within India.

The Code of Criminal Procedure now extends to the whole of India except the States of Jammu and Kashmir and Manipur [Section 1(2)]. In this connection also see the definition of 'India' in Section 4(1) (J).

3. (1) If the witness is in India but in an area to which this Code does not extend, the commission shall be directed to such Court or officer; as the Central Government may, by notification in the official Gazette, specify in this behalf. [Section 504(2)].

Arrangements with Jammu and Kashmir State.

(2) The Central Government has issued the following notification under sub-section (2) of Section 504 of the Code:—

New Delhi, the 13th May, 1952

S.R.O. 847.-In pursuance of sub-section (2) of section 504 of the Code of Criminal Procedure, 1898, (V of 1898), and in supersession of the notification of the Government of India in the Ministry of Home Affairs No. 4/8/48-Judicial, dated the 9th - May, 1950,

the Central Government hereby specifies the following Courts in the State of Jammu and Kashmir to which the said Code does not extend, to Courts to which commissions for examination of witnesses residing within the local limits of their respective jurisdiction may be directed, namely:-

1.	The Court of the District Magistrate, Srinagar.
2.	The Court of the District Magistrate, Jammu.
3.	The Court of the District Magistrate, Baramulla.
4.	The Court of the District Magistrate, Anantnag.
5.	The Court of the District Magistrate. Doda.
6.	The Court of the District Magistrate, Udhampur.
7.	The Court of the District Magistrate, Kathua.
8.	The Court of the District Magistrate, Poonch.
9.	The Court of the District Magistrate, Ladakh.

[Published in *the Gazette of India*, Part II-Section dated the 17th May, 1952 (No. 67/51-Judl.)

4. (1) If the witness is in a country or place outside India and arrangements are made by the Central Government with the Government of such country or place for taking evidence of witnesses in Criminal matters, a commission for the purpose can be issued by the Courts in India, in such form and to such Court or authority and through such channels as may be specified by the Central Government in a notification in the Official Gazette. [Section 504(3)]

(2) Any Court, Judge or Magistrate exercising jurisdiction in a country or place outside India and having authority under the law in force in that country or place to issue commissions for examination of Wit-

Arrangements
with Foreign
Countries.

nesses in criminal matters may issue such a commission for the examination of witnesses in India if such Court; Judge or Magistrate is specified in this behalf by the Central Government in a notification in the Official Gazette. The provisions of Section 505 to Section 507 of the Code relating to execution and return of commission shall apply as if these commissions had been issued by a Criminal Courts in India, (Section 508-A of the Code).

(3) The Central Government has issued the following notifications specifying the courts to which commissions for the examination of witnesses residing in the Union of Burma, United Kingdom, Australia, Canada, Ceylon, and Pakistan may be issued under the Code of Criminal Procedure. When commissions under the Code are issued to the specified authorities in these countries, the instructions contained in Volume I, Chapter 10, Part D, will apply *mutatis mutandis* so far as they may be applicable.

Notifications

I. Government of India, Ministry of Home Affairs notification No. 4/8/48-Judicial, doted the 25th January, 1950:—

In pursuance of sub-section (2B) of section 503 of the Code of Criminal Procedure, 1898 (V of 1898), the Central Government is pleased to specify the following Courts having authority in the Union of Burma, to whom commissions for examination of witnesses residing in the Union of Burma may be issued under the said Code, namely:—

The Court of any District Magistrate or a Magistrate of the first class within the local limits of whose jurisdiction in the Union of Burma the witness resides.

II. Government of India, Ministry of Home Affiars notification No. 4/8/48-Judicial, dated the 8th April, 1950:—

In pursuance of sub-section (2B) of section 503 of the Code of Criminal Procedure, 1898 (V of 1898) the Central Government is pleased to specify the Courts and Judges mentioned in column 2 of the schedule hereto annexed as Courts and judges having authority in the country specified in the corresponding entry in column 1 of the said schedule, to whom commissions for examination of witnesses residing in that country, may be issued under the said Code.

THE SCHEDULE

Country	Court or Judge
1	2
The United Kingdom	(a) The Supreme Court of Judicature at the Royal Courts of Justice, London, in case the witness resides in England; or (b) The Supreme Court of Northern Ireland, in case the witness resides in northern Ireland, or (c) The Court of Sessions, Scotland if the witness resides in Scotland.
Australia	(a)The Chief Justice of the Supreme Court of the State in which the witness resides; or (b) The Judge of the Supreme Court of the Australian Capital Territory, Canberra, in case the witness resides in that territory, or (c) The Judge of the Supreme Court of the Northern Territory, Darwin, in case the witness resides in that territory.
Canada	The Supreme Court of Canada or any Superior Court in any Provinces of Canada.
Ceylon	The Supreme Court of Ceylon.
Pakistan	Any District Magistrate or Magistrate of the first class within the local limits of whose jurisdiction in Pakistan the witness resides.

PART D. –Expert Witnesses

1. Much inconvenience is caused to expert witnesses by the reckless manner in which they are often summoned to give evidence by courts. The following instructions should be borne in mind by presiding officers of courts with regard to this class of witness:—

Evidence of Expert
Witnesses and
instructions
regarding the same

- (a) Care should be taken that when an expert is summoned, his evidence is duly taken and, where possible, completed on the day of his appearance;
- (b) Where possible the expert should be previously consulted in regard to the suitability of the date which it is proposed to fix for his evidence; and
- (c) Courts should always consider the desirability of avoiding causing inconvenience to experts by taking their evidence on commission in cases where the evidence is such as can suitably be so taken.

2. The Chief Inspector of Explosives to the Central Government has drawn attention to the fact the number of summonses he received for personal appearance before the courts all over India interferes with his legitimate duties and he has suggested that it would be of very great assistance if the issue of summonses on him and his inspectors for appearance in Magistrates' Courts could be restricted to the minimum consistent with the requirements of a case. In bringing this to the notice of State Governments, the Central Government have observed that where it is necessary to have the evidence of the Chief Inspector or his subordinates taken in Magistrates' Courts which are at a great distance from their headquarters and the cases are such as would normally be committed to the Courts of Sessions, a great deal of inconvenience may be avoided by having resort to section 503 and section 506, Criminal Procedure Code as the case may be. The Punjab Government have accordingly directed

Evidence of the
Chief Inspector of
Explosives

that prosecuting officers should press for taking evidence on commission in suitable cases. This should be borne in mind by criminal courts.

Evidence of
Chemical
Examiner or
his Assistant

3. Courts are warned to be careful to see before summoning the Chemical Examiner or his Assistant that the evidence of another medical witness whose services are more conveniently procurable will not be sufficient.

4. When an application is made for the summoning of a fire-arms expert in a case, the magistrate should first ascertain from the party wishing to call him as a witness on what points his evidence is required, and then write a letter to the expert asking him if he is able to give evidence on those points, and whether he wishes to examine any exhibits before giving an opinion. After these preliminaries, if the reply of the expert shows that he is in a position to give relevant evidence, then and not till then, summons should be issued to him to appear as a witness subject to the instructions given in preceding paragraphs.

5. When it is considered necessary to summon a Government Inspector of Railways as an expert witness, reasonable notice should be given to the Government Inspector concerned and the summons served on him through the Chief Government Inspector of Railways, Department of Posts and Air (Railway Inspectorate), Government of India, who will make himself responsible that the summons is served on the Government Inspector.

CHAPTER 10

Bail and recognizance

1. **Principles governing grant of bail:-** It must be understood that for every bailable offence bail is a right not a favour. In demanding bail from an accused person, Magistrates should bear in mind the social status of the accused and fix the amount of bail accordingly, care being taken that the amount so fixed is not excessive. The amount of bail and the offence charged, with the section under which it is punishable, should always be stated on the face of an order directing the accused to be detained in the lock-up in default of his furnishing bail. Bail may be tendered and must be accepted at any time before conviction.

Bail may also be tendered and accepted even after conviction in accordance with the provisions of sub-section (2-A) of Section 426 of the Code of Criminal Procedure, when a person other than a person convicted of a non-bailable offence satisfies the court that he intends to file an appeal.

2. **Recognition:-** When any person other than a person accused of a non-bailable offence is brought before a Criminal Court, the Court may, if it thinks fit, instead of taking bail, discharge him on his executing a bond without sureties for his appearance (section 496 Criminal Procedure Code).
3. **Bail in non-bailable cases:-** Even in the case of non-bailable offence there are circumstances under which the accused may be admitted to bail. These are described in Section 497 of the Code. Sub-section (3-A) has been inserted by the Amendment Act No. 26 of 1955 and provides that if the trial has not been concluded within sixty days of the first date fixed for evidence in the case and the accused person has been in custody during the whole of the said period, he shall be released on bail, unless for reasons to be recorded in writing the magistrate directs otherwise.
4. **Cash or Government promissory may be accepted in lieu of bail:-** Under section 513 of the Code of Criminal Procedure, a deposit of cash or Government promissory notes may be made in lieu of bail, except in the case of a bond for good behaviour.
5. **Bail is to be granted promptly:-** It is a hardship to detain parties under trial in prison an hour longer than the law requires. They are prejudiced in their means of defence, if respectable and innocent, they are exposed to the indignity of imprisonment, for which no subsequent order of discharge or acquittal can atone.
6. **Release on bail by superior Court:-** Under section 498 of the Code, the Sessions Judges may, whether there be an appeal on conviction or not, direct that any accused person be admitted to bail, or that the bail required by a Police Officer or Magistrate be reduced. The Sessions Judge may, similarly,

cause any person who has been admitted to bail by him to be arrested and may commit him to custody as provided in sub-section (2). Section 438 enables a Court of Sessions or District Magistrate in referring a case to the High Court, if it is recommended that the sentence be reversed, to direct that the person under sentence be admitted to bail. It should also be remembered that, under section 426 of the Code of Criminal Procedure; an Appellate Court may; for reasons to be recorded in writing, order that the convicted persons be released on bail or on his own bond.

7. **Bail applications on holidays:-** Sessions Judges should allow urgent applications for bail to be presented to them at their residence on holidays at a fixed hour, such applications cannot be presented in court on a working day owing to unavoidable circumstances.
8. **Disposal of bail applications in the absence of Sessions Judge :-** When Sessions Judges are unavoidably absent from the station, they should take action under section 17(4), Criminal Procedure Code for the hearing of urgent bail application.
9. **Inquiry about sufficiency of bonds:-** Considerable diversity of practice exists in carrying out the provisions of the law in regard to the taking of bonds from accused persons and their sureties, and the result of the diversity is not only to cause Police officers to be employed in needless inquiries, but also to keep the accused person in custody pending the result of the inquiry into the sufficiency or otherwise of the bail offered. Sub-section (3) of Section 499 now enables the court to accept affidavits for the purpose of determining whether the sureties are sufficient or not. At the same time, however, it is the duty of Magistrates to satisfy themselves that the sureties are, in point of substance, persons of whom it may reasonably be presumed that they can, if necessary, satisfy the terms of the bail-bond.

^[1]9A. To avoid abscondence of accused due to furnishing of bogus surety or surety bond by a stock surety, the surety, in all cases under the NDPS Act, the cases in which offence is serious and sentence provided is of more than 10 years imprisonment or the cases under the special enactment like POTA etc. shall furnish two copies of his latest passport size photograph, which is not older than six months before the date of submission, of which one copy shall be retained in the Court record and one copy to be retained by the concerned police station, alongwith one of the following documents:-

1. Passport.
2. Identity Card issued by the Election Commission of India.
3. Permanent Account Number Card, i.e. PAN Card issued by the Income-Tax Department.
4. ATM/ Debit Card or Credit Card issued by any Nationalised or Private Bank of Standing at the National Level, having photograph of the holder thereon.
5. Identity Card issued by the Government Authorities or the Public Statutory

Corporations.

6. Any such document, which is ordinarily issued by an Authority after due verification of the Identity of the person and his address, which the Judge or the Magistrate may think just and proper, in the interest of justice, by recording specific reasons.
7. If surety is not in possession or unable to produce any document referred to in Clause 1 to 5 above or documents demanded by Judge/ Magistrate under Clause 6, his identity and address be got verified from Police Station within whose jurisdiction such surety resides or works.

^[1] **Rule 9A added by correction slip no. 32 Rules/II.D4, dated 6th September, 2007.**

10. **Forfeiture of bail bonds:-** Section 514 of the Code lays down the procedure to be adopted to compel payment of the penalty mentioned in the bond from the person executing the personal recognizance and from his sureties.
11. **Form of bond for appearance before High Court:-** When a person is enlarged on bail by order of the High Court, or when bail is to be taken for his appearance before the High Court, the bonds to be executed by such person and his sureties shall be in the following forms which have been prescribed by the High Court with the sanction of the State Government, under powers conferred by section 554 (2) of Code of Criminal Procedure.

FORM OF BOND AND BAIL BOND

I,.....,son of.....caste.....,appealed resident of having____to the Punjab petitioned High Court at Chandigarh and being required to give security for my attendance before the High Court and for my surrender before the Court of the District Magistrate of..... if required, do bind myself to attend said High Court every -day of the hearing of my appeal /petition by the High Court and on such other day or days as I may be ordered to attend, and, should the High Court order my internment or commitment to person, to appear and surrender myself before the District Magistrate of.....and in the case of my making default therein. I bind myself to forfeit to the Government the sum of rupees
Dated this _____day of_____ 19

SURETY BOND

WHEREAS.....son of....., caste , resident of. ... having appealed ___to the Punjab High Court at Chandigarh petitioned is being required to give security for his attendance before the High Court and for his surrender before the Court of the District Magistrate of..... if required, I , son of , resident of..... , do bind myself to produce at the said High Court on every day of the hearing of his appeal _by the High Court and on such other day or petition days as I may be ordered to produce him, and, should the High Court order his internment or commitment to prison, to produce and surrender him before the District Magistrate of..... and in the case of my making default therein, I bind myself to forfeit to the Government the sum of rupees.....
Dated the.....day of..... 19 .

12. **Date of hearing to be communicated to the accused and sureties:-** The District Magistrate on accepting the sureties shall inform them that the person released on bail must be present at the hearing in the High Court.

He shall also inform the person released on bail to the same effect.

13. **Discretion of High Court:-** On the date of hearing in the High Court, the Judge or Judges hearing the appeal may order that:—

- (a) the bail-bond should be cancelled at-once, and the man re-arrested, or
- (b) he should appear on a certain day to hear judgment pronounced, or
- (c) he should attend daily (excluding holidays) until judgment is pronounced, or
- (d) he should be discharged from his bail-bond.

14. **Re-arrest on cancellation of bond:-** If the person who has been released on bail is not arrested on the day of hearing; in accordance with paragraph (13)(a) above he will ordinarily be rearrested in the High Court immediately judgment has been pronounced against him.

Notes.—(1) The foregoing instructions will apply *mutatis mutandis* to the case of persons enlarged on bail by a Court of Sessions.

(2) Except in very special cases, the Judges of the High Court decline to entertain applications for bail unless the Sessions Judge or the Court trying the case has already been applied to and has rejected application. Sessions Judges should conform to this practice.

15. ^[1] **Bail applications to be treated as urgent:-**

- i) All applications for bail in criminal cases including appeals should be treated as urgent.
- ii) The copy of reply to bail application or status report (by the police or prosecution) if any, shall be furnished to the accused if present, or his counsel as the case may be. The presiding officer may, in an appropriate case in its discretion insist on a statement to be filed by the prosecutor in charge of the case.
- iii) The application for bail in non-bailable cases must ordinarily be disposed off within a period of 3 to 7 days from the date of first hearing. If the application is not disposed off within such period, the Presiding Officer should furnish reasons thereof in the order itself. Copy of the order of the bail application should be furnished to the accused on the date of pronouncement of the order itself.

^[1] **Rule 15 amended vide C.S. no. 40 Rules/ II.D4 dated 10.12.2021**

16. It is irregular for criminal courts to forward original bail applications presented to the Court and other documents connected therewith to the Prosecuting Agency for report. If and when it is considered desirable to issue notice to the Prosecuting Agency, a definite date should be fixed for the hearing of the bail application, so that all concerned may have due notice.

CHAPTER 11
Police
PART A.—INVESTIGATION

1. Relation between Police and Magistrate:- Chapter XIV of the Code of Criminal Procedure contains the provisions of the law regarding information to the Police and their powers to investigate and the relation of the Police to the Magistrate are therein defined.

2. Police can investigate suo motu only cognizable cases:- It may, in the first place be pointed out that the Police have power to investigate suo motu only cognizable offences as defined in section 4 (f) of the Code, but under section 202 a Magistrate may, where he sees reason to distrust the truth of a complaint of an offence of which he is authorised to take cognizance, direct a local investigation to be made by a Police Officer (or other person). The limitations on this power of reference which are described in the instructions as to the examination of complainants should be strictly observed by Magistrates (*vide* Chapter 1-B, paragraph 4).

3. Police to record information in non-cognizable cases also:- Section 154 requires that every information to an officer-in-charge of a Police Station relating to the commission of a cognizable offence shall be reduced to writing, and action taken on it under sections 156 and

157. When the information relates to the commission of a non-cognizable offence, the substance of it shall be referred to the Magistrate. No police officer may, without *the express order of a duly empowered magistrate*, investigate an offence not cognizable by the Police [section 155(2)]

4. (1) Section 156 to 158 lay down the procedure to be followed by the Police on receipt of information relating to the commission of a cognizable offence and provide for the submission of reports of such information to the magistrate having jurisdiction.

(2) The following procedure should be followed in regard to F.I. Rs. in murder cases:-

- (i) The F.I.R. in murder cases should be sent to the Magistrate concerned immediately in his Court during Court hours and at his residence thereafter.
- (ii) In case the Magistrate concerned is out of station, the F.I.R. in a murder case should be submitted to the duty Magistrate.
- (iii) If the Magistrate is not available after Court hours, the copy of the F.I.R. should be left at his house by the messenger noting the date and hour of delivery on the cover containing the F.I.R., and the Magistrate should attach the cover with the contents.
- (iv) If on account of difficulties of communication or other causes the delivery is delayed, the reasons
- (v) and delay should be noted on the cover.
- (vi) As soon as the F.I.R. in murder cases, is received by a Magistrate, he should affix his initials thereto and note thereon the date and hour at which the report has been received by him. In the case of a delayed F.I.R., if he disagrees with the reasons given by the Police Officer for such delay, he should also give his own reasons for the same, if any.
- (vii) In cases where the Police Station is not situated in the same place where the Magistrate resides or where the Police Station is situated in an out-of-the-way place, the carbon copy of the F.I.R. after it has been recorded, should be posted at once at the nearest post office, addressed to the Magistrate by name, before the first clearance of the dak. In such cases the Magistrate should check that the F I R. has been dispatched by the earliest post after its registration in the Police Station as shown by the time recorded on it.

(3) The following is an extract from rule 22.48 of Chapter XXII of the Punjab Police Rules, Volume III, which prescribes the maintenance of a Daily Station Diary in accordance with Section 44 of the Police Act, 1861:

"It shall be in form 22.48(1) and shall be maintained by means of the carbon copying process. There shall be two copies. One will remain in the Police Station register and the other shall be despatched to the Superintendent or a Gazetted Officer designated by the latter every day at the hour fixed in this behalf".

" The Superintendent shall fixed the hours at which station diaries' shall be daily closed _____"

(4) Rules 24(4) (1) and (2) of Chapter XXIV of the Punjab Police Rules, Volume III, run as follows:—

"(1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer-in-charge of Police Station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant if any, the fact that he will not investigate the case or cause it to be investigated.

(2) If the Inspector or other superior officer, on receipt of a copy of the station diary, is of opinion that the case should be investigated he shall pass an order to that effect and shall, in any case, send on the diary or an extract therefrom to the District Magistrate for his perusal and orders.

5. (i) The following opinion, which was expressed by the Chief Court of the Punjab extra-judicially on two points connected with the recording of reports made to the Police in cognizable cases, and the power of Magistrates to order the Police to investigate such cases, is, at the request of the State Government, published for the information of the Criminal Courts of the Punjab.

(ii). **Distinction between recording of reports under sections 154 and 157, Criminal Procedure Code:-** The first point was whether a distinction is to be drawn between section 154 and section 157 of the Code of Criminal Procedure in regard to the recording of reports made to the Police in cognizable cases. On this point the Chief Court was of opinion that whereas every information covered by section 154 must be reduced to writing as provided in that section, it is only information which raises a reasonable suspicion of the commission of a cognizable offence within jurisdiction of the Police officer to whom it is given, which compels action under section 157, although, of course, a report would be sent to the Magistrate.

(iii). **Magistrate bound to entertain complaint of cognizable offence made to him directly:-** The second question was, whether a Magistrate can refuse to take cognizance of a complaint which has been duly made to him, on the ground that it relates to an offence cognizable by the Police, and should, therefore, have been made to the Police and not to himself, and whether, either without or after taking cognizance, a Magistrate can properly order the Police to investigate such a case.

As regards the matter of taking cognizance the Chief (now High) Court was of opinion that a Magistrate cannot refuse, when properly called on to do so, to exercise jurisdiction merely on the ground that the complainant might reasonably have had recourse to the Police instead of to the Magistrate.

(iv). **Investigation by Police after the Magistrate has taken cognizance:-** As to whether a Magistrate after having taken cognizance may not properly call on the Police to assist in investigating the case, the Chief (now High) Court was of opinion that a Magistrate who has taken cognizance under section 190(1)(a), of an offence cognizable by the Police

may, after complying with the provisions of section 200, and issuing his process (if he sees no reason for doubting the truth of the complaint and otherwise finds sufficient grounds for proceedings), give information of the case to the Police officer having jurisdiction, with a view to his further investigating its facts and circumstances in the manner laid down in section 157. In such a case as is contemplated, the Police Officer would not have to take measures for the discovery and arrest of the offender, as the supposed offender would be known, and a process would have been issued by the Magistrate to compel his appearance, but in other respects it would rest with him to take steps to secure the case being properly brought before the Court and he would be responsible that the witnesses named by the complainant to the Magistrate were supplemented by any others who might be necessary to complete the case for the prosecution.

6. Procedure to be adopted by Magistrate when offender is not known to the complainant:- The foregoing remarks proceed on the assumption that the complainant to the Magistrate knows or thinks he knows, who has injured him. In cases of complaint of a cognizable offence against an unknown offender, the Magistrate would have to record, under section 203, that there were in his judgment no sufficient grounds for proceeding. It would also be open to him to communicate to the Police, the information supplied to him, or to leave it to the complainant either to apply to the Police or to take such other measures as he thought proper for discovering the offender.

7. Procedure of police when there is or is not sufficient evidence against the accused:- Section 169 of the Code of Criminal Procedure provides that if in an investigation under Chapter XIV the Police Officer finds that there is not sufficient evidence to justify the forwarding of the accused to a Magistrate, he shall release the accused on bail or recognizance, and shall submit a report through the proper officer (section 173), for the orders of the Magistrate having jurisdiction.

If, on the other hand, the evidence appears sufficient the Police Officer must forward the accused under custody, or on bail, if the offence is bailable, to the Magistrate having jurisdiction (section 170).

8. Police cannot detain in custody an accused for more than 24 hours without orders of Magistrate:- Section 61 of the Code provides that no Police Officer shall, under any circumstances, in the absence of a special order of a Magistrate under section 167; detain in custody a person arrested without warrant for a longer period than twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Court.

9. Police remands:- When it appears that the investigation by the Police cannot be completed within the period of twenty four hours and there are grounds for the believing that the accusation is well founded, the Police officer must forward the accused to the nearest Magistrate, and also transmit a copy of the entries relating to the case in the diary of the Police Station. The Magistrate before whom the accused is brought may, whether he has or has not jurisdiction, authorise the detention of the accused in such custody as he thinks fit for a period not exceeding fifteen days. If he has not jurisdiction in the case, and considers such further detention unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction. [Section 167 (1)].

{Provided that the Magistrate may, on the request of accused or his counsel, supply a copy of remand application to the accused, if not objected to by the Investigating Officer. However, if the request of the accused is opposed, the Magistrate shall consider the same and pass appropriate order keeping in view its impact on the investigation.}

{Proviso added vide correction slip no. 43 Rules/II.D4 dated 21.11.2022}

10. Procedure of Magistrates granting remand:- A Magistrate authorising

the detention of an accused person as above must record his reasons for doing so; and if he is not a District Magistrate or a Sub-Divisional Magistrate, he must forward a copy of his order and reasons to the Magistrate to whom he is immediately subordinate (Section 167).

[The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.]

[Added vide Correction slip no. 8 Rules/XXIII-A-7 dated 21.01.1966]

11. Arrest by Police to be reported. When Police may discharge persons once arrested:- Sections 62 and 63 require that Police Officers shall report to the magistrate of the district or, if he so directs to the Magistrate of the division of a district the cases of all persons apprehended without a warrant within the limits of their respective stations, whether such persons shall have been admitted to bail or other- wise, and that no person who has been apprehended shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

12. Control of Magistrate over the arrests by the Police:- The object of these sections is that the Magistrates should promptly exercise authority, if necessary, with regard to all arrests by the Police; and they seem to have been framed with this view that as no person can be released without the order of a Magistrate, except on bail or recognizance, the Magistrate should be responsible as well as the Police if a person illegally arrested remains unnecessarily in custody.

13. Police diary to be kept and sent up regularly:- Section 172 requires that a Police Officer making an investigation under Chapter XIV shall record his proceedings day by day in a diary. The Magistrate of the district should see that the diary is regularly kept up, and that each day's diary has been forwarded to and has regularly reached the Superintendent of Police of the district in course of post, this being the only security against the contents being antedated. The directions of the High Court as to the inspection of these diaries in criminal trials by the Court and by other persons will be found in Chapter 12 of this volume. The directions there given should be strictly observed.

14. Duty of Magistrates to supervise Police investigation. ¹[Magistrates are bound to see that the provisions of the Code are attended to any departmental practices notwithstanding. The law has provided that the Magistrate should either expressly order (section 202), or receive immediate intimation of (section 157) every criminal investigation that is set on foot in the district, and he is not at liberty to relax the supervision which the law intends that he should exercise. Every first information report received by a Magistrate of the 1st Class under Section 157 of the Code shall be entered in Registers No. XXIII and XXIV of First information Reports prescribed in Rules and Orders of the High Court, Volume VI, Part B. The Magistrate concerned shall see that these registers are maintained by the Ahlmad attached to his court properly and every entry pertaining thereto is correct. He shall also ensure the observance of the following instructions with regard to the maintenance of both the aforesaid registers:-

1. Two separate registers No. XXIII and XXIV, should be kept for each police station to avoid confusion.
2. The date and time of the receipt should be entered in the copy of the First Information Report by the Magistrate in his own hand and signed or initialed immediately on receipt of the same, and this should not be left to the ministerial staff.
3. Entries in registers should be made according to serial number of the First Information Report. If a later 'First Information Report' is received and the earlier one is not forthcoming, the column for the entry of earlier report

should be left blank and a reminder issued to the State House Officer concerned. In this way one can find at a glance the numbers of the First Information Reports which may not be forthcoming on a particular date.

4. The dates of presentation of challans and registration of cases should invariably be entered in Register No. XXIV in the relevant column.

5. The registers should be inspected by the presiding Officer at least once a month to ensure their proper maintenance and be signed by him in token of having done so.]

[Substituted vide correction slip no. 8 Rules/Xii-F-2dated 22.11.1965]

15. Magistrates must have among his own records the means to supply statistical information:- From the quarterly statistical returns it sometimes transpires that the Magistrate is not informed of the number of persons arrested by the Police during the month. If the points above alluded to are properly attended to, the Magistrate must have among his own records the means to supply the statistical information; for the reports severally made to him of intimation of the occurrence of an offence (section 157), of there being no sufficient evidence (section 169), of there being sufficient evidence (section 170), must be in writing, and, whatever may be the mode of communication with the Police, must leave a trace in the Magistrate's office sufficient to enable the statistical writer to make out his returns.

16. Police to send to the Magistrate copies of records made under section 165, Cr. P.C.:- Magistrates of districts should also insist on the Police authorities adhering closely to the law laid down in sections 161 to 163 and 165 of the Code of Criminal Procedure. They should see that the Police forthwith sends to the nearest Magistrate, empowered to take cognizance of the offences, copies of any record made under sub-section (1) or (3) of section 165 of the Criminal Procedure Code at the time of making search.

17. Power of Police to summon witnesses and to arrest offenders:- The issuing of a warrant or summons, properly so called in criminal cases, in the prerogative of the Magistrate only and no writ from a Police Officer, as such is to bear either of these designations; but, under section 160, any Police Officer making an investigation under Chapter XIV may by 'order in writing' require the attendance of any person who appears to be acquainted with the circumstances of the case, and such person shall be bound to attend. In view of the proviso recently, inserted by Act No. 26 of 1955, no male person below the age of fifteen years or a woman can be required by the Police Office to attend at a place, other than his or her residence.

The arrest of an accused may also be effected by a Police Officer of any rank to whom, an order in writing has been issued by the officer-in-charge of the police station; but such processes are never, either officially or in common parlance, to be called 'warrants' or 'summons'.

PART B.—REMANDS TO POLICE CUSTODY.

1. The following instructions on the subject of remands to Police custody have been issued by the High Court.

Introductory.

2. Magistrates should observe the great distinction between a remand to Police custody and an ordinary remand to the Magistrate's lock-up under section 344of the adjournment of an inquiry or trial owing to the absence of a witness or from any other reasonable cause.

Distinction between remand to Police custody and remand to judicial lock-up.

3. The non-completion of the enquiry or trial justifies the latter, but the former requires some thing more, as it is expressly provided by section 167 that the non-completion of the investigation shall not, in the absence of a special order of a Magistrate be deemed to be a sufficient case for the detention of an accused person by the Police.

Non-completion of Police investi-gation does not justify detention by Police.

Magistrates should ensure that, whenever a person arrested and detained in custody is produced before them by the police for a remand, the police places before them copies of the first information report and the Zimnis and other necessary papers as required by sub-section (1) of Section 167.

¹[The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.]

4. Ordinarily when an Investigation is incomplete the proper course is for the accused person to be sent up promptly with such evidence as has been obtained and for the trial to be commenced at once by the Magistrate and proceeded with, as far as possible and then adjourned for further evidence. In the opinion of the High Court a remand to Police custody ought only to be granted in cases of real necessity and when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the Police in elucidating the case.

Remand to be granted in cases of real necessity.

5. The Police are too often desirous of retaining the accused in their custody for the longer period than twenty-four hours merely in the hope of extracting some admission of guilt from him. This is contrary to section 163 and the following section of the

Magistrate should discourage tendency of Police to take remand to Extort confession.

1. Added vide Correction Slip No. 10 Rules/XXIII-A-7, dated 21.01.1966.

Code of Criminal Procedure, and to the spirit of the Code generally; and Magistrates must be careful not to facilitate this object by too great a readiness in granting remands.

Remand cannot be granted for more than 15 days. Procedure when accused is brought before a Magistrate to obtain remand.

6. It should be further remembered that remands to Police custody cannot be granted under the Code of Criminal Procedure, for a longer period than 15 days altogether, and cannot be granted at all by a Magistrate of the third class, or by a Magistrate of the second class not specially empowered by the State Government. When an accused is brought before a Magistrate in accordance with section 167, sub-section (1), Code of Criminal Procedure, the Magistrate must adopt one of the following courses :

- (1) If he has jurisdiction to try the case or commit it for trial, either
 - (a) discharge the accused at once, on the ground that there is no cause shown for further detention, or
 - (b) remand him to Police custody (if empowered to do so) or to magisterial custody as he may think fit, for a term not exceeding 15 days, which term, if less than 15 days may subsequently be extended up to the limit of 15 days in all, or
 - (c) proceed atonce to try the accused himself, or hold an inquiry with a view to committing him for trial, or
 - (a) if for any reason it seems necessary, forward the accused atonce to the District or Sub-Divisional Magistrate to whom he is subordinate, or
 - (b) if himself a District or Sub-Divisional Magistrate, send the accused to a competent subordinate Magistrate for trial or commitment.
- (2) If he has not jurisdiction to try the accused or commit him for trial, he must either-
 - (a) if he thinks there is no ground for further detention, atonce send the accused to a

Magistrate having jurisdiction, with a view to his trial or discharge, or

- (b) if he thinks there is ground for further detention, remand him to Police custody (if empowered to do so) or to magisterial custody as he may think fit for a term not exceeding 15 days, which term; if less than 15 days, may subsequently be extended, up to the limit of 15 days in all.

Note.—By Punjab Government Notification No. 11984, dated 16th April, 1924, all stipendiary Magistrates of the 2nd class have been invested with power to authorise the detention of accused persons in the custody of the Police under section 167 (2) of the Code of Criminal Procedure as amended by Act XVIII of 1923.

7. Before making an order of remand to Police custody under section 167 of the code of Criminal Procedure the Magistrate should satisfy himself that -

Accused must be produced before the Magistrate who should satisfy himself for remand.

- (1) there are grounds for believing that the accusation against the person sent up by the Police is well founded:
- (2) there are good and sufficient reasons for remanding the accused to Police custody instead of detaining him in magisterial custody.

In order to form an opinion as to the necessity or otherwise of the remand applied for by the Police, the Magistrate should examine the copies of the diaries submitted under section 167 and ascertain what previous orders (if any), have been made in the case, and the longer the accused person has been in custody the stronger should be the grounds required for a further remand to police custody.

The person must always be produced before the Magistrate when a remand is asked for.

8. The following principles are laid down for the guidance of Magistrates in the matter of granting remands and District Magistrates (or in the districts

Principle applying remand cases.

in which the experiment of separation of the Executive from the Judiciary is being tried the Additional District Magistrates) are required to see that they are carefully applied :—

(i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.

(ii) When an accused person is remanded to Police custody the period of the remand should be as short as possible.

(iii) In all ordinary cases in which time is required by the Police to complete the inquiry, the accused person should be detained in magisterial custody.

(iv) Where the object of the remand is merely the verification of the 'prisoner's statement he should be remanded to magisterial custody.

(v) An accused person who has made a confession before a Magistrate should be sent to the Judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced for the purpose of making a confession has declined to make a confession or has made a statement which is unsatisfactory from the point of the prosecution, he should not be remanded to Police custody.

9. In any case when an accused person is remanded to Police custody, the reasons must be recorded in the order of remand, and when the Magistrate ordering a remand is not himself a Sub-Divisional or District Magistrate he must atonce send a copy of his order, with his reasons for making it to the Sub-Divisional or District Magistrate to whom he is immediately subordinate. [Section 167(4)].

Reasons for grant of remand to be recorded and copy sent to District Magistrate.

10. If the limit of 15 days has elapsed, and there is still need for further investigation by the Police, the Procedure to be adopted is that laid down in section 344; Criminal Procedure Code. The case is brought on to the Magistrate's file and the accused, *if* detention is necessary, will remain in magisterial custody. The case may be postponed or adjourned from time to time for periods of not more than 15 days each and as each adjournment expires the accused must be produced before the Magistrate, and the order of adjournment must show good reasons for making the order.

Procedure when a remand for more than 15 days is required for completion of the case.

11. District and Sub-Divisional Magistrates should take measures to exercise strict supervision over the action of all Magistrates subordinate to them, in regard to the granting of remands under section 167 of the Code of Criminal Procedure, and, as these officers receive the reports made under the last clause of that section; they possess the means for exercising the supervision here required of them without and difficulty. The District and Sub-Divisional Magistrates should further arrange that the Duty Magistrate should attend office, at specified hours on public holidays, for disposal of such applications for remand as may be placed before him.

Note.—In district in which the experiments of separation of the Executive from the Judiciary is being tried, this supervision and control over the Judicial Magistrates will be exercised by the Additional District Magistrates.

12. (i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates in regard to remands (*Punjab Government circular letter N. 6091-J-36/39829 (H.—Judl.), dated the*

Before the grant of remand accused should be heard and allowed to engage a counsel.

19th, *December*, 1936, to *all District Magistrates in the Punjab*) :-

- (a) Before a remand is granted in any case, the Magistrate should inform the accused that he is a Magistrate and that a remand has been applied for, and he should ask the accused whether he has any objection to offer to the remand. The order granting the remand should be written at the time it is announced, in the presence of the accused.
- (b) If the accused wishes to be represented by counsel, the Magistrate should allow time for counsel to appear and argue the matter before him. He may grant a temporary remand in such circumstances until arguments have been heard

Right of accused
to access to
counsel and
friends.

(ii) The Punjab Government have issued the following instructions in regard to the right of accused to access to counsel and friends:—An accused person should not be removed to a place which is either inaccessible or unknown to his friends or counsel. Information regarding his place of confinement should at all times be given to his friends on their application, and the prisoner himself should be informed that he is entitled to have the assistance of counsel and to communicate with his relations and friends.

PART C.-IDENTIFICATION PARADES.

The following instructions have been issued by the Punjab Government for the guidance of Magistrates in their conduct of identification parades (*Punjab Government circular letter No. 6091-J, 36/ 39829 (H. Judl.)*; dated the 19th December, 1936, to all District Magistrates in the Punjab) :-

Instructions issued by the Punjab Government re-identification parade.

(1) The Magistrate in charge of an identification parade should prepare a list of all persons, including the accused who form part of the parade. This list should contain the parentage, address and occupation of each member of the parade.

List of all persons included in the parade should be prepared.

(2) When any witness identifies a member of the parade, the Magistrate should note in what connection he is identified. A note should also be made if the witness identifies a person wrongly, in such a case it is incorrect to note that the witness identified nobody. All persons identified must be mentioned, whether the identification is right or wrong. If a witness, on being called for the purpose, states that he cannot make any identification, a note should be recorded by the Magistrate to this effect.

Note about identification by witnesses,

(3) Should the accused make any complaint or statement it should be recorded by the Magistrate. If from his personal knowledge the Magistrate is able to decide beyond doubt that the complaint is false or futile, a note to this effect should be made, but in other cases it is advisable to leave any decision as to the value to be attached to the objection to the court trying the case. The Magistrate should also record any statement made by a witness before making identification.

Objection or statement by accused or identification witnesses to be recorded and power of Magistrate to decide objections.

(4) The Magistrate should state-

Duty of Magistrates to record precautions taken and to note other points.

(a) What precautions he has taken to ensure-

- (i) that the witnesses do not see the person to be identified by them before the identification proceedings commence;

- (ii) that no communication which would facilitate identification is made to any witness who is awaiting his turn to identify; and
- (iii) that after making identification the witnesses do not communicate with other witnesses who have yet to do so;
- (b) Whether the person to be identified is handcuffed or is wearing fetters; and if so, whether or not other persons taking part in the parade are handcuffed or are wearing fetters, and also whether or not they are inmates of the Jail.

Form of certificate
to be appended by
the Magistrate.

(5) At the end of the Magistrate Should append a certificate in the following form —

IDENTIFICATION PARADE

The State.....*versus*
(F.I.R. No. OF 19 ,
Police Station.....).

Parade held on the 19 in the.....
Jail by....., Magistrate..... Class.....
District for the identification of..... on
the application of

Names of the witnesses who are expected to
identify the prisoner, with their particulars : —

- 1.
- 2.
- 3.

PROCEEDINGS OF THE MAGISTRATE.

Certified that the above is a true and correct record
of my proceedings.

(Sd.)

(Seal.)

Magistrate,

Class

2. The following further instructions have been issued by the Punjab Government on the subject. [*Punjab Government circular letter No. 6546-J-43/ 33844 (H. Judl.), dated the 17th December, 1943, to all District Magistrates in the Punjab*] :—

In cases where the identification of the accused is disputed and is a matter of importance, the request of an accused for an identification parade should not be refused. Such a request should not also be rejected merely because it is regarded as a measure to create delay, as it should be possible to arrange an identification parade without delay. Again a request to hold such a parade should not be refused on the ground that it is some considerable time since the witnesses last saw the accused and the accused may have changed in appearance in the meantime, and in such cases in his report on the parade the magistrate can record when the witnesses did see the accused last.

3. In districts in which the experiment of separation of judiciary from the executive is being tried, the work relating to the holding of identification parades should be done by the Judicial Magistrates.

(*Punjab Government Letter No. 16848-G-55/ 11327, dated 16th February, 1956, to all Deputy Commissioners in Punjab.*)

PART D.—CANCELLATION OF CASES REPORTED BY POLICE

1. In regard to cognizable cases reported by the Police to the Magistrate having jurisdiction under sections 157 and 173 of the Code of Criminal Procedure, it frequently becomes evident either (a) that the offence committed was really non-cognizable, or (b) that the information given to the Police was false or un- founded and the Police apply for magisterial authority to show such cases as "non-cognizable" or "flase" as the case may be. The Magistrate dealing with the Police reports in such cases, that is, ordinarily, the Magistrate who is empowered to take cognizance of the offence upon Police report, in respect of the particular Police Station, under section 159 or section 173 of the Code of Criminal Procedure, as the case may be, may, for sufficient reasons, pass an order accordingly.

Magistrate power to cancel cases reported by Police.

2. Magistrates are not required to give reasons for either granting or refusing the Police application, and they should exercise their discretion freely after satisfying themselves as to the grounds on which it is made. They should not treat the matter as one of ordinary routine.

Duty of Magistrate to satisfy himself before passing order.

3. In the event of the first and final report not coming before the same officer the Magistrate dealing with the final Police report would be competent to pass the order.

Magistrate dealing with the final Police report is competent to pass order.

4. No Magistrate of the 2nd or 3rd class is competent to make such an order, but any Magistrate of the 1st class may do so. Such an order should only be made at the time of dealing with the Police reports. No applications from the Police for a direction of this character should be entertained if made otherwise than in the final report submitted under section 173 of the Code of Criminal Procedure. But any Magistrate of the 1st, 2nd or 3rd class, may, of his own motion, in the course of trying any case reported by the Police as cognizable pass such an order at any stage of the proceedings, before or at the time of delivering judgment, intimation of the order being given to the Police.

Order of cancellation. When to be passed and by whom.

PART E –CUSTODY OF PROPERTY SENT IN BY THE
POLICE

[1] 1. (Property sent in by the Police is usually of three kinds:-

- (i) Articles including (a) counterfeit coins, together with implements for their manufacture, such as dyes, moulds etc., and (b) implements such as dyes, moulds etc. used in the forgery of currency notes, transmitted to the Magistrate under section 170 of the Code of Criminal Procedure, with the Police report in cases sent up for trial.
- (ii) Property seized by the Police as stolen property or upon suspicion, and ordered by the Magistrate, under section 451 of the Code of Criminal Procedure, to be forwarded to headquarters.
- (iii) Property taken charge of by the Police under section 25 of the Police Act (Act V of 1861) and ordered by the Magistrate of the districts to be forwarded to headquarters.

Kinds of property.

2. (a) With regard to property referred to in rule(1) (i) above, other than articles enumerated in (a) and (b) the Police Department will hand over the charge to the Court during the trial of case, when the case is decided, the property, if not returned to the owner, will be disposed of as directed by the Magistrate.

Custody and disposal of the property.

(b) Articles enumerated in 1 (i) (a) above will remain in the custody of the Court pending the disposal of the case. At the end of the case not till after the appeal or revision, if any, the Court shall send them to the Treasury or Sub-Treasury together with a short description of the case; and

(c) Articles enumerated 1 (i) (b) above, produced in and confiscated by a Court shall remain in the custody of the Authority, the Court may make such orders as it thinks fit for the proper custody of such things. At the end of case and not till after the appeal or revision, if any, the Court shall make the

articles over the Police Department for their destruction or for such other action as it may be found suitable in accordance with the rules of that department.

Custody and disposal of the property.

3. Property of second kind, when sent in to headquarters, will remain in the custody of the Court as provided in Section 451 of the Code of Criminal Procedure and will be further dealt with under the provisions of this section.)

Custody and disposal of the property.

4. Property of the third kind should on arrival at head-quarters be made over atonce to the Nazir by the Police Department.

5. In any individual case where the property consists of bullion, coins, currency notes, valuable securities or jewels, and is of great value, say, above one thousand rupees, it should instead of being made over under the preceding rules to the Nazir, be made over to the Treasury Officer; coin or currency notes (other than counterfeit coin and notes) will be treated as regular deposits under the rules in Chapter 12, Civil Account Code, Volume 1, bullion at its estimated value in cash; and securities, irrespective of their face value, and jewels will be deposited for safe custody, and an entry made not in the ordinary register, but in a special register which should be countersigned every month by the Deputy Commissioner. The orders of the Deputy Commissioner should first be obtained by the Police before placing bullion or jewellery, etc., for safe custody at the Treasury.

Responsibility of police for safe custody.

6. Until the property is, under the preceding rules, made over to the Nazir or the Treasury, the Police Department will continue to be responsible for its safe custody. When so made over, the responsibility for its safe custody will rest with the Nazir and Treasurer, as the case may be.

7. See also Volume IV, Chapter 10—"Forfeited and Unclaimed Property."

**PART F.—INSPECTION BY POLICE OFFICERS OF RECORDS
AND ORDERS AFFECTING THE WORKING OF THE POLICE.**

1. District Magistrates are instructed to permit Superintendents of Police to persue the proceedings and evidence in all criminal cases in which a member of the Police force is either sentenced to punishment, or, though acquitted, is left under suspicion or severely censured. The object is not to question the correctness of the decision of the Magistrate, but to enable the police to take such departmental action as may appear necessary.

Inspection by Police officers of the record of Criminal Cases in which a member of the police is convicted or left under suspicion.

2. Copies of all confessions which may be valuable from a Police point of view, as inculpatng accomplices, should be forwarded to the office of the Inspector General of Police for record.

Copies of certain confessions to be sent to Inspector General of Police.

3. At the request of the Inspector-General of Police the High Court is pleased to direct that intima-tion shall always be given to the Court Inspector of the District Magistrate's Court, for communication to the Superintendent of Police, of all modifications made by a Court of Appeal, Revision or Reference in an order passed by a Court of Original Criminal jurisdiction.

All modifications of the lower court made in appeal, revision, or reference should be communicated to the Superintendent Police.

Note—As copies of all such orders (except orders passed in appeal by a Subordinate Magistrate invested with criminal appellate powers for the communication of which special provision should be made) are sent to District Magistrates, the above direction can be carried out without difficulty.

PART G.- INFORMATION OF CONVICTION IN COMPLAINT CASES TO BE
FURNISHED TO THE POLICE

1. Magistrates are required to furnish the Police with information as to convictions in all cases taken up by them on complaint under the Acts noted below.

Information of convictions in certain cases to be sent to Police.

I.- (Indian *Penal Code*)*Chapter XI—*

Sections 193 to 195	... Giving or fabricating False evidence.
Sections 211 to 377	... False charge of committing an unnatural offence.

Chapter XII—

Sections 231 to 232	... Counterfeiting of coin.
Sections 233 to 235	... Making, buying, selling or Having in possession of instruments or material for counterfeiting coin.
Sections 236	... Abetting the counterfeiting of coin out of India.
Sections 237 to 238	... Import or export of counterfeit coins.
Sections 239, 240, 242, 243	... Possession of delivery of counterfeit coin.
Sections 244	... Unlawful alteration of weight or composition of coin by persons employed in Mints.
Sections 245	... Unlawful removal of coining instruments from Mints.

Vol. III.**2****Ch. 11-G.**

Sections 246 to 253

... Unlawful alteration
of weight, composition
or appearance of coin
and
possession and delivery
of such coin.

Section 255

...Counterfeiting of
Government stamps .

Sections 256 to 257

...Making, buying, selling
or having in
possession
instruments or
material for
counterfeiting Gov-
ernment stamps.

Sections 258 to 259

...Possession or sale of
counterfeit Government
stamps.

Section 260

...Using of counterfeit
stamps

Sections 261 and 263

...Fraudulent effacement
or
erasure of
Government
stamps.

Chapter XVI—

Section 311

... Being a thag.

Section 354

... Indecent assault on a
woman.

Sections 363 to 369

...Kidnapping.

Section 376

...Rape.

Section 377

...Unnatural offence.

Chapter XVII-

Sections 379 to 382

... Thefts of all kinds.

Sections 384,386 to 389

... Extortion of all kinds
except section 385.

Sections 392 to 394, 397

... Robbery of all kinds.

and 398.

Sections 395, 396, 399, 402

...Dacoity of all kinds.

Sections 400 and 401	...Belonging to a gang of thieves or dacoits.
Section 404	...Dishonest misappropriation of property belonging to a deceased person.
Sections 406 to 408	...Criminal breach of trust.
Section 409	...Criminal breach of trust by public servant.
Sections 411 to 414	Receiving stolen property.
Sections 418to420	...Cheating of all kinds, except simple cheating, section 417.
Sections 429 to 433 and 435 to 440	...Serious mischief
Sections 449 to 452	...House-trespass in order to commit an offence.
Sections 454 to 458	...Lurking house-trespass or house breaking other than simple, section 453.
Sections459 and460	... Grievous hurt or death caused in house-breaking.
Section 461	...Dishonestly breaking open a closed receptacle.
Section462	... Fraudulently opening a closed receptacle held in trust.
Sections 465 to 469	... Forgery
Chapter XVIII-	
Section 489-A to 489-D	...Forgery of currency notes and bank notes.

II.--(Code of Criminal Procedure).

Chapter VIII-

Sections 109 and 110	... Bad livelihood.

III.--(Miscellaneous Acts).

Section 3 and 4, Act III of 1867.	... Gambling.
Section 9, Act 1 of 1878.	...Opium smuggling.

Indian Arms Acts, XI of 1878, as amended by Act XII of 1891. Punjab Habitual Offenders (Control and Reform) Act, 1952. (Punjab Act XII of 1952.)

IV.—(Other Offences)

All offences in cases in which the subsequent proof of the conviction so recorded would render the person convicted liable by law to enhanced punishment on subsequent conviction of the same or a similar offence by reason of the proof of such former conviction and all offences in which, upon such proof, the law establishes a presumption in favour of the prosecution.

Illustration.—(a) Offences under section 8 of the Stage Carriages Act (XVI of 1861), shall be so entered because an enhanced punishment is provided for every subsequent conviction.

(b) Offences against rules made by the State Government under section 41 of 1878. (The Indian Forest Act) by reasons of the provisions of the last clause of paragraph 2 of section 42 of the same Act.

(c) Offences under section 13 of Act II of 1924 (The Cantonment Act).

Note.—Convictions for theft by courts martial, although the persons convicted have not been sent up for trial or prosecuted by the Police shall also be entered in the conviction registers in all cases in which the convictions are intimated to the Civil Authorities.

Form of statement prescribed for such information.

2. A form of the statement to be furnished to the Police is attached hereto.

Filling up of the form.

3. In Courts where there is a Court Inspector or Assistant Court Inspector, this official shall be held responsible for filling up the form in question, and Magistrates will only be to sign it. In other Courts, Magistrates will, after filling up the form, send it to the officer-in-charge of the nearest Police Station.

Indent for forms.

4. Printed form in English for these statements should be indented for in the usual way. The supply of vernacular form should be arranged for by District Magistrates.

*Statement showing cases taken up by Magistrates
on
complaint under sections of the Indian Penal Code
and other Acts of which the Police Department maintains a record, where such cases and in
convictions.*

1.	2.	3.	4	5	6	7
District in which trial is held.	Name, percentage, caste, residence and occupation of person convicted.	Offence of which convicted	Sentence.	Date of sentence.	Name and Powers of Magistrate	REMARKS

5. For information regarding criminal statistics to be supplied by District Magistrates to the Police every year, see Volume IV, Chapter 23—"Reports and Returns."

Criminal statistics supplied to Police.

PART H.—MISCELLANEOUS.

1. For cases against Police officers see Chapter 6,—“Cases against Government servants and Soldiers.

Cases against Police Officers.

2. The following notification of the State Government is published for information :—

Police reports sent to Magistrate through a superior Police officer.

Punjab Government notification No. 77, dated the 26th April, 1883.

In accordance with the provisions of sections 157, 158 and 173 of the Code of Criminal Procedure, the Punjab Government is pleased to direct as follows :—

The following reports sent to Magistrates shall be submitted through a superior officer of Police :—

- (a) Information reports or charge registers, under section 157, in all cases in which the Police have abstained from investigation;
- (b) Completion reports, including charge sheets under section 173; in all cases in which no person is sent up for trial and whether any person has been arrested or not: and
- (c) Completion reports including charge sheets, under section 173, in all cases sent for trial at the headquarters of districts.

The following officers of Police shall be deemed to be "superior officers" within the meaning of these rules :—

Under clauses (a) and (b), the Superintendent of Police; and when the Superintendent of Police is unable to receive such reports, an Assistant Superintendent of Police and, when Superintendent of Police and Assistant Superintendent of Police is unable to receive such reports, an Inspector of Police.

Under clause (c), the Superintendent of Police, and In his absence, an Assistant Superintendent of Police, and, in the absence of the Superintendent of Police and the Assistant Superintendent of Police, an Inspector of Police.

Copy of judgment criticizing conduct of Police to be sent to higher authorities.

3. For transmission of a copy of judgment in which the conduct of the Police is criticised to higher authorities *see* Chapter 1—H, paragraph 6.

CHAPTER 12

Police Diaries and Statements before the Police.

The Police diaries called for under section 172 of the Code of Criminal Procedure should not be shown to accused persons, or to their agents, or pleaders, except under the circumstances stated in the second clause of section 172 of the Code, that is, when they are used by a Police officer who made them to refresh his memory; or if the Court uses them for the purpose of contradicting such Police Officer, Sessions Judges and Districts Magistrates should issue such orders as are necessary to guard against, the Police diaries being inspected by persons not entitled to see them. The right of an accused person to be furnished with a copy of a statement of a person whom the prosecution purposes to examine as its witness, whether this statement has been recorded in a police diary or otherwise, is dealt with in sections 162 and 173 of the Code.

When accused is entitled to see Police diaries or state of a witness recorded by Police.

Note—These restrictions do not apply to a person duly authorized to conduct the prosecution in any case.

2. ¹[In submitting the records of criminal cases to the High Court, the Police diaries should be separated from the records and placed in a sealed cover which should then be placed with the record. The practice of translation of the Police diaries is dispensed with.]

Instructions regarding despatch of Police diaries to the High Court.

3. As to the manner in which Police diaries may be used by Courts, the following remarks should be borne in mind :—

Use of Police diary by Court.

The Provision of section 172, that any Criminal Court may send for the Police diaries, not as evidence in the case but to aid it in an inquiry or trial empowers the Court to use the diary not only for the purpose of enabling the Police

officer who compiled it to refresh his memory, or for the purpose of contradicting him, but for the purpose of tracing the investigation through its various stages the intervals which may have elapsed in it, and the steps by which a confession may have been elicited; or other important evidence may have been obtained. The Court may use the special diary, not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the State and the accused.

Should the Court consider that any date, fact or statement referred to in the Police diary is, or may be, material, it cannot accept the diary as evidence, in any sense, of such date, fact or statement, and must before allowing any date, fact or statement referred to in the diary to influence its mind, establish such date, fact or statement by evidence.

Criminal Courts should avail themselves of the assistance of Police diaries for the purpose of discovering sources and lines of inquiry and the names of persons who may be in a position to give material evidence and should call for diaries for this purpose.

Use of statement of witness made before Police when accused may get its copies.

4. As regards the proper use of statement made by witnesses before the Police during the course of an investigation, the provision of section 162 of the Code as amended in 1955, should be carefully studied. It would appear from the provisions of this section that no statement made by a witness to a Police Officer during the course of any investigation under Chapter XIV of the Code can be proved at all for any purpose during the trial, if the statement has not been reduced into writing. If such statement has been reduced into writing under sub-section (3) of Section 161 whether in a police diary or otherwise, a copy thereof along with other papers mentioned in sub-section (4) of section 173 of the Code, has to be furnished to the accused, free of cost, before the commencement of the

inquiry to trial unless the whole or any part of the

the statement has been excluded under sub-section (5) of the said section. Even so the use of this statement for any purpose whatever is prohibited except (a) when the person making the statement is called as a witness or the prosecution and (b) the accused or with the permission of the court the prosecution desire to use it in the manner provided by section 145 of the Indian Evidence Act, 1872 to contradict the witness and thus to impeach his credit. The original written record of the statement or any portion of it which is relied upon must be put to the witness, duly proved, as required by section 145 *ibid* and then the statement can be used for impeaching the credit of the witness as stated above, (*vide* I.L.R. 7Lahore 264).

5. The procedure contemplated by section 145 of the Indian Evidence Act should be carefully followed. When a witness is found to make statements conflicting with previous statements made by him in writing or reduce into writing and it is intended to contradict him with the previous statements, the relevant portions of the previous statements should be read out to him and his attention should be called to the discrepancies and he should then be asked to offer his explanation (if any), with reference to the same. The record of the Magistrate or Judge should show clearly that this procedure has been followed. The best way of doing this would be to put direct questions reciting the relevant portions of the two statements and asking for an explanation as to the discrepancies between the same and to record fully such questions and the answers given by the witness.

Method of
contradicting a
witness with
his previous
statement.

6. It will thus appear that as a result of the provisions of section 162, Code of Criminal Procedure, a statement, made by a witness before the Police, cannot be used to corroborate his testimony in spite of the provisions of section 157 of the Indian Evidence Act (of I.L.R. : 6 Lah: 171). The first information report recorded under section 157 of the Code, however, does not fall within the scope of section 162 as it is not a statement made in the course of an investigation and

Use of First
Information
Report for
purposes of
corroboration
of statement.

hence it can be used to corroborate the testimony of the person making the report if he

appears as a witness. It frequently happens, however, that the person making the first information report has no personal knowledge at all of the facts stated in the report and in such cases the report has no value except in so far as it discloses the manner in which the Police obtained the first information about the offence.

Confession made by accused to Police is admissible in evidence if it has led to discovery of any fact.

7. It has been held in *Ranun v. Crown* (I.L.R. 7 Lah, 84), that section 162 of the Code of the Criminal Procedure applies to the statements of persons examined as witnesses by the Police and not to the statement of an accused person, and that it does not modify or override the provisions of section 27 of the Indian Evidence Act in any way. Consequently a confession by an accused person to the Police, whether it has been reduced into writing or not, is admissible in evidence under section 27 of the Indian Evidence Act—if any fact is discovered as having been discovered in consequence of such a confession. As regards the extent to which such a confession can be proved. A.I.R. 1947 Privy Council 67, 1952, Supreme Court Reports 839 and AIR., 1954, Punjab 97 (F.B.) should be consulted,

Dying declaration excluded from operation of section 162, Cr.P.C.

8. It should be noted that dying declarations falling under section 32(1) of the Indian Evidence Act are excluded from the scope of section 162, Criminal Procedure Code.

Instructions for recording confession.

5. The following instructions are issued for the guidance of the Magistrates for recording confessions and statements under section 164 of the Code of Criminal Procedure. It is not intended to fetter any discretion given by the law to Magistrates as such, but it is only desired to indicate the directions under which such discretion may be exercised

- (a) Unless for exceptional reasons to be recorded in writing confessions should ordinarily be recorded in open court and during court hours.

(b) The examination of an accused person, immediately after the police brings him into court, is not desirable. Ordinarily; the

Magistrates should remand the accused to a sub-jail for a period of at least 24 hours before his statement is recorded.

Note.—Judicial lock-ups at out-lying Tehsil headquarters are hardly different from Police lock-ups and consequently remand should be to the nearest sub-Jail. It may be more convenient if in such a case confession is recorded by a Magistrate at the place where sub-jail is situate.

- (c) Before recording a confession the Magistrate should explain to the person making it that he is not bound to make a confession and that if he does so, it will be taken down and may thereafter be used as evidence against him. It should further be made clear to him that whether he makes or does not make a confession, he will not be sent back to the police custody, but will be sent to sub-jail, where the police or the investigating officer shall have no control over him. The fact that this has been done, should be recorded.
- (d) The Magistrate should invariably satisfy himself, by questioning the accused and by all means in his power, that the confession is voluntary. The Magistrate, may unless the accused objects, examine his body to ensure that no physical violence has been used. If there appear grounds for suspecting violence, he should have the accused examined. In the case of female accused and other suitable cases, a medical examination of the accused may be directed.
- (e) The provisions of Sections 163 and 164 of the Code of Criminal Procedure should be carefully complied with Sub-section (1) of section 163 of the Code of Criminal Procedure read with section 24 of the

Indian Evidence Act, provides that if a confession is caused by any such inducement, threat or promise,

offered or made, or caused to be offered or made by a police officer or person in authority in reference to the charge against the accused person, (then if in the opinion of the court the inducement, or threat or promise was) as is sufficient to give the accused person grounds which would appear to him reasonable for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, then unless in the opinion of the Court the impression caused by any such inducement, threat or promise has been fully removed, such confession is irrelevant, that is, it cannot be used as evidence in any criminal proceedings.

- (f) Under sub-section (2) of section 163 of the Code of Criminal Procedure for a confession of an accused person made in the course of a police investigation to have any value, it must be one which the accused person was disposed to make of his own free will. Before recording any such confession the Magistrate is bound to question the accused person to that effect and unless upon such Questioning he has reason to believe that the confession is voluntary, he should not make the memorandum required under section 164 at the foot of the record. He cannot say "I believe that this confession was voluntarily made" unless he has questioned the accused person and from that questioning, has formed the belief-not a doubtful attitude of mind. but a positive belief that the confession is a statement which the accused person was disposed to make of his own free will.
- (g) It is not desirable that any police officer should be present when a confession is being recorded under section 164, except such as may be necessary to secure the safe

custody of the accused person who, in the Magistrate's opinion, cannot safely be left to other attendants. In any case, it is undesirable that the police officer making the investigation should be present.

- (h) The Magistrate should invariably question the accused person as to the length of time during which he has been in the custody of the police. It is not sufficient to note the date and hour recited in the police papers, at which the accused person is said to have been formally arrested.

The Magistrate may usefully put the following questions to the accused :—

- (1) When did the police first question you?
- (2) How often were you questioned by the police?
- (3) Were you detained anywhere by the police before you were taken formally into custody, and if so, in what circumstances?
- (4) When were you taken into custody by the police and where were you detained till you were produced before me?
- (5) Were you urged or advised by the police to make a confessional statement?
- (6) Did the police or anyone else suggest to you that you will be taken as an approver?
- (7) Has the statement you offer to make been induced by any ill-treatment and, if so, by whom?
- (8) Do you fully realize that your statement is being recorded by a Magistrate and the statement which you are about to make may be used against you at your trial?
- (9) Why do you want to make a confessional statement?
- (10) The Magistrate should question the accused with a view to ascertain the exact circumstances in which his confession was made and the connection of the police with it.

It should be the endeavour of the court to record the confession inasmuch detail as possible, with a view to elicit information from which it could be judged whether it is freely made or is the outcome of some suggestion. Anything like a cross-examination of the accused is to be deprecated, but it is important that without any attempt at heckling or endeavour to entrap the accused, the Magistrate should record his statement with as much detail as possible. The more detailed a confession is the greater are the chances of correctly estimating its value, and it is also useful to know precisely how it came to be made, to what extent the police had anything to do with the accused prior to it. In the confession itself, fullest possible particulars of the incidents involved should be mentioned and so far as possible every question and every answer should be recorded in full.

(j) The Magistrate should add to the memorandum required by section 164, of the Code of Criminal Procedure, a statement, in his own hand of the grounds on which he believes that the confession is voluntary the precautions which he took to remove the accused from influence of the police and the time, in any, given to him for reflection

CHAPTER 13

Confessions and Statements of Accused Persons.

The provisions of sections 164, 342 and 364 of the Criminal Procedure Code with regard to the confessions and statements of accused persons should be carefully studied. Section 164 deals with the recording of statements and confessions at any stage before the commencement of an enquiry or trial. Section 342 deals with the examination of accused persons during the course of the enquiry or trial. Section 342-A now, enables the accused to appear as a defence witness during the trial and to give evidence on oath in disproof of the charges made against him or a co-accused. Section 364 prescribes the manner in which the examination of an accused person is to be recorded.

Statement of accused at various stages explained.

2. The object of section 164. Criminal Procedure Code, is to provide a method of securing a reliable record of statements or confessions made during the course of the Police investigation, which could be used, if necessary, during the enquiry or trial. Under section 25 of the Indian Evidence Act, a confession to a Police officer is inadmissible in evidence, and hence when an accused person confesses during the Police investigation the Police frequently get it recorded by a Magistrate under section 164 Criminal Procedure Code, and it can then be used to the extent to which it may be admissible under the Indian Evidence Act.

Use of confession of accused during Police recorded by Magistrate

3. Under section 80 of the Indian Evidence Act, a Court is bound to presume that a statement or confession of an accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate, is genuine, and that the certificate or note as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such statement or confession was duly taken. The words "taken in accordance with law" occurring in this section are very important and it is essential that in recording a statement or confession under section 164; the provisions of that section

Presumption attached to confessions recorded by Magistrate and its evidential value. Safeguards provided in law to obtain a voluntary and precisely recorded confession.

should be strictly followed. The evidential value of a confession depends upon its voluntary character and the precision with which it is reproduced and hence the section provides safeguards to secure this end. These safeguards are of great importance, as confessions are often retracted at a later stage and it becomes necessary for the Court to ascertain whether the alleged confession was actually and voluntarily made. The mere fact that a confession is retracted does not render it inadmissible in evidence, but the Court has to scrutinize any such confession with the utmost care and accept it with the greatest caution. It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars it is not prudent to base a conviction in a criminal case on its strength alone,—(Vide A.I.R. 1953 Supreme Court 459) unless from the peculiar circumstances under which it was made or judging from the reasons alleged or apparent, of retraction, there remains a high degree of certainty that the confession; notwithstanding its having been retracted, is genuine. (Vide 30 P.R. 1914 (cr.) and A.I.R. 1954 Supreme Court 4).

Important features
of section 164,
Criminal Procedure
Code

4. Some important features of section 164 are:—

- (a) Statements or confessions made in the course of an investigation can be recorded only by a Magistrate of the first class or a Magistrate of the second class who has been specially empowered by the State Government.
- (b) Confessions must be recorded and signed in the manner provided in section 364.
- (c) Before recording any such confession the Magistrate shall explain to the person making it that he is not bound to make a confession, and that if he does so it may be used in evidence against him.
- (d) No Magistrate shall record any such confession unless upon questioning the person making it he has reason to believe that it was made voluntarily, failure to question

has been held to vitiate the confession. (I.L.R. 2 Lahore 325)

- (e) The memorandum set forth in section 164(3) must be appended at the foot of the record of the confession.
- (f) It is not necessary that the Magistrate receiving or recording a confession or statement should be a Magistrate having jurisdiction in the case.

Note._ In districts in which the experiment of separation of Judiciary from the Executive is being tried the work relating to recording of confession and statements under section 164 of the Code and dying declarations should be done by Judicial Magistrate. (Punjab Government letter No. 16848-G-55/11327, dated the 16th February, 1956, to all Deputy Commissioners in Punjab).

[8] “5. The following instructions are issued for the guidance of the Magistrates for recording confessions and statements under section 164 of the Code of Criminal Procedure. It is not intended to fetter any discretion given by the law to Magistrates as such, but it is only desired to indicate the directions under which such discretion may be exercised:-

- (a) Unless for exceptional reasons to be recorded in writing, confessions should ordinarily be recorded in open court and during court hours.
- (b) The examination of an accused person, immediately after the police brings him into court, is not desirable. Ordinarily, the magistrates should remand the accused to a sub-jail for a period of at least 24 hours before his statement is recorded.

Note:- Judicial lock-ups at out-lying Tehsil headquarters are hardly different from police lock-ups, and, consequently remand should be the nearest sub-jail. It may be more convenient if in such a case confession is recorded by a Magistrate at the place where the sub-jail is situate.

- (c) Before recording a confession the Magistrate should explain to the person making it that he is not bound to make a confession and that if he does so, it will be taken down and may thereafter be used as evidence against him. It should further be made clear to him that whether he makes or does not make a confession, he will not be sent back to the police custody, but will be sent to sub-jail, where the police or the investigating officer shall have no control over him. The fact that this has been done should be recorded.
- (d) The Magistrate should invariably satisfy himself, by questioning the accused and by all means in his power, that the confession is voluntary. The Magistrate may, unless the accused objects, examine his body to ensure that no physical violence has been used. If there appear grounds for suspecting violence, he should have the accused examined by a Medical Officer, if possible. In case of female accused and other suitable cases, a medical examination of the accused may be directed.

- (e) The provisions of sections 163 and 164 of the Code of Criminal Procedure, should be carefully complied with. Sub-section (1) of section 163 of the code of Criminal Procedure, read with section 24 of the Indian Evidence Act, provides that if a confession is caused by any such inducement, threat or promise, offered or made, or caused to be offered or made by a police officer or person in authority in reference to the charge against the accused person (then if in the opinion of the court the inducement or threat or promise was) as is sufficient to give the accused person grounds, which would appear to him reasonable for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, then unless in the opinion of the Court the impression caused by such inducement, threat or promise has been fully removed such confession is irrelevant, that is, it cannot be used as evidence in any criminal proceedings.
- (f) Under sub-section (2) of section 163 of the Code of Criminal Procedure, for a confession of an accused person made in the course of a police investigation to have any value, it must be one which the accused person was disposed to make of his own free will. Before recording any such confession the Magistrate is bound to question the accused person to that effect, and, unless upon such questioning he has reason to believe that the confession is voluntary, he should not make the memorandum required under section 164 at the foot of the record. He cannot say "I believe that this confession was voluntarily made" unless, he has questioned the accused person, and from that questioning has formed the belief not a doubtful attitude of mind, but a positive belief, that the confession is a statement which the accused person was disposed to make of his own free will.
- (g) It is not desirable that any police officer should be present, when a confession is being recorded under section 164, except such as may be necessary to secure the safe custody of the accused person who, in the Magistrate's opinion, cannot safely be left to other attendants. In any case, it is undesirable that the police officer making the investigation should be present.

- (g) The Magistrate should invariably question the accused person as to the length of time during which he has been in the custody of the police. It is not sufficient to note the date and hour recited in the police papers, at which the accused person is said to have been formally arrested.

The Magistrate may use fully put the following questions to the accused:-

1. When did the police first question you ?
2. How often were you questioned by the police ?
3. Were you detained anywhere by the police before you were taken formally into custody, and if so, in what circumstances?
4. When were you taken into custody by the police and where were you detained till you were produced before me?
5. Were you urged or advised by the police to make a confessional statement?
6. Did the police or anyone else suggest to you that you will be taken as an approver?
7. Has the statement you offer to make been induced by any ill-treatment, and if so, by whom?
8. Do you fully realize that your statement is being recorded by a Magistrate and the statement which you are about to make may be used against you at your trial?
9. Why do you want to make a confessional statement?
 - i. (i) The Magistrate should question the accused with a view to ascertain the exact circumstances in which his confession was made and the connection of the police with it. It should be the endeavour of the court who record the confession in as much detail as possible, with a view to elicit information from which it could be judged whether it is freely made or is the outcome of some suggestion. Anything like a cross-examination of the accused is to be deprecated, but it is important that without any attempt at heckling or endeavour to entrap the accused, the Magistrate should record his statement with as much detail as possible. The more detailed a confession is, the greater are the chances of correctly estimating its value, and it is also useful to know precisely how it came to be made, to what extent the police had anything to do with the accused prior to it. In the confession itself, fullest possible particulars of the incidents involved should be mentioned and as far as possible, every question and answer should be recorded in full.

- (j) The Magistrate should add to the memorandum required by section 164 of the Code of Criminal Procedure, a statement, in his own hand, of the grounds on which he believes that the confession is voluntary, the precautions which he took to remove the accused from influence of the police, and the time, if any, given to him for reflection.”}

[9] 6. The confession should be recorded in the following forms : —

Form of recording confession made by an accused person before

Magistrate of the _____ Class.
Taluka _____ / Sub-Division _____ District _____
(i) The accused _____ is brought
by _____
(Sub) Inspector _____ Court _____
Police _____ before me at my _____ at
(here _____
Head Constable _____ Camp _____
_____ A.M.
enter the time) _____ to have his confession
recorded, a letter _____ P.M.
_____ from (here give the officer's designation)

Memo.
given to me is dated _____ and is
attached to the _____
Here _____ } record. I have ascertained that the
enter the _____ } offence was, committed at _____ on
name of _____ } _____ at _____ A.M.
place, _____
day and _____

peon

(ii) The accused is placed in custody of my _____ and
armed police Constable

(Sub) Inspector

the Police _____ is directed to leave the premises.

Head Constable

I have satisfied myself that there is no policeman in the Court or in any place whence the proceedings could be seen or heard except such armed police constables not concerned in the investigation of the crime as are necessary to guard the accused.

(iii) The accused is asked if he is disposed to make confession of his own free will.

He replies as follows:—

(iv) The body of the accused is examined without his objection. The result of the examination is as follows, namely:—

(v) The accused is asked to give details as to the length of time during which and the places where he has been in the custody of the police. He replies as follows : —

*State, time in
accused's own
language

"I was arrested * _____
_____ P.m.

on _____ in the village I was
Town of
City

Give place,
time and day. }

taken to _____ at _____ on _____

Insert time in
accused's own
language also }

I was sent to you from _____ at _____
on _____."

(vi) Herein give the question specified in clause (h) of the preceding paragraph as well as the answer given to each question by the accused.

Q. _____

A. _____

Q. _____

A. _____

Statement of accused.

(Sd.) . . ,
Magistrate.}

I have explained to _____ that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that his confession was voluntarily made. It was taken in my presence and hearing and was read over the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Dated.

(Sd.). .

. .

Magistrate.

The accused has been forwarded to Sub-jail _____

Magistrate.

7. An accused person who has made confession before a Magistrate should be sent to the judicial lock up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required, and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced before a Magistrate for the purposes of making a confession, has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution he should not be remanded to Police custody.

Accused who has made a confession should not be kept in Police Custody, but, should be kept in Judicial lock-up separate from other prisoners.

*Note:- In districts in which the experiment of separation of judiciary from the executive is being tried, the confession should be recorded by a Judicial Magistrate. (Punjab Government letter No. 16848-G-55/11327, dated the 16th February, 1956.).

8. When remanding to the lock-up an accused person who has made a confession, the Magistrate shall record an order for him to be kept separate from other prisoners as far as may be practicable.

Accused can be examined to explain the prosecution evidence against him and not to fill up gaps in that evidence

9. Section 342 of the Code empowers the Court to put questions to the accused at any stage of enquiry or trial to enable him to explain any circumstances appearing in evidence against him. The questions put under this section must be confined to the points brought out in the evidence and should not be in the nature of cross-examination of the accused person, Nor should the power given by the section be used to elicit information from the accused to fill up gaps in the prosecution evidence (Vide. I.L.R, 4 Lah, 55), For, the conviction of an accused person can only be based on the evidence produced by the prosecution. No oath can be administered to the accused when he is examined under section 342 and the answers given by him can only be taken into consideration in explanation of the prosecution evidence.

Accused can be questioned generally on the case only after prosecution evidence has been finished.

10. The Magistrate is allowed by section 342 of the the Code of Criminal Procedure to examine the accused at an early stage of the case for the Purpose of enabling him to explain any circumstances appearing in the evidence against him. This provision is intended for the benefit of the accused, and must not be used to elicit his defence before the prosecution evidence is complete. Magistrates sometimes question the accused generally on the case as soon as *a prima facie* case has been made out, but before the prosecution evidence is complete. This is incorrect. According to the second part of clause (1) of section 342, it is only after the completion of the prosecution evidence that the accused can be questioned generally on the case. The necessity for postponing such examination is not avoided by framing a charge at an early stage.

Failure to examine accused at the close of prosecution evidence vitiates the trial.

Even when a charge has been framed, the Magistrate should wait until the prosecution evidence is concluded before making a general examination of the accused.

11. Section 342 makes it obligatory for a Court to examine the accused generally on the case after the witnesses for the prosecution have been examined and before the accused is called for his defence. Even

when an accused person has been examined at an earlier stage the court must examine the accused generally after the close of the prosecution case and before the accused is called upon to produce his defence, so as to give him an opportunity to explain any points, which were not included in the questions put to him at earlier stages. Failure to examine the accused at the close of the prosecution evidence has been held to be an illegality which vitiates the trial (*vide* 7 I.L.R. Lahore 564).

12. The mandatory provisions of section 342 of the Code of Criminal Procedure apply as much to Sessions Judges as to Magistrates. Even when the Committing Magistrate has complied with the requirements of this section, it is not sufficient for the Sessions Court to refer to the statement of the accuse as recorded by the Committing Magistrate and the Sessions Judge must make independent enquiry from the accused in the manner provided in the section.

Vide, 1951 Supreme Court Reports 729.

13. Under sections 251A (8) and 256 of the Code, if the accused person puts in a written statement, it should be filed with the record. But a written statement of this kind does not relieve the Court of the duty of examining the accused in Court after the close of the prosecution evidence as laid down in section 342.

Written statement
of accused.

There should be no reading out of written statements by accused persons, but in Sessions and Jury trials so much of the statements as shall appear to the Sessions Judge to be relevant, shall be read to the jury.

14. Section 364 provides the mode in which the examination of an accused person is recorded. The questions put to the accused and the answers given by him should be distinctly and accurately recorded but the accused must confine himself to relevant answers to the questions asked by the Court. Section 364 does not prevent a Court from refusing to record irrelevant answers to questions put by it to the accused

Mode of recording
examination of
accused

under section 342. If necessary, the Court may even prevent the accused making lengthy irrelevant answers. The examination of the accused should be recorded in the language in which he is examined, and if that is not practicable in the language of the Court or in English. In cases in which examination is not record by the Magistrate or Judge himself he must record a memo. Thereof in the language of the Court or in English if he is sufficiently acquainted with the latter language. The examination must be read over to the accused and made conformable to what he declares to be the truth. The Magistrate or judge must then certify under his own hand that the examination was taken down in his presence and hearing, and that the record contains a full and true account of what was stated.

When evidence may be led to prove that accused duly made the confession or statement.

15. Under section 533 of the Code, if any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is intended to be or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it must take evidence that such person duly made the statement recorded and such a statement may then become admissible in evidence notwithstanding the provisions of section 91 of the Indian Evidence Act, provided the error has not prejudiced the accused as to his defence on merits.

Instructions about recording confessions.

16. (i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates recording confessions (Punjab Government *circular letter No, 6091-J -36/39829 (H.—Judl), dated the 19th December, 1936, to all District Magistrates in the Punjab*):—

Confession recorded should not be handed over to the Police.

[10]* (a) The Magistrate who records a confession under section 164, Criminal Procedure should not hand over the document after ever completion to the Police officer incharge of the prisoner, but should forward it as required by sub-section (2) of that section direct to the Magistrate by whom the case is to be enquired into or tried.

Copy of recorded confession may be given to any Police.

*(b) These instructions do not prohibit a Magistrate who has recorded a confession or statement from allowing the Police to take a copy of it before it is forwarded to the trial Magistrate, and Magistrates should always permit the Police to take a

copy if they express a desire to do so. When permission is so given the Police copy should be written out by a Police officer or clerk from the dictation of an officer of the court, in the actual presence of the Magistrate who recorded the confession.

Time and labour can be saved if the Magistrate recording a confession makes a carbon copy which can subsequently be made available for Police purposes, or alternatively dictates a copy to an official of the court at the same time as he himself writes the original.

17. Section 342A, inserted in the Code by Act No. 26 of 1955, provides that an accused person shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial. This, however, is subject to the exception that the accused shall not be so examined except on his own request in writing. Moreover the court or any of the parties cannot make the failure of the accused to put himself in the witness box a subject of any comment or presumption against the accused or any person charged with him at the same trial.

CHAPTER 13 Part-A**DYING DECLARATIONS**

1. Statements made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death are themselves relevant facts and admissible in evidence under section 32(1) of the Indian Evidence Act in cases in which the cause of that person's death comes into question. A Statement commonly known as "dying declaration" constitutes such an important evidence in criminal cases that their Lordships of the Supreme Court ruled in *Khushal Lal vs. State of Bombay* (A.I.R. 1958 S.C. 22), which was followed in *Harbans Singh vs. The State* (A.I.R. 1962 S.C. 439) that it could form the sole basis of conviction. It is thus necessary that a Court trying the case should have before it a correct and faithful record of the statement made by the dead person. As far as possible the dying declaration should be recorded in the manner hereinafter prescribed, and in the event of death of the person making it, should be submitted at the enquiry or trial.

2. (1) Where a person whose evidence is essential to the prosecution of a criminal charge or to the proper investigation of an alleged crime, is in danger of dying before the enquiry proceedings or the trial of the case commences, his statement, if possible, be got recorded by a Judicial Magistrate. When the police officer concerned with the investigation of the case or the medical officer attending upon such person apprehends that such person is in the danger of dying before the case is put in Court, he may apply to the Chief Judicial Magistrate, and, in his absence, to the senior most Judicial Magistrate present at the headquarters, for recording the dying declaration.

Dying declarations
to be recorded by
Judicial Magistrates

(2) On receiving such application, the Judicial Magistrate shall at once either himself proceed, or depute some other stipendiary Judicial Magistrate to record the dying declaration.

3. Before proceeding to record the dying declaration, the Judicial Magistrate shall satisfy himself that the declarant is in a

Fitness of the
declarant to make
the statement
should be got
examined

fit condition to make a statement, and if the medical officer is present, or his attendance can be secured without loss of time, his certificate as to the fitness of the declarant to make a statement should be obtained. If, however, the circumstances do not permit waiting for the attendance of the Medical Officer, the Judicial Magistrate may in such cases proceed forthwith to record the dying declaration but he should note down why he considered it impracticable or inadvisable to wait for a doctor's attendance.

The statement of the Declarant should be in the form of a simple narrative.

4. The statement, whether made on oath or otherwise, shall be taken down by the Judicial Magistrate in the form of a simple narrative. This, however, will not prevent the Judicial Magistrate from clearing up any ambiguity, or asking the declarant to disclose the cause of his apprehended death or the circumstances of the transaction in which he sustained the injuries. If any occasion arises for putting questions to the dying man, the Judicial Magistrate should record the questions as also the answers which he receives. The actual words of the declarant should be taken down and not merely their substance. As far as possible the statement should be recorded in the language of the declarant or the Court language.

Signatures or thumb impression of the Declarant to be obtained in token of the correctness of the statement.

5. At the conclusion of the statement, the Judicial Magistrate shall read out the same to the declarant and obtain his signature or thumb-impression in token of its correctness unless it is not possible to do so. The dying declaration shall then be placed in a sealed cover and transmitted to the Judicial Magistrate having jurisdiction to deal with the case to which it relates.

Recording of Dying Declarations at a place away from the District Headquarters.

6. Where in an emergency a dying declaration has to be recorded at a place away from the District headquarters the investigating officer or the medical officer attending upon the dying man shall apply to the nearest Judicial Magistrate to record the dying declaration, and such Judicial Magistrate shall immediately proceed to the spot and take down the statement of the dying man in the manner stated above.

This however would not prevent the medical officer or the police officer connected with the investigation of the case from

recording the dying declaration if he is of the opinion that death is imminent and there is no time to call a Judicial Magistrate. In such cases the police or the medical officer concerned must note down why it was not considered expedient to apply to a Judicial Magistrate for recording the dying declaration or to wait for his arrival.

7. Where a dying declaration is recorded by a police officer or a medical officer, it shall, so far as possible, be got attested by one or more out of the persons who happen to be present at the time.

Recording of a Dying declaration by a police officer or medical officer.

8. The Judicial Magistrate or other officer recording a dying declaration shall at the conclusion of the dying declaration certify that declarant was fit to make a statement and it contained a correct and faithful record of the statement made by him as well as of the questions, if any, that were put to him by the person recording the statement. If the accused or his counsel happens to be present at the time of dying declaration is recorded, his presence and objection, if any raised by him shall be noted by the Judicial Magistrate or the Officer recording the dying declaration, but the accused or his counsel shall not be entitled to cross-examine the declarant.

Fitness of the Declarant to make a statement to be certified by the Judicial Magistrate or other officer concerned.

9. It is the duty of the person recording a dying declaration to take every possible precaution to ensure the making of a free and spontaneous statement by the declarant without any prompting, suggestion or aid from any other person.

Dying Declaration should be a free and spontaneous.

10. The Judicial Magistrate, medical officers and police officials must all realize that the welfare of the injured man should be their first consideration, and in no circumstances must the proper medical treatment be impeded or delayed simply to obtain the dying declaration of the injured man. (Pamphlet No. 2 dated 3rd July, 1966).

Welfare of the injured persons.

CHAPTER 14.

Approvers

The term "aprover" is neither defined nor used in the Criminal Procedure Code, but is usually applied to a person, supposed to be directly or indirectly concerned in or privy to an offence to whom a pardon is granted under section 337 of the Code with a view to securing his testimony against other persons guilty of the offence. The procedure laid down in section 337 has often to be resorted to in this State in cases of organised crime like dacoities, when no independent evidence is available to bring the offenders to book.

Definition.

2. The scope of section 337 has been widened by the amendments made by Act No. 26 of 1955. Now besides the other offences specified in sub-section (1), a tender of pardon can be made in cases of all offences punishable with imprisonment of seven years or more. A Magistrate exercising powers inferior to those of a Magistrate of the first Class cannot tender a pardon, and a Magistrate of the first class can do so only if the case is under inquiry or trial by him or (with the sanction of the District Magistrate) if he has jurisdiction in the place where the offence might be tried or inquired into, and it is still under investigation.

When
pardon may
be tendered
and by
whom.

3. The reasons for tendering a pardon to any person must be stated.

Reasons for ten-
dering pardon
should be recorded
and extent of
pardon explained
to the intended
approver.

In all cases in which a pardon is tendered, the intended approver should always be made clearly to understand the extent of the pardon offered to him, it should be explained to him that he is being tendered a pardon and will not be prosecuted in respect of such and such a case, and no others.

4. When a Magistrate has tendered a pardon to any person and examined such person, the case cannot be tried by any Court other than the High Court or the Court of Session or in cases of offences punishable under section 161 or 165-A of the Indian Penal

Only High court or
Sessions Court or
Special Judge to
try cases in which
pardon has been
tendered.

Code or under the Prevention of Corruption Act, 1947 (II of 1947) by any Court other than the Special Judge appointed under the Criminal Law Amendment Act, 1952 (XLV of 1952).

Testimony of an approver generally requires corroboration for conviction.

5. The evidence of an approver being that of an accomplice is *prima facie* of a tainted character, and has therefore to be scrutinised with the utmost care and accepted with caution [cf. 2 P.R. 1917 (Cr.)]. As a matter of law, pure and simple, a conviction is not bad merely because it proceeds upon the uncorroborated testimony of an accomplice (*vide* section 133 of the Indian Evidence Act.) But it has now become almost a universal rule of practice not to base a conviction on the testimony of an accomplice unless it is corroborated in material particulars. As to the amount of corroboration which is necessary, no hard and fast rule can be laid down. It will depend upon various factors, such as the nature of the crime, the nature of the approver's evidence, the extent of his complicity and so forth. But as a rule corroboration is considered necessary not only in respect of the general story of the approver, but in respect of facts establishing the prisoner's identity and his participation in the crime.

The danger of accepting approvers' evidence without corroboration should be pointed out to the jury.

6. In cases tried with the aid of a jury, the evidence of an approver should not be left to the jury without such directions and observations from the Judge as the circumstances of the case may require, pointing out to them the danger of accepting such evidence in the absence of corroboration. The omission to do so is an error in summing up and is on appeal a ground for setting aside a conviction when the Appellate Court thinks that the prisoner has been prejudiced thereby and there has been a failure of justice.

If approver gives false evidence he can be tried for the offence and also for perjury.

7. An approver is under the condition of his pardon bound to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor in the commission thereof. If the approver fails to comply with this condition and gives false evidence, he is liable

to be prosecuted for the offence in respect of which pardon was granted and also for perjury. He, cannot, however, be tried for the former offence except upon a certificate granted by the Public Prosecutor as laid down in section 339. Sanction of the High Court is necessary for his prosecution for giving false evidence. An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the State and not by a letter of reference (cf. 10 P.R. 1904).

8. An approver accepting a pardon under section 337, Criminal Procedure Code, has to be "detained in custody" until the termination of the trial. The word "custody" as used in section 337(3), Criminal Procedure Code has not been defined anywhere in the Code, but the High Court has held recently that this "custody" means judicial and not Police custody. The detention of an approver, therefore, must be in a judicial lock-up under the orders of the Court. The practice of detaining approvers in Police custody is not correct.

Approvers
should be
kept in judi-
cial custody
until close of
trial.

CHAPTER 15.

Proceedings against Absconders and Record of
Evidence in their absence.

PART A.—MEASURES TO ENFORCE APP BN FARANCE.

1. Sections 87 and 88 of the Code of Criminals Procedure provide for the attachment and sale of the property of any accused person or witness whose presence is required by a Criminal Court as a last remedy for compelling his attendance. The procedure laid down must be strictly followed, otherwise the attachment and subsequent sale will be liable to be set aside. The proper forms for the proclamation, attachment etc., to be used in such proceedings are given in Schedule V of the Code.

Attachment
and sale of
property.

2. No proclamation can issue under section 87 unless a warrant has issued in the first instance and the Court has reason to believe that the person against whom it was issued has absconded or is concealing himself so that such warrant cannot be executed. The proclamation must fix a date for the appearance of the person at a specified place and that date must be not less than thirty days from the date of the publication of the proclamation. The proclamation must be published in the manner specified in sub-section (2) of section 87, and the Court should be careful to record the statement as regards the due publication of the proclamation as required by sub-section (3) of that section. The Court has the discretion to issue an order for attachment of property simultaneously with the issue of a proclamation. Section 88 (as amended in 1923) now provides for the summary investigation of claims of objectors to the attachment by Magistrates. The decision of the Magistrate can be challenged by a civil suit within a year.

Proclamation

3. If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment remains "at the disposal of

Consequences of
non-appearance of
proclaimed person.
Sale of property.

Government". It can be sold at once at the discretion of the Court when it is liable to speedy decay if the Court considers that the sale would be for the benefit of the owner. But, otherwise it cannot be sold until the expiration of six months from the attachment and until the disposal of claims of objectors (if any) by the Magistrate.

Directions for sale. Only life interest can be sold in certain cases.

4. In conducting sales, the interest of the absconding person in the attached property which is to be sold should be clearly specified so as to avoid complications in the future. It has been held by a Full Bench of the Punjab Chief Court that only the life-interest of an absconder governed by agricultural custom in ancestral immovable property can be sold under section 87-88, Criminal Procedure Code. As a result the reversioners of the absconder have a right to claim such property after the death of the absconder. (Sec 18 P. R. 1908 F.B., 52 P.R. 1915).

Property or its proceeds may be given to absconder if he appear before Court.

5. If the absconder appears or is apprehended and brought before the Court within two years from date of the attachment of his property and satisfies the Court *(i)* that he did not abscond or conceal himself for the purpose of evading execution of the warrant and *(ii)* that he had no such notice of the proclamation as could enable him to attend within the specified time, he can get the property back or its net proceeds if it has been sold (section 89).

PART B.—RECORD OE EVIDENCE IN THE ABSENCE OF THE
ACCUSED.

The provisions of the Code of Criminal Procedure in regard to the taking and recording of evidence in the absence of accused persons are important and should not be overlooked.

Introductory.

2. Section 512(1) provides that whenever it is proved that an accused person has absconded and there is no immediate prospect of arresting him, any Court competent to try or commit such person for trial for the offence complained of may, in his absence, examine the witnesses produced for the prosecution and record their depositions, and such depositions may, on the arrest of the accused person, be used in evidence against him, if the deponent is dead or is incapable of giving evidence, or his attendance cannot be conveniently procured. It is also to be noted in connection with this that section 164 enables a Magistrate to record, in the same manner as evidence, any statement regarding an offence made by an accused person whomsoever it may implicate.

Evidence recorded in evidence of the absconding accused may be used against him in certain cases.

3. Proceedings under section 512 should commence by evidence being taken and recorded (1) that the accused person has absconded, and (2) that due pursuit having been made there is no immediate prospect of arresting him.

Proceedings under Section 512.

4. In cases where the crime has terminated fatally, or where medical evidence would ordinarily be required at the trial the evidence of the medical officer as to the cause of death or as to the injuries inflicted, should invariably be recorded.

Medical evidence should be recorded in some cases.

5. In cases where the crime has been committed by some persons unknown and the offence is punishable with death or imprisonment for life, the High Court may order an inquiry similar to that under section 512 (1) of the Code and statements recorded in that inquiry can be used as evidence against the offender subsequently discovered.

Confession by
accused implicating
an absconder cannot
be used after the
execution of the con-
fession case.

6. It should be remembered that confessions by accused persons, who have been executed, implicating an absconder cannot, be used after the execution of the confessor against the absconder, when the latter is found and placed upon his trial, as he is not being tried in a joint trial with the other, and has had no opportunity to cross-examine. (*See* section 30 of the Indian Evidence Act, 1872).

CHAPTER 16

Extradition and Foreign Jurisdiction
(Criminal Courts).

PART A.—EXTRADITION FROM BRITISH INDIA.

Extradition means the surrender of a fugitive offender by one State to another in which the offender is liable to be punished or has been convicted. The law of extradition is based on the broad principle that it is in the interests of all nations that crimes recognised as such by the civilized world should not go unpunished.

Definition.

2. The Indian Extradition Act, 1903, deals with the surrender of fugitive criminals to States outside the British Empire. The Fugitive Offenders Act, 1881, 44 and (45 Victs. 69) deals with the surrender of fugitive offenders as between British possessions.

Laws applicable.

3. The Indian Extradition Act, 1903, defines a "Foreign State" as a State to which the English Extradition Acts, 1870 and 1873, apply. These are certain foreign countries (mostly in Europe and America) with which the British Government has entered into extradition treaties and to which the English Extradition Acts have been applied by an Order-in-Council. The procedure for surrender of fugitive criminals to such "Foreign States" is laid down in Chapter II of the Indian Extradition Act (which has been declared a part of the English Extradition Act, 1870, by an Order-in-Council, -vide the appendix to this Chapter), while the procedure for surrender to States other than "Foreign States" is laid down in Chapter III of that Act. In the case of States other than "Foreign States" the procedure varies according as there is or is not an extradition treaty with the State concerned. If there is such a treaty, the procedure in Chapter III must be followed subject to the provisions of the treaty (*vide* section 18). If there is no treaty, the procedure laid

Procedure for
surrender of
fugitives to
Indian and
Foreign states.

wn in Chapter III will prevail. The Indian States come under the class of States dealt with in Chapter III and the procedure laid down in that chapter will therefore apply to them except in so far as it may have been modified or superseded by the provisions of a treaty (if any) with the State concerned.

Arrest and de-
tention of "fugitive
criminal" of Foreign
States.

4. In the case of "Foreign States" extradition of a "fugitive criminal" can be only obtained in respect of an "extradition crime," i.e., a crime specified in the first schedule of the Extradition Act, 1870,—(vide definition of a "fugitive criminal" in the English Extradition Act, 1870), and on a requisition by the State concerned. Section 4 enables Magistrates to arrest "fugitive criminals" within their jurisdiction in certain circumstances, but they are required to report the arrest at once to the Government and are not empowered to take further action unless they receive an order from the Government for an inquiry under section 3, sub-section 1. An order for inquiry under that, sub-section can only be issued on a requisition from the State concerned. No person can be detained in custody for more than two months unless such an order is received from the Government, and the fugitive may apply to the High Court for his release, if detained longer without such order.

Procedure in
case of fugitives
from Indian
States.

5. In cases falling under Chapter III also, similar procedure is prescribe, but the requisition can be made in respect of a person accused of having committed any "offence" in the territories of the State concerned. (*vide* section 9), In the case of States for which there is a Political Agent* the requisition must be made through such an Agent.

*Note.—The expression "Political Agent" is not defined in the Indian Extradition Act. It is defined in the General Clauses Act, 1897, as follows:—

"Political Agent" shall include-

- (a) the principal officer representing the Crown in any 'territory or place beyond the Limits of British India; and
- (b) any office 'appointed to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition.

Section 10 empowers Magistrates to arrest such persons found within their jurisdiction, in certain circumstances specified in the section, but here again the Magistrates must report their action to the Government or to the Political Agent, when there is such an Agent for the State concerned and the person arrested cannot be detained in custody for more than two months without the sanction of the Government unless an order for inquiry is issued under section 9 or a warrant of arrest is issued by the Political Agent.

6. A warrant of arrest under section 7 can be issued by a Political Agent only if the following conditions are fulfilled:-

- (i) The State for which the Political agent is appointed is not a "foreign state".
- (ii) The offence is an "extradition offence." i.e., an offence specified in the First Schedule of the Indian Extradition Act, 1870.
- (iii) The person accused is not a European British subject (as defined in the Code of Criminal Procedure).

Warrant of arrest by Political Agents: Reference to Government and release of accused on bail.

A warrant of arrest issued by a Political Agent under section 7 is sufficient authority for the arrest of the offender and his surrender to the State according to the tenor of the warrant. The District Magistrate to whom the warrant is issued has no authority to question the legality of the warrant or to make any inquiry (*vide* 7 I.L.R. Lahore, page 159) but he is authorised to record the statement of the accused person and has the discretion under section 8-A to make a reference to the Provincial Government in the matter if he thinks it fit to do so and in the meantime he can release the accused person on bail. The latter section can be properly resorted to when, for instance the District Magistrate finds the warrant to be defective (e.g., on account of its having been issued against a European British subject* or for a non-extradition offence, etc.) or there are other good reasons for not surrendering the accused person to the State.

7. The surrender of fugitive offenders as between "British possessions" is governed by the Fugitive offenders Act, 1881, read with Chapter IV of the

Surrender of fugitives as between British possessions.

Indian Extradition Act. By an Order-in-Council, Chapter IV has been recognised as a part of the Fugitive Offenders Act, 1881, (*vide* appendix). That Act is divided into two parts and the procedure varies according as the British possessions concerned are grouped together or not for the purposes of the Act. The Procedure in Part II applies in the case of possessions which are grouped together and is comparatively simpler.

PART B.—EXTRADITION TO BRITISH INDIA.

Extradition of fugitive offenders who have fled from British India to other States is a matter governed by political and administrative consideration and not by legislation—except where the State to which the offender has fled is a British possession. In the latter case extradition is governed by the Fugitive Offenders Act 1881. The offences committed in British India to which the Act applies are piracy, treason, and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term of twelve months or more or with any greater punishment (*vide* section 19 of the Indian Extradition Act, 1903).

When extradition from British possessions and other states is possible.

2. With a view to ensure regularity of procedure in cases where an offender has fled to a British possession it is directed that the powers of issuing and endorsing warrants and of issuing and endorsing summons and the powers generally conferred upon Magistrates by the Fugitive Offenders Act, 1881, should, as a rule be exercised, by the District Magistrate himself, or in cases of necessity, by only those subordinate Magistrates of the first class who are acquainted with English.

Authority competent to issue summons, warrants, etc.

3. Evidence should be taken that the person against whom the warrant is applied for has absconded then evidence that an offence has been committed by such person should be faithfully and minutely recorded under section 512 of the Code of Criminal Procedure. If upon such evidence the Court issues a warrant, the warrant should be in the form prescribed by section 75 and directed as required by section 77. Evidence should be taken showing clearly that the offence charged is one to which the Fugitive Offenders Act applies, or at least a certificate from the Magistrate should be appended to the warrant clearly showing that the offence charged is of that description. All the evidence should be taken, if possible, in the presence of the Police officer to whom the warrant is addressed, and to whom it is desired that the fugitive offender should be delivered.

Procedure

Procedure

4. A copy should be made of every deposition and every documentary exhibit; and each copy should contain a declaration, signed by the Magistrate as such, that it is a true copy of the deposition taken by himself or an exhibit produced to him, as the case may be. The whole of the copy of the record thus made should then be entrusted to the Police officer to whom the warrant is addressed, who will be in a position authenticate every portion of it when produced by him in the possession in which the fugitive offender is.

Procedure where evidence is not taken in the presence of Police Officer entrusted with the execution of warrant.

5. When the presence of the Police officer, who is to execute the warrant, cannot be obtained at the proceedings referred to, then each copy must, before being entrusted to the Police officer, be sealed with the of seal of the Governor of the State in which the proceedings were held. Although when the documents can be authenticated by the oath of a witness in the possession from which it is desired to procure the delivery of the offender, the seal of the Governor is not essential, it is expedient that the seal should be affixed whenever it can be conveniently done.

Identifying accused.

6. If the Police officer entrusted with the execution of the warrant is unable to identify the accused he should be accompanied by some person able to identify the accused.

Approval of District Magistrate required when subordinate Magistrate takes action.

7. The approval of the District Magistrate should be obtained by Subordinate Magistrates where action under the Fugitive Offenders Act, 1881, seems requisite, and ordinarily action should be taken only by the District Magistrate himself: if this is not feasible, then by a Magistrate who knows English.

Evidence as to nature of offence when offender is to be obtained from United Kingdom.

8. In all future applications for the removal of an offender from the United Kingdom under the Fugitive Offenders Act, 1881 (44 and 45 Vict., Chap. 69), it must be proved by evidence that the acts with which the accused is charged amount, under the law in force in the British possession from which the application for his rendition has been received, to an

offence punishable by 12 months imprisonment with hard labour or some greater punishment

9. The most convenient method of complying with these instructions will be to arrange that all applications of the nature in question shall be accompanied by the deposition of a judge, advocate, barrister, solicitor or any official in a position from which the knowledge of the law may be presumed, duly authenticated in the manner provided for by section 29 of the Fugitive Offenders Act, and containing the necessary evidence. The course indicated above should ordinarily be followed in future.

Evidence of a person having legal knowledge is advisable.

10. A deposition should also be taken of the following facts from any person competent to prove them:—

Evidence as to other matters.

- (1) The statute under which the charge is brought.
- (2) That such enactments is still in force.
- (3) That the facts charged if established by evidence constitute the offence dealt with by such statute.
- (4) That the offence dealt with in such statute is punishable in the territory by some punishment within the terms of Section 9 of the Fugitive Offenders Act. 1881.

11. Cases may occur in which the adoption of the above mentioned course would not be quite suitable. In such cases, since a point of Indian law may also be proved by oral evidence; arrangements can, if necessary, be made for the attendance of any competent witness who happens to be available in England at the time (e.g., judicial officers employed in India who are at home on leave, Advocates of the Indian High Courts, etc.) who would be able to furnish the necessary evidence.

Evidence of witnesses available in England may be suitable in some cases.

12. Extradition from States outside the British Empire is governed generally by treaties with the States concerned. In the case of the more important States such treaties exist.

Extradition from states outside British Empire.

Extradition from
Indian : States
Extradition from
parts of India to
which the Act
does not extend.

13. The most common class of cases occurring in British India are those where the offender escapes into an Indian Native State. For the procedure to be followed in cases where extradition is sought from Indian States see Punjab Government Consolidated Circular No. 20.

PART C.—JURISDICTION OF CRIMINAL COURTS IN
REGARD TO OFFENCES COMMITTED BEYOND THE
LIMITS OF BRITISH INDIA.

1. Section 188 of the Code of Criminal Procedure renders British subjects and servants of the Crown liable to be tried in British India or offences committed beyond the limits of British India in certain cases.

Persons
liable to be
tried.

2. When the acts has been committed in British territory the nationality of the offender does not, of itself, prevent him from being subject to the law of India and the jurisdiction of its Courts, and the locality of the act is comparatively unimportant. But when the act has been committed beyond the limits of British India, it is necessary to ascertain whether the accused is or is not-

- (i) a Native Indian subject of His Majesty, or
- (ii) a British subject or
- (iii) a servant of the Crown.

The locality to the act varies in importance according as the accused falls under one or the other of the above categories.

3. A person, who is not a British subject, is ordinarily not bound by the law of India and is not subject to the jurisdiction of its Courts in respect of an act done by him outside British India. But an exception is created in the case of a servant of the Crown in respect of offences committed by him in the territories of any Native Prince or Chief. For such offences, a servant of the Crown, whether he is a British subject or not; is liable to be tried" in British India. Whenever, it appears to the Court that an alien is liable to its jurisdiction for an act done by him beyond the limits of British India the special provisions of the law which is held to give jurisdiction to the Court should be expressly stated.

Liability of
Crown
servants and
aliens.

4. By section 188 of the Code of Criminal Procedure a Native Indian subject of His Majesty is liable to be dealt with by the British Courts in India for

Liability of
Native Indian
subjects.

any offence committed by him in any place whatever beyond the limits of British India as if it had been committed at any place in British India at which he may be found; and he is liable to be punished for it, if it is an offence under the Indian Penal Code, by force of section 3 of that Code.

Liability of
other British
subjects.

5. Any other British subject and any servant of the Crown is, by force of the same section, similarly liable to be punished in India in respect of any offence committed by him in any place in the dominions of a Native Prince or Chief in India.

Trial permissible
only on the
certificate of
Political agent or
sanction of
Government.

6. The proviso to section 188 of the Code of Criminal procedure requires that no charge as to any such offence as is referred to in that section shall be inquired into in British India, without a certificate of the Political Agent if there be one for the territory in which the offence is alleged to have been committed. If there is no Political Agent, the sanction of the Provincial Government is necessary.

Even inquiry not
permissible
without certificate.

7. The aforesaid proviso does not merely prohibit a trial upon a charge framed after an inquiry, but even an inquiry into the accusation in the absence of a certificate, when requisite. The section itself, however, still leaves a Court competent to issue process, such as a summons or a warrant or to take any other step which is merely preliminary to an inquiry.

Court should first
record a finding
where the offence
has been
committed.

8. It follows from what has been said that it is the duty of every court, dealing with an accusation of an act alleged to be an offence and to have been committed in a place near the limits of British territory, to inquire and ascertain and record a clear finding as to whether it has been committed within or beyond those limits.

Court to record a
finding about
nationality of
offender and insert
it in charge.

9. It is also the duty of every Court, dealing with an act alleged or found to have been committed beyond the limits of British India, to inquire and ascertain and record a clear finding as to whether the accused is or not a British subject, and if he is, whether he is a Native Indian subject of His Majesty.

In every formal charge of an offence alleged to have been committed beyond the limits of British India, it should be explicitly stated either that the accused is not a British subject or if he is a British subject that he is a Native Indian subject of His Majesty or otherwise as the case may be.

10. It seems expedient to add (1) that a Magistrate is not at liberty to shirk an inquiry into nationality of an accused person merely because it may appear to him a question of nicety or difficulty, and (2) that a Magistrate is not competent to dispense with the enforcement of the law and absolve a British subject from the penal consequences of an offence, prima facie established against him; merely because the offence was not committed within the limits of British India. Both these mistakes were found to have been committed in 9 P.R. (Cr.) 1893.

Court to
record a
finding
about
nationality
of offender
and insert it
in charge.

11. In cases in which the question of nationality arises the rulings of the Chief Court (22 P.R. (Cr,) 1883, I.P.R. (Cc.) 1885, 9 P.R. (Cr,) 1893) may be consulted,

Nationality
of accused.

12. Section 189 contains a special rule of evidence for inquiries and trials under section 188. The object is to render admissible evidence taken before Courts which are not Criminal Courts of British India, in order to supply evidence which might not be otherwise procurable

Special rule
of Evidence.

PART D.—MISCELLANEOUS

1. It should be noted that section 54(1) *seventhly*, of the Code of Criminal Procedure, authorises police officers to arrest, without an order from a Magistrate and without a warrant, persons liable under any law relating to extradition or under the Fugitive Offenders Act, 1881, to apprehension or detention in British India on account of offences committed at any place out of British India. Such persons may, under sections 23 of the Extradition Act, 1903 be detained under the orders of a Magistrate, within the local limits of whose jurisdiction the arrest was made, in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 10.

Power of
Police to
arrest
without
warrant.

1-A The following instructions have been issued by Provincial Government :—

States which
have agreed to
the procedure
laid down as to
the requisition of
Police for fugi-
tives.

It has been brought to the notice of the Punjab Government that applications made by the Police of India States for the arrest of fugitive offenders from their territories under the provisions of the seventh clause of section 54(1) of the Criminal Procedure Code are sometimes accompanied by no details which would assist the Magistrate before whom the alleged offender is produced to decide whether he should be released on bail or not. The Magistrate is thus placed in an un-satisfactory position when extradition is delayed and it is necessary to grant remands under section 344 of the Criminal Procedure Code. This difficulty has been the subject of correspondence with the Indian States adjoining the Punjab, and those noted in the margin have finally agreed to adopt the following procedure in such cases on the understanding that the Punjab Police will adopt a similar procedure when they wish to secure the arrest of fugitive offenders in Indian States :—

- (1) All states in the Punjab State Agency.
- (2) All States in the Rajputana States Agency except the Jodhpur State.
- (3) The Kashmir State.

- (i) In all cases of emergency or hot pursuit the Police should arrest a fugitive offender upon receipt of any urgent communication whether telegraphic, telephonic or in any

Police may arrest
on receipt of
urgent
communication.

other form to the effect that he is required to be arrested for an offence committed in a Part B. States, without further enquiry.

Urgent communication should be followed within a fortnight by particulars of the case and evidence against the offender.

(ii) As soon as possible after an urgent communication has been made; particulars of the facts of the case and of the nature of the evidence against the wanted man should be forwarded to enable the Magistrate before whom he is produced to decide whether or not he should be released on bail. If these particulars are not furnished within a fortnight of the original urgent request, the magistrate should ordinarily release the accused on bail.

(iii) It is not necessary that the information to be supplied by the officer applying for the arrest of the offender should be in any particular form, and it would suffice if as full precis of the evidence at his disposal as he can conveniently, prepare, is forwarded.

Procedure in non-emergent cases.

(iv) Except in an emergency, particulars should be sent along with the written request for the arrest of the fugitive offender. If such particulars are not forwarded, the police are under no obligation to make the arrest, and, if an arrest is made, the Magistrate should release the accused on bail, pending receipt of a warrant under section 7 of the Indian Extradition Act, 1903.

(Punjab Government letter No. 8817-P.G-36/36663. dated the 25th November, 1936.)

Surrender of criminals confined in British Jails.

2. The provision of section 40 of the Prisoners Act (III of 1900) do not apply to cases where a Court in an Indian State desires the extradition of a person confined in a jail in a Province of British India and accused by such Court of an extradition offence and consequently there is no necessity in cases of this nature for an application to the Provincial Government of the province in which the accused is confined. The Extradition Act

itself provides for the surrender of criminals confined in British Jails as well as for the surrender of criminals who may be at large. A District Magistrate is; therefore, bound to act in pursuance of a warrant under section 7 of the Extradition Act, whether the accused is a prisoner in jail, or not without any instructions from the Provincial Government. As regards prisoners so dealt with, however, it is under section 11 of the Act, a condition of surrender that a criminal extradited shall be re surrendered on the termination of his trial for the offence for which his surrender has been asked.

APPENDIX

The following Rules and Orders issued by the Central Government and Provincial Government, regarding the extradition of criminals and foreign jurisdiction, are published for the guidance of the Courts :

Re Chapters of the
Indian Ex-tradition
Act adopted as part
of English Acts.

I.—GOVERNMENT OF INDIA NOTIFICATION No. 1860-I,A, DATED THE 13TH MAY, 1904.

The following Orders of His Majesty the King in Council, which were published in the *London Gazette*, dated the 8th March, 1904, are republished for general information :-

At the Court at *Buckingham Palace* the 7th day of March, 1904.

PRESENT:

The King's Most Excellent Majesty in Council.

WHEREAS by section 18 of the Extradition Act, 1870 it is, amongst other things, enacted that if by any law made after the passing of the said Act by the Legislature of any British Possession, provision is made for carrying into effect within such Possession the surrender of fugitive criminals who are in, or suspected of being in such British Possession. His Majesty may be by the Order in Council applying the said Act in the case of any Foreign State, or by any subsequent Order.

direct that such law or any part thereof shall have effect in such British Possession with or without modifications or alterations, as if it were part of the Act:

AND WHEREAS an Act, entitled "The Indian Extradition Act, 1903", has been passed by the Governor General of India in Council and it is expedient to declare that Chapter II of the Act shall have effect as if it were part of the Extradition Act, 1870 :

Now, therefore, His Majesty, in pursuance of the Extradition Act, 1870 and in exercise of the power in that behalf in the said Act contained, doth by this present Order, by and with the advice of His Privy Council, declare that Chapter II of the Indian Extradition Act, 1903, shall have effect in British India as if it were part of the Extradition Act, 1870.

AND the Right Honourable St. John Brodrick, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

At the Court at _____ Buckingham Palace, the
7th day of March, 1904.

PRESENT :

The King's Most Excellent Majesty in Council.

WHEREAS section 32 of the Fugitive Offenders Act, 1881, it is amongst other things enacted, that if the Legislature of a British Possession pass any Act or Ordinance : —(1) for defining the offences committed in that Possession to which this Act or any part thereof is to apply or (2) for determining the Court, Judge, Magistrate, Officer or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised, or (3) payment of the costs incurred in returning a fugitive or a prisoner, or in sending him back if not prosecuted or if acquitted, or in otherwise in the execution of this Act; or (4) in any manner for the carrying of this Act or any part thereof into effect in that Possession, it shall be lawful for His Majesty by Order in Council to direct, if it seems to His Majesty

in Council necessary or proper for carrying into effect the objects of this Act, that such Act or Ordinance or any part thereof, shall, with or without modification or alteration, be recognised and given effect to throughout His Majesty's Dominions and on the high seas as if it were part of this Act :

AND WHEREAS an Act entitled "The Indian Extradition Act, 1903", has been passed by the Governor-General of India in Council, and it is expedient to declare that Chapter IV of the Act shall have effect as if it were part of the Fugitive Offenders Act, 1881 :

Now therefore, His Majesty, in pursuance for the Fugitive Offenders Act, 1881, and in exercise of the power in that behalf in the said Act contained, doth by this present Order, by and with the advice of His Privy Council, declare that Chapter IV of the Indian Extradition Act, 1903, shall be recognised and given effect to throughout His Majesty's Dominions and on the high seas as if it were part of the Fugitive Offenders Act, 1881.

And the Right Honourable St. John Brodrick one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

II—GOVERNMENT OF INDIA NOTIFICATION No. 1861-I,A,
DATED THE 13TH MAY, 1904,

WITH reference to the notification of the Government of India the Foreign Department, No.1860-I.A., dated the 13th May, 1904, and in exercise of the power conferred by section 1, sub-section (3) of the Indian Extradition Act, 1903 (XV of 1903, the Governor-General in council is pleased to direct that the said Act shall come in force on the 1st day of June, 1904.

Re date when
the Act came
into force.

III.---GOVERNMENT OF INDIA NOTIFICATION No. 1862-
I.A.,DATED 13TH MAY; 1904*

IN exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and by

Re Issue of
warrant, trial of
accused and
execution of
sentence.

*As amended by No. 2542-B, dated the 26th January, 1912.

As amended by No. 3472-1, C, dated the 28th August, 1908.

As amended by No. 823-D, dated the 25th March, 1913.

section 22 of the Indian Extradition Act, 1903 (XV of 1903) and in supersession of all previous rules on the same subject, the Governor-General in Council is pleased, with effect from the 1st day of June, 1904, to make the following rules, namely:--

When Political Agent shall not issue a warrant.

1 The Political Agent shall not issue a warrant under section 7 of the Indian Extradition Act; 1903 (hereinafter referred to as "the said Act", in any case which is provided for by Treaty, if the State concerned, has expressly stated that it desired to abide by the procedure of the Treaty nor in any case in which a requisition for surrender has been made by or on behalf of the State under section 9 of the said Act.

When he may issue a warrant.

2. The Political Agent shall not issue a warrant under section of the said Act; except on a request preferred to him in writing, either by or by the authority of the person for the time being administering the Executive Government of the State for which he is a Political Agent or by any Court within such State which has been specified in this behalf by the Governor-General in Council or by the Governor of Madras or Bombay in Council as the case may be by notification in the official gazette.

Certified when offender is a British subject.

3. If the accused person is a British subject, Political Agent shall, before issuing a warrant under British section 7 of the said Act, consider whether he ought not to certify the case as one suitable for trial in British India, and he shall, instead of issuing such a warrant, so certify the case, if he is satisfied that the interests of justice and the convenience of witnesses can be better served by the trial being held in British India.

Preliminary inquiry.

4. The Political Agent shall, in all cases before issuing a warrant under section 7 of the said Act, satisfy himself, by preliminary inquiry that there is a prima facie case against the accused person.

5. (1) The Political Agent shall, before issuing a warrant under section 7 of the Act, decide whether the warrant shall provide for the delivery of the accused persons :—

Political Agent
to decide to
whom offender
to be delivered.

- (a) to the Political Agent or to a British officer subordinate to the Political Agent with a view to his trial by Political Agent, or
- (b) to an authority of the State; with a view to his trial by the State Courts.

(2) Before coming to a decision the Political Agent shall take the following matters into consideration:-

- (i) the nature of the offence charged;
- (ii) the delay and trouble involve in bringing the accused person before himself;
- (iii) the judicial qualifications of the Courts of the State;
- (iv) whether the accused person is a British subject or not; and if he is British (other than European British) subject, whether the Courts of the State, either by custom or by recognition, try such British subjects surrendered to them; and
- (v) whether the Courts of the State have by custom, or by recognition, power to inflict the punishment which may be inflicted under the Indian Penal Code for an offence similar to that with the accused is charged.

6. Notwithstanding anything in rule 5, the Political agent shall make the warrant provide for the delivery of the accused persons (or to an officer subordinate to himself), or to an authority of the State concerned, as the case may be, if he is generally or specially instructed by the Governor General in Council to try an accused person himself or to make him over for trial to the proper Court of such State.

Political Agent
to decide to
whom offender
to be delivered.

7. In the case of accused person made over for trial to the Court of the State, the Political Agent shall satisfy himself that the accused received a fair

Duty of Political
Agent to see that
accused receives a
fair trial.

trial, and, that the punishment inflicted on conviction is not excessive or barbarous; and, if he is not so satisfied he shall demand the restoration of the prisoner to his custody, pending the orders of the Governor-General in Council.

Offenders arrested to be treated as persons under trial in British India.

8. Accused persons arrested in British India on warrants issued under section 7 or section 9 of the said Act, shall be treated, as far as possible, in the same way as persons under trial in British India.

Execution of sentences and right of appeal.

9. A person sentence to imprisonment by a Political Agent shall, if a British subject, be conveyed to the most convenient prison under British administration, and shall there be dealt with as though he had been sentenced under the local law:

Provided always that this rule shall not be construed so as to give such person any right of appeal other than that allowed by the rules for the time being in force for regulating appeals from the decisions of the Political Agents.

Exceptions.

10. Nothing in these rules shall be held to apply to areas in Indian States under British Jurisdiction, in which the Code of Criminal Procedure, 1898 (Act V of 1898), is in force.

IV - POLITICAL AGENTS.

(a)—Court of Vakils.

The following extracts from correspondence between the Agent to the Governor-General in Rajputana and the Government of India, which were forwarded to all Commissioners in the Punjab; for information with Punjab Government, Political Department, Circular No. 41-789, dated the 7th July, 1870, indicate under what circumstances the Court of Vakils of each Agency will be considered the Court of the Political Agent : —

Extract from a letter from the Agent to the Governor-General in Rajputana No. 49-J., dated 12th April, 1870.

Paragraph 8.—There is another subject connected with the Code which I submit for consideration. In article III of the Treaties which have been lately negotiated with the States of Rajputana for the extradition of offenders it is stated that, "as a general rule, such cases will be tried, by the Court of the Political Agent, in whom the political supervision of the State may be invested." A case has arisen in which a political Agent desired the rendition of any offender under this article of the Treaty for trial before the Court of the Vakils over which he presided. The Magistrate objected that this Court was nowhere alluded to by Government, or acknowledged in the Treaties.

Paragraph 9.—It is obviously good policy to encourage and promote the action of these Courts, Their extension, indeed, in my opinion is the one hope that exists that the Native States will be able to maintain their separate jurisdiction in the midst of our Empire. A persual of the Code now submitted will, I think, convince His Excellency in Council that the measure of supervision exercised by British Officers is sufficient, to secure a rude justice adapted to the state of the country, and I believe it might safely be rule that the Court of Vakil of each Agency should be considered the Court of the Political Agent as regards the Extradition Treaties in all cases where he presides personally.

Extract from letter to the Agent to the Governor-General in Rajputana, No. 87-J., under dated the 6th June, 1870.

Courts of Vakils, when the Political Officer presides in person, may in the opinion of the Governor-General in Council in this department, be considered to be Courts of the Political Officer referred to in Article III of the Extradition Treaties concluded with various States in Rajputana. The papers will be communicated to the Home Department of the Government of India, with a view to the necessary communications on the subject being made to the Local Administrations, on whose officers it is to be anticipated

that demands for the surrender of offenders may be made under these Treaties.

(b)—Others

Government of India, Foreign and Political Department, Notification No. 40-I, dated the 16th January, 1934.

In pursuance of sub-clause (b) of clause (40) of Section 3 of the General Clauses Act, 1897 (X of 1897) the Governor-General in Council is pleased to appoint the Secretary to the Honourable the Resident for the Punjab States, for the time being to exercise the powers of a Political Agent for the purposes of Sections 7 and 8 of the Indian Extradition Act, 1903 (XV of 1903), for the States included in the Punjab States Agency.

V.—(a) RULES FOR THE PURSUIT AND ARREST OF OFFENDERS.

Government of India, Foreign and Political Department Notification No. 107-I, dated the 24th February, 1932, as amended by Government of India; Foreign and Political Department, Notifications Nos. 427-I. B., dated the 18th July, 1935, 58-I.B., dated the 15th January, 1936, and 418-I, B.; dated the 8th July, 1936.

In exercise of the powers conferred by Section 22 of the Indian Extradition Act, 1903 (XV of 1903) and in supersession of the notification of the Government of India in the Foreign and Political Department, No. 505-1., dated the 13th August, 1931, the Governor-General in Council is pleased to make the following rules to provide for the pursuit and arrest in British India of persons accused of offences committed elsewhere: --

Pursuit and
arrest by Police
of Indian State.

1. When a person accused of having committed in a State specified in the First Schedule hereto, an offence, which, if committed in British India would be punishable under section of the Indian Penal Code

specified in the Second Schedule hereto, enters British India with members of the Police Force of that State in pursuit the pursuing party may subject to the provisions hereinafter contained, continue the pursuit into, and arrest the fugitive in, British India.

2. The authorisation conferred by rule (1) shall not be operative unless—

- (a) The pursuing party includes at least one officer holding in the State Police force a rank not lower than the rank corresponding with that of a Head Constable of Police in British India, and

(b) the circumstances are such that an- application for the continuance of the pursuit and the effecting of the arrest by the British Indian Police would prejudice the prospect of effecting the arrest of the fugitive.

3. A person arrested by State Police under the authority of these rules shall forthwith be conveyed to the nearest place in which an officer of the British Indian Police is known to be and shall be handed over to the British Indian Police in that place.

This authority is subject to conditions.

Arrested person to be handed over to Police in British India.

FIRST SCHEDULE

Part A.—*States premanently included in the Schedule.*

- (1) Hyderabad.

(2) Mysore.

(3) Kashmir.

(4) Gwalior.

(5) Sikkim

(5-A) Baroda.

(6) Indore.

(7) Bhopal.

(8) Rewa.

(9) Nagod.

(10) Maihar.

(11) Orchha.

(12) Datia.

(13) Samthar.

(14) Panna.

(15) Charkhari.

(16) Aligarh.

(17) Bijawar.

(18) Baon I.

(19) Chhatarpur.

(20) Dewas Senior Branch.

(21) Dewas Junior Branch.

(22) Jaora.

(23) Sitamau

(24) Sailana.

(25) Rutlam.

(25-A) Dhar.

(25-B) Barwani.

Rajputana

(26)	Alwar.	(30)	Kotah..
(27)	Bikaner.	(31)	Jaipur.
(28)	Bharatpur.	(32)	Jodhpur.
(29)	Dhopur.	(33)	Tonk. <i>Pnnjah</i>
		(37)	Kapurthala.
(34)	Patiala.	(38)	Sirmoor.
(35)	Jind.	(39)	Malerkotla.
(36)	Nabha.	(40)	Faridkot. <i>States of Western India</i>
(41)	Cutch.	(59)	Thana Deoli.
(42)	Junagarh.	(60)	Vadha.
(43)	Nawanagar	(61)	Lathi
(44)	Bhavanagar.	(62)	Muli.
(45)	Porbandar	(63)	Virpur.
(46)	Dharangadhra.	(64)	Malia.
(47)	Palanpur.	(65)	Kotala-Saugani
(48)	Radhanur.	(66)	D.S. Yalu Mulu Suraj of Jetpur.
(49)	Morvi.	(67)	D.S. Vala Rewat Ram of Bilkha.
(50)	Gondal.	(68)	Patdi.
(51)	Jafrabad.	(69)	Tharad.
(52)	Dhrol	(70)	Wad
(53)	Limbdi.	(71)	M.S. Jorawarkanji's State Varahi.
(54)	Wadhwan.		
(55)	Lakhtar.	(72)	Thana areas and the Civil
(56)	Vaja.		Stations of Wadhwan and
(57)	Jasdan.		Raikot in the Westerh
(58)	Manavadar.		India States Agency.

Madras

- (73) Travancore
- (74) Cochin.
(75) Pudukattah.

Bombay

- (76) Savantuadi
- (77) Jath.
- (78) Sauanur.
- (79) Cambay.
- (80) Janjira.
- (81) Koliapur.
- (82) Mudh'ol.
- (83) Sangli.
- (84) Miraj (Senior)
- (85) Miraj (Junior)
- (86) Jamkhandi
- (87) Kurundwad. (Senior)
- (88) Kurundwad. (Junior).
- (89) Ramdruz.
- (90) Idar.
- (91) Vijayanagar
- (92) Danta
- (93) Mansa.
- (94) Malpur.
- (95) Surgana
- (96) Bhar.
- (97) Raipipla.
- (98) Chhota Udepur.
- (99) Lunawada.
- (100) Saut.
- (101) Kadaua.
- (102) Bhadarwa.
- (103) Sanjeli.
- (104) Jambugheda.
- (105) Aunsh.
- (106) Phaltan,
- (107) Akalkot.
- (108) Khairpur.
- (109) Bansda.
- (110) Dharampur.
- (111) Jawhar.
- (112) Administered areas
comprised in the thana
Ciicles and Sardar
Bazzar.
- (113) Sankeda Mewas.
- (114) Pandu Mewas.

Bengal

- (115) Cooch Behar
- (116) Tripura.

United Provinces

- (117) Benares
- (118) Tehrl

Vol. III.	14	Ch. 16-D.
<i>Eastern States Agency</i>		
(119) Athgarh.	(139)	Kharsawan,
(120) Athmallik.	(140)	Korea
(121) Bamra.	(141)	Mayurbhanj.
(122) Baramba.	(142)	Nandgaon.
(123) Bastar.	(143)	Narsinghpur.
(124) Baudh.	(144)	Nayagarh.
(125) Bonai.	(145)	Nilgari.
(126) Changbhak	(146)	Pal-Lahara.
(127) Chhuikhad	(147)	Patna.
(128) Daspalla.	(148)	Raigarh.
(129) Dhenkanal	(149)	Rairakhol
(130) Gangpur	(150)	Ranpur.
(131) Hindol.	(151)	Sakti
(132) Jashpur	(152)	Sarangarh.
(133) Kalahandi.	(153)	Seraikela
(134) Kanker.	(154)	Sonepur.
(135) Kawardha	(155)	Surguja
(136) Keonjhar.	(156)	Talcher.
(137) Khairagarh.	(157)	Tigiria
(138) Khandpara	(158)	Udaipur.
<i>Assam</i>		
	(159)	Manipur.

PART B.-STATES, INCLUDED IN THE SCHEDULE FOR THE PERIOD TERMINATING ON THE DATE SPECIFIED AGAINST EACH.

State.	Date of termination.
Baria	1st June, 1940.
Ali Ranpur	1st October. 1940.

SECOND SCHEDULE

LIST OF SECTIONS OF THE INDIAN PENAL CODE.

Sections 200, 302, 303, 304, 307. 308, 311, 382, 392, 393, 394. 395, 396, 397, 398, 399, 400. 401; and 402.

(b) Rules for the Search and Seizure of Property.
Government of India Foreign and Political Department, notification No. 362-1, dated the 20th July, 1925.

In exercise of the powers conferred by Section 22 of the Indian Extradition Act, 1903 (XV of 1903), the Governor-General in Court is pleased to make the following rule, namely:-

- (1)In any proceedings against any person under the provisions of the Indian Extradition Act 1903, or of any treaty for the extradition of

offenders, the Magistrate acting in such proceedings and any police officer authorised to arrest such person under the provisions of the said Act or of such treaty, may exercise in any place in British India in respect of any property in the possession of such person or any of the other person which appears to such Magistrate or police officer to have been the subject of or to be required for proof of the offence in respect of which the proceedings are being taken the powers respectively of a Court and of an officer in-charge of a police station under the Code of Criminal Procedure 1898, as if such property were property the production of which is necessary for the purposes of any investigation or trial under the said Code by or before such Court or officer: and the provisions of the said Code. so far as they can be made applicable, shall apply to any summons or warrant issued in pursuance of this rule and to any search made under the authority of any warrant so issued and to the disposal of any property seized in any such search.

- (2) Such Magistrate may send such property to the State to which such person is surrendered and shall have, in respect of any such property produced before him in such proceedings or returned by the aforesaid State, all the powers of disposal vested in a Court under the Code of Criminal Procedure. 1898, in respect of any property produced before it during an enquiry or trial.

VI, EXTRADITION OFFENCES WITHIN THE MEANING OF INDIAN EXTRADITION ACT.

Government of India. Foreign and Political Department, Notification No. 1718-I, dated the 16th December, 1931.

(a) In exercise of the powers conferred by the First Schedule to the Indian Extradition Act. 1903; Act, 1903; IXV of 1903) and in supersession of the Notification

Offences
under
Criminal
Tribes Act.

of the Government of India in the Foreign and Political Department No. 4806-I.B., dated the 17th November, 1919, the Governor-General in Council is pleased to declare offences under the Criminal Tribes Act, 1924 (VI of 1924); to be Extradition offences within the meaning of the Indian Extradition Act, 1903 (XV of 1901).

*Government of India, Foreign and Political Department, Notification No. 249-I.. dated the 10th May, 1933 (as amended up-to-date).**

Desertion
from Indian
States forces.

(b) No. 249-I.—In pursuance of the First Schedule to the Indian Extradition Act, 1903 (XV of 1903) and in supersession of the notification of the Government of India in the Foreign and Political Department: No. 405-I, dated the 20th June, 1928, the Governor-General in Council is pleased to declare the following units of the Indian States Forces to be units desertion from which is an extradition offence:-

Alirajpur

Alirajpur Partap Infantry.

Alwar.

Alwar Mangal Lancers.

Alwar Jey Paltan.

Alwar Paltan (Training Battalion).

*

Amended by the following Notifications:—
 No. 467-I., dated the 16th August, 1933.
 No. 674-I, dated the 21st December, 1933.
 No. 59-I., dated the 7th February, 1934.
 No. 77-I., dated the 20th February, 1934.
 No. 148-I., dated the 11th April, 1934.
 No. 202-I., dated the 15th May, 1934.
 No. 445-1., B, dated the 19th September, 1934.
 No. 517-I., B, dated the 25th October, 1934.
 No. 669-I., B., dated the 12th December, 1934.
 No. 32-I., B., dated the 3rd January, 1935.
 No. 125-1., B., dated the 19th February, 1935.
 No. 89-I., B., dated the 30th January, 1935.
 No. 384-I., B., dated the 19th June, 1935.
 No. 517-I., A., dated the 18th September, 1935.
 No. 622-1.A., dated the 14th November, 1935.
 No. 153-1., A., dated the 11th March, 1936.
 No. 375/37-Judl., dated the 23rd March, 1936.
 No. 106/37-Judl., dated the 18th May, 1939.
 No. 47/39-Judl., dated the 21st October, 1939.
 No. 47/1/39-Judl.—dated the 15th November, 1939.

Bahawalpur.

His Highness the Nawab's Bahawalpur Own Body
Guard Lancers.

1st Bahawalpur Sadiq Infantry

2nd Bahawalpur Haroon Infantry.

Baria.

Baria Subhag Risala,
Baria Ranjit Infantry.

Baroda.

Second Baroda Infantry.

Benares

First Benares (Prabhu Narain's Own) Infantry.
Second Benares Cavalry Troop.

Bharatpur.

Bharatpur Jaswant Household Infantry.
Bharatpur Jaswant Garrison Company.
Bharatpur Body Guard.

Bhavnagar.

Bhavnagar Lancers.
Bhavnagar Infantry.

Bhopal.

Bhopal Sultania Infantry Battalion.
Bhopal Gohar-i-Taj. Own Training Company.

Bikaner.

Bikaner Ganga Risala.
Bikaner Sadul Light Infantry.
Bikaner Dungar Lancers.
Bikaner Bijey Battery.
Bikaner Motor Machine Gun Sections.

Chamba.

Chamba Infantry.
Chamba Body Guard.

Cutch

Cutch State Infantry.

Cutch State Body Guard.

Datia.

Datia Gobind Infantry.

Datia Gobind Infantry "B" Company.

Dhar.

Dhar Light Horse (Maharaj Kumari Kamla Raja's Own).

Dhar Infantry (Maharaja Anand Rao's Own Laxmi Guards).

Dhrangadhra.

Dhrangadhra Makhwan Infantry.

Dhrangadhra Body Guard.

Dholpur.

Dholpur Narsingh Infantry

Faridkot

Faridkot Sappers.

Faridkot Body Guard.

Faridkot State infantry.

Gwalior.

Gwalior 1st Jayaji Lancers.

Gwalior 2nd Alijah Lancers

Gwalior 3rd Maharaja Madho Rao Scindia's Own Lancers.

Gwalior "B" Battery, Scindia's Horse Artillery (15 pounder).

Gwalior Mountain Battery

Gwalior Transport Corps

Gwalior 1st Maharani Sakhya Raja's Own Infantry.

Gwalior 2nd Maharaja Jayaji Rao's Infantry.

Gwalior 3rd Maharaja Scindia's Own Infantry.

Gwalior 4th Maharaja Bahadur Infantry.

Gwalior 7th Scindia's Training Battalion.

Hyderabad.

Hyderabad 1st Imperial Service Lancers.

Hyderabad 2nd Imperial Lancers.

Hyderabad Cavalry Training Squadron.

Hyderabad 3rd Golconda Lancers.

1st Battalion Hyderabad Infantry.

2nd Battalion Hyderabad Infantry.

3rd Battalion (No. 0) Hyderabad Infantry.

Hyderabad Infantry Training Company.

"A" Battery Nizam's Horse Artillery.

Hyderabad Animal Transport Section.

Idar.

Idar Sir Partab Infantry.

Indore.

Holkar's Mounted Escort.

Holkarj's Transport Corps.

1st Battalion Maharaja Holkar's Infantry.

Jaipur.

Jaipur State Transport Corps.

Jaipur Lancers.

1st Jaipur Infantry.

2nd Jaipur Infantry.

Jaipur Sawai Man Guards.

Jind.

Jind Body Guards.

Jind Infantry:

Jind (2nd Line) Infantry.

Jodhpur.

Jodhpur Sardar Risala.

Jodhpur Sardar Infantry.

Junagadh.

Junagadh Lancers.

Junagadh Mahaba Khanji Infantry.

Kapurthala.

Kapurthala Jagatjit Infantry.

Kapurthala Body Guard.

Kapurthala Paramjit Infantry.

Kashmir.

1st Jammu and Kashmir Mountain Battery.

2nd Jammu and Kashmir Mountain Battery

1st Jammu and Kashmir Infantry.

2nd Jammu and Kashmir Rifles.

3rd Jammu and Kashmir Rifles.

4th Jammu and Kashmir Infantry.

5th Jammu and Kashmir Light Infantry Battalion.

6th Jammu and Kashmir Infantry.

7th Jammu and Kashmir Infantry.

Jammu and Kashmir Training Battalion.

Jammu and Kashmir Army Training School.

Jammu and Kashmir Body Guard Cavalry.

Jammu and Kashmir Military Transport.

Kotah.

Kotah 1st Umed Infantry.

Loharu.

Loharu State Infantry.

Loharu State Camel Transport.

Malerkotla.

Malerkotla Lancers (Body Guard.)

Malerkotla Infantry.

Malerkotla Sappers.

Mandi.

Mandi Joginder Sappers and Miners.

Mandi Palace Guard.

Mewar.

Mewar Lancers.

Mewar Bhupal Infantry.

Mewar Bhupal Training Company.

Mewar Sajjan Infantry.

Mysore.

Mysore Lancers.

Mysore Horse.

1st Battalion Mysore Infantry.

2nd Battalion Mysore Infantry (Training Company).

3rd Battalion Mysore Infantry.

Nabha.

Nabha Akal Infantry.

Nawanagar.

Nawanagar Lancers.

Nawanagar Shatrushalya Infantry.

Palanpur.

Palanpur Iqbal Infantry.

Panna

Panna Chhatrasal Infantry.

Patiala

1st Patiala Rajindra Lancers.

2nd Patiala Lancers.

1st Patiala Infantry (Rajindra Sikhs).

2nd Patiala Infantry.

3rd Patiala Infantry.

4th Patiala Infantry.

The Patiala Transport Train.

Porbandar.

Porbandar Body Guard.

Porbandar Infantry.

Rajpipla.

Rajpipla Infantry.

Rajpipla Body Guard.

Rampur.

Rampur Rohilla Lancers.

1st Rampur Raza Infantry.

2nd Rampur Murtaza Infantry.

Ratlam.

Ratlam Lokendra Rifles.

Rewa.

Rewa Transport Corps.

Rewa Venkot Battalion.

Sirmoor.

Sirmoor Sappers.

Sirmoor Body Guard.

Suket.

Suket Lakshman Cavalry.

Suket Lakshman Infantry.

Tehri-Garhwal.

Tehri-Garhwal Narendra Poineers.

Tehri-Garhwal Infantry.

Tehri-Garhwal Sappers and Miners.

Tripura.

1st Tripura Bir Company.

2nd Tripura Bikram Infantry.

(c) *From the Deputy Secretary to the Government of India, in the Foreign and Political Department, to the Chief Secretary to the Government of Madras* * *

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to the Chief Commissioner, Delhi—No. F-247-I B./35, dated Simla, the 24th July, 1936.

*Subject:—*Conclusion of reciprocal arrangements with Indian States for the extradition of persons concerned with the traffic in dangerous drugs.

Sir,

I am directed on to forward for your information a copy of the Foreign and Political Department letter No. F.-160-1/131, dated the 12th June, 1935, and to say that the reciprocal arrangements concluded with Indian States for the extradition of persons concerned in offences connected With the traffic in dangerous drugs are to be confined to offences under the Indian

Opium Act, 1878, the Dangerous Drugs Act, 1930 (excepting sections 9 and 19) and the Excise and Abkari Acts of Local Governments, in so far as they relate to Indian hemp. So far as Indian States are concerned the arrangement will be applicable to offences under the Excise Law or Laws of the State. The proposed arrangements will only be between the Government of India and the State concerned and separate extradition agreements will have to be concluded between the various Indian States, if so desired.

2. I am also to add that the Government of India do not propose to issue a notification as extradition in such cases should be effected in accordance with the procedure provided by section 9 of the India Extradition Act, 1903.

*From the Secretary to His Excellency the Crown Representative:
to* * * *, the Honourable the Resident for the Punjab
States,—No. F.137-I.B./38, dated New Delhi,
the 10th March, 1939.*

Subject:—Conclusion of reciprocal arrangements with Indian States for the extradition of persons concerned with the traffic in dangerous drugs.

Sir,

In continuation of the endorsement from the late Foreign and Political Department No. F. 247-IB /35, dated the 24th July, 1936, I am directed to forward herewith, for information, a "Statement" containing the names of the Indian States with which reciprocal arrangements have been concluded by the Government of India or the extradition of persons concerned in offences connected with the traffic in dangerous drugs.

Statement

		Name	
e of Agency		Name of State or Estate	
Mysore	Central India	Banganapale, Mysore and Sandur.	
		Bhopal, Bijawar, Chhatarpur, Dewas (Junior), Dewas (Senior), Datta Dhar, Indore,Jaora, Kaurwal, Maihar Makrai, Mohammadgarh, Nagod, Orchha, Panna Pathari, Piploda, Ratlam, Sailana, Sitamau.	
Rajputana			
Bharatpur, Bikaner, Bundi, Jaipur, Jhalwar, Jodhpur, Karauli, Kishengarh, Kotah, Shahpura, and Tonk, Udaipur (Mewar).			
Western India States			
Ambaliara, Ghodasar, Idar Katosan, Khadal Mohanpur, Malpur, Ranasan, and Thana Circles of (1) Bawishi,(2)Katosan,(3)Gadhwada, (4) SabarKantha (5) Vatrak Kantha Thana, Sadar Bazar(Administered Area).			
Punjab State			
Bahawalpur, Chamba, Dujana, Farjkd. Jind,Kapurthala,Khairpur,Loharu, Malerkotla,Mandi, Nabha Pataudi, Patiala, Suket Baghat, Baghat, Bashahr Bhajji, Biji, Bilaspur,Darkoti, Delath, Dhamik Dhad Ghund Jubbal, Kalsia, Keonthal. Khuneti,Koti, Kumbarsain, Kunihar, Kuthar. Madhan. Mahlog angal, Nalgarh, Ratesh, Rawingarh, Sangri, Sirmur, Tehri, Tharoch, and Theog.			
Baroda and Gujarat State			
Balsainor, Bansda, Baria, Bhadarwa,Cambay, Chhota Udepur, Dharampur, Jawahar, Kadana, Lunawanda, Pandu Mewas, Rajpipla, Sanjei, Sant, Sachin, San- heda ,Mewas, Surgana and Umeta.			
Kashmir			
Benares, Gwalior and Rampur.			
Gwalior			
.. Cochin, Pudukkottai and Travancore.			
Madras State			
Akalkot,AundhBhor,Jamkandi,Janjira,Jatt Kolhapur,Kurundwad(Junior), Kurundwad (Senior) Miraj (Junior), Miraj(Senior), Mudhol, Phaltan, Ramdurg, Sangli,, Savanur, and Sawantwadi.			
Kolhapur and Deccan			
All States in the Eastern States Agency.			
Eastern States			
. Manipur.			
representative's letter No. 154-I. B/39, dated the 13th June 1939.			

(d) *Government of India* Notification No 920- IB.,
dated the 1st April, 1920.

In exercise of the powers conferred by the first Schedule of the Indian Extradition Act, 1903. (XV of 1903), the Governor-General in Council pleased to declare the Offence of enticing or taking away or detaining with criminal intent a married woman, as defined in section 498 of the Indian Penal Code to be an extradition offence within the meaning of the Indian Extradition Act 1903, in the case of the Bikaner State.

Offences under
Section 498,
Indian Penal
Code.

(e) Offence under Section 498 of the Indian Penal Code has also been declared to be an extradition offence in Khairpur State by Government of India (Foreign Department Notification No. 3321-I.A, dated the 16th August, 1905.

Ditto

(f) Reciprocal arrangements have been concluded-

Ditto

- (a) between the Punjab Government and Mandi State for the extradition of persons accused of offences under section 498. Indian Penal Code—vide Punjab Government letter No. 19208-Pol.-I./S., dated the 12th June, 1930;
- (b) between the Punjab Government and Faridkot; State for the extradition of persons accused of offences under Sections 494 to 498, Indian Penal Code.—vide Punjab Government letter No. 236-Pol., dated the 30th March 1914,
- (c) between Bahawalpur State and Dera Ghazi Khan district for the extradition of persons accused of offences under Section 498, Indian Penal Code.

VII —DELEGATION OF POWERS TO STATE GOVERNMENT.

Government of India, External Affairs Department Notification No. 67-X, dated the 1st April, 1938.

In exercise of the powers conferred by sub-section (1) of Section 124 of the Government of India

Act, 1935, the Central Government is pleased, with effect from the 1st April, 1938, to entrust to all State Governments with their consent the functions of the Central Government under sub-sections (1), (4), (6), (7) and (8) of Section 3, sub-sections (1) and (2) of Section 4, Section 5, Section 8-A, Section 9, sub-section (1), (2), and (3), of Section 10, Section 11, Section 15, clause (c) of Section 19 and Section 20 of the Indian Extradition Act, 1903 (XV of 1903).

*Section 124(1) of the Government of India Act, 1935, corresponds to Article 258 (1) of the Constitution of India.

1. Lunatics may be classed as follows:—
- (a) Criminal lunatics.

(b) Lunatics for whose detention in an asylum a reception order has been passed.

(c) Lunatics so found by inquisition.
- Classification.
2. Criminal lunatics are lunatics for whose confinement an order *has* been passed under section 466 or 471 of the Code of Criminal Procedure, or under section 30 of the Prisoners Act, 1900. These are dealt with in parts B and C of this Chapter.

3. Reception orders are dealt with in Chapter II of the Indian Lunacy Act, 1912, which lays down the procedure to be observed before a person, other than a criminal lunatic or a lunatic so found by inquisition, can be detained in an asylum. Such reception orders are usually made by Magistrates.

4. Lunatics so found by inquisition are dealt with by the Civil Courts (See Part III, Indian Lunacy Act, 1912).

5. Although persons suffering from unsoundness of the mind are described as lunatics in the Acts mentioned above, it is now considered more humane to refer to them as "mental patients." Similarly, institutions for the care and treatment of such persons, which were formerly called Lunatic Asylums, are now called Mental Hospitals. The latter term should ordinarily be used in correspondence.

6. The only institution of this kind in the Punjab is the Punjab Mental Hospital at Amritsar to which all mental patients, whose confinement is considered necessary, are now sent. Accommodation is
- Criminal lunatics.
- Reception orders.
- Lunatics so found by inquisition.
- Term "Mental Patient" and "Mental Hospital" explained.
- Admission into Punjab Mental Hospital.

limited, and the earliest possible notice should be given, whenever it is proposed to send a patient to the Hospital. Magistrates are particularly requested, before passing any order for detention therein, to study the rules regarding admission, of which the most important are given in this Chapter.

Further
directions
about
admission.

7. If possible, arrangements should be made for the patient to reach the hospital before 5 p.m. and admission on Sundays and gazetted holidays should be avoided. Patients should invariably be brought to the hospital in a conveyance, and the escort should be instructed to see that the patient is properly clothed.

PART B. —CRIMINAL LUNATICS —ENQUIRY.

1. Whenever a Magistrate, either in the course of an enquiry or during a trial, has reason to believe that an accused person is incapable of making his defence by reason of unsoundness of mind, he is bound to hold an enquiry into such unsoundness of mind (section 464 of the Code of Criminal Procedure).

Magistrates bound to make enquiry about unsoundness of mind of the accused.

2. For the purpose of such enquiry, he is further bound to have the person examined by the Civil Surgeon or such other Medical Officer as the State Government may direct.

Examination by Medical officer and his evidence.

The Medical officer must then be examined as a witness, and his examination must be reduced to writing. It will be found most convenient to have the form mentioned in Part C, paragraph 2, filled in at this stage.

3. If unsoundness of mind is established to the satisfaction of the Magistrate, a finding to that effect should be recorded, and further proceedings should be stayed.

Stay of proceedings if unsound-ness of mind proved.

4. The procedure in a Court of Sessions is slightly different. There, the fact of unsoundness and incapacity are to be tried in the first instance by the jury, or by the Court as the case may be, and there is no specific provision for an examination by a Medical Officer. The trial of the fact of insanity however, forms part of the trial before the Court, and the Court would ordinarily take the necessary evidence before proceeding to a finding.

Trial of the fact of insanity in Sessions trials.

5. Either during the examination of the accused by a Medical Officer, or during the enquiry into the fact of insanity, or after the accused has been found to be of unsound mind, and incapable of making his defence, the Magistrate or Court may release the accused on sufficient security being given that he will be-

Accused may be released on security.

- (1) properly taken care of;
- (2) prevented from doing injury to himself or any other person; and
- (3) produced before the Court or such other officer as the Court appoints, when required.

Such an order may be passed whether the case is bailable or not (section 466 of the Code).

In releasing accused due regard should be paid to public safety.

6. An order for release, however, should not be passed without due regard to the public interest. If the crime of which such a person is accused be an offence against the person, or if there is reason to believe that he has at any time been aggressive, a detailed medical history sheet should in all cases be obtained, and this should be consulted before orders are passed regarding bail. In the event of the lunatic having at any time exhibited a tendency to violence, it is the duty of the Magistrate or Sessions Judge to satisfy himself that a sufficient length of time has elapsed since such manifestations to render a recurrence improbable, and that the sureties are in a position to control the actions of the lunatic should they recur.

Action to be taken when accused cannot be released on bail.

7. If the case is one in which in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court must order the accused to be detained in safe custody in such place and manner as he or it may think fit (section 466(2)). The action taken must then be reported to the State Government.

Accused may be sent to Mental hospital in such cases.

8. This provision enable a Court to send an accused person direct to a Mental Hospital, instead of awaiting the orders of the State Government, as was formerly necessary. But if an order is made for the detention of the accused in a Mental Hospital, this order must be in accordance with any rules which the State Government may have made under the Indian Lunacy Act, 1912.

Proceedings under section 464, 466 can be taken only when a prima facie case is made out by prosecution evidence.

9. It should be borne in mind; however, that before action is taken under section 466 of the Code, case for the prosecution should be gone into in order to discover whether any prima facie case is made against the accused. In warrant cases instituted on police report, the magistrate shall take into consideration the documents referred to in sub-sections (1) to (3) of section 251-A and give the prosecution and the counsel for the accused an opportunity of

being heard, In other cases a reference to sections 207-A and 208 (inquiry preliminary to commitment) and section 252 (Warrant cases instituted otherwise than on a police report) of the Code will show that the magistrate has to record the evidence for the prosecution. When this has been done the Magistrate has to form an opinion as to whether any case is established which should go to trial or not. If no case is established the accused must be set at liberty, (Section 207-A (6) 209, 251-A, (2) and 253 of the code). If a *prima facie* case is made out a charge has to be framed. (Sections 207-A (7), 210, 251-A (3) and 254 of the Code), either previous to the case being committed to the court of Sessions or High Court or in view to the accused being called upon to enter upon his defence. It is at this stage that section 464 to 466 come into play.

10. When an enquiry has been postponed under sections 464 or 465, the Magistrate or Court may at any time call for the accused of its motion and resume proceedings under section 467. Such action will ordinarily be taken after a reasonable period in all cases when the accused has been released on security.

11. If, however, the accused has been detained in a Mental Hospital, the accused will usually be returned by the authorities under section 473, as soon as he is certified to be capable of making his defence. The practice in the Punjab Mental Hospital at Amritsar is for patients to be brought before the visitors committee at the half-yearly inspection, and if the Medical Superintendent considers that any person is capable of making his defence and of understanding the proceedings against him, he recommends that he should be put up for trial. If this recommendation is accepted by the committee the patient is then sent back for trial.

12. It should be noted that the orders of a Magistrate or Court for the detention of a criminal lunatic may be varied by the State Government-

- (i) certificate under section 474;
- (ii) an application by a friend or relative under section 475.

Resumption of proceedings under section 467.

Patients certified by Mental Hospital to be fit to make their defence.

Orders of Magistrate for detention may be varied by Government.

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Procedure when accused is of sound mind at the time of trial but was not so at the time of committing the offence.

13. A second class of cases arises when an accused person appears to be of sound mind at the time of enquiry or trial but there is reason to believe that he was of unsound mind at the time of committing the offence with which he is charged. In such cases the Magistrate must proceed to determine the facts with reference to section 84 of the Indian Penal Code.

14. If the Magistrate finds reason to believe that he committed an act, while he was of unsound mind which, but for such unsoundness, would be an offence, the Magistrate should--

- (1) if he is competent to do so try the case against the accused.
- (2) if the case is one which should be tried by the Court of Sessions or High Court commit the case for trial by such Court, leaving to that Court to deal with the matter.

If accused is acquitted on the plea of insanity he should not be released.

15. If the plea is accepted and the accused is acquitted on the ground that although he committed an act which would have constituted an offence if he had been of sound mind; he was insane at the time of committing it, the court cannot order his release but must order him to be detained in safe custody (section 471, Criminal Procedure Code). The procedure is then the same as that given in paragraphs 7 and 8 above. Final orders for the release or detention of such a prisoner will be finally passed by the State Government under section 474, Criminal Procedure Code.

Superintendent Jail to keep the prisoner under observation and to report the results thereof.

16. In all cases in which insanity is pleaded or set up as a defence, the Superintendent of the Jail in which the convict is confined should be directed to keep the prisoner under observation and to report the result thereof to the High Court before the date fixed for hearing in that Court.

PART C.--CRIMINAL LUNATIC—DETENTION.

The accompanying form (printed at the end of Chapter 17-C as an Appendix) has been prescribed by the State Government for all cases in which the papers of a criminal lunatic are sent to it for orders. Unless this form is completed, it is impossible to arrive at any safe decision regarding the period for which it will be necessary to detain him.

Medical history sheet to be sent to Government.

2. The same form should invariably be used when a criminal lunatic is sent direct to a Mental Hospital by a Magistrate or Court. As observed above, the form should be filled up, as far as possible, after the medical examination in the first instance.

Same should be sent to Mental Hospital.

3. Attention is called to the following memorandum, embodying the views of certain experts as to the principles which should apply generally in dealing with the cases of criminal lunatics. This memorandum is only intended to indicate broadly the action which may ordinarily be taken. The case of every criminal lunatic should be considered separately and dealt with on its own merits, and if in any case the opinion of the officers responsible for advice regarding it is that the principles embodied in the memorandum do not apply, the action recommended should be that which the special circumstances of the case suggest to the experience of the officers concerned as the most appropriate.

Memo of principles to be observed in dealing with the cases of criminal lunatics.

I.—RECOVERED CRIMINAL LUNATICS.

(1) If the crime be against the person, the cause, the use of intoxicating drugs, and the type of insanity acute or chronic mania, a period of three years should be spent in an asylum free from all signs of insanity before any action is taken.

Crime.—Offences against the person.
Cause.—Intoxieating drugs.
Type.—Acute or chronic mania.
Crime.—Offence against the person.

(2) If the crime be an offence against the person, the type of insanity acute or chronic mania, and the alleged cause not the use of intoxicating drugs, a period of at least four years of complete freedom from insanity should be spent in an asylum before action is taken.

Cause—Other than intoxicating drugs.
Type.—Acute of chronic mania.
Crime.—Not an offence against person, but *where* mental attitude is aggressive.

Type.-Acute of chronic mania.

(3) If the crime be not an offence against the person, but the lunatic has at any time exhibited dangerous or violent tendencies, a period of at least four years should be spent in an asylum before any recommendation is made for his transfer to Jail or for his release.

Crime.—Not an offence *against* the person, or, if so, trivial in its nature; mental attitude not aggressive.

(4) If the crime be not an offence against the person, and there is no history that the lunatic was at any time aggressive, he may generally be treated much as if he were a non-criminal lunatic. The State Government will generally be guided in such cases by the recommendations of the Visitors and of the Superintendent of the Asylum in which the lunatic is confined.

Crime.—Murder.

Type.—Melancholia

(5) If the crime be murder and the type of insanity be melancholia, a period of at least six years complete freedom from insanity should be passed in an asylum before action is taken.

(5) (a) If the crime be one against the person, and the lunatic has been originaly confined in the asylum under the provisions of section 466, Code of Criminal Procedure, and has subsequently sufficiently recovered to stand his trial and has been acquitted under section 470 of the Code, it will be necessary that the lunatic shall be sent back to the asylum to undergo the same period of complete freedom from insanity in accordance with the above rules before a recommendation by the visitors can be made for the lunatic's release.

Crime.-Attempted suicide.

Type-Melan-cholia

(6) If the crime be attempt to commit suicide, the type melancholia and if the lunatic has not exhibited any violent tendencies while under observation, some relaxations of the rules may be permitted according to circumstances, age period of detention, and c.

Crime.-offences against a person.

Type.-Chronic mania of irritable aggressive kind.

II.—UNRECOVERED CRIMINAL LUNATICS.

(7) If the crime be an offence against the person, the type chronic mania of the irritable aggressive kind, it will seldom be possible to release the lunatic during continuance of insanity except in advanced age and on exceptional security.

(8) If the crime be not an offence against or, if an offence against the person of trivial nature, and the lunatic has never exhibited aggressive symptoms, he may generally be treated much as if he were a non-criminal lunatic, and the State Government dealing with his case under section 474 of the Criminal Procedure Code, will be guided mainly by the recorded opinion of the Superintendent of the Asylum as to the propriety of releasing him, and by the recommendations of the Visitors..

Crime-offences not against a person, or if trivial nature. Type-Mental attitude not aggressive.

4. In the case of lunatics confined in jail, sections 473 and 474 of the Code of Criminal Procedure assign certain functions to the Inspector-General of Prisons, and section 471 provides that the State Government may empower the officer in charge of a jail to discharge these functions. In practice, however, all criminal lunatics should be sent to Mental Hospital and not to a jail.

Criminal lunatics should not be sent to a jail but to a Mental Hospital .

APPENDIX

FORM No. 117.

Medical History Sheet of Lunatics.

N.B.—The ultimate responsibility for the preparation of this form rests with the committing officer who must see that the requisite information is supplied by the Police and the Medical Officer without undue delay.

QUESTIONS TO BE ANSWERED BY POLICE

ALONE.

1. Name of patient in full, and caste or race.
2. Name of patient's father,
3. Sex and age of patient,
4. Marks whereby the patient may be identified,
5. Married or single or widowed.
6. Condition of life and previous occupation (if any).
7. Religion.
8. Place of birth and recent place of abode.*

*Here the name of village, police station and district and length of residence should be stated.

*In this the general health of the patient as well as any abnormality of feature or development should be entered. It is desirable that special mention be made as to whether the patient is or is not, suffering from any tubercular disease.

PART D.—NON-CRIMINAL LUNATICS.

1. Reception orders are dealt with in Chapter II of Indian Lunacy Act, 1912. The most important provisions relate to- Reception order when passed.

- (a) Reception orders passed on a petition.
- (b) Reception orders passed on a Police report or information otherwise received by a Magistrate.

2. Such orders may be passed by a District Magistrate, Sub-Divisional Magistrate, or a Magistrate of the 1st Class specially empowered in this behalf by the State Government (Vide, definition of 'Magistrate' in Section 3(6) of the Act.) Who may pass reception order.

3. Reception orders passed on a petition are dealt with in sections 5 to 11. The most important provisions to be noted are- Reception orders petition.

- (a) The petition should be in the prescribed form (Form 1 in Schedule I of the Act.) It should be presented by a relative, if not reasons must be given.
- (b) There must be two medical certificates, on separate sheets of paper, one of which must be from a medical officer—'Medical Officer' is defined in Section 3(8) as a Gazetted Medical Officer in the service of the Government and includes a medical practitioner so declared by the State Government for the purposes of this Act. (Section 5)
- (c) If the lunatic is not dangerous or unfit to be at large, no order may be passed, unless it has been ascertained that the Mental Hospital is willing to receive him, and some person undertakes to pay for his cost of maintenance. (Section 11.)

4. Sections 13 to 16 deal with orders passed otherwise than on petition. Such orders may be passed on the ground that the person presented is- Reception orders passed otherwise.

- (a) dangerous by reason of lunacy;

- (b) not under proper care and control; or
- (c) cruelly treated or neglected by any relative or other person having charge of him.

Reports under (a) may be presented only by the Police. Information under (b) and (c) may be given by the Police or any other person.

Period of detention for Medical examination.

5. Section 16 gives the Magistrate power to order detention up to ten days to enable observation by a Medical Officer. If further time is required, there must be a fresh order, in the same way as with remands; but the total period of detention must not exceed thirty days from the date on which the person has first been brought before the Magistrate.

Copy of reception order to be sent to Medical Hospital.

6. A certified copy of every reception order must be sent to the Medical Superintendent of the Mental Hospital.

Questions to be put to Medical witnesses in case of suggested insanity.

7. For questions which may suitably be put to a Medical witness in case of persons suspected of insanity, see chapter 18, "Medico-Legal Work" Part D, Appendix B, VIII.

Inquiry as to the domicile of the lunatic. .

8. A magistrate making a reception order under section 14 or 15 of the Act, shall, after ascertaining that accommodation is available, direct the reception of the lunatic into the Mental Hospital at Amritsar. He shall, in all cases, make strict inquiry as to the domicile of the lunatic, and shall see that entry to that effect is made in the medical history sheet (Form 9, page XLVII, in the Appendices to the Punjab Mental Hospital Manual) or is communicated as soon as possible to the Medical Superintendent of the Hospital in which the lunatic is to be admitted.

Admission of a lunatic in the Mental Hospital in another State.

9. The Magistrate or Courts exercising Jurisdiction in any State may send lunatic or any class of lunatics to a Mental Hospital in any other State in accordance with general or special orders of the State Government made in that behalf with the consent of the Government of that State (Section 85).

In all such cases he shall first satisfy himself that accommodation is available and that the cost of maintenance will be paid (section 11). In order to effect

the earliest possible treatment of the patient action shall be taken as soon as possible and the Magistrate shall furnish to Government in writing full details as to domicile, reasons for the admission, fees agreed to, etc.

10. As soon as it is known that a lunatic, who has been admitted to the Punjab Mental Hospital, is domiciled elsewhere than in the Punjab, the fact (with details of the case) should be brought to the notice of the State Government, so that action for the removal of the lunatic may, if advisable be initiated early with the Government of the State of domicile under section 35 of the Act.

Action to be taken on subsequent discovery of the domicile of the lunatic in Another province.

11. No patient can be admitted to the Punjab Mental Hospital unless accompanied by the following documents:—

Documents to be sent when lunatics is to be admitted to Mental Hospital.

- (a) In the case of patients admitted under sections 13 to 16 of the Indian Lunacy Act, IV of 1912, a Detention Order authorising his detention for observation for a period of not exceeding 10 days. A Police report, and a statement of particulars should also be sent.
- (b) In the case of a patient who has been kept under observation at a jail or Civil Dispensary prior to admission to Punjab Mental Hospital, the following documents are necessary:—
 - (i) Copy or the original order for detention.
 - (ii) Medical Certificate of observing Medical Officer.
 - (iii) Final Reception Order bearing the seal of the court and dated within seven clear days of the Medical Certificate.
 - (iv) Police report or statement of particulars.
 - (v) In the case of patients who have not been admitted within 14 clear days of the Medical Certificate a certificate should be sent stating the reasons and where

the patient has been confined pending his removal to the Mental Hospital.

(c) In the case of patients admitted under sections 5 to 11 of the Indian Lunacy Act,—

(i) Two medical certificates, dated not more than 7 clear days before (ii).

(ii) Application of relatives or friends and statement of particulars.

(iii) Reception order bearing the seal of the court.

Note.— Patients must be admitted within 14 days of the date of the Medical Certificate,—vide Punjab Government letter No. 396-A (Home—Jails), dated the 26th September, 1914, Committing Magistrate are further referred to Punjab Government letter No. 17652-Medical, dated the 31st May, 1928, and are informed that, in accordance with the orders contained in paragraph 11 above, it will be necessary to report to Government all instances in which Committing Magistrates fail to comply with the provisions of the Indian Lunacy Act, 1912, which have been summarized in this order.

CHAPTER 18

Medico-Legal Work.

A.—POST-MORTEM EXAMINATION

1. The questions to be determined by a post-mortem examination vary in different cases, and the possibility of determining them effectually is not in every case equally dependent on the stage which the process of putrefaction has reached.

Effect of
decomposition.

Thus, in death from drowning, strangulation and various diseases, questions respecting the appearance of flesh tissues, and the amount of blood in parts are required to be considered, and these can only be determined soon after death, and before putrefaction has made much progress.

But it would be quite possible to determine the existence or absence of a wound or severe bruises of soft parts, even if decomposition were considerably advanced; and injuries of bones, pregnancy, presence of foreign bodies, metallic poisoning, and some profound organic diseases, are ascertainable long after death.

2. In each case the circumstances, so far as they are known, respecting the death and the discovery of the body, which are communicated by the Police, will enable the Medical Officer to form an opinion as to whether it would be possible by a post-mortem examination to throw any light on the cause of death and wherever such possibility exists or whenever nothing is known; it is his duty to make as full an examination as possible.

Duty of Medical
Officer to conduct
post-mortem
examina-tion
when nothing is
known about
causes of death.

3. These considerations should guide a Magistrate in determining on the propriety or otherwise of exerting the power given him by law of ordering the exhumation of a body. In cases of doubt the Magistrate should; if possible, consult a Medical Officer before passing such an order.

Exhumation of
body when ad-
visable for exa-
mination.

Officers authorised to conduct post-mortem examinations.

Vol. III. 2 Ch. 18-A.

4. The following notification of the Punjab Government is published for information :-

Punjab Government notification No. 332, dated the 3rd April, 1905

The following notification is issued regarding the Medical Officers authorised to conduct post-mortem examinations, in supersession of Notification No. 1067, dated 14th September, 1904:—

Body should be forwarded without delay.

1. In exercise of the, powers conferred by section 174 of the Criminal Procedure Code, the Lieutenant Governor (now Governor) is pleased to appoint the Medical Officer hereinafter named to conduct postmortem examinations under that section, and to rule that, except as provided in clauses 3 and 4, bodies for such examinations shall be forwarded to the authorised officer employed within the district where the case arises, to whom they can be brought by rail or otherwise in the shortest time.

Medical officers authorized.

2. The authorised officers appointed under this Notification are-

- (1) all Civil Surgeons;
- (2) all Medical Officers hording collateral Civil charges;
- (3) all Staff Surgeons;
- (4) all Assistant Surgeons;

When body to be sent to Staff Surgeon.

3. Bodies for post-mortem examinations shall be forwarded to Staff Surgeons (a) when they are those of soldiers, camp followers or other persons entitled to the professional attendance of the Military Medical Staff, and (b) when they do not come under clause (a), but the death occurs within the jurisdiction of the Court of the Cantonment Magistrate and there is no Civil Surgeon or Assistant Surgeon residing in the Cantonment, or within 3 miles of it.

Fees of examination.

4. For rules *re* fees, see Chapter 9 "Witnesses—Criminal Courts."

Rules about the deposition of Medical witnesses and reports of Chemical Examiners.

5. Attention is invited to the special rules of evidence regarding the depositions of medical witnesses and the reports of Chemical Examiners contained in sections 509 and 510 of the Code of Criminal Procedure.

PART B.—REFERENCES TO, THE CHEMICAL EXAMINER,

1. (i) The question as to whether any, and, if so, what, articles should be sent for chemical analysis, and the transmission of such articles to the Chemical Examiner will rest ordinarily with the Medical Officer (usually the Civil Surgeon), who should, however, attend to any requisition made by the Magistrate or the Police in this matter.

Medical officer to be consulted about articles to be sent to Chemical Examiner.

(ii) In cases where human subjects are not concerned the Police may send articles to, and correspond direct with the Chemical Examiner.

In certain cases Police may send articles direct.

(iii) All Magistrates are at liberty to forward any articles connected with any Criminal Case before them to the Chemical Examiner, but the desirability of their consulting the Civil Surgeon or other Medical Officer before doing so is obvious.

Everything upon which the Chemical Examiner's opinion is necessary, should be forwarded to him with the least possible delay.

2. On the subject of the Chemical Examiner's work in India, the careful attention of Magistrates, Medical Officers and the police is directed to the statement of the conditions of medico-legal inquiry in India as compared with such inquiry in England, prepared by the Chemical Examiner for the Punjab, and annexed hereto as Appendix A.

Conditions of Medico-legal inquiry in India.

3. Whenever any article is sent to the Chemical Examiner, whether by a Magistrate, Medical Officer or the Police it should be accompanied by a statement containing all possible information that may serve to guide the Chemical Examiner in his investigation.

Statement to accompany articles sent.

4. All articles should be forwarded in separate bottles, the stomach in one, its contents in another, the liver in a third, dry particles in small phials; and when any articles liable to decomposition are sent, they should always, whether the season be hot or cold, be immersed in methylated spirits of wine which should be used

Mode of packing of articles to be sent.

in the proportion of one-third of the bulk of the articles.

The cork of each bottle should be tied down and sealed and each bottle should be numbered. To ascertain that it has been securely closed, the bottle should be placed for some minutes with its mouth down.

Weight of
articles sent
to be noted.

5. The weight of each article sent, and, where the portion of an organ is sent, the weight of the whole organ, as well as of the part sent, and, in the case of fluids the total quantity of the fluid and the quantity sent should be stated on a ticket attached to the bottle, and also in the letter of invoice prescribed in paragraph 8 below.

Precautions
in packing
bottles.

6. (i) The several bottles containing the articles sent should be enclosed in a tin or wooden box, which should be large enough to allow of a layer of raw cotton, at least three-fourths of an inch thick, being put between the bottle and the box; the box should be securely fastened and covered with wax-cloth.

(ii) In cases where any of the contents of the bottles might prove offensive, the box must be of tin, and Macdougall's powder or charcoal should be dusted between the box and wax-cloth.

Articles to be
packed and
sealed in the
presence of
the forward-
ing officer.

7. All articles on being put up by the forwarding officer, and sealed and numbered by him, should be packed in his presence and under his immediate supervision, and the package should then be sealed by him, in accordance with the usual rules of the Post Office as to parcels, in such a manner that it cannot be opened without destroying the seal. The seal used should be a private seal, and the same throughout.

Invoice of
articles and
post-mortem
reports or
statement to
accompany
articles.

8. In all cases of transmission of articles to the Chemical Examiner, whether by a Magistrate, Medical Officer, or the Police, a letter of invoice giving a full description of the articles sent, should be despatched by post, together with the statement or post-mortem report. A duplicate of the invoice should also be

placed between the wax-cloth and the box to accompany the package. Both copies of the invoice should be stamped with an impression of the seal referred to in paragraph 7.

The Chemical Examiner should be requested to return, if possible, any articles sent to him for examination which is likely to be required at the trial.

9. In inquiries or trials, where reference has been made to the Chemical Examiner, it will be the duty of the Magistrate to examine the official who despatched the articles for analysis with regard to the indentify of the invoice and seal, and thereby establish the identity of the subjects reported on with those sent for analysis, and prove that the Chemical Examiner's report refers to the subject connected with the case under inquiry. If the decision of the case turns on the results of the chemical examination, a copy of the judgment, and of the evidence regarding symptoms and postmortem appearances, will be supplied to the Chemical Examiner; such copies being made at the expense of Government as a special charge.

Evidence should be taken to prove that Chemical Examiner's report refers to the subject connected with the inquiry.

10. In all cases of homicide, where the body is found, the identity of the body with the person said to be deceased must be fully established before the Magistrate trying or inquiring into the case.

Identity of body to be proved.

In such cases, where there has been a postmortem examination, evidence must be recorded, by the Magistrate to prove the custody of the body of the deceased after death, and its delivery for the purpose of post-mortem examination to the Medical Officer.

11. In all cases in which articles are brought up in evidence, the custody of such articles, throughout the various stages of the inquiry must be clearly traced and established. Evidence must be recorded on this point, and the evidence should never leave it doubtful as to what person or persons have had charge of the articles at any stage of the proceedings.

Proper custody of articles to be proved.

All such articles must be distinctively marked, and any reference to them in the record must be so clear as to leave no room for doubt as to the special article referred to.

Evidence of non-professional witnesses re blood and human hair should be accepted with caution.

12. Magistrates are warned that the evidence of non-professional witnesses on the subject of blood and of human hair must be accepted with the utmost caution, and that, where the case rests materially on the proof of such matters, the evidence of a professional witness must be taken, and reference made, if necessary, to the Chemical Examiner.

Chemical Examiner attached to Custom Departments are Chemical Examiners for the purpose of section 510 Criminal Procedure Code.

13. The Chemical Examiners and Assistant Chemical Examiners attached to the Customs Departments at Madras, Bombay; and Calcutta are 'Chemical Examiners to Government', for the purpose of section 510, Criminal Procedure Code.

GOVERNMENT OF INDIA

FINANCE DEPARTMENT (CENTRAL REVENUE)

Simla, the 7th August, 1943. NOTIFICATION

Chemical Establishment

No. 67.—With reference to section 510 of the Code of Criminal Procedure, 1898, (Act V of 1898), the Central Government is pleased to declare that the Chemical Examiners in the Custom Houses at Bombay, Calcutta, and Madras in the Central Revenue Control Laboratory, New Delhi, the Central Excises and Salt Revenue Department, North Western and North Eastern India and in the Opium Factory, Ghazipur, are Chemical Examiners to Government.

PART C.—RULES FOR THE GUIDANCE OF POLICE OFFICERS
REGARDING THE SUBMISSION OF BLOOD-STAIN CASES TO THE
SEROLOGIST AT CALCUTTA.

As a result of the success attained by Lieutenant-Colonal W.D. Sutherland in his research in regard to the differentiation of human blood-stains from those of the blood of other animals the Government of India have appointed a Chemical Examiner on special serological duty at Calcutta to carry on their this special branch of medico-legal work for the whole of India. This officer has been designated "the Serologist and Chemical Examiner to the Government of India at Calcutta".

Serologist appointed to distinguish human blood from other blood.

2. As it would not be possible for the Serologist to cope with his work expeditiously if all articles suspected of having blood-stains were sent direct to him, it has been decided to issue the following instructions for the guidance of Police Officers in dealing with blood-stained articles:-

Articles to be sent to Chemical Examiner and when.

- (a) In cases in which the evidence of the blood-stained articles is, relatively to the whole body of the evidence of small importance, the articles shall be sent direct to the Chemical Examiner at Kasauli for examination.
- (b) In cases in which the establishment of the fact that blood-stains are of human blood as distinct from the general classification of "Mammalian", is material to the prosecution and has a really important bearing in the case, the blood stained article shall he sent direct to the Chemical Examiner, who will determine which of such articles he will forward to the Serologist with the necessary sketches, etc, in sending articles for the serological test, the Superintendent of Police shall specifically ask for examination to test the source of the blood. The Serologist will, after examining the articles sent to him by the Chemical Examiner, return them with a copy of his report direct to the Superintendent of Police concerned.

Cases in which articles shall be sent to the Chemical Examiner Kasauli.

In cases where blood-stained articles form important piece of evidence the chemical examiner will select articles to be sent to the Serologist.

In some cases only stained portion of the articles may be sent.

- (c) In cases of articles of blood-stained clothing, etc., the stained portion only should be cut out and forwarded for determination of the source of the blood. In the case of weapons and other solid articles the entire articles should be sent.

Medico-legal history of the case should be sent along with the articles.

Articles to be sent direct only under the order of Police Superintendent.

- (d) All articles sent should be accompanied by a complete medico-legal history of the case.
- (e) No articles should be forwarded direct except under the express orders of the Superintendent of Police.

NOTE.—(1) As vegetable poisons cannot be detected in ashes it has accordingly been held useless to forward such poisons to the Chemical Examiner for detection,—vide Punjab Government letter No. 16781-Medl, dated 5th June, 1923.

- (2) The Serologist has been appointed to be a Chemical Examiner to Government,—vide Government of India Notification No. 1168-Health, dated 14th October, 1924.

PART D.—GENERAL.

With a view to assisting Magistrates and Police Officers in conducting inquiries into cases of suspected murder and other cases in which medico-legal questions are involved, an Appendix B is here to annexed, which contains the following :--

Appendix B
deals with
medico-legal
questions.

- (a) symptoms produced by some of the more common poisons;
- (b) Questions that may be put to medical and other witnesses in certain cases;
- (c) Points to be inquired into in case of death from rupture of spleen,

APPENDIX A

STATEMENT OF THE CONDITIONS OF MEDICO-LEGAL
INQUIRY IN INDIA AS COMPARED WITH SUCH
INQUIRY IN EUROPE.

*Extract from the Report of the Chemical Examiner,
Punjab, for 1873.*

Conditions in
India different
from Europe.

The investigation and proof of medico-legal cases in India are generally conducted under very different conditions and by very different means from those in most countries of Europe, and it is very necessary for the officers engaged in this country to understand the value and The significance of the various parts of this investigation that each has to perform, and especially for the Magistrate to know how his decision is to be modified by the way in which the investigation has been conducted.

Proof of poisoning
mainly depends
on scientific
evidence. Poison-
ing has to be
inferred from
certain symptoms
and chemical
evidence.

The proof of poisoning, though it may be clear by other evidence, depends mainly on establishing the cause of certain-symptoms, or of death, that is, it rests principally on scientific evidence. Of This evidence there are three parts-the symptoms, the post-mortem appearances: if death occurred, and the chemical evidence from the proper investigation, and co-relation of which the unknown cause may be established.

In Europe medical
practitioners
skilled in dia-
gnosis are diffus-
ed all over and
there is generally
a medical attend-
ant to recognise
symptoms and
certify the causes
of death.

In Europe there is a class of qualified medical practitioners, diffused almost universally, who certify to the causes of death, the public registration of which is compulsory. When a person is seized with sudden illness followed or not by death, there is almost always a medical attendant sufficiently skilled in diagnosis to recognise the symptoms as those of some known disease, or, if not, he is able in one class of cases to give an opinion that these symptoms are not those of any known disease but that they are those of a certain injury or poison, or class of poison: while in another class of cases he may only be able to say that they may possibly be those of a certain disease, but that they suspiciously resemble those of smile poison or injury.

In India, qualified practitioners not being generally diffused among the people the causes of sudden illness or death are not recognised by the ignorant relatives and attendants. In this way many cases of disease may be attributed to poison, or injury, or witch craft, and from ignorance, doubt or enmity be reported Police. On the other hand, cases of real poisoning may be passed over as cases of disease. This part the investigation has generally to be conducted by the Police who cannot be supposed to be skilled in the observation and estimation of symptoms. In addition, they have to get an account of the symptoms after they have occurred and from ignorant witnesses, and they have to contend with a difficulty in getting them to speak the truth unknown in Europe. The evidence so far is, therefore, generally defective, and must be so till there be a class of practitioners spread among the people sufficiently skilled to certify to the causes of deaths. In all possible cases the Police should have the assistance or advice of a Medical Officer, and the evidence of attendant hakims, who often show considerable acuteness in observation, should be taken down and signed by them.

The second part of the investigation, the postmortem examination, is generally made in Europe by the medical attendant along with another doctor. In definite class of cases an opinion can be affirmed that the *post-mortem* appearances are, or are not, those of the suspected disease, that they are not, or are those of the suspected injury, poison or class of poisons. In another class, in which the *post-mortem* appearances are not so diagnostic an opinion can only be given expressing probability or uncertainty.

In India the evidence from post-mortem examinations is also generally less definite from various causes. Not only is the evidence regarding symptoms, which ought to guide in distinguishing suspected and possible causes of death, more imperfect, but very often the autopsy has to be performed without any information at all. The number of possible causes of death being very numerous, it is in such cases only possible to give an opinion of certainty or probability when marked and profound lesions are left by disease, injury, and poison

In India a Medical attendant is generally not present to certify the cause of death or recognize the symptoms. Police have to get an account of symptoms from ignorant people who are not even inclined to speak the truth.

Post-mortem examination in Europe is more definite.

In India the evidence from post-mortem examination is less definite due to various causes.

poison and there is a chance of uncommon lesions or slight appearances which might prove important in evidence being overlooked. Again, the body often reaches the Medical Officer advanced in decomposition, when the slighter appearances left by disease, injury or poison, may not be recognisable. But in all cases it is distinctly to be understood that the examination should be made, as even in such cases many causes of death may be established or negatived. Also, in all cases a complete and not a partial examination is more necessary; in this country on account of the imperfectness of the preliminary evidence as to the possible causes of death. Different causes may afterwards be suggested in the evidence regarding which judicial inquiries may be made.

Police to supply to the Medical officer an account of the suspicious circumstances of death.

In order to render this part of the evidence more definite and valuable, it is necessary that the Police, in handing over the body for examination, should at the same time hand over an account of all that is known as to the suspicious circumstances of death, and it should be noted by the Medical Officer whether he was in possession of this information or not when making the *post-mortem* examination.

In Europe Chemical evidence is more definite as the preceding evidence is perfect.

In Europe the third part of the evidence the chemical—is one of the most definite in its results. The symptoms and *post-mortem* appearances recorded by duly qualified and informed observers are laid before the Chemical Examiner, and the question asked is whether one poison; or at most one of a class of poisons, be present in the substances sent; and he certifies to the presence or absence of those of the poisons indicated which can be identified by Chemistry.

This is not so in India, the preceding evidence being imperfect.

In India, from the imperfectness of the preceding evidence, the problem proposed is more indeterminate and often insoluble. As a general rule, substances have hitherto been sent for analysis with no information as to what poisons might possibly have been used. This problem, which is seldom met with in a lifetime by an expert in Europe, resolves itself into a search for the poisons commonly used in the country, unless some suspicious appearances or particles lead

to a conjecture in another direction. The number of substances that may cause death being practically indefinite, it would be impossible with a limited amount of material and time to attempt any thing else.

In order that the Chemical Examiner's evidence may be as definite as possible, if no poison is found, he should distinctly certify as to the poison he was led to examine for and whose absence he demonstrated.

Chemical Examiner should certify as to poison he was led to examine.

The position of the Magistrate as regards the scientific witness differs in India and England. In England the scientific witnesses are really cross-examined by the defence both as to the facts they have observed and the opinions they bring forward and similar witnesses may be brought forward to challenge their statements.

In England scientific witnesses are cross-examined both as to the facts observed and the opinions formed by them.

In India, this is very seldom possible. The Civil Medical Officer has practically functions rather resembling those entrusted to him in some countries of Europe. He is a Government official charged with the investigation of facts, regarding which he has to give evidence in the same way as the police officer. In addition, he has to interpret to the Court the precise value, significance and limits of the scientific evidence; and it is his duty to bring forward with judicial carefulness any conclusions or opinions connected with the facts.

This is not so in India. The Chemical Examiner should therefore restrict himself to statement of observed or demonstrated facts and should not make mention of probabilities or opinions.

The Chemical Examiner should restrict himself to a statement of observed or demonstrated facts and should on no account make mention of probabilities or opinions, unless specially asked, but it is his duty to reply to a questions regarding the meaning or limits of the scientific evidence which the local Medical Officer may wish to be referred or which the Court may choose to propose.

If the cause of death be not satisfactorily proved by the scientific evidence, the Magistrate has to consider to what extent it proves or disproves anything. It is purely negative in value in the case of poisons not detectible by Chemistry which do not produce symptoms and *post-mortem* appearances distinguishable

Magistrate should consider how far the scientific evidence proves or disproves anything.

with certainty from those of disease or injury. It is also negative in the case of detectible poisons of which the symptoms and *post-mortems* appearances alone are not decisive, when the Chemical Examiner has not been led to examine for those poisons. In this class of cases the proof principally depends on whether the Medical Officers was in possession of the suspicious circumstances of death when making the *post-mortem* examination and whether the Chemical Examiner knew both these when examining for poison. If the latter had no information he could only certify to the absence of common poison; and it is to be remarked that the large number of poisoning cases proved in this country is due to the ignorance of the natives, and that, as intelligence spreads, uncommon poisons will be used more frequently.

A poison may be given in various ways and yet be not detected.

If no poison has been found, it should be noted that it may have been administered in the following cases : —

- 1st*—if a poison has been given for which there are no chemical tests;
- 2nd*—if a detectible poison were used for which the Chemical Examiner was not led to examine;
- 3rd*—if a volatile poison has been used which has been placed in circumstances in which it might have volatilized;
- 4th*—if certain organic poisons have been used, and a sufficient time has elapsed for their decomposition;
- 5th*—in the case of most organic poisons it is only the part left in the stomach after death that can be discovered, that which is absorbed into the system becomes chemically changed; so that it is really the part that does not cause death that is detected. Consequently, if the stomach has been well cleared out by the stomach pump or vomiting, or if sufficient time has elapsed before

death to allow the poison to be absorbed, none may be detected;

6th—even in the case of metallic poisons, which can be detected after absorption, if sufficient time (three weeks to a month) elapse before death the whole of the poison may be eliminated from the system by the kidneys, etc., and the patient may die from the lesions caused by the poison.

APPENDIX B.

(a) A SHORT MEMORANDUM BY THE CHEMICAL EXAMINER, PUNJAB, OF THE SYMPTOMS PRODUCED BY SOME OF THE MORE COMMON POISONS.

<i>Poison</i>	<i>Usual Symptoms</i>
ARSENIC	Vomiting: burning pain in the stomach; great thirst: purging; sometimes cold skin; cramps in the limbs and sleepiness.
<i>Native name</i>	Sleepiness; pupils small; complete insensibility, skin sweating: vomiting seldom occurs.
Sammal-far	
Sankhya	
Hartal and Mansil	
OPIUM	Numbness and tingling in the mouth and throat, afterwards in the limbs; fothing at the mouth: sleepiness; occasionally convulsion or delirium or paralysis.
Afium	
Afim	
ACONITE	Sleepiness; pupils enlarged; delirium; insensibility; vomiting rare.
Bish	
DHATURA	
Dhatura	
Nux <u>VOMICA</u>	Twitching in the limbs followed by violent spasms and often lock-jaw.
Kuchil	The spasm ceases for a time and then again returns, often without evident cause; it usually affects the whole body .

Shortest time before symptoms, 5 minutes.

Shortest time before death 1 hour.

NOTE—Any one of the above symptoms may be absent though the poison by which they are usually caused has been administered.

Arsenic.—Ordinary interval between taking the poison and the appearance of symptoms, 1/2 to 1 hour.

Ordinary time before death, 6 to 12 hours.

Opium.—Ordinary interval before symptoms, 1/2 to 1 hour.

Ordinary interval before death; 6 to 12 hours.

Aconite.—Ordinary interval before symptoms. 15 minutes, Ordinary .. interval before death, 1 to 8 hours.

Dhatura.—Ordinary interval before symptoms, 5 To 10 minutes.

Ordinary interval before death, 6 to 12 hours.

Nux-Vomica.—Ordinary interval before symptoms, $\frac{1}{4}$ to 1 hour.

Ordinary interval before death, 6 to 12 hours

(b) QUESTIONS THAT MAY BE PUT TO MEDICAL AND
OTHER WITNESSES IN CERTAIN CASES.

No. I.

*Questions which may be put to a medical witnesses in a
cases of suspected poisoning after post-mortem
examination of the body.*

1.— Did you examine the body of
late a resident of, and, if so, what did
you observe?

II.—What do you consider to have been the cause of
death? State your reasons.

III.—Did you find any external marks of violence on the
body? If so, describe them.

IV.—Did you observe any unusual appearances on further
examination of the body? If so, describe them.

V.—To what do you attribute these appearances; to
disease, poison or other cause?

VI.—If to poison, then to what class of poisons?

VII.—Have you formed an opinion as to what particular
poison was used?

VIII.—Did you find any morbid appearances in the body
besides those which are usually found in cases of poisoning by
..... ? If so, describe them.

IX.—Do you know of any disease in which the post-
mortem appearances resemble those which you observed in
this case?

X.—In what respect do the post-mortem appearances of
that disease differ from those which you observed in the
present case?

XI.—What are the symptoms of that disease in the living?

XII.—Are there any post-mortem appearances
usual in cases of poisoning by..... but
which you did not discover in this instance?

XIII.—Might not the appearances you mention have been the result of spontaneous changes in the stomach after death ?

XIV.—Was the state of the stomach and bowels compatible or incomplete with vomiting and purging ?

XV.—What are the usual symptoms of poisoning by..... ?

XVI.—What is the usual interval between the time of taking the poison and the commencement of the symptoms ?

XVII.—In what time does.....generally prove fatal ?

XVIII.—Did you send the contents of the stomach and bowels (or other matters) to the Chemical Examiner ?

XIX.—Were the contents of the stomach (or other matters) sealed up in your presence, immediately on removal from the body ?

XX.—Describe the vessel in which they were sealed up and what impression did the seal bear ?

XXI.—Have you received a reply from the Chemical Examiner; if so, is the report now produced that which you received ?

XXII.—(If a female adult), what was the state of the uterus ?

No. II.

Questions that may be put to a non-professional witness in a case of suspected poisoning

I.—Did you know , late a resident of ? If so, did you see him during his last illness and previously ?

II.—What were the symptoms from which he suffered?

III.—Was he in good health previous to the attack ?

IV.—Did the symptoms appear suddenly ?

V.—What was the interval between the last time of eating or drinking and the commencement of the symptoms ?

VI.—What was the interval between the commencement of the symptoms and death? (If death occurred).

VII.—What did the last meal consist of ?

VIII.—Did anyone partake of this meal with ?

IX.—Were any of them affected in the same way?

X.—Had ever suffered from a similar attack before?

(If any of the following symptoms have been omitted in answer to question I, special questions may be asked regarding them as follows)

XI.—Did vomiting occur ?

XII.—Was there any purging ?

XIII.—Was there any pain in the stomach ?

XIV.—Was very thirsty ?

XV.—Did he become faint ?

XVI.—Did he complain of headache or giddiness?

XVII.—Did he appear to have lost the use of his limbs ?

XVIII.—Did he sleep heavily ?

XIX.—Had he any delirium ?

XX.—Did convulsions occur ?

XXI.—Did he complain of any peculiar taste in the mouth?

XXII.—Did he notice any peculiar taste in his food or water ?

*XXIII.—Was he sensible in the intervals between the convulsions ?

‡ XXIV.—Did he complain of burning or tingling in the mouth and the throat, or of numbness and tingling in the limbs?

No. III,

Questions which may be put to medical witness in a case of supposed death by wounds or blows, after post-mortem examination of the body.

1.—Did you examine the body of late a resident of; and, if so, what

did you observe ?

*This is with reference to Nux-Vornica.

‡ This is with reference to Aconite.

II.—What do you consider to have been the cause of death ? State your reasons.

III.—Did you find any external marks of violence on the body ? If so, describe them.

IV.—Are you of opinion, that these injuries were inflicted before or after death ? Give your reasons.

V.—Did you examine the body internally ? Describe any unnatural appearance which you observed ?

VI.—You say that in your opinion.
was the cause of death; in what immediate way did it prove fatal?

VII.—Did you find any appearance of disease in the body ?

VIII.—If so, do you consider that, if the deceased had been free from this disease, the injuries would still have proved fatal ?

IX.—Do you believe that the fact of the suffering from this disease lessened his chance of recovery from the injuries sustained ?

X.—Are these injuries taken collectively or is any one of them ordinarily and directly dangerous to life ?

XL.—Have they been caused by manual force or with a weapon ?

XII.—Did you find any foreign substance in the wound ?

XIII.—By what sort of weapon has the wound been inflicted ?

XIV.—Could the injuries have been inflicted by the weapon now before you (No in the Police charge sheet) ?

XV.—Could the deceased have walked so far, spoken etc., after the receipt of such an injury?

XVI.—Have you chemically, or otherwise, examined the stains on the weapon, clothes, etc., now before you (No. in the Police charge sheet)?

XVII.—Do you believe the stains to be those of blood?

XVIII.—What time do you think elapsed between the receipt of the injuries and death ?

XIX.—What was the direction of the wound, and can you form an opinion as to the position of the person inflicting such a wound with respect to the person receiving it ?

XX.—Is it possible for such a wound to have been inflicted by any one on his own person? Give your reasons.

XXI.—Give precise direction of the wound (in gun shot wounds).

XXII.—Did the appearance of the wound indicate that, the gun had been discharged close to the body or at some distance from it ?

XXIII.—Did you find any slug, bullet, wadding, etc., in the body ?

XXIV.—Do you think it possible that you could have mistaken the aperture of entrance for that of exit ?

No. IV

Questions that may be put to a medical witness In a case of supposed infanticide after post-mortem examination of the body.

Male

I.—Did you examine the body of a-----child

Female

sent to you by the District Superintendent of Police on the..... of 19 ? And, if so, what did you observe ?

II.—Can you state whether the child was completely born alive or born dead? State the reasons for your opinion.

III.—What do you consider to have been the cause of death? Give your reasons.

IV.—What do you believe to have been the uterine age of the child ? State your reasons.

V.—What do you believe to have been the extra-uterine age of the child ? Give reasons.

VI.—Did you find any marks of violence or other unusual appearance externally ? If so, describe them accurately?

VII.—Did you find any morbid or unusual appearances on examination of the body internally? If so, describe them accurately.

VIII.—Do you believe the injuries you observed to have been inflicted before or after death? Give reasons.

IX.—Can you state how they were inflicted? Give reasons.

X.—Do you consider that they were accidental or not? Give reasons.

XI.—Had the infant respired fully, partially, or not at all?

XII.—Did you examine the person of..... the alleged mother of the infant? If so, have you reason to suppose that she was recently delivered of a child? Can you state approximately the _____ date of her delivery? Give reasons.

No. V

Questions that may be put to a medical witness in a case of supposed death by hanging or strangulation.

I.—Did you examine the body of..... late a resident of.....? And if so, what did you observe?

II.—What do you consider to have been the cause of death? State the reasons for your opinion.

III.—Did you observe any external mark of violence upon the body?

IV.—Did you observe any unnatural appearances on examination of the body internally?

V.—Was there any rope or other such article round the neck when you saw the body?

VI.—Can you state whether the mark (or marks) you observed were caused before or after death?

VII.—By what sort of articles do you consider the deceased to have been hanged (or strangled)?

VIII.—Could the marks you observed have been caused by the rope or other article now before you (No. of the Police charge sheet)?

X.—Would great violence be necessary to produce the injuries you describe? (If strangulation).

V.—Did you observe any further marks of violence upon the person of the woman ?

VI.—Had she passed the age of puberty?

VII.—Can you state approximately what her age was ?

VIII.—Did you find her to be a strong, healthy woman; or so weakly as to be unable to resist an attempt at rape ?

IX.—Did you examine the person of the accused?

X.—Did you observe any marks of violence upon his body ?

XL.—Was he suffering from any venereal disease?

XII.—Did you find the woman to be suffering from a similar or other venereal disease ?

XIII.—Had a sufficient time elapsed. when you examined the person of the woman, for venereal disease to have made its appearance, in case of her having been infected ?

XIV.- _ Can you state, approximately, how long the accused had been suffering from this ,complaint ?

XV.—Can you state, approximately how long the woman had been suffering from this (venereal) complaint ?

XVI.—Have you examined the stained articles forwarded to you, and now in Court (No of Police charge sheet) ?

XVII.—What is the result of your examination ?

XVIII.—Do you believe that a rape has been committed or not ? State your reasons.

No. VIII.*

Questions that may be put to a medical witness in case of suspected insanity.

I.—Have you examined.....

II.—Have you done so on several different occasions so as to preclude the possibility of your examinations having been made during lucid intervals of insanity ?

III.—Do you consider him to be capable of managing himself and his personal affairs?

This is with reference to Nux-Vomica.

**This is with reference to Aconite.

IV.—Do you consider him to be of '*unsound mind*', in other words, intellectually *insane*?

V.—If so, do you consider his mental disorder to be complete or partial?

VI.—Do you think he understands the obligation, of an oath ?

VII.—Do you consider him, in his present condition, competent to give evidence in a Court of Law ?

VIII.—Do you consider that he is capable of pleading to the offence of which he now stands accused?

IX.—Do you happen to know how he was treated by his friends (whether as a lunatic, an imbecile or otherwise) prior to the present investigation and the occurrences that, have led to it ?

X.—What, so far as you can ascertain; were the general characteristics of his previous disposition ?

XL—Does he appear to have had any previous attacks of insanity?

XII.—Is he subject to insane *delusions*.

XIII.—If so, what is the general character of these ? Are they harmless or dangerous ? How do they manifest themselves ?

XIV.—Might such delusion or delusions have led to the criminal acts of which he is accused ?

XV.—Can you discover the cause of his reason having become affected ? In your opinion was it *congenital* or *accidental* ?

XVI.—If the latter, does it appear to have come on suddenly, or by slow degrees ?

XVII.—Have you any reason for believing that his insanity is of *hereditary origin*? If so, specify the grounds for such an opinion; and all the particulars bearing on it, as to the insane parents or relatives of the accused; the exciting cause of his attack; his age when it set in; and the type which it assumed.

XVIII.—Have you any reason to suspect that he is, in any degree, *feigning* insanity? If so, what are the grounds for this belief?

XIX.—Is it possible, in your opinion, that his in-sanity may have followed the actual commission of his offence, or has been caused by it ?

XX.—Have you any reason to suppose that the offence could have been committed during a lucid interval, during which he could be held responsible for his act ? If so, what appears to you to have been the duration of such lucid interval ? Or, on the contrary, do you believe his condition to have been such as altogether to absolve him from legal responsibility?

XXI.—Does he now display any signs of *homicidal* or of *suicidal* mania; or has he ever done so to your knowledge?

XXII.—Do you consider it absolutely necessary, from his present condition, that he should be confined in a lunatic asylum ? or again :

XXIII.—Do you think that judicious and unremitting supervision, out of an asylum; might be sufficient to prevent him from endangering his own life or the lives or property of others ?

No. IX.

Questions that may be put to a medical witness in a case of alleged causing miscarriage (Section 312-315, Indian Penal Code).

I.—Did you examine the person of
If so, when ? What did you observe ?

II.—Are you of opinion that a miscarriage has occurred or not ? Give your reasons

III.—In what mode do you consider the miscarriage to have been produced whether by violence per *vaginam*, or by external violence or by the use of irritants internally ? Give your reasons.

IV.—It is alleged that a drug called was used, state the symptoms and effects which the administration internally of this drug would produce. Do you consider that it would produce miscarriage ?

V.—Can you state whether the woman was quick with child when the miscarriage was produced? State your reasons.

VI.—Did you see the foetus ? If so, at what period of gestation do you consider the woman to have arrived ?

No. X.

Questions that may be put to a medical witness in a case of greivous hurt.

1.—Have you examined ? If so, state what you have observed.

II.—Describe carefully the marks of violence which you observed.

III.—In what way do you consider the injuries to have been inflicted ? If by a weapon, what sort of a weapon do you think was used?

IV.—Do you consider that the injuries inflicted could have been caused by the weapon now shown to you (No. of Police charge sheet) ?

V.—What was the direction of the wound, and can you form an opinion as to the position of the person inflicting such a wound with respect to the person receiving it?

VI.—Is it possible for such a wound to have been inflicted by any one on his own person? Give your reasons.

VII.—Do you consider that the injuries inflicted constitute any of the forms of "greivous hurt" defined in section 320 of the Indian Penal Code? If so, which of them ? Give reasons.

The Magistrate in putting this question will show the Indian Penal Code to the witness, or the Magistrate may vary the form of the question so as to elicit the required information without calling the Witness's attention to the Code.

VIII.—Do you consider that the person injured is now out of danger?

IX.—It is alleged that the injuries were caused by manner indicated ?

..... Could they have been caused in the

X.— Have you chemically or otherwise examined the stains (on the weapon, clothes, etc.), now before you (No...
..... in the Police charge sheet)?

XI.—Do you believe the stains to be those of blood?

N.B.—In case of the Injuries being gun-shot wounds, questions XXI to XXIV under the head of No. III (Death by wounds) may be put to the witness.

(C) POINTS TO BE INQUIRED INTO IN A CASE OF DEATH
FROM RUPTURE OF THE SPLEEN

*Report on rupture of the spleen, by Dr. Burton-Brown,
late Principal of the Lahore Medical College.*

Rupture of the spleen usually occurs from violence affecting the spleen when it is already diseased, but it may occur when the structure is quite healthy if the violence is very great, or it can happen without violence if the spleen is in a very diseased state; rupture has been known to have occurred either from muscular efforts, or straining, coughing or vomiting or even it is stated, spontaneously in intermittent fever, but these cases are very rare. It is, therefore, of great importance to determine what was the condition of the spleen in all cases in which death has been caused by rupture of this substance.

When the spleen is ruptured by violence the marks of that violence can sometimes be seen on the body but not in all cases, since rupture of the spleen often produces death so rapidly that no effusion of blood can occur, and also sometimes the violence appears only to affect the spleen, and not to injure other parts.

It is, therefore, quite possible that the spleen should be ruptured by violence and yet no evidence of the injury be seen on the skin or other parts of the body.

The condition of the spleen previous to rupture can generally be determined by its size and consistency after death. A healthy spleen measures about 5 or 5-1/2 inches long, 3 or 4 wide, and 1 to 1/2 thick; and it weights about 6 ounces—varying from 4 to 8. When the spleen is so diseased as to render a rupture

from slight violence probable, it will often weigh from 10 to 30 ounces, and measures from 7 to 12 inches in length. The healthy spleen does not project beyond the ribs but the diseased spleen does so,—often to a considerable distance.

The consistency of the spleen, when healthy, is moderately firm, so that it may be but with ease, leaving a sharp edge and smooth surface when divided, but in disease the spleen may become quite soft and pulpy or even diffluent, so as to fall away like a thick liquid when the capsule is divided. The condition, however, may also occur from putrefaction of the body if kept long after death or if the weather is very warm; and therefore these circumstances should also be ascertained.

The enlargement and softening of the spleen from disease is usually a result of previous attacks of intermittent fever or ague; it may also occur in other diseases, especially typhoid fever, scurvy and purpura.

The part of the spleen which is usually ruptured in the concave or inner surface and the extent of the rupture varies greatly; but death usually occurs more rapidly in proportion as the rupture is larger and deeper. When the rupture is small, the patient may live several days, or may even recover entirely. "

If the rupture is extensive, the person is usually incapable of moving from the place where the rupture occurred.

Lastly, in some instances the spleen is covered with a layer or membrane caused by previous attacks of inflammation; this may delay or even prevent death by limiting the rupture or preventing excessive bleeding.

The questions, therefore, which appear necessary to ask in cases of death from rupture of the spleen are---

Ist.—What appearances of external violence were perceptive on the body?

- 2nd.*—What was the size and weight of the spleen . after death ?
- 3rd.*—How far did it project beyond the ribs ?
- 4th.*—What was the consistency of the spleen—hard, firm, soft, pulpy or diffluent ?
- 5th.*—How long after death was the body examined and what the temperature of the air?
- 6th.*—Was the body much putrefied ?
- 7th.*—What was the position of the rupture ?
- 8th.*—What was the length and breadth of the rupture ?
- 9th.*—Is it, your opinion that the rupture was caused by external violence or not ? State your reasons for your opinion.
- 10th.*—Were there any adhesions about the spleen ; if so, were they older than the rupture or not ?

CHAPTER 19

Sentences

PART A.—GENERAL

1. The determination of appropriate punishment after the conviction of an offender is often a question of great difficulty and always require careful consideration. The law prescribes the nature and the limit of the punishment permissible for an offence, but the Court has to determine in each case a sentence suited to the offence and the offender. The maximum punishment prescribed by the law of any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum. The measure of punishment in any particular instance depends upon a variety of considerations such as the motive for the crime, its gravity, the character of the offender, his age, antecedents and other extenuating or aggravating circumstances, such as sudden temptation, previous convictions, and so forth, which have all to be carefully weighed by the Court in passing the sentence.

The award of suitable sentence depends on a variety of considerations.

2. The Indian Penal Code permits (Vide Section 53) the following classes of punishments viz fine, imprisonment, imprisonment for life and death. The sentence of forfeiture of property was abolished for certain offences (e.g., sections 121 and 122) by Act XVI of 1921 but can be imposed for certain other offences (e.g. sections 126 and 127). The sentence of penal servitude which could be awarded against Europeans and Americans in lieu of transportation was abolished by Act XVII of 1949. Act 26 of 1955 has abolished the sentence of transportation and Act 44 of 1955 which has repealed the Whipping Act, 1909, abolishes the sentence of whipping which could be imposed in lieu of or in addition to other punishments. The Reformatory Schools Act, 1897, provides for "youthful offenders" (i.e. offenders below the age of 15 years) sentenced to imprisonment being detained in a Reformatory School instead of being sent to Jail, Section 562 of

Various kinds of punishments. Minimum and enhanced punishments prescribed in different cases.

the Criminal Procedure Code enables the Court to release offenders in certain cases after taking a bond for good behaviors or in trivial cases even with a mere admonition. On the other hand there are certain offences for which a minimum punishment is prescribed (see e. g., section 397, Indian Penal Code), and the Court cannot pass a lesser sentence on a person convicted of such an offence. Section 75 of the Indian Penal Code makes a previous convict liable to enhanced punishment in the case of certain offences. There are also other Acts of the Legislature (e.g., the Punjab Excise Act), which lay down an enhanced penalty for repetition of an offence.

In certain cases, the Court can take action when passing the sentence to ensure good behavior on the part of a convict on his release from jail. In the case of a person convicted of an offence involving a breach of the peace, the court can order him to execute a bond for keeping peace for a period up to three years (section 106, Criminal Procedure Code). Section 565, Criminal Procedure Code enables Courts to order convicts to remain under police surveillance after their release from jail in the case of certain offences. In the same circumstances, an order of restriction can be passed under section 8 of the Restriction of Offenders Act, 1918.

Limits of the sentences which different classes of Magistrates can impose.

3. In passing sentence, the Court has not only to bear in mind the nature and the limit of the punishment prescribed for the offence of which the accused is found guilty, but also the nature and the limit of the punishment which it is empowered to impose. Sections 31 to 35 of the Criminal Procedure Code lay down the limits of the sentences which different classes of courts are empowered to impose. Magistrates of the 2nd or 3rd class are not empowered to exercise powers under section 565, Criminal Procedure Code. Nor can they deal with first offenders under section 562 Criminal Procedure Code unless empowered by the State Government. In the Punjab however, the State Government has empowered all Magistrates of the 2nd class to take security from first offenders under section 562 of the Criminal Procedure Code. The powers under the Reformatory Schools Act cannot be exercised by any Magistrate other than the District Magistrate, unless

he is specially empowered by the State Government in that behalf.

4. When a Magistrate of the 2nd and 3rd class is of opinion that an offender should receive a punishment different in kind from or more severe than that which such Magistrate is empowered to inflict or that he should be sent to a Reformatory School, he should take action under section 349, Criminal Procedure Code, and forward the proceedings to the District Magistrate or the Sub-Divisional Magistrate to whom he is subordinate. Similarly when a Magistrate of the 1st class is of opinion that an offender, owing to previous convictions or other circumstances deserves a severer sentence than what he can inflict, he should report the case to the District Magistrate with a view to have it transferred to a Magistrate empowered under section 30 of the Criminal Procedure Code or should commit the case to the Sessions Court if the case is serious enough to justify that course. Instructions on this subject in chapter 23 relating to "Habitual offenders" should also be consulted in this connection.

Procedure when Magistrate thinks that the accused should receive greater punishment than he can award.

5. Where a Person is convicted of an offence which is made up of parts each of which constitute an offence or when a Person is convicted of more offences than one the limitations imposed by sections 71 Indian Penal Code and section 350 Code of Criminal Procedure must be adhered to. When a person is convicted of more than one offence, the Court should be careful to pass a separate sentence for each offence so that if the conviction is set aside on appeal with respect to one of the offences there will be no room for doubt as to the sentences passed with respect to the rest. The Court has discretion to make such sentences run concurrently and this discretion should be exercised so as to make the effective sentence proportionate to the gravity of the offence. Under section 397 of the Code (as amended in 1923 and 1955) the Court has now power to order in the case of an accused person who is already undergoing imprisonment for another offence that a subsequent sentence of imprisonment passed on him shall take effect at once and run concurrently with the sentence he is undergoing. Where, however, the

Limitation imposed by Section 71, Indian Penal Code, and section 35, Criminal procedure Code Sentences in cases of accused convicted of several offences Concurrent sentences.

previous sentence is of imprisonment for life, the subsequent sentence of imprisonment must be made to run concurrently with such previous sentence.

Recommendations to Government for remission or commutation of punishment.

6. Whenever it is considered necessary in a case to recommend the remission or commutation of a sentence, the instructions contained in Chapter 20-F of this Volume and the provisions of sections 401 and 402 of the Code (as amended by the Adaptation of Laws Order, 1950) may be referred to.

PART B.----FINE

1. This is the lightest form of punishment which a Criminal Court can impose, but care should always be taken to see that the fine is not excessive with reference to the means of the offender. Indiscriminate imposition of fines without due regard to the capacity of the convict to pay it only results in waste of time of the Courts and the Police in attempting to realise it, and harassment to the convict and his dependants. If in awarding sentences of imprisonment in default of payment of fines, regard is had to the status of the accused and the sentence properly regulated, the accused may be induced to pay the fine rather than evade such payment.

Fine to be in proportion to offenders means.

2. Courts are empowered to impose imprisonment in default of payment of fines, but such imprisonments can only be awarded subject to the limitations prescribed in sections 64 to 67 of the Indian Penal Code.

Limitations.

3. When an offender has been sentenced to fine only and to imprisonment in default of fine and the fine is not paid forthwith, the court can, under section 388 of the Code of Criminal Procedure, order that the fine be paid within a certain period or in instalments as laid down in that section.

Instalments or postponment of realisation of fine.

PART C.—IMPRISONMENT

The Indian Penal Code provides for imprisonment of two kinds, viz., simple and rigorous, and the Court must choose one or the other form in view of all the circumstances. In certain Local and Special Acts, it will be found that the Legislature has not specified the kind of imprisonment which may be awarded. Under section 3(27) of the General Clauses Act, 1897, such imprisonment may be simple or rigorous. In the case of many offences under the Indian Penal Code and other Acts, it is provided that the offender *shall* be punished with imprisonment up to a certain term and *shall also be liable to fine*. In such cases the offender must be sentenced to some period of imprisonment (however small), but it is not obligatory to impose fine in addition, as supposed by some Magistrates.

Kinds of imprisonment and their selection.

2. Simple imprisonment is suitable where a fine will not suffice and a very short term of imprisonment has to be imposed. This ensures casual offenders being kept apart from the contamination of hardened criminals.

When simple imprisonment is suitable.

3. The Indian Penal Code provides for “solitary confinement” being awarded up to a certain limit (*vide* section 73). This form of punishment; is appropriate in the case of the more heinous class of offences. It should be borne in mind, however, that solitary confinement can be awarded in the case or offences under the Indian Penal Code only and not in the case or offences under Special or Local Acts.

When solitary confinement is suitable.

4. Short term imprisonments should ordinary be avoided and before passing such sentences the Court should consider whether the imprisonment till the rising of the court, allowed by law, could not appropriately be passed instead or the provisions of section 562 of the Code applied in favour of the accused. This is however not intended to fetter the judicial discretion of the Courts.

Short term imprisonment.

5. The Honourable the Chief Justice and the Judges have expressed agreement with the following

Ditto.

paragraphs of the Report of the Jail Reforms Committee, recommending abolition of short term sentences -

"23. It is common knowledge that short sojourn in jail is very harmful to the first offender in as much as by association with other prisoners, such sojourn may result in making an ordinary offender to become a hardened criminal. Besides, such short sentences take away the fear of jail life from the mind of the offenders as well as from the public mind. They provide more work for the jail officials and are uneconomical to the State. Evidently short sentences cannot be reformatory in character. It is for this reason that in many countries, sentences of imprisonment for less than 4 weeks have been abolished. The Committee also recommends that simple imprisonment for less than four weeks should be abolished 270. * * *

It is considered opinion of prisoner experts that a short sentence is neither deterrent nor reformatory in its effect, but is positively harmful. As said in the Indian Jail Committee's report "short sentence was often the introduction to life of crime. If familiarised the offender with prison, destroyed his self-respect and made him indifferent to further disgrace." The only justification for the award of short sentence was the lack of a suitable alternative. Trivial offences in respect of which short sentence are passed could equally be suitably dealt with by imposing fine, admonishing or awarding a sentence till the rising of the court,

* * . In many such cases "the publicity and inconvenience and anxiety of a public trial are more punishing than a sentence." (Mr. Justice Heaton) there may, however be occasions when in the opinion of the Court, imprisonment is the only sentence and the ends of justice would not be met by a mere sentence of fine. The court can while dealing with such cases give a sentence of imprisonment but all the same our recommendations considering all the pros and cons of the question would be that the sentence should not be for a period less than four weeks."

PART D.-DETENTION IN A REFORMATORY SCHOOL.

See Chapter 22, relating to youthful offenders.

PART E.—DEATH SENTENCES

1. When a convict is sentenced to death by a Court of Sessions, it must :—

- (i) direct by its sentence that he be hanged by the neck till he is dead (Section 368 of the Code) ;
- (ii) submit its proceedings to the High Court for confirmation of the sentence ;(Section 374) and
- (iii) inform the convict of the period within which he must appeal if he wishes to do so [Section 371 (3)].

Instruction to be observed by courts passing death sentences.

CHAPTER 20.

Execution of Sentences.

PART A.—FINES

For instructions regarding the realization of fines
see Volume IV Chapter 11.

Realization
fines.

PART B.—WARRANTS FOR EXECUTION

Warrants of commitment issued by European Magistrates should as a rule, and especially in cases where more than six months' imprisonment, is awarded, be filled up in English ; but cases need never be delayed on this account, as the printed forms leave very little to be filled up in writing.

Filling in warrants.

Note.—Instructions have been issued to Superintendents of jails that in cases in which more than six month's imprisonment is awarded by a European Magistrate and the warrant is not filled up in English, a fresh warrant in due form should be called for and substituted for that originally sent.

2, Warrants issued by an Indian Magistrate should be in Urdu unless he is well acquainted with the English. The objects to be attained are that the officer who signs a warrant should be responsible for its contents, and that all warrants should, as far as possible, be uniform.

Officer signing the warrant is responsible for its accuracy.

3. (i) The Code of Criminal Procedure enacts that every warrant should be signed by the Magistrate with his own hand, and the practice of affixing a signature by means of a stamp is strictly prohibited and should never be resorted to. An officer in charge of a jail would be justified in refusing to reserve or detain a prisoner in jail on a warrant to which is affixed a *signature* by means of a stamp.

Signature by means of a stamp not permissible.

(ii) Warrants of commitments should be in the form prescribed by Schedule V to the Code of Criminal Procedure, and should be signed in full (not initialled) by the Judge or Magistrate who issues it, and should be sealed with the seal of the Court.

Warrants should be signed sealed and in the prescribed form.

(iii) In the case of under-trial prisoners, the warrant of commitment for intermediate custody should be prepared with the greatest care possible with reference to the above instructions. A separate warrant should be issued in respect of each person committed to jail.

Separate warrants for each person.

(iv) Except in cases falling under clause (1) of this rule the Superintendent of a Jail should not refuse to admit a person where the above instructions have not been carried out but he should draw the immediate

Superintendent of jail should not refuse to admit a prisoner owing to defect in the warrant.

attention of the Magistrate concerned to the defect, and ask for its rectification at once, sending at the same time a copy of his letter to the Magistrate of the district for his information.

Loper convicts to be sent to Tarn Taran Jail.

(v) Persons sentenced to imprisonment who are found to be suffering from leprosy in a communicable form should be sent to the Leper Asylum at Tarn Taran.

Class of Prisoner when other than C to be noted in the warrant.

(vi) When a Court places a prisoner in a class other than C, it should make an endorsement to this effect on the warrant of commitment.

Warrants for release or remission of sentence.

4. On receipt of warrant ¹[and personal bond] for release of a prisoner, it should be forwarded through e-mail under digital signatures immediately provided that till such time such facility is made available in all the jails/Sub Jails, the release warrants be sent through Fax as well as through registered post.

1. Inserted vide C.S. No. 39 Rules/II.D4 dated 18.12.2020]

In case of dacoity or other organized crime, court should note on the warrant the nature of the crime and convict.

5. (i) In accordance with the request of the State Government communicated in the letter from the junior Secretary to Government, Punjab, No. 35, dated the 31st January, 1898, it is directed that, in every case of a sentence for dacoity, or other organized crime, the convicting Court shall enter on the warrant of commitment, for the information of the jail authorities, the nature of the crime, and whether the prisoner is a professional, hereditary or specially dangerous criminal.

If this is not noted the jail authorities should take steps if this is not noted.

(ii) If in any case this information is not given the jail authorities will refer the warrant to the Court, which should then have the proper entry made on it.

Court should consult record if required.

(iii) If there is any doubt as to the entry to be made the Court should decide the question by a reference to the record of the case, or by further inquiry, if necessary

The following rules have been made by the Punjab Government under section 60 of the Prisons' Act, 1894 to regulate the classification and treatment of convicted and under-trial prisoners : —

Rules about classification and treatment of convicted and under trial prisoners.

SECTION I.

Rules for classification of convicted and under-trial Prisoners.

1. (1) Convicted persons shall be divided into three classes, namely, A, B and C Class 'A' will contain all prisoners who are-

Three classes.

- (a) non-habitual prisoners of good characters.
- (b) by social status, education and habit of life been accustomed to a superior mode of living, and
- (c) have not been convicted of-
 - (i) offences involving elements of cruelty moral degradation or personal greed;
 - (ii) serious or premeditated violence
 - (iii) serious offences against property.
 - (iv) offences relating to the possession of explosives, firearms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed;
 - (v) abetment or incitement of offences falling within these sub-clauses.

(2) Class 'B' will consist of prisoners who by social status education or habit of life have been accustomed to a superior mode of living. Habitual prisoners may be included in this class by order of the State Government.

(3) Class "C" will consist of prisoners who are not classified in classes A and B.

2. In the case of classes A and B the classifying authority will be the State Government. Class C will be classified by the trying Courts, but such prisoners will have a right to apply for revision to the State Government.

Classifying authority.

PART C.—IMPRISONMENT FOR LIFE

In every case in which a sentence of Imprisonment for life is passed on a woman for the murder of her infant child, and the sentence is not appealed against the record of the case shall, after the expiration of the period allowed for appeal, be forwarded to the High Court for submission to Government, with a view to the consideration of the question whether any commutation or reduction of the sentence should be allowed.

Record of the case in which a woman has been sentenced to imprisonment for the murder of her child should be sent to Government through High Court.

PART D —SENTENCE OF DEATH

After a death sentence has been confirmed or other order has been made by the High Court, the Registrar will return the record, with a duplicate or an attested copy of the order under the seal of the Court, to the Sessions Judge, who will take the steps prescribed by section 381 of the Code of Criminal Procedure to cause the sentence or order to be carried into effect.

Order of High Court to be sent to Sessions Judge for carrying out sentence.

For the procedure is issuing a warrant for the execution of a sentence of death reference should be made to rule (ii) of Part E of this Chapter.

2. The record of every case, as prepared for the use of the High Court, in which the sentence of death has been confirmed by the High Court, should as soon as orders have been passed confirming the death sentence, be forwarded to the State Government together with the Court's order thereon and the English record of the Sessions Court.

Record of case wherein death sentence has been confirmed should be forwarded to Government.

PART E.—EXECUTION OF THE ORDERS OF CRIMINAL
APPELLATE COURTS AND COURTS OF REVISION,

The following rules, as to the mode of carrying out the orders passed on appeal or in revision by Criminal Courts, should be observed :—

- (i) The High Court will certify its decision to the Court from whose judgment the petition of appeal or application for revision was preferred

High Court
will certify
its decision
to Lower
Court.

Provided that if such judgment was that of a Court subordinate to the Magistrate of the district the decision of the High Court will be certified to the Magistrate of the district.

- (ii) The Court to which the decision is certified will, in cases of rejection of appeal or confirmation of sentence cause the appellant to be informed, and in cases of alteration, reversal or enhancement of sentence will issue a warrant accordingly to the Superintendent of the Jail of the district in which the trial was held, or if the original sentence was one of fine only to the person to whom the original warrant was addressed.

Lower Court will
inform prisoner
and the Jail
Superintendent.

Sessions Judges should not fail to communicate the High Court's orders in Murder References and appeals to the convicts merely on the assumption that the High Court will itself directly communicate the result to the convicts.

When a sentence of death is confirmed or passed by the High Court in appeal or revision, the Sessions Judge to whom the decision of the High Court is certified, shall issue the warrant for the execution of the sentence of death, to the Superintendent of the Jail to which the prisoner was originally committed. If the condemned prisoner has been or should be transferred to another jail, and the Superintendent to whom the original warrant of commitment was addressed returns the warrant, for the execution of the sentence of death

to the Sessions Judge with an intimation that the prisoner has been transferred to another jail the Sessions Judge shall issue a revised warrant for the execution of the sentence of death to the Superintendent of the jail in which the condemned prisoner is confined.

¹[NOTE.—When a sentence of death has been suspended or commuted under Chapter XXIX of the Code of Criminal Procedure, the passing of further orders regarding the carrying out of such sentence is a matter for the Government ordering the suspension or commutation and not for the Sessions Judge.]

Appellate court will at once in inform jail superintendent direct about all orders of release or alteration or enhancement of sentence passed by it.

(iii) The Sessions Court or any other appellate Court will, in all cases in which its order on appeal requires the immediate release of a prisoner, issue a warrant of release direct to the Superintendent of the Jail in which the prisoner is confined. The Superintendent of jail will, after executing such warrant, forward it with the original warrant of commitment duly filled up, to the Magistrate of the district in which the trial was held. If in any case the warrants have not been received from the Superintendent of the Jail by the time the records in the case are returned by the Appellate Court, it will be the duty of the Magistrate of the district to at once institute inquiries as to whether the prisoner has been released, and if necessary to issue his own warrant for the release of the prisoner.

In cases of alteration or enhancement of sentence also the Sessions Court or any other appellate Court will issue a warrant direct to the Superintendent of the Jail in which the prisoner is confined. In cases of rejection of appeal or confirmation of sentence the Appellate Court will certify its decision on appeal to the Magistrate of the district in which the trial was held, who will cause the appellant to be informed. When an appeal is rejected the Superintendent of the Jail in which the prisoner is confined should also be informed direct, by the Appellate Court.

NOTE—The attention of the Judges of the High Court has been drawn to the great delays which frequently occur between the decision of criminal appeals and the communication of the result to the Superintendent of the Jail in which the convict is confined. In many cases it is apparently necessary for the Superintendent to issue several reminders to the Appellate Court before he can obtain the information desired. As this state of things is contrary to the procedure prescribed in the foregoing instructions a strict compliance therewith is enjoined in to prevent the occurrence of any such delay.

1. Substituted vide Correction Slip No. 19 Rules.XII.A.15 dated 08.02.1974.

- (iv) The Magistrate of the district will in communication with the Superintendent of the from jail, arrange that no prisoner is removed of from the Jail in which he has been confined by order of the Court sentencing him to imprisonment until the period of appeal has expired, or if at that time an appeal is pending until the decision of the Appellate Court is known :

Prisoners not to be transferred from the jail until decision of appeal, Exceptions.

Provided that prisoners committed to the Gurgaon, Hoshiarpur and Dharamsala Jails may be transferred respectively to the Delhi, Jullundur and Gurdaspur jails at the discretion of the jail authorities; but no prisoner so transferred shall be removed from the jail to which the transfer is made until the period of appeal has expired, or, if an appeal has been filed, until the decision of the Appellate Court is known; and that notices issued by any Court for service on such prisoner shall be forwarded without delay to the Superintendent of the Jail in which the prisoner is confined with instructions that it be returned *direct*, after service, to the Court issuing such notice.

- (v) If for any reason an exception is made to the above rule and a prisoner is transferred before the order of the Appellate Court is known, the Superintendent of the Jail to which the prisoner was originally committed will forward the information or warrant of the order of the Appellate Court to the Superintendent of the Jail to which the prisoner has been transferred, and the latter officer, having executed the order, will report execution to the Court issuing the information or warrant.
- (vi) The Inspector-General of Prisons has, pointed out that difficulties occasionally arise in carrying out sentences , passed under section 35 of the Code of Criminal Procedure, of which one is to take effect after the expiration of the other, when the first sentence to be executed is subsequently set aside on appeal.

Duty of Jail Superintendent to inform the Superintendent of the jail to which the prisoner has been transferred about orders passed by appellate court.

Execution of sentences passed under Section 35, Criminal Procedure Code.

If the sentence which is to take effect first in set aside on appeal the appellate Court should direct the original court to issue a fresh warrant directing that the second sentence be carried out at once.

Procedure for execution of order of Appellate court when accused has been admitted to bail.

(vii) When a prisoner on whom separate sentences are passed under section 35 of the Criminal Procedure Code is committed to jail under two separate warrants, the sentence in the one to take effect from the expiry of the sentence in the other, the date of such second sentence shall in the event, of the first sentence being set aside on appeal, be presumed to take effect from the date on which he was committed to jail under the first or original sentence. A direction to this effect should invariably be given and communicated by the Appellate Court to the Court which passed the original sentence, with a view to the issue of a fresh warrant to the Jail authorities in supersession of the original warrant.

(viii) Where an accused has been admitted to bail pending the hearing of his appeal the original warrant of commitment shall, be forwarded by the jail authorities to the Appellate Court, which will take action as follows on the decision of the appeal :-

- (1) In every case in which a sentence reserved on appeal, the Appellate Court shall return the original warrant with a copy of its order to the Court by which the accused was admitted to bail, with directions to discharge him.
- (2) In every case in which a sentence is modified on appeal, the Appellate Court shall prepare a fresh warrant (in the form prescribed in the following rule) and shall forward the same, with the original warrant and with a copy of its order, to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and commitment to jail on the modified warrant.
- (3) In every case in which a sentence is confirmed on appeal, the Appellate Court

shall make an endorsement on the original warrant to the effect that the sentence has been confirmed and return it with a copy of its order to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and recommitment to jail on the original warrant.

In each of the cases last above-mentioned it shall be the duty of the Court to which the accused surrenders to his bail to endorse on the warrant the dates of his release on bail and of his subsequent surrender.

- (ix) Where an accused who has been released on bail presents himself in an Appellate or Revisional Court and his sentence is confirmed or so modified that he has still to serve some term of imprisonment, such Court shall commit, him to Jail on the original or a modified Warrant and shall inform the district Magistrate concerned of the action taken when sending a copy of a judgment.
- (x) When, on appeal, re-trial is ordered and accused is not released on bail, but is remanded to the judicial lock-up, the Jail authorities should return the original warrant of commitment to the trial court. If, however, the order for re-trial is subsequently set aside, and the appellate court is directed to re-hear the appeal, the appellate court should take care to re-call the original warrant and re-commit the accused to jail to serve his sentence, pending disposal of the appeal. If it thinks it fit to release the accused on bail the procedure laid down in paragraph (viii) above should be followed.
- (xi) The following form of warrant is prescribed for use by appellate Courts when a sentence is modified or altered on appeal :-

Procedure when accused surrenders to his bail in Appellate Court.

Procedure when re-trial is ordered.

Form of warrant when a sentence is modified or altered on appeal.

In the Court_____ at _____To the Officer-in-charge of the Jail at _____

Whereas.....son of
.....of Village.....
Pargana Police Station.....
.....in the district of

.....Magistrate of
.....was convicted by

.....of the offence of
.....and was
sentenced on the day of
.....19 to
.....which conviction and
sentence have been modified on appeal by this Court, and
in lieu thereof the said
.....has been
convicted of the offence of and
sentenced on the day of
.....19 to

This is to authorise and require you the said Superin-
tendent to receive the said into
your custody in the said jail, together with this warrant,
and carry the aforesaid sentence into execution
according to law; and this is further to authorise and
require you to return to this Court the original
warrant of commitment, in lieu whereof this warrant is
issued.

Given under my hand and the seal of the Court
this..... day of 19

Sessions Judge

PART F.—SUSPENSION AND REMISSION OF SENTENCES

I. It happens at times that sentence which a Judge or a Magistrate can pass under the law is unsuitable in view of all the circumstances of the case. In such cases all that can be done is to make a recommendation to the 'appropriate Government' to take action under section 401 and 402 of the Code of Criminal Procedure. When a Sessions Judge or a Magistrate passing a sentence wishes a case to be brought; to the notice of the appropriate Government for remission or commutation of the punishment he should submit the recommendation with his proceedings through the High Court other wise the High Court may hear in appeal a case in which the Government has remitted or commuted the punishment, without knowing of such remission or commutation. 'Appropriate Government' for the purposes of sections 401 and 402 of the Code has been defined in sub-section (3) of section 402 of the Code (as amended by Adaptation of Laws Orders, 1950). In this connection also see articles 72 and 161 of the Constitution of India.

Recommendation for remission or commutation to 'appropriate Government.'

'Appropriate Government' defined.

II. The Central Government has made the following rules in exercise of powers conferred by sub-section (6) of section 401 of the Code:-

Rules made by Central Government.

Published in the Gazette of India, Part II—Section 3, dated November, 19, 1955.

MINISTRY OF HOME AFFAIRS

New Delhi-2 the 9th November, 1955.

S. R. O. 3491,—In exercise of the powers conferred by sub-section (6) of Section 401 of the Code of Criminal Procedure 1898, (Act V of 1898) the Central Government hereby makes the following rules:—

1. Where a petition for suspension of the execution of the sentence of imprisonment or for remission of the whole or part of a sentence of imprisonment is made by or on behalf of a person sentenced to imprisonment for an offence against any law relating to a matter to

which the executive power of the Union extends and the person sentenced to such sentence of imprisonment is in Jail, the execution of the sentence shall be suspended and such person released on parole, subject to the conditions specified in rule 3, for such period not exceeding fifteen days; as may be necessary for obtaining the orders of the Central Government on the petition, if the State Government of the State in which such person is detained in jail is satisfied that the immediate release of such person on parole is rendered necessary by reason of any illness constituting a grave threat to the life of such person or of a parent, wife, husband or child of such person.

2. A State Government ordering a release on parole under rule 1 shall forthwith report the full facts and circumstances of the case to the Central Government, while forwarding the petition to the Central Government and the Central Government may on consideration of the report and petition make such order as they deem fit.

3. A person released on parole under rule I shall enter into a bond undertaking to reside during the period of his parole at a place specified therein and not depart therefrom without the previous permission of the State Government and to return to the jail in which he is confined on expiry of the period of his parole, and to conform to such other conditions as the State Government may consider necessary, (No. 43/ 32/55-Judi& I).

¹[CHAPTER 21]
The probation of Offenders Act, 1958.

1. **Probation System:** The essence of the system is-

- (i) that the offender, instead of being fined or sentenced to imprisonment, is placed on probation, that is to say a probation order is made by the Magistrate and the probationer undertakes to be bound by it by entering into a recognizance, with or without sureties;
- (ii) that the order may provide that the probationer shall be under the supervision of a probation officer for a specified period, and it may stipulate certain conditions to be observed by the probationer, for example, as to residence, abstention from intoxicating liquor and the like; and
- (iii) that the order can produce beneficial results only with the voluntary co-operation of the probationer.

2. **Objects of probation:** Probation is based on the following premises:

- (i) Many offenders are not expert or dangerous criminals but are weak characters who have surrendered to temptation, or, through misfortune or improvidence, have been brought within the operations of the police and the courts.
- (ii) In assigning this type of offender to the care of a probation officer, the court not only saves him from the stigma and possible contamination of prison, but also encourages his own sense of responsibility for his future; if he co-operates with the probation officer, he will be able to continue his family life and his record will still be clean.
- (iii) Such a practice not only assists the offender as a social value to the community, but by relieving the prisons of large numbers of first offenders, short-term prisoners, and other classes of quasi-criminal offenders, it results in economy and allows the prison service to apply themselves to their true function - that of segregating or providing suitable treatment for the vicious and dangerous criminals.

3. **Age of the offender:** Law is now well settled that the crucial date for

1. Chapter 21 Substituted vide correction Slip No 17/XVI.A.123, dated 20.12.1972

reckoning the age is the date on which the trial court had to deal with the offender. (1) The Act applies not only to young persons but also to other offenders. Under Section 6, however, when any person under 21 years of age is found guilty of an offence punishable with imprisonment (not being imprisonment for life), the Court by which the person is found guilty cannot sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or Section 4 and If the Court passes any sentence of imprisonment on the offender, it has to record its reasons for doing so.

4. Application of the Act to offences under Local and Special Acts.

The Act replaces Section 562 of the Code of Criminal Procedure and covers within its broad sweep not only offences under the Indian Penal Code but also those under local and special Acts; the only exceptions being the provisions set out in Section 18 of the Act. Even the offences for which a minimum sentence is prescribed are not excluded from the operation of the Act. In a case under the Prevention of Food Adulteration Act, 1954 in Ishar Dass Vs. State of Punjab, A.I.R. 1972 s.c.1295 the Supreme Court made the following observations:

“Adulteration of food is a menace to public health. The prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the prevention of Food Adulteration Act. As regards persons under 21 years of age, however, the policy of law, appears to be that such a person in spite of his conviction under the Prevention of Food “Adulteration Act, should be deprived of the advantage of Probation of Offenders Act, which is a beneficent measure and reflects and incorporates the modern approach and latest trend in penology.”

The Hon’ble Judges consider that the above observations furnish a true guide as to the policy of law to be followed in cases under the Opium Act, Punjab Excise Act, 1914 and other local and Special Acts.

5. Methods of treatment provided under the Act: - The Act lays down three different methods of treatment. These are:

(a) Section 3 deals exclusively with first offenders, who are convicted of an offence punishable under any of Sections 379, 380, 381, 404 or 420 of the Indian Penal Code or with not more than two years imprisonment. It provides for release of such offenders after admonition. The object of the section is to afford an alternative to the Courts so that in case of first offenders especially of tender years, the Court may afford them a further chance to turn over a new leaf. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve. Before passing an order under this Section, the trial Court should guard against two things:

(i) The danger to the public, and

(ii) The danger to the accused himself.

The Public must not be led to suppose that all juvenile offenders may commit any crime that they like without any fear of punishment because that course would be an incentive to criminal parents to initiate their children into a life of crime and even children themselves being immune from fear of punishment might be tempted to go astray into the paths of crime. It is obvious, therefore, that before applying this section, the Court must consider whether there is a good case for its application or not. If the offence is by no means a simple crime such as is committed by children out of mere thoughtlessness rather than criminality but it shows a singular combination of a design and in gratitude and a general character of craft and deceit on the part of an adult, it would surely call for a very severe punishment indeed and resort should not be had to the provisions of this Section.

(b) Section 4 empowers the Court in appropriate cases to release any offender (not being guilty of an offence punishable with death or imprisonment for life) on probation of good conduct instead of sentencing him at once to any punishment. Where the provisions of this section are invoked, the usual procedure of a conviction followed immediately by sentence is divided into two parts. The second part,

namely, the sentence, is postponed. This section provides an exception to the rule that conviction must be followed immediately by sentence.

It is to be noted that before an offender is placed on probation, the Court must record a conviction for an offence against him.

It would normally be advisable to take sureties in addition to personal bonds as sureties are themselves a guarantee of some efforts towards reform and a safeguard against the offender removing himself outside the jurisdiction of the Court and breaking the condition of the bond entered into by him.

A Magistrate must carefully explain the nature and effect of a probation order to the offender. He should impress on the offender that probation must not be thought of as a “let-off”, but that it is always open to the Magistrate to review the case and that if the probationer fails in his undertaking during the time specified in the order, he may be brought before the Magistrate and sentenced for his original offence. After explaining the matter to him, the Magistrate must ask the offender whether he consents to be placed on probation; if the offender declines to be placed on probation some other mode of punishment will have to be used.

- (c) In order to ensure that an offender released on probation of good conduct really conducts himself properly and becomes a useful member of the society. Something more definite is required than the mere taking of the security. With a view to achieve that object, a provision has been made in Sub-Section (3) of Section 4 to enable the Court to pass a supervision order directing that such offender shall be under the supervision of a probation officer during such period as may be specified therein and imposing such conditions as in the opinion of the Court may be necessary for securing such supervision. A Court making a supervision order must carefully explain to the offender the terms and conditions of the order. It must also furnish to the offender, and the sureties, if any, and the probation officer concerned with a copy of the order.

If the offender is released under the provisions relating to admonition or probation, the Court may, if it thinks fit make at the same time a further order directing the offender to pay (i) compensation to the person who has suffered loss or injury as a direct consequence of the crime and (ii) costs of the trial. A condition to pay damages creates an impression on the probationer who might otherwise treat probation lightly; and also in some cases, the feeling that he is

making good an injury tends to restore his self-respect. Where a probation order is made it is important that it should be enforced; to allow a probationer to disobey the conditions laid down in the order, and to disregard the authority of the probation officer, is to discredit the system. However, it is clearly undesirable to take serious notice of minor lapses of conduct; for these, a warning by the Magistrate may be sufficient, or the Magistrate may impose a penalty without prejudice to the continuance in force of the recognizance (vide Section 9(3)(b)). The ultimate sanction behind obedience of a probation order is the power of the Magistrate to impose the punishment which might have been inflicted for the original offence.

6. Enquiries to be made before passing the order: The Act is intended for the reformation of offenders in their own homes, if such a course is likely to succeed. It is essential, therefore, to find out all possible details about the offender, his character, his physical and mental ability, the conditions in which he lives and the circumstances in which he came to commit the crime. As soon as the charge has been or is about to be framed, the Court, if it considers that the offender, having regard to the nature of the offence and the part played by him is likely to be given the benefit of Section 3 and 4 of the Act, should immediately instruct the probation officer of the area concerned to make preliminary enquiries about the offender. The Court should endeavour to obtain full information regarding the age, character, antecedents and physical and mental condition of the offender, which will enable it to make a wise selection of the method of treatment out of the various methods of treatment provided in Sections 3, 4(1) and 4(3) of the Act.

In some cases it may be desirable to get the offender medically examined in order to ascertain his mental and physical condition. In such cases medical or psychiatric examination should be arranged.

7. The period of orders of probation and supervision: - The Court is empowered by Section 8 to vary its original order and it is psychologically sound to limit the duration of the order in ordinary cases to one year in the first instance and to extend the period later on, if required. To the average offender the prospect of a three year's period of probation may prove intimidating and a shorter period may encourage him to make an effort to reform.

8. Watch to be kept after release: - The duty of the Court does not end when the order has been passed. It is provided in the rules under the Act that where a supervision order has been passed and a probation officer has been

appointed, the probation officer may be required to submit periodical reports in respect of the conduct and behavior of the offender to the Court which passed the supervision order. The Court will have to keep a watch on the progress of the probationer, and should, if necessary, under Section 8 of the Act, upon the application of the probation officer vary any of the conditions in the bond or extend or reduce its duration. The success of the Act depends on the wise exercise of discretion and the proper discharge of their duties by the Courts administering it.

9. The following rules including forms framed by the Governor of Punjab in exercise of powers vested in him under Section 17 of the Act are reproduced for general information:-

The Punjab Probation of Offenders Rules, 1962

I- Preliminary

1. **Short title.**- (1) These Rules may be called the Punjab Probation of Offenders Rules, 1962.

(2) They shall come into force in any area on the date on which the probation of Offenders Act, 1958, comes into force therein.

2. **Definitions.** - In these rules unless the context otherwise requires,-

(a) “Act” means the Probation of Offenders Act, 1958 (20 of 1958);

(b) “Chief Controlling Authority” means the Officer appointed under sub-rule 4;

(c) “Chief Probation Officer” means the officer appointed under sub-rule (3) of rule 3;

(d) “District Probation Officer” means the salaried probation officer in charge of the probation work in a probation district;

(e) “Form” means a form appended to these rules;

(f) “Part-time Probation Officer” means a probation officer other than a salaried probation officer recognized by the State Government under clause (a) of sub-section (1) of Section 13 of the Act or provided by a society under clause (b) of sub-section (1) of Section 13 of the Act, who is remunerated by fees or honorarium and not by salary or who works without remuneration;

(g) “Probation District” means a district or a bigger or smaller area as may be specified in this behalf by notification by the State Government;

- (h) “Salaried Probation Officer” means a whole-time probation officer appointed or recognised by the State Government under clause (a) of sub-section (1) of section 13 of the Act, or provided by a society under clause (b) of sub-section (1) of section 13 of the Act who is remunerated by salary and not by fees or honorarium;
- (i) “Special Probation Officer” means a probation officer appointed by the court under clause (c) of sub-section (1) of section 13 of the Act;
- (j) “Supervision order” means an order passed under sub-section (3) of section 4 of the Act.

II- Departmental Control of Probation Officers.

3. Probation officers and their control. [Sections 13(1) (a) and 17(1).-
(1) The State Government may appoint for each probation district such number of persons as it thinks fit to be probation officers for the purposes of the Act.

(2) All probation officers (whether appointed or recognized by the State Government) in each probation district shall be under the control of a probation officer specified by the State Government in this behalf and designated as District Probation Officer.

(3) All such probation officers in the State shall be under the control of the Chief Probation Officer to be appointed by the State Government.

4. Chief Controlling Authority. [Section 17(1).-(1) The Inspector-General of Prisons, shall be the “Chief Controlling Authority” for the purposes of these rules.

(2) The chief Controlling Authority shall-

- (i) control and supervise the work of the Chief Probation Officer and all Probation Officers;
- (ii) exercise all financial powers of the Head of Department for incurring expenditure and for other administrative work with respect to the work of probation in the State;
- (iii) deal with recognized societies;
- (iv) contact other associations and such members of the public as may be interested in the propagation of work relating to probation;

- (v) submit statistical returns and such periodical or special returns or other reports in such manner as may be required by the State Government from time to time;
- (vi) inspect the work and offices of the Chief Probation Officer and District Probation Officers annually and the offices of the Probation Officers and institutions and premises for the reception of probationers at such intervals as may be fixed by the State Government.

5. Chief Probation Officer. [Section 17(1) and (2)(b)].- Subject to the control and supervision of the Chief Controlling Authority, the Chief Probation Officer shall be responsible for administering the work of probation throughout the State, and his duties and responsibilities shall include-

- (a) control, guidance and supervision of the work of District Probation Officers and other Probation Officers;
- (b) assisting and fostering after-care work in the State and other activities for the purpose of rehabilitation of offenders and maintaining contact with other related associations and the public;
- (c) submission of statistical or other returns and reports to the Chief Controlling Authority; and
- (d) such other functions as may be assigned to him by the Chief Controlling Authority or the State Government.

6. District Probation Officer. [sections 17(1) and 17 (2)(b)].- (1) The headquarters of a District Probation Officer shall be the headquarters of the district or such other place as may be fixed by the Chief Controlling Authority. The jurisdiction of the District Probation Officer shall extend to the whole of the probation district in which he is posted.

(2) He shall-

- (a) be responsible for the working of probation in whole of the area within his jurisdiction;
- (b) control, guide and supervise the work of probation officers in the district;
- (c) be the drawing and disbursing officer in respect of all expenses connected with the probation work in the district;

- (d) submit to the Chief Probation Officer a half-yearly report on the conduct and progress of all probationers in his jurisdiction, and reports of cases dealt with under section 9 of the Act;
- (e) submit to the Chief Controlling Authority, Chief Probation Officer, the District Magistrate and the Court such other reports as may be required by the Chief Probation Officer or the Chief Controlling Authority or the State Government;
- (f) perform such other functions as may be assigned to him by the Chief Probation Officer or the Chief Controlling Authority.

III-Probation Officers-Qualifications for appointment and conditions of service.

7. General attributes of Probation Officer. [Sections 13(1), 17(1) and 17(2)(a)].-While appointing Probation Officers, due regard shall be had to the following general attributes of a Probation Officer-

- (a) adequate educational attainments;
- (b) good character and personality suitable for influencing persons placed under his supervision in two essential respects, viz., (a) confirming to law during the period of probation, and (b) reformation of character and attitude to social behaviour, so as not to revert to crime;
- (c) maturity of age and experience;

Explanation- A Probation Officer in order to have independent charge of a probationer shall not be less than thirty years of age.

- (d) aptitude, zeal and a “calling” for probation work.

8. Qualifications of part-time Probation Officer. [Sections 17(1) and 17(2)(a)].- A part-time Probation Officer appointed in a district shall be-

- (a) not less than 30 years of age;
- (b) a resident of the district;
- (c) in a position to devote adequate time to the supervision of probationers;
- (d) a person having sufficient practical experience in special work or in teaching or in moulding character; and
- (e) fully conversant with the provisions of the Act and these Rules.

9. Appointment and registration of Probation Officers. [Sections 13(1), 17(1) and 17(2)(a)].- (1) The procedure relating to the appointment of Probation Officers by the State Government shall be in accordance with general rules relating to recruitment of officers to posts of similar status and responsibility.

(2) (a) The names of all Probation Officers with their addresses shall be entered in a register kept by the Chief Probation Officer.

(b) Lists containing the names of-

(i) Probation Officers appointed by the State Government;

(ii) Salaried Probation Officers provided by societies; and

(iii) Part-time Probation Officers for service in the District specified areas of the district or allocated Courts in the district shall be kept by the District Probation Officer and made available to the Courts, whenever necessary.

10. Special Probation Officer.- (1) The Court may appoint a Special Probation Officer under clause (c) of Sub-Section (1) of section 13 of the Act in view of the special circumstances of a particular case, when no Probation Officer on the lists referred to in clause (b) of sub-rule (2) of rule 9 is available or considered suitable enough to attend to the case. A Court or a District Magistrate may also appoint a Special Probation Officer under sub-section (2) of Sec. 13 of the Act.

(2) In deciding whether a person is suitable for appointment as a Probation Officer in a particular case, under clause (c) of sub-section (1) or sub-section (2) of Sec. 13 of the Act, the Court or the District Magistrate may take into consideration-

(a) the general attributes specified in rule 7 and the provisions of rule 11, (b) his age, position, character and attainments and relationship to the offender, and (c) his ability to follow these rules and to discharge the duties of Probation Officers.

11. Choice of Probation Officer, Precautions. [Section 14]. - (1) Female probationers shall not ordinarily be placed under the supervision or control of male Probation Officers.

(2) While choosing a Probation Officer for supervision in a particular case, the Court may, where necessary, consult the district Probation Officer.

12. Terms and conditions of Service. - (1) (a) Salaries, allowances and other terms and conditions of service applicable to Salaried Probation Officers appointed by a society shall be prescribed by the society in accordance with these rules and the instructions issued by the Chief Controlling Authority or the State Government under rule 21(3)(b).

(b) A part-time Probation Officer may be paid (i) a fixed remuneration with due regard to the nature and extent of the duties he is required to perform, or (ii) an honorarium, or he may work without accepting any remuneration.

(c) A special Probation Officer may be paid, if the Court so directs, remuneration or allowance for supervision of probationers at rates similar to those prescribed for part-time Probation officers.

(2) (a) Every Probation Officer shall be furnished with an Identity Card in Form I which shall be used only when necessary and shall be returned to the Chief Probation Officer on suspension or termination of his appointment.

(b) Probation Officers shall not wear any uniform or badge.

IV- Probation Officers-Duties and Responsibilities

13. Departmental responsibility. [Section 17(2)(b).]-(1) Every Probation Officer shall carry out the directions of the Chief Probation Officer and the Chief Controlling Authority.

(2) Every Probation Officer shall inform the District Probation Officer as soon as a probationer is placed under his supervision.

(3) Every probation officer shall submit-

(a) to the District Probation Officer a monthly report in Form II on the progress of each probationer placed under his supervision and copies of pre-sentence report and of other reports submitted to a Court or District Magistrate, and

(b) to the Chief Probation Officer and the District Probation Officer such periodical reports and statistics as may be required.

14. Pre-sentence report. [Section 14].- (1) For the purpose of section 14 (a) of the Act, the Probation Officer shall after making discreet inquiries regarding the offender's character and antecedents, his social and environmental conditions, the financial and other circumstances of his family,

the circumstances in which the alleged offence was committed, and any other facts which the Court has directed him to enquire into, put down the relevant facts fully and faithfully in the report, as nearly as may be in Form III.

(2) The summary required to be given in Form III shall include an objective statement of facts alongwith the Probation Officer's assessment of the case, so as to help the Court in determining the most suitable method of dealing with the offender after he is found guilty.

(3) The report shall be treated as "confidential" and delivered to the Court on the date specified by it. It shall be enclosed in a sealed cover, if sent to the Court or delivered on a date prior to the date of delivery of judgment.

15. Supervision of probationers. [Section 17(2)(b)]. - (1) The Probation Officer shall act as a friend and guide of the probationer. For this purpose, he shall, subject to the provisions of the supervision order, require the Probationer to report to him at stated intervals, meet him frequently and keep in close touch with him.

(2) At the first time meeting the Probation Officer shall-

(a) explain to the probationer the conditions of the supervision order;

(b) advise him as to how he should conduct himself; and

(c) specify the days on which he should report to the officer, the time and place of reporting being so arranged as to avoid unnecessary hardship to the probationer and to secure proper privacy; and inform the probationer that any omission on his part in so reporting will have to be satisfactorily accounted for.

(3) The Probation Officer shall visit the Probationer periodically in his home surroundings and, where appropriate, his occupational environment, in order to see the progress made by the probationer and the difficulties, if any, met with by him:

Provided that in the case of young offenders attending school or college, the Probation Officer shall not visit the probationer in the institution but may make discreet enquiries of the teacher, tutor or head of the institution regarding his attendance, conduct and progress without prejudicing the probationer's interest in any way.

(4) The frequency of the meetings, including visits by the officers should depend upon the conduct and mode of life of the probationer and upon the progress he is making. But the number of meetings shall be, unless the Court directs otherwise, not less than-

- (a) once a week, during the first month;
- (b) once a fortnight, during the rest of the first half of the period of probation;
and
- (c) once a month during the remaining period.

(5) The Probation Officer shall endeavour, by example, advice, persuasion and assistance and, where necessary, by warning, to ensure that (a) the probationer does not violate the conditions of the supervision order or commit any further offence and behaves in conformity with law and (b) his behaviour, attitude to society, habits, character and morals improve so that he may not revert to crime.

(6) The Probation Officer shall also take such action as he deems necessary for better regulation of the conduct and mode of life of the probationer or for closer supervision over him.

16. Duties in relation to courts. [Section 17(2) (b)].- (1) The Probation Officer may move the court before which the Probationer is bound to vary the conditions of the bond by way of tightening or relaxing them, as may be required by the conduct of the probationer.

(2) If the Probation Officer considers that the probationer has made sufficient progress and further supervision is not necessary, he shall make an application to the court for discharging the bond under sub-section (3) of section 8 of the Act.

(3) If a probationer fails to observe any of the conditions of the bond or behaves in a manner indicating that he is not likely to fulfil the purpose of the supervision order, the Probation officer shall report the fact to the Court or the District Magistrate for such action as may be considered necessary.

(4) The Probation Officer shall consult the District Probation Officer with regard to an appeal or revision under section 11 of the Act.

17. Responsibilities in relation to District Magistrate. [Section 17(2) (b)].-The Probation Officer shall, (1) carry out any directions that the District

Magistrate, or other officer not below the rank of a Sub-Divisional Magistrate duly authorised by him to act on his behalf, may give regarding supervision of a probationer;

(2) Submit such report to the District Magistrate on the progress of probationers as may be required, as nearly as may be in Form II;

(3) report to the District Magistrate-

(a) cases where conditions of the supervision order or bond are not adhered to, which would include inter alia-

(i) the probationer changing his residence;

(ii) any fresh offence committed by the probationer;

(iii) any serious violation of the conditions of the supervision order; and

(iv) any plan of the probationer to abscond;

(b) any attempt by any person to aid or abet the probationer in commission of a crime or otherwise influence him so as to adversely affect his conduct and reformation; and

(c) the factors, if any, obstructing the rehabilitation of the probationer.

18. Rehabilitation and after-care of probationer. [Section 17(2)(b)].-(1)

The probation officer shall assist the probationer's rehabilitation in society, so that he does not revert to crime. For this purpose the Probation Officer shall endeavour to secure for the probationer-

(a) training facilities,

(b) employment opportunities,

(c) any necessary financial aid, and

(d) contacts and associations with normal individuals and congenial organisations like Boy Scouts and Girl Guides, Youth Organisations and Community Projects.

(2) The Probation Officer shall try to maintain constant touch with discharged probationers to follow up the progress made by them towards their

rehabilitation, for such period as may be prescribed by the Chief Probation Officer.

(3) The Probation Officer shall participate, whenever possible, in aftercare schemes and organisations.

19. Other duties of Probation Officers. [Section 17(2) (b)].- The Probation Officer shall also undertake the following functions:

(1) educating the public and mobilising support for the probation system;

(2) mobilising public assistance and co-operation in the field of Social Defence;

(3) being in charge of any institution or other premises referred to in Rule 29 that may be assigned;

(4) any other duties of a cognate nature which may be assigned by order of the State Government.

20. Probation Officer not to divulge information. [Sections 14 and 17(1) and 17(2) (a)].- A Probation Officer shall not divulge information concerning his inquiries or work of probation to any other person other than the authorities to whom he is required to report, except in so far as it is necessary to do so in the interest of the probationer.

V- Recognition of Society.

21. Recognition of society. [Sections 13(1)(a) and 17(1)].- (1) A Society primarily devoted to any of the following kinds of work will be eligible for seeking recognition under clause (b) of sub-section (1) of section 13 of the Act:

(a) social defence including care, after-care or aid to offenders or discharged prisoners and protection and training of rescued or destitute women or children;

(b) education or other social welfare work; and

(c) religious or charitable work, with interest in aiding and rehabilitating such persons as are mentioned in clause (a).

(2) Any society eligible under sub-rule (1) and desiring recognition shall make an application to the State Government, together with a copy of each of its rules, by-laws, articles of association, list of its members and office-bearers and a statement showing its status and past record of social or public service.

(3) The State Government may, after making such inquiry as it considers necessary into the status, past record of social or public service and present condition of the society and satisfying itself that the society possesses sufficient financial means to carry out its obligations, grant recognition to the society, on condition that it shall undertake to-

- (a) provide such Probation Officers as may be required by the State Government or the Court;
- (b) abide by these rules and any instructions issued by the State Government and the Chief Controlling Authority and see that the same are followed by the Probation Officers and the personnel of any institution or other premises referred to in rule 29 under it; and
- (c) furnish to the State Government, whenever required, a statement of its financial position including the balance-sheet and audited report, if any.

(4) The State Government may withdraw the recognition granted to a society under sub-rule (1) after giving a notice of three months to the society. The recognised society may also get its recognition withdrawn by the State Government after giving to it a notice of three months.

22. Grant of subsidy to society. [Sections 17(2)(d)].—(1) A recognised society requiring a subsidy from the State Government in aid of its activities relating to probation shall forward to the Chief Controlling Authority through the Chief Probation Officer an application accompanied with a copy of—

- (a) its rules regarding salaries, allowances and conditions of service of probation officers and its rules regarding the management of institutions or other premises referred to in Rule 29, if any, under it; and
- (b) such other particulars as may be required.

(2) The State Government may in deserving cases and on the recommendation of the Chief Controlling Authority pay to a recognised society such subsidy and for so long as it may deem fit.

(3) The society which has been granted a subsidy shall-

- (i) submit its annual report and audited accounts and such other reports as may be called for by the Chief Controlling Authority;

- (ii) maintain standards of supervision work and manage institutions or other premises referred to in rule 29, if any, under it to the satisfaction of the Chief Controlling Authority; and
- (iii) provide all facilities for inspection by the officers concerned.

23. Control of Probation Officers. [Section 17(1) (a)].- (1) (a) If a Probation Officer appointed by a society fails to observe the duties imposed on him by the Act or these rules or to abide by other orders of the Chief Probation Officer or the Chief Controlling Authority or the State Government for regulation of the work and conduct of Probation Officers, the court or the District Magistrate or the District Probation Officer may, report the fact to the society, and thereupon the society-shall take suitable action on that report and inform the District Probation Officer of the action taken.

(b) The society shall consider every complaint against such Probation Officer relating to any matter which affects his fitness for office and shall investigate every such complaint which in its opinion calls for investigation; and take further disciplinary action, whenever necessary.

(2) The work of Probation Officers provided by the society will be subject to guidance, supervision and control by the Chief Controlling Authority or any Officer empowered by the State Government to act on his behalf.

VI. – Procedure for Courts and District Magistrates.

24. Powers of Court to call for report from Probation Officer for passing order under sections 3, 4, 5, 6 and 7.[Sections 3, 4(2), 5, 6(2) and 7]. - (1) The Court may direct a Probation Officer, as nearly as may be in Form IV, to enquire into the character and antecedents of the accused, the circumstances in which the offence was committed and other matters and submit a report on a prescribed date, which should ordinarily be expected date of delivering judgment. The Court shall consult the report only after finding the accused guilty. If he is not found guilty, the report should be returned to the Probation Officer concerned for record for purposes of future reference.

(2) The Court may direct the Probation Officer to make any further investigations, and, where required, to have medical or psychiatric examination of the offender and report to the Court for enabling it to decide action to be taken under sections 3, 4, 5, 6 and 7 of the Act.

25. Forms of Bonds and supervision order. [Sections 4(1), 4(3) and 4(4)] - The following forms may be used for purpose noted against each:

- (a) Form V - Bond for good behaviour under sub-section (1) of section 4 of the Act.
- (b) Form VI – Supervision order under sub-section (3) of section 4 of the Act.
- (c) Form VII – Bond under sub-section (4) of Section 4 of the Act.

26. Powers of Court to call for report form Probation Officer for passing orders under sections 8 and 9.- The Court may require a Probation Officer to submit a report on a stipulated date of periodical reports on the progress, conduct and mode of living of the probationer placed under his supervision for purposes of passing orders under sections 8 and 9 of the Act.

27. Society to be furnished with a copy of supervision order. [Sections 4(3) and 17(1)].- Where a court passes a supervision order under sub-section (3) of Section 4 and appoints a Probation Officer provided by a Society, it shall forward a copy of it to the society.

28. Function of District Magistrate. [Section 17(1)].- The District Magistrate or any other officer not below the rank of Sub Divisional Magistrate duly authorised by him may-

- (a) inspect the work and any record in the office of any Probation Officer working within his jurisdiction;
- (b) give any directions to Probation Officers that he considers to be immediately required for the due performance of their work relating to supervision; and
- (c) send his observations or report on the foregoing or other facts to the District Probation Officer and the Chief Probation Officer.

VII.-Residence of Probationers

29. Institutions and other premises for reception of probationers. [Sections 4(3) and 17(1)].- The State Government may maintain, or approve subject to such conditions (including conditions relating to management and inspection) as it may deem fit to impose, any institution or other premises for the reception of probationers who may be required to reside therein by a supervision order.

(2) any such institution or other premises shall be maintained, managed and inspected in accordance with such instructions as may be issued by the State Government from time to time.

30. Residence of a probationer in such institutions or other premises. [Section 14].- (1) When a Probation Officer is of opinion that it is necessary or desirable for a probationer to reside in any institution or other premises referred to in rule 29 on the ground that the probationer has no fixed abode or no abode suitable for the due supervision, or that his home surroundings are not suitable for achieving the objects of probation, or that the objects of probation would be better served by his staying in such institution or premises, the probationer may be asked to reside therein.

(2) A probationer may also be required to reside in any such institution or premises in pursuance of any order of the Court which passed the supervision order, or in terms of the bond entered into by the probationer.

31. Change of residence. [section 14].- (1) Where a probationer under supervision, consistent with the condition of the supervision order, changes or proposes to change his place of residence and the place of such residence is outside the jurisdiction of the Probation Officer, he shall obtain the permission of-

- (a) the Probation Officer, if the period of such stay does not exceed a fortnight;
- (b) the Chief Probation Officer, on the recommendation of the Probation Officer, if such period exceeds a fortnight but does not exceed three months; or
- (c) the Court, on application made through the Probation Officer, if such period exceeds three months.

(2) Where the period of stay referred to in sub-rule (1) exceeds a fortnight, the probationer shall be required to report to a Probation Officer, if any, having jurisdiction in the changed place of residence on or before a specified date.

(3) The Probation Officer in the changed place of residence shall send to the original Probation Officer a report of arrival of the probationer and send copies of the report and such other reports as may be required by the Chief Probation Officer to the District Magistrate and to the Chief Probation Officer.

(4) Where the period of stay referred to in sub-rule (1) exceeds one month, a new Probation Officer may be appointed under sub-section (2) of section 13 of the Act by the District Magistrate having jurisdiction over the changed place of residence or by the Court.

VIII.-Records.

32. Records to be maintained by Probation Officers. [Section 17(2)(b)]. – (1) A Probation Officer shall maintain the following records;

- (a) a diary showing his day-to-day work, including preliminary enquiries, attendance at Courts, meetings with probationers, contacts with societies and visits to institutions and premises referred to in rule 29, a copy of the diary being submitted every week to the District Probation officer;
- (b) a file containing copies of all reports of preliminary inquiries submitted to the Courts;
- (c) a register showing the receipt and disposal of all orders of the Courts to the Probation Officer for making enquiries;
- (d) probationer's case-file as in Form VIII containing-
 - (i) a front cover page indicating the main particulars of the probationer and the case;
 - (ii) a summary of the probationer's antecedents, character, his family and other environment and the circumstances of the offence, further progress of supervision and all other important events during the period of probation; and
 - (iii) copies of pre-sentence report, orders of Court, bonds, or undertakings, and all other records relating to him including a history-sheet;
- (e) an Index Card and Chronological Register, as nearly as may be in Form IX, of probationer;
- (f) register of payments made on account of probationers showing-
 - (i) payments to institutions or premises referred to in rule 29 for maintenance of probationers;
 - (ii) payments to probationers for travelling expenses to such institutions or premises and back;

- (iii) fares for reporting to a probation officer;
- (iv) other financial aid to probationers.
- (g) such other records as may be required by the Chief Probation Officer or the Chief Controlling Authority from time to time.

(2) In the case of Part-time Probation Officer, the records mentioned in clauses (b), (c), (e) and (f) of sub-rule (1) shall be kept in the office of the District Probation Officer.

(3) A special Probation Officer shall maintain the records mentioned in clauses (a) and (d) of sub-rule (1) and send such other information to the District Probation Officer, the Chief Probation Officer and the Chief Controlling Authority as may be required by the State Government from time to time.

33. Preservation of records. [Section 17(1)].- (1) Each probationer's case-file with the probation officer shall be preserved for not less than ten years from the date of expiry of the supervision order to which it relates.

(2) The diary shall be closed on the 31st December of each year and thereafter be deposited as a confidential record in the office of the Chief Probation Officer. Each volume of the diary shall be preserved for not less than ten years from the date of its closure.

(3) The Index Card and the Chronological Register shall be preserved for at least ten years more after the destruction of the history-sheets to which they relate.

34. Inspection Book. [Section 17(1)].- An Inspection book shall be maintained at each Probation Officer's office; and a copy of the Inspection book relating to a part-time Probation Officer shall be maintained in the office of the District Probation Officer. The Chief Controlling Authority, Chief Probation Officer, District Magistrate, District Probation Officer and such other persons as may be appointed by the Chief Controlling Authority for inspecting the work of probation officers shall record their observations in the book. The observations made therein shall be forwarded to the Chief Probation Officer along with the comments of the Probation Officer.

35. Records to be maintained by the District Probation Officers. [Sections 17(1) and 17(2) (b)].- The District Probation Officer shall maintain in his office in such manner as may be prescribed by the Chief Controlling Authority-

- (1) list of Probation Officers in the district or area under his jurisdiction;
- (2) list of institutions or premises referred to in rule 29 in that area;
- (3) a dossier for each probationer under supervision in the district, containing a summary of the case and duplicates of important documents in the case record with the Probation Officer;
- (4) register of probationers in the district as nearly as may be in Form II;
- (5) an inspection file containing notes of inspection of offices of Probation Officers and copies of reports of inspection submitted to the Chief Probation Officer;
- (6) register of probationers staying in institutions or premises, referred to in rule 29, in the district;
- (7) register of payments to probationers in the district;
- (8) register of payments to societies in the district; and
- (9) such other records as may be directed to be maintained by the Chief Controlling Authority.

IX- Miscellaneous

36. Probationers not to be employed on private work of probation officer. [Section 17(2) (a)].- A Probation Officer shall not employ any offender placed under his supervision for his own private purpose or take any private service from him.

37. Submission of statistics. [Section 17(2) (b)].- Every Probation Officer shall collect and submit in January and July the following statistics for the preceding half year to the District Probation Officer concerned, who, in turn, will consolidate these statistics for the probation district and submit the same to the Chief Probation Officer-

- (1) the number of probationers;
- (2) employment of probationers;
- (3) the number of cases of variation of orders under section 8 of the Act and of failure to observe conditions of bond dealt with under section 9 of the Act;

- (4) the number of offenders in his jurisdiction (a) discharged after admonition under section 3 of the Act, (b) released under section 4 (1) of the Act without supervision, (c) sentenced to imprisonment though under 21 years of age.

The statistics mentioned above shall be shown separately according to sex, age (over 21, between 21 and 16, below 16), nature of offender (i.e. first offender, second offender, habitual offender), and gravity of crime:

Provided that in the case of part-time Probation Officers the statistics mentioned in this rule shall be collected and maintained by the District Probation officer.

FORM I

(Front Cover)

[See rule 12(2) (a)]
GOVERNMENT OF PUNJAB.
HOME DEPARTMENT

IDENTITY CARD

(Back Cover)

(INSTRUCTIONS)

1. This card is meant for establishing the identity of the holder as a District Probation Officer/Salaried Probation Officer/Probation Officer.

2. The holder shall keep the card in his personal custody and shall be responsible for the safe custody thereof. Any loss of subsequent recovery of this card must be immediately reported to the Head of Department.

3. This card shall be returned to the Chief Probation Officer when the holder is placed under suspension or ceases to hold office.

4. Holder of the card will be liable for disciplinary action, if the card is misused in any way.

(Inside). Serial No. _____	F	
Name in full (in block letters) _____	O	
Designation of The post held. (in block letters) _____	L	
Full Signature of the holder- _____	D	
Date _____	H	
	E	
	R	
	E	

Signature

Chief Probation Officer

Photograph of holder.

Date _____

FORM II

[See rules 13(3) and 17(2)]

MONTHLY REPORT ON PROGRESS OF PROBATIONER

PART I

Probation office For the month of Register
No.....Court
Probationer's Name.....Case No.....
Date of
Supervision Order.....

Probationer's address Period of Probation.....

PART II

Place of interview	Date
.....	
.....	
.....	
.....	

1. Where the Probationer is residing.
2. Progress made in any educational/training course.
3. What work he is doing and his monthly average earning.
4. Savings kept in the Post Office Savings Bank Account in his name.
5. Probationer's health.
6. Remarks on his general conduct and progress.

PART III

7. Any proceedings before Court /District Magistrate for-
(a)Variation of conditions of bond under section 8(1) or 9(1) of the Act, or (b)
Change of residence,-vide rule
or (c) discharge under section 8(3) of the Act.
or (d) Other matters.
8. Probation period completed on (date)
9. Result of probation, with remarks (if any).
10. Occupation and address after discharge.

To
District Probation Officer/Court.
Copy to Chief Probation Officer.

Probation Officer
Date of Report.
Address:

FORM III

[See rule 14(1)]

REPORT OF PRELIMINARY ENQUIRIES

(Under the Probation of Offenders Act, 1958)

Serial No.....

In the Court of the..... Magistrate, ...

(Place).....(District).....

C. G. No.....19..... Date of hearing.....

* Offence:-

State.....(Police Station).....Crime No.....19.....

Name of Offender **.....

Address (Place of residence).....

Age.....

Sex and religion.....

* Give section and brief description.

** In block letters.

PERSONAL HISTORY

Behaviour and habit (moral, recreational, etc.).....

Temperament (outstanding character and personality traits).....

Physical and mental history and present condition.....

Leisure time activities.....

EXTERNAL INFLUENCES

School record and report of teachers, if available.....

Employment history.....

Present occupation and wages (give also conditions of labour, leisure, etc.).....

Report of employer, if any.....

Associates.....

Contact with social and religious organisations, if any.....

Home conditions.....

Family history of:

- (a) Father.....
- (b) Mother.....
- (c) Step-father.....
- (d) Step-mother.....
- (e) Brothers.....
- (f) Sisters.....
- (g) Wife.....
- (h) Children.....
- (i) Other interested relations, if any.....

Economic condition of the family.

Any social agencies, institutions or individuals interested in the family
.....

Report of parents and relations.....

Attitude of family towards offenders and extent of its influence on him/her.....

Report of neighbours

Home surroundings and general outlook.

Is poverty or unsettled life the cause of offence?

LEGAL HISTORY

Previous Institutional record, if any.....

Statement of the present offence and circumstances in which it was committed.....

Offender's own relation to the offence and his attitude towards possible punishments.....

Any special information required by Court-

SUMMARY

- (a) Factual background of offender and his environment and offence.
- (b) Diagnosis (offender's attitudes, defects in character or family, motivations and other factors regarded as casual factors for the offence).
- (c) Prognosis (Treatment considered most suitable and estimates of chances of improvement).
- (d) Recommendation (if asked for by Court).....

Name and address of the Probation Officer.....

Station.....

Date.....

Nature of disposal of the case.....Probation Officer

Date of disposal.....

FORM IV

[See rule 24 (1)]

Order under sub section (2) of section 4 of the Probation of offenders Act, 1958
Probation Officer.....

Whereas a report under sub-section (2) of Section 4 of the Probation of
Offenders Act, 1958 (Act 20 of 1958) or under the provision of is
required for dealing with

name

son/daughter of

of (full address)

who has been brought before the Court under section in case
No

you are hereby directed to collect or arrange to collect the necessary
information after making an enquiry and place the same before this Court on
.....

Signature of Presiding Officer
of the Court

Seal of the Court.

FORM V

[See Rule 25]

Bond to keep the peace and to be of good behaviour (under sub section (1) of section 4 of the Probation of Offenders' Act, 1958)

In the Court of the.....Magistrate.

Case No.....of 19.....

Whereas I, ...inhabitant of have been ordered to be released by the Court of on condition of my entering into a bond to appear and receive sentence when called upon during a period of

I hereby bind myself –

(1) to appear and receive sentence when called upon to do so;

(2) not to commit a breach of the peace or do any act that may occasion a breach of the peace; and

(3) to be of good behaviour to the Government and all the citizens of India during the said period. In case of my making default therein, I hereby bind myself to forfeit to Government the sum of Rupees.....

Dated this.....day of.....19.....Executed before me.
(Signature).....

Magistrate

I/We do hereby declare myself/ourselves surety/sureties for the above named, who had bound himself-

(1) to appear and receive sentence when called upon to do so;

(2) not commit a breach of the peace or do any act that may occasion a breach of the peace; and

(3) be of good behaviour to Government and all the citizens of India during the said period.

In case of his making default therein, I/We bind myself/ourselves jointly and severally, to forfeit to Government a sum of Rupees

Dated this day of 19.....

(Signature).....

(Signature).....

Executed before me.

Magistrate.

FORM VI

[See Rule 25]

Supervision Order

[Under sub-section (3) of section 4 of the Probation of Offenders Act 1958]

IN THE COURT OF THE.....MAGISTRATE

Case No.....of 19.....

Whereas has this day been found guilty of an offence under section

And the Court is satisfied that it is expedient to deal with the said person by making an order placing him under supervision:

It is hereby ordered that the said person be placed under supervision of, a Probation Officer, for a period of subject to the following conditions, namely :

- (1) that he will present himself, within fourteen days from the date of this order, before the Probation Officer named herein, and will produce copies of the order and the bond executed by him;
- (2) that he will submit himself to the supervision of the Probation Officer or any other Officer appointed in his place;
- (3) that he will (a) during the period specified herein, keep the Probation Officer advised of his place of residence and means of livelihood; (b) reside at for a period of
- (4) that he will not quit the district jurisdiction of without the written permission of the competent authority;
- (5) that he will not associate with bad characters or lead a dissolute life;
- (6) that he will live honestly and peaceably and will endeavour to earn an honest livelihood;
- (7) that he will not commit any offence punishable by any law in force in India;
- (8) that he will abstain from taking intoxicants;
- (9) that he will carry out such directions, as may, from time to time, be given by the Probation Officer, for the due observance of the conditions mentioned above.

Dated this day of 19.....

Judge or Magistrate.

FORM VII

[See Rule 25]

[Under sub-section (4) of section 4 of the Probation of Offenders Act, 1958]

IN THE COURT OF THE MAGISTRATE

Case No.....of 19.....

Whereas I, ... inhabitant of have been ordered to be released by the Court of on condition of my entering into a bond to observe the conditions specified in the supervision order made by the Court, I hereby bind myself as follows:

- (1) That I will accept and fulfil the conditions specified by the Court in such order for the period specified therein.
- (2) That I will present myself, within fourteen days from the date of the supervision order before the Probation Officer named in that order and will produce copies of the order and the bond executed by me.
- (3) That I will submit myself to the supervision of the Probation Officer named in the supervision order or of any other officer appointed in his place.
- (4) That I will (a) during the period specified in the order, keep the Probation Officer advised of my place of residence and means of livelihood, (b) reside at for a period of
- (5) That I will not quit the said district/jurisdiction of without the written permission of the competent authority.
- (6) That I will not associate with bad characters or lead a dissolute life.
- (7) That I will live honestly and peaceably and will endeavour to earn an honest livelihood.
- (8) That I will not commit any offence punishable by any law in force in India.
- (9) That I will abstain from taking intoxicants.
- (10) That I will carry out such directions, as may, from time to time, be given by the Probation Officer, for the due observance of the conditions mentioned above.

In case of my making default therein, I hereby bind myself to forfeit to Government the sum of Rupees

Dated this day of 19.

(Signature).....

Executed before me.

Magistrate.

I/We do hereby declare myself/ourselves surety/sureties for the above-named that he will observe the conditions specified in the supervision order and in the bond and in case of his making default therein I/We bind myself/ourselves jointly and severally to forfeit to Government the sum of Rupees

Dated this day of 19.....

Signature

Executed before me.

Signature of Magistrate.

FORM VIII

[See rule 32(1) (d)]

Probationer's Case File

A. (Front/Cover Page)

Probation Officer.....,	Court
Office Registration No.....,	Case No
Name of Probationer.....,	Date of Supervision order
Address.....,	Offence (Section)
Occupation.....	
Home Address.....	
Mother tongue.....	
Sex..... Age.....	
Date, time and place of arrest.....	
Facts of the case (in brief).....	
Previous conviction(s).....	
Referred for enquiry on.....	
Enquired by.....	
Enquiry Report submitted on.....	
Monthly Progress report submitted on 1 st year	2 nd year 3 rd year

Final disposal and date.....

B. SUMMARY

1. Brief family history and home conditions.....
2. School record and employment history.....
3. Delinquencies.....
4. Health.....
5. Mental condition.....
6. Neighbourhood conditions.....
7. Any other outstanding feature and additional information.....
8. Chronological development of the case.....
9. Suggestions made by the P.O.....
10. Final order (with date) of the Court.....
11. Name and address of the surety/sureties while under supervision....
12. (a) Restrictions as to residence in any area/Probation home/or otherwise.....
- (b) Other restrictions.....
13. Salient points in progress reports.....
14. Amendments to order, if any, under sections 8 and 9 of the Act.....
15. Final Disposal.....

Probation Officer.

C. OTHER CONTENTS OF DOSSIER

1. Pre-sentence Report.....
2. Order of the Court.....
3. Copy of bond/undertaking executed, if any
4. Correspondence.....
5. Monthly report.....

FORM IX

[See Rule 32 (1) (e)]

Chronological Register of Probationers

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Serial No.	Name of probationer, father's name and address	Sex, age, religion and identification marks etc.	Offence (give section and brief description of the offence.)	Court passing the supervision order & case No.	Date of Supervision order and period of supervision	Name of Probation Officer.	Pre-sentence report submitted or not (if submitted give P.R. No. and date)	Whether the probationer is residing in Institution and premises for the reception of probationers; if so, give the name and address of the home	Name and address of sureties if any	Occupation, if any, and wages, name and address of employer, if any.	Any variation in original supervision order and the date on such variation	No. of visits paid	No. of visits received	No. of progress reports submitted	Result of probation and remarks of Probation Officer, if any	Subsequent history after completion of probation

10. Given below is the list of places to which the provisions of the Act have been applied together with the relevant notifications:-

1. Notification No. GSR-132/CA-20/58/SI/62, dated 25th July, 1962.

- (i) Kapurthala.
- (ii) Shimla
- (iii) Mohindergarh
- (iv) Kangra
- (v) Ambala (excepting the Rupar Tahsil).
- (vi) Gurgaon.
- (vii) Hoshiarpur.

2. Notification No. S.O.127/C.A./20/58/S.I./66, dated the 28th April, 1966.

- (i) Hissar
- (ii) Rohtak
- (iii) Karnal
- (iv) Jullundur

(v) Ludhiana

(vi) Bhatinda

(vii)Gurdaspur

(viii)Patiala.

(ix) Lahul and Sipti.

(x) Tahsil Rupar of District Ambala.

3. Notification No. S.O. 38/C.A./20/58/S.I.67, dated the 22nd May, 1968.

(i) Rupar District.

4. Notification No. S.O.28/C.A.20/58/S.I.68, dated the 27th March, 1968.

(i) Jind district (Haryana).

CHAPTER 22**Youth Offenders****PART A.—GENERAL**

The question of the proper treatment of youthful offenders was considered by the Indian Jails Committee, 1919-20, in Chapter XV of their report, principally with a view to the prevention of their committal to prison. The instructions given below are chiefly based on the recommendations of the Committee, as approved by the Central Government.

Introductory

2. It is now generally accepted that commitment of children to prison is against public policy, as it exposes them to the evils resulting from association with hardened criminals. In the case of children (i.e., persons under fourteen), the Central Government has approved of the principle that commitment to prison should be avoided as far as possible.

Commitment to prisons of children should be avoided.

3. Even for the purposes of remand pending enquiry or trial, the committal of children and young persons to prison should be avoided. In England special places of detention are provided for children and young persons under trial, and it was suggested by the committee that remand homes for children should be provided in India. Unfortunately there are at present financial difficulties in the way of the solution. Courts should, however, make suitable arrangements when practicable for the detention of children (excepting those belonging to a criminal tribe) under remand, so long as no remand-homes are provided.

Remand to prison pending inquiry or trial not desirable.

4. . Subsequent to the publication of the Committee's report, it was represented that at present the police have no power to release offenders on bail, with the result that child-offenders must remain in police custody until such time as they can be brought before the Magistrate of the Ilaqa, and it was suggested that

Police not empowered to release children on bail, but it should produce them at once before nearest Magistrate for grant of bail.

police officers should be allowed the discretion of taking bail for appearance before a Magistrate in non-bailable cases. This suggestion was considered by the Judges; and while they held that it was impossible for them to issue instructions overriding the provisions of the Code of Criminal Procedure, they were of opinion that executive action might be taken by District Magistrate themselves, by having children cases brought up to the nearest Magistrate instead of the Ilaka Magistrate.

5. When a Magistrate is called upon to sentence a juvenile offender, he has the following alternatives before him. He may order :

- (a) fine,
- (b) security under section 562 of the Code of Criminal Procedure,
- (c) treatment under section of the Reformatory Schools Act, which is similar to (b);
- (d) detention in a Reformatory School.
- (e) Imprisonment:

The subject of detention in a Reformatory School is dealt with separately in part C. Before ordering imprisonment. Magistrates should make free use of the other alternatives and should refrain from sending boys to the Reformatory School in cases where they can be suitably dealt with otherwise.

6. Courts not empowered to pass orders under Section 562 of the Code of Criminal Procedure should be encouraged to refer cases suitable to the application of this provision of law to courts which have been invested with the necessary powers.

7. The failure of Magistrates to impose suitable sentences on youthful offenders is possibly due to inadvertence, the age of the accused not being prominently in the mind of the Magistrate at the time of passing the sentence. In order to minimise and, if possible to abolish the infliction of sentences which are likely to have prejudicial effect on the character of a youthful offender, when other suitable methods of punishment are available the Judges are also pleased to direct that all Criminal Courts should in future enter the ages of the convicts in the body of their judgments with a view to being directly seized with the question of age when deciding the sentence to be imposed on a juvenile or adolescent. They have also been pleased to direct that in future all Magistrates shall report the cases of convictions of youthful offenders under 18 years of age where a sentence of imprisonment has been awarded, to the District Magistrates, as soon as judgment is passed. They shall also submit to the District Magistrate at the end of every month returns of all cases in which persons under the age of 24 years are sentenced to imprisonment. The District Magistrates will scrutinize these cases and returns, and will take action on the revision side in all

Sentence against juvenile offenders, alternatives. Imprisonment and detention in Reformatory School to be avoided.

Cases should be sent to Courts exercising powers of whipping and under Section 562. Criminal Procedure Code.

Age of the offender to be noted in the judgment Sentence of youthful offenders to imprisonment to be reported to District Magistrate. Monthly return of offenders under 24 years of age to be sent. Duty of District Magistrate.

suitable cases in general, and in particular in all these in which casual offenders under 24 years of age have been sent to Jail for short terms.

8. Short Sentences to be avoided-With regard to short sentences of imprisonment the Indian Jails Committee was of opinion that sentences of imprisonment less than 28 days should be altogether prohibited. While the Government of India were unwilling to lay down any rigid rule on this point they agreed with the Committee in deprecating short sentences of imprisonment, and suggested that suitable executive instructions should be issued. The Judges have been unable to agree to the issue of any such definite instructions which would fetter the statutory judicial discretion of the Courts, but they consider that the recommendations of the Committee deserve careful consideration by all Magistrates dealing with youthful offenders. They also wish to draw the attention of subordinate Courts to the desirability of making free use of the provisions of section 31 of the Reformatory Schools Act, 1897, where these can be applied. This section runs as follows:

“(1) Power to deal in other ways with youthful offenders, including girls.

Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to imprisonment or directing him to be detained in a Reformatory School, order him to be-

“(a) discharged after due admonition, or

“(b) delivered to his parent or to his guardian or nearest adult relative, on such parent, guardian or relative executing a bond, with or without sureties, and the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

“(2) For the purposes of this section the term ‘youthful offender’ shall include a girl.

“(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under Section 8.

“(4) When any youthful offender is convicted, by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender it may record such opinion and submit the proceeding and forward the youthful offender to the Magistrate to whom such Court is subordinate.

“(5) The Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentences as he might have made or passed if the case had originally been tried by him.”

Youthful offenders defined. “Youthful Offender” in the above section means a person under the age of 15 years at the time of conviction. The other instructions given above relate both to “children” and “young persons. With regard to children the State Government was in agreement with the Central Government that as far as possible child offenders should be released under section 562 (Section 360 of 1973 Code) of the Code of Criminal Procedure and the Judges hope that these recommendations will be borne in mind.

PART B*Children's Courts*

1. Children's Courts. One of the most important recommendations of the Indian Jails Committee was that special Children's Courts should be opened on the lines of those existing in other countries. The State Government agreed that the creation of Children's Courts was distinctly desirable; but they were of opinion that the number of children accused of offences in any one station of the Punjab was not sufficient to justify the appointment of a special Magistrate to deal with children cases only.

2. Selection of Magistrate to try children cases. Trial to be held at a different place. Government has accordingly decided that each judicial Magistrate should be left to select one of the Magistrates subordinate to him, before whom all cases concerning children should be brought. The trial of Children should be held, if possible, at a different place from the Court in which cases are generally heard. If this is impossible these cases should be heard at a different time from other cases. In the case of outlying subdivisions and tehsils, children will normally be brought before the Magistrate having jurisdiction in the place, who will hear their cases in same way as the Magistrate selected at headquarters.

3. Simple language of trial. The language used at the trial of youthful offender should be as simple as possible, and legal phraseology should be reduced to the bare necessities.

4. Outsiders should not be allowed at the trial. If case has to be heard in the Magistrate Court room (no other place being available); then the room should be cleared of all outsiders, only those actually concerned with the particular case being admitted.

PART C.—REFORMATORY SCHOOLS

1. It should be noted that the only Courts empowered to direct youthful offenders to be sent to the Reformatory Schools are-

Courts empowered to direct youthful offenders to the Reformatory School- Procedure for a Magistrate not so empowered.

- (a) the High Court ;
- (b) the Court of Session ;
- (c) a District Magistrate ;
- and
- (d) any Magistrate specially empowered by the State Government in this behalf.

The State Government has empowered Magistrates of the 1st class only with powers mentioned in section 8 (i) of the Reformatory schools Act (*vide Punjab Government Notification No. 578-Jails, dated the 7th January, 1924*); but any Magistrate who has not been so empowered may, under section 9 of the Act, refer the case of any youthful offender to the District Magistrate to whom he is subordinate, and all Magistrates should do so in suitable cases.

2. A youthful offender is defined as meaning any boy who has been convicted of any offence punishable with imprisonment, and, who at the time of such conviction, was under the age of 15 years, and it is incumbent on all Courts and Magistrates dealing with cases of youthful offenders (whether specially, empowered or not), to make a preliminary inquiry and to record a finding as to the age of the offender before directing the offender to be sent to a Reformatory School or making a reference to the District Magistrate under section 9 for that purpose. In taking the medical evidence mentioned in paragraph 4(a) of this chapter, the opinion of the Medical Officer as to the age of the boy should invariably be recorded.

Court should record a finding as to age, definition of youthful offender.

3. The rules framed by the Punjab Government under the Reformatory Schools Act should be studied. The effect of Punjab Government notification 37, dated the 20th January, 1906, as supplemented by addendum No. 469, dated 6th November, 1914, under which these rules were published, appears to be this.

Rules framed by Government Youthful offender to be sent to Reformatory School when Magistrate awards imprisonment.

Court or Magistrate convicting any youthful offender of any of the offences noted below should act as follows. If the presiding officer considers that the offence committed is one in connection with which the offender should be-

- (a) dealt with under section 562 of the Code of Criminal Procedure, or
- (b) dealt with under section 31 of the Reformatory Schools Act, the provisions of which are very similar to those of section 562 of the Code of Criminal Procedure, or
- (c) fined,

he should pass orders accordingly.

If, however, he considers that the case should not be so dealt with, he must pass an order of imprisonment commensurate with the offence and then send the offender to the Reformatory School.

OFFENCES SPECIFIED

- (1) Any offence except those described in sections 302, 303, 304, 307, 308, 354, 376 and 377 of the Indian Penal Code.
- (2) Any abetment or attempt in connection with any such offence.

Reformatory School intended for casual criminals and first offenders capable of reformation. Disqualifications preventing admission.

4. It should be borne in mind that before recording an order directing the detention of a boy in the Reformatory Schools, Courts and Magistrates should satisfy themselves-

- (a) after taking medical evidence, that he is not totally blind insane, idiot, leprous, tuberculous, epileptic or suffering from any permanent physical incapacity for industrial employment; or
- (b) that he has not been previously convicted under section 377 of the Indian Penal Code.

A youthful offender with any of these disqualifications will not be admitted into the Reformatory School, and Courts or Magistrates must deal with such an offender in the ordinary course under the Indian Penal Code, or under section 562 of the Code of Criminal Procedure.

These rules will, it is hoped, secure as inmates of the Reformatory School casual criminals and first offenders capable of reformation, and will exclude the corrupting influence of incorrigible offenders, and of boys who have already learnt the evil can be learnt in jail.

5. The more extended powers of the State Government under A, Rule II, notification No 37, of 20th January, 1906, and the obligation on the part of the District Magistrate to move the State Government in special cases, should be borne in mind.

Further powers of Government and duty of District Magistrates to move Government.

6. (i) Section 8, sub-section (1), of the Reformatory Schools Act; prescribes the period for which Magistrates must order detention in the Reformatory School. This period cannot be less than three or more than seven years. This section should be read in connection with *Punjab Government notification No. 37, dated the 20th January, 1906* which further limits the Magistrate's discretion as to the period of detention he can order. It should nevertheless be borne in mind that a boy ordered to be detained in the Reformatory School for seven years will not necessarily be kept in the school for so long. He will in any case be discharged when he attains the age of 18 years.

Period for which detention in the school is to be ordered.

(ii) It has been noticed that Magistrates while convicting youthful offenders and ordering their being sent to the Reformatory Schools do not follow the provisions of rules 3 and 4 of the rules framed by the State Government under section 8(3) of the Reformatory Schools Act, in respect of the period for which the youthful offender should be detained in the school, with the result that several references have to be made for

the correction of these errors. The said rules are therefore reproduced for facility of reference:

- "(3) Every youthful offender sent to a Reformatory School who is found by the Magistrate to be thirteen years of age or more at the time of his conviction shall be sent to the School for a period that will expire on his attaining the age of eighteen; and
- (4) Subject to the provisions of Rule 5, every youthful offender sent to a Reformatory School who is found by the Magistrate to be under thirteen years of age at the time of his conviction shall be sent to the School for five years".

District ' Magistrate should re-commend to Government when he thinks that youthful offender though not admissible under the rules is a proper person for admission.

7. Besides the case of youthful offenders convicted by a Court or Magistrate of one of the offences specified (vide paragraph 3 of this Chapter), section 10 of the Reformatory Schools Act contemplates another case in which detention in the Reformatory School may be directed. This section gives the Superintendent of a Jail power to produce before the District Magistrate any boy who is under the age of 15 years. In deciding whether any youthful offender brought to his notice in this manner should be sent to the Reformatory School, the District Magistrate will, of course, be guided by the rules made by the State Government under section 8, sub-section (3), clause (a), of the Reformatory Schools Act published as Punjab *Government notification No. 37, dated the 20th January, 1906*. Should the District Magistrate consider that the youthful offender, though not admissible to the Reformatory under those rules, is a proper person to be an inmate of the school, he must refer the case to the State Government.

Classificati on of boys School. Magistrate should re-commend the class.

8. Under the rules made by the State Government for the classification separation and daily employment of youth offenders, boys detained in a Reformatory School will be classed in two divisions, a senior and a junior, and each division will be sub-divided into two sub-division, A and B. The senior division will consist of boys above 14, and the junior division of boys

under 14 years of age. Sub-division A will contain boys not in sub-division B and sub-division B will contain (1) boys who by reason of previous offences, whether the subject of criminal prosecution or not, or of the character of their offence, or the circumstances under which it was committed (offences against morals and serious or organized offences, whether against property or against the person) appear to have marked criminal propensities; (2) boys who have been in jail except those sent to jail under the proviso to section 12 of the Reformatory Schools Act temporarily, i.e., detained in jail for want of accommodation in the Reformatory Schools; (3) boys whose parents are habitual criminals, and boys who have been subjected to family influences and surroundings which are likely to prejudice to a life of crime. In directing the detention of a boy in the Reformatory School Magistrates should, with reference to this rule, record their opinion as to the sub-division in which the boys should be placed while under detention,

9. When a Magistrate orders a boy to be detained in the Reformatory School, he should by telegram ascertain from the Superintendent thereof whether accommodation is available. If there is accommodation, the boy should be sent at once to the school, otherwise, he should be sent to the jail prescribed by the State Government in notification No 426, dated 2nd October, 1903, and 'the' Superintendent of the Reformatory School should be informed of the Jail to which he is sent or to which he may thereafter be transferred.

Duty of Magistrate to enquire about accommodation in School and to make arrangement if there is no accommodation.

10. It has been noticed that as Magistrate seldom or never visit the Reformatory School they cannot see for themselves the benefits that are likely to accrue to juvenile offenders for a period of detention in this establishment. They thus acquire a tendency to send too many children to prison. In order to minimise this tendency the Judges consider it desirable for as many first class Magistrates as possible to pay a visit, inspection to the Reformatory School.

Magistrates advised to visit the School.

11. Under travelling allowance rules Nos. 2.48 and 4.3 (serial 7), read with paragraph 22.4, item (3), Chapter 22—Delegation Orders of Financial Handbook No. 2, volume 1I, Commissioners are authorised in the case

Sanction Authority for travelling allowance for the visit.

of all first class Magistrates within their division to declare absence from headquarters for the period necessary to visit the Reformatory to be absence on duty, and thus to sanction the travelling allowance for such journeys.

Second and
third class
Magistrates not
required to visit.

12. Magistrate should be encouraged to take advantage of these orders, and such visits should be facilitated, provided always that they do not interfere seriously with the routine of magisterial work. It is not proposed to grant this concession to Magistrates of the 2nd and 3rd class.

Sessions Judges
may permit sub-
judges exercising
criminal powers to
visit the school.

13. The power granted above in Commissioners has been delegated to District and Sessions Judges, who may permit Sub-Judges, who are also Magistrates of the 1st class, to visit the Reformatory School but one visit only not exceeding two days, may be allowed in each case.

PART D.—BORSTAL JAIL

Attention is drawn to the Punjab Government Circular No. 362-J. L. 39/4621 (H.—Jails) dated the 4th February 1939 on the subject of Borstal Jail extracts from which are given below:—

1. Cases have come to the notice of Government which indicate that misunderstanding still exists in the minds of some magistrates and officials in regard to the nature of Borstal training and the type of offender to be sent to the Borstal Institution. Some official appear to believe that the Institution is no more than a jail in which conditions are easier than in the ordinary prison: that Borstal is merely an up-to-date term for a juvenile jail. In some quarters indeed it seems to be imagined that unless there is an order for Borstal treatment a juvenile convict will be made to serve his sentence in association with adult prisoners. The Punjab Borstal Act, 1926, the main lines of which follow those of the corresponding statute in the United Kingdom, provides a special kind of treatment for a particular class of offender, namely, the adolescent convict of habitual type or (to use the English prison phraseology) the young recidivist.

Intended for the adolescent convicts of habitual type.

2. Speaking broadly the types of course overlap there are three categories of young offenders for whom provision has to be made :-

Sentences suitable for different kinds of youthful offenders.

(a) Casual offenders, other than those convicted of heinous crime.

(b) Juveniles sentenced for offences of a comparatively minor character, but who are former convicts or are otherwise known to be tending towards a life of crime.

(c) Juveniles sentenced for murder and other flagrant offences.

Juvenile offenders of type (a) should normally be released on probation of good conduct or after admonition. In more serious cases where such treatment appears unsuitable there will perhaps be a sentence of

fine. As has been repeatedly emphasized, short sentences of imprisonment are always to be avoided, and the juvenile offender should never be sent to jail, even for a second offence, if his case can be adequately dealt with in some other way. Offenders of type (c) present a special problem, to which reference will be made later in this chapter. There remains type (b). It is for this class of convict that the Borstal Institution is intended—the young hooligan or waster whom perhaps a previous warning has had no effect and who appears likely unless reformatory treatment is quickly applied, to develop into a professional criminal. It is not essential, before an order is passed for detention in a Borstal Institution; that a previous conviction should be established but, in the language of section 6 of the Punjab Act there must be "criminal habits or tendencies or association with persons of bad character". In view of this wording it would be permissible to order Borstal detention, for instance, in the case of a lad of sixteen or seventeen who had been associated with older men in a burglary or dacoity, provided that he had not been personally concerned in murder or some similar offence. But it would not be proper to use the Act in a rape case, unless there was reason to believe that the offender had been responsible for similar outrages before, or had been misled by bad companionship.

3. The characteristics which distinguish Borstal treatment from ordinary imprisonment are two : —

- (i) An order of Borstal detention must always be for an extended period—a period longer than for which the offender would have been sent to jail if he had been sentenced in the ordinary way. In the Punjab Act a minimum of two years is prescribed. The period must be sufficient to enable the good influences which it is hoped to bring to bear on the convict to have their effect.
- (ii) After a certain period in the Borstal Institution the offender will normally be released to serve the balance of his term on probation outside. Other classes of prisoners can

Distinguishing
features of
Borstal treatment.
Relevance.

of course be released on probation by order of the State Government under the Good Conduct Prisoners Probational Release Act, 1926, or under section 401 of the Code of Criminal Procedure. In the case of the Borstal detainee, however, release on probation can be ordered by the Visiting Committee, subject to the sanction of the Director of Borstal Institutions;* without reference to Government.

Release on licence is thus an integral feature of Borstal treatment. The young criminal is to be subjected for an extended period to reformatory influences: first within the walls of the institution, where he will be in contact with a housemaster, taking a close personal interest in his character and development, and afterwards on licence outside, where a probation officer will fulfil a similar function.

4. Such an automatic system of probational release would clearly be unsuitable for prisoners of type (c) mentioned above—juveniles sentenced for homicide or other flagrant offences. For the most part the offenders in this class have brought themselves within the reach of the law by a single violent act. They have no tendency towards crime in general, and if it were possible to concentrate exclusively on the reformation of the individual, disregarding all other considerations, the most suitable treatment in many cases would be immediate release. The primary object in keeping them in confinement is, in the words of an ex-Lord Justice of Appeal in a recent letter to *The Times*, "to satisfy the public indignation with regard to the serious character of the crime which calls for punishment." The need for bringing good influences to bear should always be kept in mind, but with offenders of this type the reformatory aspect of imprisonment must be secondary. In some cases it may be possible to release the prisoner on probation after a certain period in jail, but this is permitted only under the

Primary object
of keeping
such offenders
in Borstal Jail.

*The Inspector-General of Prisons has been appointed Director of Borstal Institutions, ex-officio.

orders of the State Government. Adolescent prisoners of this type are thus radically different from those for whom the Borstal system has been devised. They must of course be kept separate from adult convicts, but their sentences are to be served in jail, not in a Borstal Institution.

When
offenders
should be sent
to the Borstal
Institution and
when to the
Reformatory
Schools.

5. To complete this chapter a reference should perhaps be made to the Reformatory Schools. Magistrates may at times feel a doubt whether a particular offender should be sent to the Borstal Institution or to the Reformatory School. Such doubts can generally be resolved by considering the age of the offender. The Schools established under the Reformatory Schools Act, 1897; are intended for younger type of offender than that for which the Borstal Institutions cater. To be sent to the Reformatory School the offender must at the times of conviction be under fifteen: the corresponding age in the case of the Borstal Institution is twenty-one. Cases sometimes occur in which it is necessary to sentence boys of only ten or twelve years of age to imprisonment. In such cases the Reformatory School is always to be preferred: children of this age would be quite out of place in the Borstal Institution. The School also differs from the Borstal in the character of the training given to the inmates. The Borstal Institution has of course its school, as well as the factories in which the lads are given vocational training, but the educational arrangements at a Reformatory School are generally much more elaborate. The boys there are of ordinary school age, and an education is provided for them which would hardly be suitable for the older adolescents in the Borstal. It may be mentioned here that in the case of admission to the Reformatory School there is 'no such distinction between casual and habitual offenders as there is in the case of the Borstal Institution. Where as there is an absolute bar against the use of the Borstal Act in the case of juveniles convicted of offences punishable with death, a Reformatory School will receive even this type of juvenile offender, with the special premission of the State Government.

CHAPTER 23

Habitual Offenders

PART A.-PREVENTIVE MEASURES.

The Criminal Procedure Code provides for Preventive measures of two kinds against habitual offenders. Under section 110, security can be taken for their good behaviour (*vide* Chapter 3, Security Cases), while under section 565, they can be ordered to be placed under police surveillance for a period extending up to five years in the event of their conviction of certain offences. In the Punjab another important remedy is provided by the "Restriction of Habitual Offenders Act. 1918". Under this Act an habitual offender can be restricted in his movements to a certain area or required to report himself at times and places in the manner prescribed in the order. An order or restriction may be passed in the same circumstances in which an order for security for good behaviour may be passed. Now in view of the amendments of sections 7 and 12 of the Act by Punjab Act No. XXI of 1949 -an order of restriction can be passed in addition to an order for security for good behaviour. The procedure to be followed in proceedings under this Act is mostly the same as that in proceedings under section 110 of the Code of Criminal Procedure; but there are certain differences. For instance, when an order of restriction for a period of more than one year is passed by a Magistrate, the order of restriction does not require any confirmation by the Sessions Judge. Care should be taken to see that the order of restriction is in conformity with the rules framed by the State Government under the Act (*vide* Part F of this Chapter). An order directing a person not to leave his house between 8 P.M. and 5. A.M. was held in I.L.R. 8 Lahore, 267, to be *ultra vires*, not being in conformity with the aforesaid rules, District Magistrates have power to make an order of restriction in addition to an order for security under

section 110, Criminal Procedure Code, in any case coming to their notice. Sessions Judges can make *a* similar order in cases submitted to them under section 123(2), Criminal Procedure Code.

An order of restriction is especially suitable in the case of habitual offenders who are not in a position to furnish security and in whose case an order for security under section 110 Criminal Procedure Code would necessitate their commitment to Jail.

PART B.—ENHANCED SENTENCES

1. Under section 75 of the Indian Penal Code, a person convicted a second time of an offence punishable under Chapter XII or Chapter XVII of the Code, with three years' imprisonment and upwards; is liable to a greatly enhanced sentence.

Enhanced punishment under Section 75, Indian Penal Code.

2. This of course does not increase the competence of the court trying the offender. Even though section 348 of the Code seems to provide that the case can be tried by the magistrate if he is competent to try it or may be sent to a magistrate invested with powers under section 30 of the Code, it would be safer, in view of the amendments of section 30 by Act No. 26 of 1955, to commit such cases to the Court of Sessions as the accused is liable on subsequent conviction to a sentence of imprisonment for life or imprisonment of either description for a term which may extend to ten years. A provision is contained in section 347 which enables a commitment to be made to the court of Sessions at any stage before judgment is signed.

Procedure for Magistrates not competent to award enhanced punishment.

3. Although section 75 of the Indian Penal Code makes a previous convict in certain classes of cases liable to enhanced punishment, it is, of course, not obligatory to impose an enhanced sentence in every case of this description.

Enhanced punishment not obligatory.

Ordinarily cases of petty nature should not be made the basis for an enhanced punishment, unless the nature, number and sequence of previous convictions and the sentences previously undergone clearly show the necessity of enhanced punishment. Similarly; very old convictions (e.g., when the offence is committed, say, more than five years after the last release of the offender from Jail) should not ordinarily be made a ground for imposing an enhanced penalty under this section in the absence of special reasons.

Cases of organised crime stand on a different footing and where the offence under trial and the previous offences are of this description greater weight must be attached to them.

The general principle to be borne in mind is that section 75 is meant to be used as a deterrent only when the punishment provided for the offence itself is considered to be inadequate in view of the antecedents of the offender. The judgments in the previous cases should be referred to freely in order to ascertain the real character of the offender, and the section should not be resorted to unless the previous convictions indicate a criminal habit or instinct which needs to be checked by a punishment higher than that provided for the offence.

It should also be remembered that a moderate sentence coupled with an order under section 565, Criminal Procedure Code, or an order of restriction under the Restriction of Habitual Offenders Act is generally a better way of dealing with habitual offenders than the imposition of long terms of imprisonment.

Previous conviction for attempts to commit an offence not covered by Section 75, Indian Penal Code.

4. It should be noted that previous convictions for attempts to commit offences specified in section 75; or a security order under section 110, Criminal Procedure Code, do not bring an offender within the scope of section 75, Indian Penal Code.

Imprisonment under Section 75, Indian Penal Code.

5. In awarding sentences of imprisonment under section 75 of the Indian Penal Code. Courts should bear in mind that the provisions of this section are subject to those of sections 31, 32 and 34 of the Code of Criminal Procedure.

Action to be taken by Magistrate of 2nd or 3rd Class when he cannot award adequate punishment.

6. Section 349 gives a Magistrate of the 2nd or 3rd class the means of securing the proper punishment of an accused when he finds, in the course of the trial, that the maximum sentence which he is empowered to inflict would be insufficient. At the same time, in resorting to this section, it must be remembered that when the accused appears to be habitual offender he must ordinarily be dealt with under the provisions of section 348 and be committed to the Court of Sessions,

Duty of the Police to prove previous conviction. Discovery of previous conviction after judgment has been pronounced.

7. It is the duty of the police, in conducting the investigation to take proper steps to establish the identity of an accused person and to obtain and produce evidence of previous convictions against him. The attention of Criminal Courts is directed to the decision of the Chief Court in the case *Empress Versus Sham*

Singh, reported as Criminal Judgment No. 36 in the Punjab Record of 1884, and especially to the remarks of Mr. Justice Plowden at page 70 of the Record, with regard to the duties of the Court and of the police in this matter. It will be seen that the discovery, subsequent to sentence, that the prisoner has been previously convicted, but that this has escaped notice on account of a change of name, is not in itself a good ground for interference on revision.

When the police make a request that the pronouncement of judgment may be postponed on the ground that the result of the search slip in the case has not been received by them; the Courts should ordinarily adjourn the case for a reasonable time. It results in a mis-carriage of justice when, after the sentence has been passed, it is discovered that the accused had previous convictions and was liable on that account to an enhanced sentence.

8. In Punjab Government Circular No, 43-1077: dated the 19th July, 1870, the Criminal Courts of the State were instructed to enter any previous conviction or convictions of a prisoner upon the warrant committing him to jail, and the attention of all Courts is directed to these instructions. In the form of warrant of commitment prescribed for use under the Code of Criminal Procedure, provision has been made for mention of the fact that the convict has been previously convicted, when one or more previous convictions have been proved against him at his trial, and for the entry of the particulars of the previous convictions in a separate statement, which should be attached to the warrant of commitment in such cases.

Previous convictions to be noted on the warrant of commitment and in a separate Statement. Note on the warrant when the identity of the prisoner has not been proved or he declines to give an account of himself.

It is further directed at the suggestion of the Inspector-General of Police, and with the sanction of the State Government, that Courts, when committing a prisoner to jail, will enter a note in red ink on the warrant of commitment, in cases where the identity of the prisoner has not been satisfactorily ascertained, or he declines to give an account of himself.

PART C.—DEFINITION AND CLASSIFICATION OF
HABITUAL CRIMINALS.

The Central Government has framed the following rules defining and prescribing the treatment of "habitual criminals" for the purposes of jail discipline:

Persons liable to
be classified as
habitual criminals.

I. The following persons shall be liable to be classified as "habitual criminals", namely:-

- (i) Any person convicted of an offence punishable under Chapters XII, XVII and XVIII of the Indian Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he is by habit a robber, housebreaker, dacoit, thief or receiver of stolen property; or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps, or forgery.
- (ii) Any person convicted of an offence punishable under Chapter XVI of the Indian Penal Code, whose previous conviction or convictions; taken in conjunction with the facts of present case show that he habitually commits offences against the person.
- (iii) Any person committed to or detained in prison under section 123 (read with section 109 or section 110) of the Code of Criminal Procedure.
- (iv) Any person convicted of any of the offences specified in (i) above when it appears from the facts of the case, even although no previous conviction has been proved, that he is by habit a member of a gang of dacoits, or of thieves or a dealer in slaves or in stolen property.
- (v) Any person registered under the Punjab Habitual Offenders (Control and Reform) Act, 1952, (XII of 1952) as a habitual offender.

- (vi) Omitted.*
- (vii) Any person convicted by a Court or Tribunal acting outside India under the general or special authority of the Central Government of an offence which would have rendered him liable to be classified as a habitual criminal if he had been convicted in a Court established in India.

Explanation —For the purposes of this definition the word "conviction" shall include an order made under section 118, read with section 110, of the Criminal Procedure Code.

Classifying authority. Right of prisoner for revision of the order of classification.

II. The classification of a convicted person as a habitual criminal should ordinarily be made by the convicting Court, but if the convicting Court omits to do so, such classification may be made by the District Magistrate, or, in the absence of an order by the convicting Court or District Magistrate, and pending the result of a reference to the District Magistrate, by the officer-in-charge of the jail where such convicted person is confined : provided that any person classed as a habitual criminal may apply for a revision of the order.

Power of District Magistrate or convicting Court not to classify certain convicts as habitual criminals.

III. The convicting Court or the District Magistrate may, for reasons to be recorded in writing, direct that any convicted person or any person committed to or detained in section 123 read with section 109 or section 110 of the Code of Criminal Procedure, shall not be classed as a habitual criminal and may revise such direction.

Revision of classification.

IV. Convicting Courts or District Magistrate, as the case may be, may revise their own, classifications, and the District Magistrate may alter any classification of a prisoner made by a convicting Court or any

*Clause (vi) has been omitted in view of paragraph 7 of the Indian (Adaptation of Existing Indian Laws) Order, 1947. It ran as follows;—

"(vi) Any person convicted of an offence and sentenced to imprisonment under the corresponding sections of the Indian Penal Code and the Code of the Criminal Procedure as applied by order under the Indian (Foreign Jurisdiction) Order in Council, 1902, or by the authority or any Prince or State in India."

other authority provided that the alteration is made on the basis of frity, which were not before such Court or authority.

NOTES.—The expression "District Magistrate" wherever it occurs in paragraphs II, III and IV above means the District Magistrate of the districts in which the criminal was convicted, committed or detained. The expression includes a Presidency Magistrate.

V. Every habitual criminal shall as far as possible be confined in a special jail in which no prisoner other than habitual criminal shall be kept, provided that the Inspector-General of Prisons may transfer to this special Jail any prisoner, not being a habitual criminal, whom for reasons to be recorded in writing, he believes to be of so vicious or depraved a character, and to exercise, or to be likely to exercise, so evil an influence on his fellow prisoners that he ought not to be confined with other non-habitual prisoners, but a prisoner, so transferred shall not otherwise be subject to the special rules affecting habitual criminals.—(Government of India Resolution No. F.-III Jails, dated 15th September, 1922)

Habitual criminal to be kept in a special jail.

VI With reference to rule I (v) above a habitual offender is defined in section 2(3) of Punjab Act No. XII of 1952 as a person :—

Member of a criminal tribe defined.

- (a) who, during any continuous period of five years, whether before or after the commencement of this Act, has been convicted and sentenced to imprisonment more than twice on account of any one of more of the offences mentioned in the Schedule to this Act committed on different occasions and not constituting parts of the same transaction; and
- (b) who has, as a result of such convictions suffered imprisonments at least for a total period of twelve months.

Explanation 1.—A conviction which has been set aside in appeal or revision and any imprisonment suffered in connection therewith shall not be taken into account for the above purpose.

Explanation 2.—In computing the period of five years, any periods spent in jail either under a sentence of imprisonment or under detention shall not be taken into account.

Convicting officer to decide about classification and should note it on the warrant.

Statement of previous conviction should be attached to warrant.

VII. Whenever a person is sentenced to imprisonment for an offence, the Magistrate or Judge who passes the sentence should determine whether the prisoner is to be classed as an habitual criminal or otherwise, and should endorse the words "habitual" or "non-habitual" as the case may be, on the warrant of commitment, and sign such endorsement.

VIII. If the prisoner has been previously convicted, statement containing the particulars of the previous convictions should be attached to the warrant of commitment.

PART D.—RESIDENCE OF RELEASED CONVICTS

In every case in which an order under section 565 of the Criminal Procedure Code is made, directing that the person sentenced to imprisonment shall notify his residence and any change of residence after release, a copy of such order should be transmitted by the Court passing the sentence and order, with the warrant of commitment issued under section 384 of the Code, to the officer-in-charge of the jail or other place in which the prisoner is, or is to be confined. Attention is also invited to the following rules: —

Copy of order under section 565, Criminal Procedure Code to be sent to jail.

NOTIFICATION

The fifth March, 1931.

No 7335.—In exercise of the powers conferred by sub-section (3) of section 565 of the Code of Criminal Procedure, 1898; Punjab Government is pleased to make the following rules regulating the notification of residence or change of or absence from, residence by released convicts in regard to whom an order has been made under sub-section (1) of section 565 of the said Code.

Punjab Government notification No. 395 (Home-Judicial), dated the 13th March, 1901, is hereby cancelled.

RULES

I. *Released convicts to observe rules.*—When, at the time of passing sentence of imprisonment on any person the Court or Magistrate also order's that his residence and any change or residence after release be notified for the term specified in such order, such person shall comply with and be subject to the rules next following. In these rules a person released subject to an order of the nature hereinbefore described is called a "released convict".

II. *Released convict to notify, at the time of release, intended place of residence to releasing officer.*—Every convict in regard to whom an order has been

made under section 565 of the Code of Criminal Procedure, 1898. shall not less than fourteen days before the date on which he is entitled to be released, notify the officer in charge of the all, or other place in which he may for the time being be confined, of the place at which he intends to reside after his release.

III—Released convict to notify intention to change first residence at local Police Station.—Whenever any released convict intends to change his place of residence from the place which he specified at the, time of his release as the place at which he intended to reside to any other place, he shall notify the fact of such intention and the place at which he hereafter intends to reside not less than twenty-four hours before he so changes his residence, to the officer-in-charge of the Police Station within the jurisdiction of which he resides at the time when he notifies his intention to change his residence.

IV. Released convict to similarly notify all subsequent intention to change residence.—Whenever any released convict intends to change his place of residence from any place at which he may at any time, be residing, under the provisions of Rules III, he shall notify any intended change of residence in the manner in that rule provided :

V. Period to be appointed for taking up residence.—In default the convict to notify his actual residence.—The Officer recording a notification under rule IT, rule III or rule TV: shall appoint such period as may be reasonably necessary to enable the convict to take up his residence in the place notified. If the convict does not take up his residence in such place within the period so appointed he shall, not later than the day following the expiry of such period, notify in person his actual place of residence to the officer-in-charge of the Police Station within the limits of which he is residing.

VI. Released convict to notify the fact of his having actually taken up his residence at the place specified under preceding rules.—Every released convict shall, within twenty-four hours of his arrival at

the place of residence notified under rule II of rule III or rule IV, notify the fact of such arrival to the officer-in-charge of the Police Station within the jurisdiction of which such place of residence is situate.

VII. *Particulars of place of residence to be supplied.*—In notifying places of residence under these rules released convict shall

- (a) If the place of residence is in a rural tract—specify the name of the village, hamlet, or locality of such place, and the zaif, thana, tahsil and district within the limits of which such place is situate;
- (b) If the place of residence is in a town or city—specify the name of the town or city and the street, quarter and sub-division of the town or city within the limits of which such place is situate.

VIII. *Manner of notifying changes of residence.*— Every notification to be made by a released convict under rules III, IV and VI, respectively, shall be made by such convict personally at the proper Police Station :

Provided that-

- (a) the District Magistrate may, by order in writing exempt any released convict from the operation of this rule and may permit such convict to make such notifications in Writing or in such order, prescribe in that behalf;
- (b) If from illness or other unavoidable cause, any released convict is prevented from making any notification required by these rules personally at the proper Police Station he may do so by written communication addressed to the officer-in-charge of the proper Police Station. Such, Communication shall state the cause of his inability to attend in person at the Police Station, and shall, before it is transmitted to the proper Police Officer, be attested by a village headman or other village officer.

Note.—These rules will also be applicable to special orders of police surveillance issued by the State Government in the cases of prisoners conditionally released before the expiry of the term of their sentence.

NOTE.—(1) Subsidiary Rules issued by the Police Department will be found in Appendix 28-39 (1) to the Punjab Police Rules, Volume II.

(2) Rules made by the Punjab Government in exercise of the powers conferred by Section 16 of the Restriction, of Habitual Offenders (Punjab) Act, 1918 (V of 1918), are published in Punjab Government Notification No. 9853, dated the 29th April, 1918.

PART E.—IDENTIFICATION OF RE-CONVICTED
PRISONERS.

At the request of the State Government the following instructions are issued with a view to insuring the proper recognition of re-convicted prisoners for the purposes of jail discipline.

Introductory.

2. According to the existing practice in this State the decriptive roll of each person sent up by the police for trial is retained in the office of the Magistrate and filed with the Judicial record of the case. Under instructions of the Central Government, it is necessary that a descriptive roll of every prisoner arrested by the police should be prepared at the station-house and be sent up with the prisoner to the Magistrate; and that this roll, in the event of the final conviction of the prisoner by the Magistrate, should be copied in a register kept up in the jail for the purpose.

Descriptive roll
of the convict.

3. As in the Punjab the descriptive roll is embodied in the charge sheet-sent up by the police, all that appears to be required is that the charge-sheet, instead of being at once filed with the magisterial records of the case, should accompany the warrant of commitment to the jail, that the descriptive roll of the prisoner should be copied into the jail register, and that thereafter the charge-sheet should be returned to the Magistrate.

Charge sheet
to be sent
up by Police.

4. Magistrate are, therefore, instructed to forward the charge-sheet, with the warrant of commitment, to the Superintendent of the Jail, who will be directed by the Inspector-General of Prisons to cause the descriptive roll to be copied from the charge-sheet into the appropriate jail register. The Superintendent will then return the charge-sheet to the Magistrate.

Charge to be
sent to jail.

PART F.—RULES FRAMED UNDER THE PROVISIONS OF
RESTRICTION OF HABITUAL OFFENDERS (PUNJAB)
ACT, 1918.

The 29th April, 1918

No. 9853.—In exercise of the powers conferred by Section 16 of the Restriction of Habitual Offenders (Punjab) Act, 1918, the State Government is pleased to make the following rules:-

RULES.

1. In these rules the expression "Court" includes "Magistrate." Definition

2. The areas to which persons may be restricted by an order under this Act shall ordinarily be- Areas of restriction.

(a) if the person resides in a village—the area of the villages to which may be added at the discretion of the Court the areas of any contiguous villages in which the said person owns or occupies any immovable property or practises any trade or calling.,

(b) if the person resides in a town—the area of the town

But in special cases the Courts may fix a larger area.

(i) Unless the person restricted is an owner of land the Court may, if it is opinion that restriction to the aforesaid areas is inexpedient, select any other village or town, as the case may be, in the district within which the person ordinarily resides. Exceptions.

(ii) If the person restricted has been twice convicted of offences under, Chapter XVII of the Indian Penal Code, and is not an owner of land, the area of restriction may be any settlement established under section 14 of the Punjab Habitual Offenders (Control and Reform) Act, 1952. (Punjab Act XII of 1952), but the court must obtain the concurrence of the Deputy

Commissioner-in-charge of the settlement before restricting any person to such settlement.

Absence without
leave. Passes

3. No person restricted by an order of restriction under this Act shall leave or be absent from the area of restriction without having obtained a pass in accordance with these rules and except in accordance with the terms of such pass.

Proviso.—Nothing contained in this rule shall be deemed to render it illegal for any restricted person to leave the limits of the area of restriction whenever necessary for the purpose of appearing at the police station or before the 'nearest Magistrate to complain of an offence affecting himself or his family, or to present an appeal or petition of revision against the order of restriction or to obtain a pass under these rules, provided that he gives due notice of his intended departure to the headman of his village or town or to the officer-in-charge of the settlement or school proceeds straight to the police station or Court of the Magistrate and returns without unnecessary delay.

Times of
report.

4. The times at which a person is required by an order of restriction to report himself shall be such times at intervals of not less than 24 hours and not more than 7 days as the Court may fix; but such times shall not be more frequent than the Court thinks strictly necessary in each case.

Places of
report.

The place of report shall be the house of the headman or the zaildar or other officer, who in exceptional cases for reasons to be recorded in writing may be a police officer not below the rank of an officer-in-charge of a police station as the Court may direct; provided that no person shall be required to report himself at a place situated more than three miles from the place where he ordinarily resides.

Mode of
report.

Every person required to report himself by an order of restriction under this Act shall do so by attending in person and announcing his presence, unless physically incapacitated from doing so.

5. A person restricted to any area by an order of restriction under this Act may be granted a pass in Form A appended to these rules authorising him to leave the said area for one day, between sunrise and sunset-

Leave for one day.

- (a) if he is restricted to any village or group of contiguous villages or larger area—by any headman of the village in which he ordinarily resides;
- (b) if he is restricted to a town—by such officer as may be specified by the District Magistrate;
- (c) if he is restricted to a settlement or school by the officer-in-charge of the settlement or school.

6. The officer-in-charge of the police station or settlement or school within the limits of which any person is restricted by an order of restriction under this Act may on due cause being shown grant such person leave of absence for a period not exceeding 15 days and may issue a pass to him.

Leave not exceeding 15 days.

7. The District Magistrate of the district in which Long leave any person is restricted by an order of restriction under this Act, or any person only authorised by the District Magistrate in writing in this behalf, may on due cause being shown grant such person any leave of absence which he may deem reasonable and may issue a pass to him.

Long leave.

8. Any person granted leave or absence under Conditions rule 6 or rule 7 shall .travel to his destination and return to his residence by the route specified in the pass. He shall have the time and date of his arrival endorsed on the pass by the headman of the village of destination and within three days of his arrival he shall report himself at the police station within the limits of which his destination is situated, and shall present his pass for endorsement.

Conditions attaching to absence on leave.

9. During such time as any person restricted to any area by an order of restriction under this Act is absent from the area of restriction, he shall report

Reports while on leave.

himself once every three days to the headman of the village in which he may happen to be, and once in every 15 days he shall unless exempted by order of the District Magistrate, report himself to, and present his pass for endorsement by the officer-in-charge of the police station.

Surrender
of passes.

10. On his return to his residence he shall deliver the pass up to the authority from whom he received it. All passes so returned shall be sent for record to the police station within whose limits the person is restricted.

Form of
passes.

11. Passes issued under rule 6 or rule 7 shall be printed and filled in Urdu in Form B, appended to these rules. They shall be drawn up in triplicate and each part shall be signed or sealed by the authority granting the pass. One part shall be retained by such authority, the second shall be given to the person granted leave, and the third part shall be sent to the officer-in-charge of the police station within the limits of which the destination of the holder of the pass lies.

Person on
leave unable
to return.

12. If any person who has been granted a pass under these rules is from any unavoidable cause prevented from returning to his residence within the period of his leave, he shall at once give information to the nearest police station. The officer-in-charge of the police station shall verify the information and shall send a report to the authority which issued the pass.

Withdrawal
of passes.

13. Any pass granted under these rules may at any time be withdrawn by the authority which granted it, or by the District Magistrate or any officer duly authorised by him in writing in this behalf.

FORM A (Rule 5).
(To be printed in Urdu)

(FOIL)

*Day pass for persons restricted under Punjab Act
I of 1918*

Serial No. _____ Dated _____
Dhaka

Name	Father's name	Tribe	Residence	LEAVE Date Day	Place to which the person will go

Note – RULE 5 is reproduced on the Form

Seal or Signature of the Headman.

Granting pass

Vol. III.

(COUNTERFOIL FIR OERSIB GUVEN KEAVE)

*Day pass for persons restricted under Punjab Act
I of 1918*

Serial No. _____ Dated _____
Dhaka

Name	Father's name	Tribe	Residence	LEAVE Date Day	Place to which the person will go

Note – RULE 5 is reproduced on the Form

Seal of the Signature of the Headman.

Granting pass

Form B (Rule 11)

(FOIL FOR RECORD)

pass for leave granted to persons
restricted under Punjab Act 1 of 1918

Serial No. _____ Dated _____ Place _____

Father's name	Tribe	Residence	Leave Granted	Route prescribed

Signature of Officer granting

Note – Rules 8 to 11 are reproduced on the Form here.

(To be printed in Urdu)

(COUNTERFOIL FOR THE POLICE
STATION TO WHICH PERSON IS GOING)
pass for leave granted to persons
restricted under Punjab Act 1 of 1918

Serial No. _____ Dated _____ Place _____

Name	Father's name	Tribe	Residence	Leave Granted	Route prescribed

Signature of Officer granting leave.

Note – Rules 8 to 11 are reproduced on the Form here.

(COUNTERFOIL FOR THE PERSON GRANTED LEAVE)

pass for leave granted to persons
restricted under Punjab Act 1 of 1918

Serial No. _____ Dated _____ Place _____

Name	Father's name	Tribe	Residence	Leave Granted	Route prescribed

Signature of Officer granting

Note – Rules 8 to 11 are reproduced on the Form here.

ENDORSEMENTS WHILE ON LEAVE

Date of departure on leave	Signature of headman or Officer	Dates of endorsements while on leave	Signature of headman or officer	Dates of endorsement while on leave	Signature of headman or officer
Dates of endorsement while on leave	Signature of headman or officer				
				Dates of return to residence	Signature of headman or officer
				Date of pass reaching police station	Signature of Officer-in-charge

CHAPTER 24

Sessions Cases

PART A.—COMMITMENT.

1. All cases punishable with death or in which a witness has accented a tender of pardon under section 337 of the Code of Criminal Procedure shall be committed to the Court of Sessions except the cases mentioned in sub-section (2B) of section 337, which have to be sent without any further inquiry to the Court of the Special Judge appointed under the Criminal Law Amendment Act. 1952. (XLVI of 1952). In view of the recent amendments of section 30 of the Code all cases relating to offences punishable with Imprisonment for life or with imprisonment for a term exceeding seven years should be committed to a Court of Sessions when the Magistrate cannot award adequate punishment.

What cases
are
committed
to Sessions.

2. The District Magistrate should see that all cases triable by Magistrate with enhanced powers under section 30 are disposed of by such Magistrate including himself when he is so invested and that only those cases should be committed to the Court of Sessions which a section 30 Magistrate is not competent to try. Ordinarily a section 30 Magistrate should not try cases in which he takes action on his own knowledge or information or in which special grounds exist for rendering a commital desirable.

Cases which
Section 80
Magistrate
should not
try.

3. (1) Section 207A, inserted in the Code by Act No. 26 of 1955, lays down a different procedure in inquiries Preparatory to commitment where the proceeding has been instituted on a police report. When the Magistrate receives the police report forwarded under section 173, he shall fix a date for the inquiry under section 207A which shall not ordinarily be later than fourteen days from the date of receipt of the report. If a later date is fixed, the Magistrate must

Inquiry in
cases
instituted on
police
report.
Preliminary
matters.

record his reasons for doing so. The officer conducting the prosecution can apply to the Magistrate at any time before this date for the issue of a process to compel the attendance of witness(es) to give evidence and/or produce any document or thing at the said inquiry. The Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Commencement of the inquiry. The Accused to be furnished with documents.

(ii) At the commencement of the inquiry, when the accused appears or is brought before the Magistrate, he shall satisfy himself that the accused has been furnished with the documents mentioned in section 173; if this has not been done, he shall, subject to the provisions of subsection (5) of that section, cause these documents to be furnished to the accused.

Not obligatory to examine other than the eye witnesses.

(iii) The Magistrate shall then proceed to examine the witnesses produced by the prosecution as witnesses to the actual commission of the offence. It is not obligatory to examine the other witnesses but if the Magistrate is of the opinion that it would be in the interest of justice to do so, he may examine any one or more of the prosecution witnesses. The parties have the usual rights of cross and re-examination of these witnesses. Section 207A does not anywhere provide for the examination of the witnesses for the defence during the inquiry preparatory to commitment though in proceedings instituted otherwise than on a police report, the evidence produced on behalf of the accused has also to be examined under section 208 of the Code.

Examination of evidence and accused etc. to decide whether charge should be framed.

(iv) After the prosecution evidence referred above has been taken the magistrate shall examine it and the documents mentioned in section 173. He should also examine the accused to enable him to explain any circumstances appearing in the evidence against him and give the parties an opportunity of being heard.

Order of discharge.

(v) If the Magistrate is of the opinion that such documents and evidence, etc., disclose no grounds for committing the accused for trial, he may discharge the accused after recording his reasons for this order,

unless the Magistrate is of the opinion that the person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(vi) If after proceeding in the manner laid down in sub-para (iv) above the Magistrate is of the opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged. The charge shall then be read and explained to the accused and a copy thereof shall be given, free of cost, whether the accused asks for it or not.

Charge and copy
to accused etc.

4. In all cases committed for trial by a Court of Session, the State should be entered as prosecutor, and the complainant as a witness. The charge should be framed with care, and in strict accordance with the provisions of section 221 of the Code of Criminal Procedure and should describe the offence with which the accused is charged as nearly as possible in the words of the law which creates that offence, so that the accused may have full knowledge of the offence charges against him. If it is intended to prove a previous conviction at the trial, such previous conviction should be set out in the charge in the manner described in Chapter I, of this Volume, "Practice in the Trial of Criminal Cases."

Heading and
charge in
Sessions Cases.

Note.—The word State will be rendered in the vernacular as "Sarkar".

5. (i) The names of complainants and other prosecution witnesses and in cases instituted otherwise than on a police report, also of the witnesses on behalf of the defence who have appeared before the committing Magistrate and whose attendance before the Court of Sessions or High Court is necessary shall be entered in a calendar which such Magistrate should prepare and shall be bound over to be in attendance when called upon at the trial.

Calendar of
witnesses.

(ii) The Committing Magistrate shall call upon the accused to give, orally or in writing a list of the persons (if any) whom he wishes to be summoned on his trial.

List of defence
witnesses.

Defence witnesses to be summoned by the Committing Magistrate.

(iii) After this list has been furnished by the accused, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the State and such witnesses may be summoned accordingly.

Magistrate may refuse to summoned certain defence witnesses or call upon accused to deposit their expenses.

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witnesses is material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

Production of witnesses not entered in the calendar.

(iv) The prosecution is entitled to have entered in the calendar the names of such witnesses only as have been examined by the Committing Magistrate. The prosecution is not debarred from producing other witnesses in the Court of Session but is not entitled to have process issued for the attendance of such witnesses.

Instructions for the recording of medical evidence.

6. The attention of Committing Magistrates is drawn to section 208(1) which enables them in cases instituted otherwise than on a police report to call for and examine any witnesses not examined by the prosecution or by the defence. If, on an examination of the police diaries, it appears to the Committing Magistrate that any material witness has not been cited by the prosecution nor examined by the defence, he should examine such witness and record his statement.

Duty of Committing Magistrate to call for other material witnesses.

7. Where a Magistrate decides under section 207A (4) or finds it necessary under section 208(1).

to record the medical evidence during commitment proceedings, he should observe the following instructions:—

- (i) The medical evidence should be recorded with care and precision in the English language when the Magistrate is acquainted with that language, and should be translated into the vernacular-and read over to the accused, in order that he may have an opportunity to cross-examine. Under section 509 of the Code of Criminal Procedure, the evidence of a medical witness duly taken by the Committing Magistrate can be tendered before the Court of Session without the witness being actually called. The medical witness should not therefore be ordinarily bound over to appear before the Court of Session. It should be noted that section 509 requires that the evidence should not only be taken but also attested in the presence of the accused. The Magistrate should, therefore, append a certificate in the following form:-

Medical evidence.

"Taken before me and signed by me in the presence of the accused.

(Signature of Magistrate.)"

- (ii) A Magistrate recording medical evidence should not content himself with merely taking down, in the presence of the accused, the statement of the Civil Surgeon or other Medical Officer as spontaneously made by that officer, but should, if necessary examine him further in view of the detailed instructions contained in Chapter 18 of this volume "Medico Legal Work," in which suitable questions to be put to medical officers in certain classes of cases are suggested.

Duty of Magistrate to examine medical witnesses thoroughly.

- (iii) In all cases in which the medical evidence is that the body of a person alleged to have been murdered reached the witness

Inquest reports.

in a state of decomposition, evidence of the condition of the body when first discovered should be recorded and formal proof obtained of the "inquest report" "*Surat hal*," where there is one. In almost all cases of homicide, it is desirable that the police officer who first viewed the body and prepared the "*Surat hal*" should be required to put in and prove that document.

Completion of
record.

(iv) Further, Committing Magistrate must insist on the proper filing and placing on the record of all documents referred to, or which may be required for reference by medical witnesses, as, for example, correspondence between medical officers and the Police relating to the cause of death, the forwarding of the corps, its condition and so forth, as well as correspondence between Medical Officers and the Chemical Examiner and notes of *post-mortem* examinations. The Chemical Examiner should always be requested to return, if possible any article sent to him for examination which is likely to be required at the trial.

8. In proceedings instituted otherwise than on a police report the following points should be kept in mind while the evidence is being recorded.

Other material
circumstances
to be proved.

(i) Circumstances connected with the finding of the body, or of the property, or with the state of locality, or the department, etc., of the accused must be proved by the evidence of witnesses who saw what they describe; or by the police officer who conducted the investigation.

Identity of
the body
and Clothes,
etc.

(ii) In case of homicide, evidence should be taken to identify the body of the person killed; to prove the custody of the body from the moment it is discovered to the time of its delivery to the Medical Officer for

post-mortem, examination, and to show that it has not been tampered with during its conveyance from the scene of death to the place of examination. Clothes and ornaments found on the body should similarly be identified by proper witnesses, and their removal from the body and custody, until produced in Court, proved in evidence.

- (iii) Similar care is often required in tracing the custody of poisonous substances, poisoned food, blood-stained clothes, etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry, if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the Chemical Examiner. The person who packs, seals and dispatches such articles should invariably be examined.
- (iv) Clothes, weapons; money, ornaments, poisonous substances, food and every article which forms a part of the circumstantial evidence should be produced in Court. and their connection with the case and identity should be proved by witnesses.
- (v) A great deal of evidence, such as is mentioned in the foregoing paragraphs is formal in character but it is necessary that such evidence should be forthcoming at the trial. A committing Magistrate is bound as a rule to record all material witnesses produced before him or those for whose attendance he has issued process under section 208 of the Criminal Procedure Code. Where the prosecutor does not examine before a Committing Magistrate a witness, whom he proposes to call at the trial, he should be required to state the nature of such evidence so as to indicate to the accused the case he has to meet and thus to obviate the necessity of an adjournment in the Court of Session. Attention

Custody of other articles to be proved.

Every article re circumstantial evidence should be produced.

Completion of record. Supplementary witnesses. Evidence produced to be called at the trial but not produced before Committing Magistrate.

is invited to the provisions of section 219 of the Criminal Procedure Code which enables- a Committing Magistrate to examine supplementary witnesses even after the order of commitment, If he summons and examines any such supplementary witnesses, he should bind them to appear and give evidence at the trial and also furnish a copy of their statements free of costs to the accused at his or their request.

Plans. (vi) In Cases in, which a plan is necessary, and has been prepared by or under the directions of the Police, its correctness should be proved by the person who prepared it, and it should be marked and recorded as an exhibit.

Plans. 9. (i) In all cases where a plan of the locality is material such a plan, should be sent up with the record of commitment. The Inspector-General of Police has been requested to direct his subordinates to have such plans prepared, but it must be remembered that plans as well as Police reports are not evidence until they have been sworn to in Court by the persons who prepared them or who of their personal knowledge can depose to their correctness.

Plans. (ii) In all cases where the decision turns upon topography, or the position and construction of a dwelling, a plan, drawn to scale, and proved as accurately representing the place or dwelling indicated, should be filed with the proceedings.

Plans. (iii) In cases instituted on police report the costs of preparing all such plans shall be borne by the Police (Punjab Government, (Home), circular letter No. 9299-J-55/3688, dated the 24th January, 1956).

Police responsible for proper custody and production of all material articles. 10. Magistrate should impress on Police officials that such officials are responsible for the proper custody and production at the trial of all such articles and substances as are mentioned above from the time of their first discovery until the close of the trial,

whether or not they have been sent to the Chemical Examiner for report.

11. All exhibits should be marked with a letter or number. Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record whenever any such article is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the Police, that series of numbers should be retained, as exhibits are sometimes referred to in Police diaries by numbers, and if a new set of numbers is made by the Committing Magistrate confusion will arise.

Exhibits,
Articles to bear
numbers.

The Committing Magistrate should see that all articles to be produced at the trial in the Court of Session are carefully packed and sealed and should have them placed in the custody of the Court Inspector or other proper officer, who should himself produce them at the trial in the state in which he has received them. All exhibits in the nature of documents including photographs and *bahis* proved in evidence, should be marked with a letter and placed on the record & list of all exhibits should be prepared and placed on, the record. Where a weapon is used in the commission of an offence, it should be labeled, packed, sealed, and placed in proper custody, and a rough sketch -of it should be drawn and its measurement and weight recorded thereon, and the sketch should be marked as *a* exhibit and placed on the record after being duly proved. The Magistrate should add his signature and the date to the mark placed on each exhibit.

Packing and
making over of
articles to Court
Inspectors. Sketch
of weapons.

A printed label should be affixed or attached to each exhibit. It should contain the following particulars:—

Printed labels
for exhibits.

Number of exhibit _____
Produced by _____
Admitted (Signature of Magistrate).
Date _____
Case _____

Description of exhibit

The Committing Magistrate should see that these entries are properly made.

Statements
liable to be
transferred
to the
Sessions

All depositions or statements which are ordinarily liable to be transferred to the record of the Court of Session should be recorded on separate sheets of paper of foolscap size. Every deposition and statement should bear the date on which it is recorded and should be signed by the Magistrate.

List of defence
witnesses. Right
of accused to
produce witnesses
not mentioned
in the list.

12. As soon as a charge has been framed, the accused shall be required at once to give in, orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, and the Magistrate may allow the accused to give in a further list of witnesses subsequently. The accused is entitled to examine at the trial witnesses other than those mentioned by him in these lists but he is not entitled to the process of the Court for the attendance of such witnesses.

Calendar.

13. The form of calendar as prescribed (*see* Form No. 143 in Part B-III, Rules and Orders, Volume VI, Part B) is printed at the end of these instructions and should be used after necessary modifications. It has been filled in as if the proceedings had been instituted otherwise than on a police report. The entries would be very much simpler for proceedings instituted under section 207A on a police report.

Reasons for
commitment to
be recorded.

14. The reasons for commitment required by the Code of Criminal Procedure should be written on a separate sheet or sheets of paper and attached to the calendar. In the case of commitments made by Magistrates who are not acquainted with English the calendar should be written in the vernacular of the Court and so submitted. The Committing Magistrate is responsible for seeing that the calendar is correctly prepared.

Marshalling of
evidence by
Committing
Magistrate.

15. In preparing the "Reasons for Commitment" the Committing Magistrate should give a concise but intelligent statement of the facts and should marshal

the evidence in the order in which it should come under judicial consideration. In cases instituted on police report there would normally be only the direct evidence of the perpetration of the crime and the circumstantial evidence for the Committing Magistrate to deal with but in other case the marshalling of the evidence may be in the following order:

- (a) the medical evidence, if any;
- (b) the evidence as to the identity of the body or property and the direct evidence of the perpetration of the crime;
- (c) the evidence as to the discovery of the offender and his arrest;
- (d) the circumstantial and other evidence.

16. The witnesses should be numbered in the order in which they are marshalled; an official should be designated by his title and a female by words like 'Kumari' or 'Shrimati'. If there be more than one witness of the same name, the parentage of each should be given. If any of the witnesses are relatives of the accused, or connected with the deceased or the party in whose interest the Government prosecute this should be stated.

Numbering of witnesses and necessary particulars.

17 The Committing Magistrate as soon as he decides to commit a case, should inform the Session Judge, sending him a brief statement showing the section under which the accused is charged and the number of witnesses and giving his own estimate of the time likely to be required for the trial.

Committing Magistrates to send timely information to Sessions Judge of the case to be committed.

18 When a commitment is made, the Magistrate should notify the fact and transmit the following papers to the Court of Session:—

Papers and articles to be sent to the Sessions Court by the Committing Magistrate.

- (a) The record of the original enquiry, including the order of commitment made under section 207A (10) of section 213(1) of the Code of Criminal Procedure and a copy of the original charge framed under section 207A (7) of section 210 of the said Code.

- (b) The original charge framed under section 207 (A) or section 210 of the Code of Criminal Procedure.
- (c) The calendar as required by paragraph 13 of this Chapter.
- (d) The reasons for commitment prescribed by section 207A (10) or section 213 of the Code of Criminal Procedure and paragraph 14 of this Chapter, whether endorsed on the calendar or separately recorded.

Besides these, any weapon or other article of property necessary for production in evidence should be forthcoming at the trial.

19. Whenever a case in which a death sentence may be inflicted is not completed in a Committing Court and the records required by rule 18 despatched to the Sessions Court within three months from the date of the arrest of the accused, the Committing Magistrate should attach to the record an explanation, of the delay signed by himself.

(High Court letter No. 5844-R/XII D-2, dated 16th July, 1941.)

FORM OF CALENDAR

Form of Calendar (Paragraph 13)

CASE COMMITTED TO THE COURT OF THE SESSION OF AMRITSAR DIVISION BY A.B., MAGISTRATE OF THE
IST CLASS ON THE IST DAY OF JULY, 1894

Prisoner's name, parentage, caste, residence and age	Offence charged with law, applicable and date of commission	Date of apprehension	Whether in prison or on bail	Witnesses for prosecution with a brief indication of the nature of evidence shown against name of each	Material evidence i.e., weapon, clothes, etc.	Documentary evidence	Witnesses for defence
1	2	3	4	5	6	7	8
I. Sona Singh, son of Rodu, caste Rajput, residence Aliwal, Amritsar District, age 42 II.- Aja Singh, son of Lehna Singh, Caste Jat, residence Tung, Amritsar District, age 40 III.- Bulaki, son of Gulaba, Caste Jutlea, residence Aliwal of Amritsar District, age 30	Against I and II Murder of Nika Singh on 25 th June, 1894, Section 302, Indian Penal Code Against III. Furnishing false information to a public servant on 25 th June, section 177, Indian Penal Code	I- 25 th June II and III- 26 th June	I and II- In prison III- On bail	1. Dr.A.B., Civil Surgeon- to cause of death 2. Devi Ditta, son of deceased- eye-witness of murder; identifies body 3. Partap Singh to finding of ear-ring, and finding and identify of bloody knife, and identity of body 4. Gurbaksh 5. Gulab, son of Muhammada 6. Bahadur 7. Dial Singh 8. Ahmad Baksh, Constable	Bloody knife, ear-ring bloody garment	...	Fact Prisoners I and II Sheo Bhagat; Ganga Pershad, Devi Din Character, Budh Singh Muhamda

9. Ram Dass Hearing a cry ran to
Spot, was accused
10. Narain Singh } I and II running
 } away heard
 } deceased's dying
 } declaration
11. Din Muhammad- Helped to carry
 body to the Sadr,
 witness to
 enmity
12. Shrimati Jivni-Identifies ear-ring
13. Gulaba, son of Ghulam-identifies
 ear-ring
14. Jhanda-identifies bloody knife
15. Aladin-saw deceased in company of
 prisoners I and II
16. Bansidhar, Muharrir Sergeant-
 recorded first report made by
 accused III
17. Sant Singh, Sub-Inspector-proves
 "Surat Hal" and conducted inquiry
 on the spot
18. Surat Ram, Constable-was sent in
 charge of the corpse and knife to
 the Sadr and made them over to
 Civil Surgeon
-

PART B.—TRIAL OF SESSIONS CASES.

1. The Judges desire to emphasize the desirability of disposing of Sessions cases with the greatest possible expedition and to secure this object the following method should be adopted.	Introductory
2. Sessions Judges should reserve for possible Sessions cases several days in each month. The Committing Magistrate, as soon as he decides to commit cases any case should inform the Sessions Judge (sending him a brief statement showing the section under which the accused is charged and the number of witnesses for the prosecution) and give his own estimate of the time that the trial will take in the Sessions Court.	Reservation of several days for possible Sessions cases.
3. For instance, let it be assumed that the Sessions Judge has reserved the 1st to the 3rd of July and the 15th to the 17th of July for Sessions case up but till the 20th of June, he has received no intimation that a case is to be committed. He then proceeds at once to fill up the dates reserved in the beginning of July with criminal appeals and civil appeals of parties (such as those residing in headquarters) who can be served easily and with preliminary hearings of civil appeals. Then, perhaps, at the end of June he receives information that a case is to be committed. It can be fixed at once for trial on the days reserved in the middle of July.	Ditto
4. If the scheme explained above is properly worked it should be possible to dispose of all Sessions cases heard at headquarters within two or three weeks of the actual date of commitment, and even where Sessions Judges have more than one district under their jurisdiction would be concluded much more quickly than would be the case when no Preliminary warning is sent by the Committing Magistrate.	Intimation in advance by Committing Magistrate.
5. To secure the best results the co-operation of Magistrates and of their staff is of course, very necessary: because if Committing Magistrates fail to give the intimation-required. Sessions Judges will be compelled to fix longer dates owing to the necessity of serving the witnesses through the police.	Ditto

Postponement of cases awaiting arrest of absconders.

6. The instructions contained in paragraph 7 of Chapter I-A of this Volume, regarding the postponement of cases in order to await the arrest of other accused in the case, apply *mutatis mutandis* to Sessions cases.

Explanation for delay.

7. The High Court requires explanations to be furnished in monthly Sessions statement of any case pending over ¹[four months].

Place of trial

8. Under section 9 of the Code, as recently amended, the State Government may, by general or special order in the official Gazette, direct at what place or places the Court of Sessions shall ordinarily hold its sittings; but if in any particular case the Court is of the opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in its Sessions division, it may, with the consent of the parties, sit at that place for the disposal of the case or the examination of one or more witnesses in the case.

As a general rule a Sessions case should, if possible, be tried at the headquarters of the district from which it was committed. [see paragraph 3(c) of Chapter 31 of this volume.]

Examination of record and intimation of the date fixed by Sessions Judge to the Committing Magistrate.

9. On receipt of the record the case will be registered and when the date and place of the trial have been fixed a memorandum should be made in English on the calendar and due notice thereof sent to the Committing Magistrate. Sessions Judges should examine carefully the record of each case committed, immediately upon receipt, in order to satisfy themselves, that Magistrates have carried out the requirements of the law and of these instructions.

Careful examination of charge and medical evidence by the Sessions Judge in order to amending charge. He may summon any witness not included in the calendar.

10. The charge and the medical evidence should be examined in particular. If the charge has not been correctly framed, it should be amended before being read out to the prisoner. The medical evidence is sometimes recorded in the Committing Magistrate's Court carelessly and important points are left in doubt. In such cases the medical witness should be summoned and examined in the Sessions Court so as to get the points cleared. Similarly the police diaries should be

1. Substituted vide Correction Slip No. 20/Rules.XII.D.2, dated 15.11.1974.

seen to make sure that a material witness has not been left out.

In view of the amendments made in the Code by Act No. 26 of 1955, the Committing Magistrate, in proceedings instituted on police report, generally examines only the witnesses produced by the prosecution as witnesses to the actual commission of the offence alleged. In all such cases it would now be for the Sessions Court to keep in mind the instructions contained in paragraph 7 to 9 of Part A of this Chapter and to see that all material evidence and circumstances are brought on the record during the trial. If the record is carefully examined on its receipt, Sessions Judges will be able to summon any witnesses not examined by the Committing Magistrate and not included in the Calendar whom they consider material and thus avoid the necessity of an adjournment, which is extremely inconvenient in the case of Sessions trials.

- (i) The prosecution is not debarred from producing in the Court of Sessions evidence which has not been produced in the Committing Magistrate's Court, *vide*, -1952, Supreme Court Reports, 813;
- (ii) Whenever a charge is altered or added to by the Court of Sessions, the prosecutor and the accused shall be allowed to call further witnesses whom the Court may think to be material with reference to such alterations or additions in the charge. (Section 231 of the Code of Criminal Procedure.)

11. Sessions Judges should report Magistrates who fail to carry out these instructions.

Further prosecution evidence.

12. The names and descriptions of the counsel appearing for the prosecution and defence should be noted on the first page of the record of trial. If the accused is unrepresented the fact should be noted. When the charge is read out to the prisoner at the commencement of the trial, the portion relating to previous conviction should not be read out in court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution or any evidence adduced thereon until, in the case of a trial by a

Charge to be read out: Mode of recording evidence.

jury, the jury have delivered their verdict on the charge of the subsequent offence or in Other cases, until he has been convicted of the subsequent offence. (*See* section 310 of the Code, as amended). The English record should show every detail of the examination-in-chief, cross examination and re-examination of each witness; and if the accused does not avail himself of the liberty to cross-examine, a note should be entered to that effect.

Charge as
originally framed
or as amended
in the Court of
Sessions to be
read out.

13. The papers referred to in Part A, paragraph 18, clauses (b), (c) and (d) form the basis of the record of the Court of Session. Of these charge, either as originally framed by the Magistrate or as amended in the Court of Session, must be read out at the commencement of the trial in open Court, but neither the Calendar nor the Reasons for Commitment need to be or should be read out.

Papers to be
transferred to
Sessions record.

14. The papers to be transferred as evidence to the record of the Court of Session, from the record of inquiry are those admitted in evidence by the Court of Sessions.

These usually include the charge, documentary exhibits depositions of witnesses and the statement of the accused person. The depositions of the medical witness and the Chemical Examiner's report, if any, may also be transferred. Depositions of witnesses examined by the Committing Magistrate who have become incapable of appearing at the trial, are to be transferred when required as well as depositions transferred under section 288 of the Criminal Procedure Code

NOTE.—The order which papers transferred as evidence to the Sessions Judge record should occupy, is as follows:—

- (i) the charge;
- (ii) the deposition of medical witnesses;
- (iii) the chemical examiner's reports;
- (iv) documentary exhibits;
- (v) deposition of a witness examined by the Committing Magistrate, who has become incapable of appearing at the trial in the Sessions Judge's Court (following immediately the evidence sheet of that witness, which should contain a record of the cause for not examining that witness in the Court of Sessions);
- (vi) deposition of a witness if transferred under section 288. This should follow the Sessions record of the deposition of the witness; and
- (vii) statements of accused persons, the confession and statement of each accused person should immediately precede, in this order, the record of his statement in the Sessions Court.

15. (i) In preparing records in Sessions cases and in copying judgments, the following instructions should be strictly followed, namely :—

Instructions
re-preparation
of record.

- (1) the record of evidence of each witness should be numbered;
- (2) the evidence should usually begin with that of the medical witness, the records of whose depositions, if any, in the Committing Magistrate's Court should follow their record sheets in the Court of Session (if any). Each witness should have a separate record sheet in the Court of Session;
- (3) confessions and other previous statements of each accused person should immediately precede his or her statement in the Court of Session;
- (4) where the evidence before the Committing Magistrate of a witness is brought on to the Sessions record it should immediately follow the Sessions record sheet of that witness, and the reason why and the provision of the law under which it is brought on to the record should be given; and
- (5) the pages of the original judgment should be noted in the margin of each copy of a judgment issued and the pages of copies of the records of evidence of witnesses should be similarly noted.

16. In using previous statements before the police or the Committing Magistrate to discredit witnesses careful attention should be paid to the provisions of section 162 of the Code of Criminal Procedure and section 145 of the Indian Evidence Act. (For detailed instructions on the subject see Chapter 12 of this Volume, Police Diaries, etc.).

Use of previous
statements of
witnesses.

17. Under section 288 of the Code of Criminal Procedure, the Sessions Judge has the discretion to on the record and treat as substantive evidence in the case the statement of a witness duly recorded in the presence of the accused under Chapter XVIII of

Transfer of
previous
evidence.

the Code (i.e., during commitment proceedings) if such witness is produced and examined in the Court of Session. Where the Sessions Judge considers that a witness for the prosecution has changed his statement in material particulars his previous statement should ordinarily be transferred when it can be used as substantive evidence. The mere fact that a witness made a different statement in the Committing Magistrates Court is of course no guarantee that the earlier statement was true. In view of the words "subject to the provisions of the Indian Evidence Act" which occur in section 288, the evidence given by a witness before the Committing Magistrate cannot be used as substantive evidence in the Sessions Court unless the witness is confronted with those parts of his evidence which are to be used for the purpose of contradicting him, even though, if the only object of the prosecution is to discredit the evidence given in the Sessions Court by cross-examining him with reference to previous statements made before the Committing Magistrate, it is not necessary to do so,—*vide* 1951 Supreme Court Reports 729 and A.I.R. 1954 Punjab 182 (D.B.). The weight to be attached to a statement transferred under this section is a matter to be judged in the light of all circumstances including any explanation the witness may offer as regards the discrepancy.

Any statement transferred to the Sessions record under section 288 should be read in Court before being placed on the record.

It is unsafe to pass
conviction on
transferred
Evidence.

18. Evidence taken before the Committing Magistrate and transferred to the Sessions file under section 288 can be treated as substantive evidence for all purposes and as a matter of law requires no corroboration. As a matter of caution, however, it would ordinarily be unsafe to base a conviction on such evidence without any corroboration and corroboration can also be found in the circumstances surrounding a case. The fact that a witness has resiled from his earlier statement is a fact to be taken into consideration giving value to the statement that the Court eventually relies upon. If, with that circumstances in mind, the Court still thinks that the earlier statement

is true then it is its duty to act upon it whether that statement is corroborated or not,---*vide* A.I.R. 1946 Lahore 380.

19. Before transferring to the record of the Court of Session, the confession or examination of an accused person recorded by a Magistrate, the Sessions Judge should see that the provisions of sections 164 and 364 of the Code of Criminal Procedure have been duly complied with.

Transfer of statement of accused.

20. Every paper to be transferred to the record of the Court of Session whether it be an exhibit or a deposition, must be read out in full in open Court. If the paper transferred is in English, a translation should be made and read to the accused; if in vernacular, a translation into English should be made in the Court of Session and after being duly verified, be filed with the record. In both cases the papers transferred should be inserted in the record of the Court of Session in their proper places, so that the record may be read continuously. On every paper transferred an endorsement must be made to the effect that it has been read out and admitted in evidence and transferred to the record of the Court of Session.

Papers transferred to be read out, translated and placed in proper place.

19. A list of all persons composing the record should be given on the first page of the English proceedings. The name of each witness, and all documents comprising the record, should be enumerated in this index, and the page of the record, at which each is to be found, should be indicated.

Index of the record.

20. In all cases referred to the High Court for confirmation of sentence of death, and in all cases where death or serious bodily injuries are found to have been caused by an accused person, a full and accurate description of all weapons produce in Court in connection with the trial should form part of the record transmitted. Such description should, in the case of cutting instruments of all kinds, include mention of the condition of the edge, and in the case of all other weapons, not being fire-arms, their dimensions and weight. A rough sketch of the weapons used should be made and placed on the record as an exhibit.

Detailed memo about weapons.

Detailed memo
about weapons.

23. Sessions Judges should see that these orders are compiled with in every case of the above description. Inconvenience is frequently caused in cases coming before the High Court by the failure of Sessions Judges to follow the existing instructions and the consequent absence from the record of any proper description of weapons connected with the case; and the judges have accordingly given directions that the record should be returned to the lower Court whenever it is found that it does not contain such a description.

Note.—These directions should be observed by all Magistrates exercising powers under section 30 of the Code of Criminal Procedure, in cases in which person are convicted of offences at least the human body.

Further
evidence by
parties.

24. Section 291 allows the accused to examine any witness not previously named by him, provided that such witness is in attendance at the Court of Session, but he is not entitled, except as provided in sections 207A (9), 211 and 231, to claim to have any additional witness, summoned by the Court of Session. It must be remembered that the prosecutor is also entitled to summon additional witnesses when the conditions specified in section 231 of the Criminal Procedure Code exist.

Ditto.

25. It is not intended to lay down any hard and fast rules regarding the discretion to be used by Sessions Judges in summoning or refusing to summon additional witnesses but it is contrary to the intention of the Code to allow the accused; as a normal practice; to summon his witnesses when the Sessions trial has begun. At that stage witnesses should be summoned only in exceptional circumstances. The accused should normally give a list of his witnesses to the Committing Magistrate.

Trials by
Jury.

26. In view of the amendments made in the Code of Criminal Procedure by Act No. 26 of 1955 there can now be no Sessions trial with the aid of assessors. In cases tried by jury, when the case for the defence and all prosecutors reply, if any, are concluded the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence and laying down the law by which the jury are to be guided. The charge to the jury, wherever practicable should be

dictated to a stenographer in the language in which it is delivered and a transcript of the charge should be signed by the judge and placed on the record (Section 297). The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceedings [Section 298 (2)]. The duties of the Judge and the jury are defined in sections 298 and 299 of the Code.

Note.—(1) The trial of all offences before the Court of Sessions in the State of Delhi shall be by the Judge himself; *vide* the Delhi State Government notification No.F.-2(242)/55-Home, dated the 2nd April, 1956, under section 269 of the Code of Criminal Procedure.

(2) The Punjab Government have decided that at present the system of trial by jury should not be followed in the Punjab State,— *vide* Punjab Government letter No.65-J-56/16374, dated 16th April,

27. After the judge has finished his charge, the jury shall retire to consider their verdict. After the verdict has been considered, the foreman shall inform the judge what is the verdict of the jury or what is the verdict of a majority or that the jurors are equally divided in opinion. The Judge may require the jury to retire for further consideration when the jurors are not unanimous in their verdict. The jury shall return a verdict on all the charges on which the accused is tried unless the judge orders otherwise; and the judge may question the jury to ascertain what their verdict is on each charge. Such questions and answers shall be recorded. (Sections 300 to 303 of the Code.).

Verdict of Jury.

28. When the Judge does not think it necessary to disagree with the verdict of the jurors or a majority of them he shall give judgment according to that verdict and if the verdict is for the conviction of the accused the Judge shall pass sentence on him according to law (Section 306). In this connection please see Chapter 19 "Sentences", of this Volume.

Judgment in agreement with the jury's verdict.

29. Where the Judge disagrees with the jurors or a majority of the jurors and is clearly of the opinion that it is necessary in the ends of justice to submit the case to the High Court or where the jurors are equally divided in opinion, the Judge shall submit the case in

Procedure in case of disagreement with jury's verdict.

respect of such accused to the High Court after recording his opinion on such charge or charges and stating the offence which he considers to have been committed. In such cases if the accused is further charged with a previous conviction under section 310 of the Code, the Judge shall proceed to try the accused as if the verdict had been of conviction. (Section 307).

Pronouncement
of Judgment.

30. In cases tried by the Judge himself, after the case for the defence and the prosecutors reply, if any are, concluded the Judge shall give a judgment in the case and in the event of a conviction pass sentence according to law (section 309). In trials by jury, the court need not write a judgment, but the heads of charge to the jury shall be recorded unless the charge has been delivered in English and taken down in shorthand [Section 367(5)].

Judgment should
be pronounced in
open Court by
Sessions Judge.

31. The Judgment should be pronounced by the Sessions Judge either immediately after the trial or on some future day of which due notice must be given to the parties or their pleaders. Sentence should be passed in open Court and then explained to the prisoner. It appears that certain Sessions Judges have been in the habit of writing judgments while on their September leave and sending them to headquarters for pronouncement by District Magistrates. Section 367(I) of the Code of Criminal Procedure clearly lays that a judgment shall be dated and signed by the presiding officer in open Court at the time of pronouncing it. Under section 17(4) of the Code, the Sessions Judges may, for the reasons given, make provision for the disposal of any urgent application by the District Magistrate, but there is no authority for the proposition that the power given to a Sessions Judge under section 17(4) extends to delegation of the duty to pronounce judgments. Sessions Judges must arrange to pronounce judgment in all original cases before proceeding on leave if a delay in pronouncing judgment is likely to cause hardship to any person under trial.

Judgment to be
written before
pronouncing.

32. In cases where the law requires that a judgment should be written it should be written and delivered before the sentence is pronounced. If such

cases it is illegal to pass sentence at the termination of a trial and to postpone the writing of the judgment to a future occasion. All cases must continue to be shown on the pending file until judgment and/or sentence are written and delivered.

33. In case tried by a Court of Sessions, the Copy to shall forward to the District Magistrate a copy of the judgment in addition to the copy of the finding and sentence required by section 373 of the Code of Criminal Procedure.

Copy to be
forwarded to
District Magistrate.

Where there has been a complete acquittal of all or any of the accused by a Sessions Court, the Sessions Judge should, at the time of pronouncing the judgment, also forward a facsimile copy thereof to the District Magistrate, in whose jurisdiction the trial was held, so as to enable him to consider whether or not an appeal against acquittal is to be recommended. The stenographer should be required to prepare an extra carbon copy, for this purpose, while transcribing the judgment dictated to him by the Sessions Judge.

In a case in which an accused charged with murder receives a sentence for imprisonment for life or is tried for an offence under section 302, Indian Penal Code, but is convicted under section 304, Indian Code, the Sessions Judge should follow the same procedure.

34. If the sentence is one, which has to be referred to the High Court for confirmation, under section 374 of the Code of Criminal Procedure, the record of the Court of Session, with the exception of the final judgment, should be submitted in original. In addition to the type-written copy of the judgment which takes the place of the original (retained in the Court of Session) two extra type-written copies will be forwarded for use in the High Court together with type-written copies of the following documents on the Sessions record:—

Documents to be
forwarded to High
Court when
sentence requires
confirmation.

- (1) First report at police station (if any).
- (2) Inquest Report;

- (3) Statement under section 364, Criminal Procedure Code;
- (4) Examination under section 364 by the Magistrate;
- (5) Magistrate's charge-sheet;
- (6) Record of evidence in Court of Session with any further examination under section 364, Criminal Procedure Code, and altered charge, if any;
- (7) Material documentary evidence, if any;
- (8) Record of verdict of the jury, if any.

Note.1- Photographs and italics should be treated as “documentary evidence” and should be marked with letters like other documents, and should always be sent to the High Court.

¹*[Note.2-* One of the copies of the record to be forwarded under this rule should be authenticated in the manner laid in rule 7 of Chapter 25-G post.]

Reference to High Court should be in prescribed form.

35. The copy of the final judgment should be signed by the Sessions Judge himself, and not by the Superintendent or other office of the Court on his behalf, as certifying such copy to be a true copy. The reference to the High Court for confirmation of the death sentence should be made in the prescribed form:

In death sentences accused should be informed about period for appeal.

36. In all cases in which a person is sentenced to death, the Sessions Judge should, as directed in section 371 of the Code of Criminal Procedure, explained to the condemned man that he must file his appeal within a period of seven days (*vide*, Article 150 of the Schedule to the Indian Limitation Act, 1908).

Explanation for delay.

37. Whenever a Sessions trial in which a death sentences is inflicted is not completed and the record dispatched to the High Court within ²[four] months the date of the receipt of the Committing Magistrate's record or within ³[six] months from the date of the arrest of the accused an explanation of delay similar to that required from a Committing Magistrate, by rule 26 of Part A of this Chapter, signed by the Sessions Judge, should be attached to the record.

Sessions Judge to ask accused and promptly deliver if he requires a copy of Judgment.

38. In order to prevent delay, the Sessions Judge should, on delivering judgment, ask the accused if he desires to have the copies or translation of the judgment to which he is entitled under sub-sections (1) and

1. Note 2 added vide Correction Slip No. 15, dated 22.07.1972.
2. Substituted vide Correction Slip No. 20/Rules.XII.D.2, dated 15.11.1974.
3. Substituted vide Correction Slip No. 20/Rules.XII.D.2, dated 15.11.1974.

(2) of section 371 of the Code (as amended) on making an application. When the accused is sentenced to imprisonment he has to be supplied a copy of the finding and sentence soon after the delivery of judgment even if he makes no application for the same. All these copies and the translation of the judgment are to be supplied to the accused free of cost. The Sessions Judge should record in the judgment that copies and translation have been furnished and should furnish the same without delay.

39. The copies referred to in the preceding rule and a translation of the judgment if required by the accused, should be sent to him by the Sessions Judge with the following endorsement, namely:

Endorsements
on copy sent to
accused.

- (a) the date of the despatch of the copy or translation of the judgment; and
- (b) in case of sentence of death;
 - (i) notice that the appeal must be presented within seven days from the date of sentence (exclusive of that date and of the time which has been spent in supplying him with the copy of the judgment) mentioning the latest dates on which his appeal can be filed;
 - (ii) intimation that, on the expiry of seven days, the record will be sent to the High Court, and that the hearing of the reference with a view to confirmation of sentence (under section 374 of the Code) will take place about one month after despatch of the copy.

40. When the condemned person has taken a copy of the judgment, the record should not be forwarded to the High Court until after the expiration of the total period within which his appeal can be legally filed, i.e., a period of seven days from the date of sentence plus the time spent in supplying the copy. If no appeal has then been filed in the Court of Session, the record should be submitted to the High Court without any further delay whatever, accompanied by a certificate under the hand of the Sessions

Record to be sent
to High Court soon
after period of
appeal has expired.

Judge that no appeal has been filed within the prescribed period, notwithstanding the fact of the law having been explained to the accused. Similarly, if no copy of the judgment has been applied for and no appeal filed within seven days after the date of the sentence the record should be submitted to the High Court without any delay whatever. If an appeal has been preferred, it must be sent up to the High Court with the record.

41. The explanation of delay, if any, furnished by the Committing Magistrate and the Sessions Judge under rule 19 of Part A and rule 37 of Part B of this Chapter should also be forwarded to the State Government, together with any explanation of delay caused in the High Court. All such explanations should be placed before the Division Bench dealing with the case before submission to Government.

Notice to accused
and Advocate
General on receipt
of record.

42. Standing orders have been made in the High Court that immediately on receipt of the record, notice shall be issued to the accused in jail informing him that the proceedings will be considered with a view to an order of confirmation being made under section 374 of the Code of Criminal Procedure and the appeal (if any) be heard on a date to be entered in the notice which will ordinarily be the first working Monday after the explanation of a month from the date when the necessary copies and translation of judgment, if any, applied for were dispatched to the accused by the Court of Session. Similar notice will also be issued to the Advocate-General when an appeal is preferred. Unless records are promptly submitted it will not be possible to carry out the above standing order, and Sessions Judges are accordingly requested to pay strict attention to the instructions here given.

Copy of High Court
judgment to be
sent to Sessions
Judge.

43. After the sentence has been confirmed or other order has been made by the High Court, the Registrar will return the record, with a duplicate or an attested copy of the order under the seal of the Court, to the Sessions Judge, who will take the steps prescribed by section 381 of the Code of Criminal Procedure to cause the sentence or order to be carried into effect.

44. The record of every case, as prepared for the use of the High Court, in which the sentence of death has been confirmed by the High Court, should as soon as orders have been passed confirming the death sentence; be forwarded to the State Government, together with the Courts order thereon, and the English file of the Sessions Court.

Record to be sent to Government when death sentence has been confirmed.

45. In issuing warrants for the execution of sentences of death, Sessions Judges should as directed by Government fix a date for the execution of the sentence that is not less than fourteen or more than twenty-one days from the date of the issue of the warrant.

Date for execution of death sentence.

46. Under the orders of Government, it is directed that in every case in which a sentence of imprisonment, for life is passed on a woman for the murder of her infant-child and the sentence is not appealed against, the record of the case shall, after the expiration of the period allowed for appeal, be forwarded to the High Court for submission to Government, with a view to the consideration of the question whether any commutation or reduction of the sentence should be allowed.

Record to be sent to Government when a woman has been sentenced to imprisonment for life for infanticide.

47. . (i) All weapons with which injuries are alleged to have been inflicted by the accused, whether the nature of the injuries is in dispute, or not, shall be forwarded to the High Court when a case is referred by a Sessions Judge for confirmation of a sentence of death. In order to secure that this will be done, the Sessions Judge shall record a note at the foot of his judgment stating what weapons are to be forwarded to the High Court and he should see that they are forwarded when the records are dispatched.

(ii) In a case in which a convicted person is called upon to show cause why his sentence should not be enhanced to death similar weapons are required in the High Court, but will not be forwarded to the High Court until the High Court calls for them.

(iii) In a case where the sentence of imprisonment for life is awarded for the offence of murder, the

Sessions Judge shall forward the weapons of offence to the High Court along with the records of the case, unless there are special reasons for not doing so. In order to secure that this will be done the Sessions Judge shall record a note at the foot of his judgment stating what weapons are to be forwarded to the High Court and he should see that they are forwarded when the records are dispatched in pursuance of requisition received from the High Court.

48. (i) All garments of an accused person which are proved to have been stained with human blood and have been made exhibits shall be forwarded along with the record to the High Court when a case is referred by a Sessions Judge for confirmation of a sentence of death. In order to secure that this is done, the Sessions Judge shall record a note at the foot of his judgment stating what garments are to be forwarded to the High Court.

(iv) In a case in which a convicted, person is called upon to show cause why his sentence should not be enhanced to death similar garments are required in the High Court, but will not be forwarded to the High Court until the High Court calls for them.

49. Exhibited articles, which are not documents and are not referred to in paragraphs 47 and 48 of this Chapter, should not be sent to the High Court, unless the High Court calls for them, or unless the Sessions Judge considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal.

Vol. III.

Ch. 24-C.

Chapter 24 Part-C

Legal Aid to Accused (Haryana) Rules, 1981

High Court of Punjab and Haryana at Chandigarh

21st February, 1981

No. 25 G.S.R.25/C.A.2/1974/S.304(2)/81.—In exercise of the powers conferred by sub-section (2) of section 304 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974) and Article 227 of the Constitution of India, and all other powers enabling it in this behalf, the High Court of Punjab and Haryana, with the previous approval of the State Government of Haryana makes the following rules for regulating the appointment of pleaders to defend the accused in trials before Courts of Session in the State of Haryana, at the expense of the State, namely:-

PART-I

1. (1) **Short title and commencement.**—These rules may be called the Legal Aid to Accused (Haryana) Rules, 1981.

(2) These rules shall come into force from the date of their publication in the Official Gazette.

2. **Definition.**—In these rules, unless the context otherwise requires,-

- (a) **'High Court'** means the High Court of Punjab and Haryana at Chandigarh.
- (b) **'Advocate'** means a person enrolled under the Advocates' Act, 1961, and entitled as of right to practice in the Courts subordinate to the High Court.
- (c) **'List'** means the list of Advocates prepared and maintained by the Sessions Judge of each sessions division under these rules, willing to appear for the undefended accused in trials before Courts of Sessions.
- (d) **'Code'** means the Code of Criminal Procedure, 1973.

PART-II

3. **Report of the Committing Magistrate.**—When in a case instituted on a police report or otherwise, the accused is committed to the Court of Sessions for trial under section 209 of the Code, the Magistrate shall simultaneously forward a report to the Sessions Judge whether the accused was represented by a pleader in the proceedings before him, and whether the accused has sufficient means to engage a pleader for his defence.

4. **Assignment of Advocates for defence.**—When the accused appears or is brought before the Court of Session in pursuance of the commitment of the case under section 209 of the Code and he is not represented by a pleader, the Judge shall assign from the list an Advocate for his defence at the expense of the State, if he is satisfied on the basis of the report of the Magistrate and such further inquiry as he may deem fit that the accused has not sufficient means to engage a pleader:

Provided where an accused is charged with the commission of an offence punishable with death or imprisonment for life and he is unrepresented, the Judge shall assign from the list an Advocate of at least seven years' standing at the Bar at State expense for his defence, irrespective of the fact whether the accused has sufficient means to engage a pleader.

PART-III

5. (1) **Preparation of list.**—The Sessions Judge of each Sessions Division shall, after consultation with the Additional Session Judge(s), if any, and President of district Bar Association, prepare and maintain a list of 5 to 15 suitable Advocates willing to appear for the undefended accused at State expense in trials before the Court of Session.

(2) An Advocate, with a standing of not less than 5 years at the Bar and who is ordinarily practising in such Court, shall be eligible for being brought on the list of Advocates. It shall, however, be the duty of the Sessions Judge to persuade competent senior lawyers to have their names placed on the list.

(3) The Sessions Judge shall revise the list in the month of December in each year after following the procedure prescribed in sub-rules (1) and (2).

7. (1) **Scale of fees.**—The ordinary fee payable to an Advocate, engaged for the defence of an accused charged with the commission of an offence punishable with death or imprisonment for life shall be Rs.50 per day and Rs.32 per day in other cases or Rs.200 for the entire case, whichever is less, according as the Sessions Judge may decide in each

case in cases tried by himself or on the basis of the recommendation, if any, of the Additional Sessions Judge, trying the case.

(2) In special cases the Sessions Judge may add to the ordinary fee allowed by sub-rule (1), a bonus not exceeding Rs.200.

(3) In any case in which the fee authorized in sub-rule (2) is manifestly inadequate, High Court may, on the recommendation of Sessions Judge, grant special bonus up to a maximum of Rs. 2000 per case.

(4) No fee shall be payable for the day on which a case is adjourned without any proceedings being taken by the Court, except at the first hearing of the case after the accused appears or is brought before the Court in pursuance of commitment of the case under section 209 of the Code:

Provided that if an Advocate assigned for the defence of an accused is required to retire at any time after the framing of a charge against the accused owing to the engagement of counsel by the accused himself, he will be entitled to get one day's fee as compensation.

8. ***Maintenance of Diary by the Advocates.***—An Advocate engaged at state expense shall, at the conclusion of each day of hearing in the case, prepare and submit for counter signatures by the Presiding Officer of the Court a diary containing following details fully set out:-

Date	The Name and title of the case and name of the accused defended.	Duration of hearing	Work done	Signature of the Presiding Officer	Remarks

9. (1) *Payment of fees.*—The Sessions Judge shall be controlling officer for the payment and audit of all fees due to Advocates engaged under these rules.

(2) The Advocates shall submit their bills to the Sessions Judge within one month of the disposal of the case by the Court of Session.

PART VI

10. The Rules contained in Chapter 24-C, Volume III of the Rules and Orders of the High Court are hereby repealed.

CHAPTER 25

Appeal and Revision—Criminal.

PART A.—ADMISSION OF PETITIONS.

Rule 1.—A petition of appeal or revision on behalf of a person convicted by a criminal court or an application for transfer shall not be admitted by a criminal court, unless it is either submitted through the jail authorities, or is presented by the convicted person himself, or by some person authorised by a duly stamped power of attorney to present it on his behalf, and a petition for revision by a complainant shall not be admitted unless it is presented by the complainant or by some person authorised by a duly stamped power of attorney to present it on behalf of the complainant.

Persons
competent to
lodge petition.

Provided that a person confined to jail shall be allowed to appoint his pleader, whether falling under jail prisoner class (1) or (2) of section 4(r) of the Code of Criminal Procedure, by means of a printed form, signed by him and attested by the Superintendent of the Jail, and that no stamp shall be required on this form.

Appointment
of a pleader
by a jail
prisoner.

Note.—A specimen of the form is given in the Appendix attached to this part.

2. Petitions of appeal and revision, written by Jail officials on behalf of prisoners, shall be authenticated by the Superintendent of the Jail and every such petition received from the Superintendent of a Jail shall be examined upon receipt, and if it has not been authenticated by the Superintendent, it shall be returned forthwith for this to be done.

Authentication of
petitions written
by jail officials for
prisoners.

3. A petition of appeal or for revision received by post otherwise than through jail or District authorities should, if possible, be returned to the person from whom it was received by post 'bearing'.

Petitions received
by post.

Pleader
engage
d by
agent.

4. ¹[Pleader engaged by agent.- When an agent has been duly appointed by a convict to file an appeal or revision, a pleader engaged by the latter shall be required to file a power-of-attorney.

An Advocate at the time acceptance of his appointment/engagement shall also record his residential/office address, telephone/cell number, enrolment number and if available, e-mail as well as fax number on the Vakalatnama/Memo of Appearance/Written Authorization, which shall be address for service within the meaning of the Rule 5 of Order 3 of Code of Civil Procedure, 1908.

Provided that where more than one Advocate accepts the appointment/engagement, it shall be sufficient for one of them to record his address.

Provided further that every Vakalatnama/Memo of Appearance/Written Authorization shall be affixed with the requisite Advocate Welfare Fund Stamp. In case of urgency, if the Advocate Welfare Fund Stamp is not available, the filing will be accepted subject to the undertaking furnished by the counsel that the requisite stamp will be affixed. The matter shall be listed before the Court only after compliance of the undertaking unless otherwise ordered by the Court. In the case of respondent also where the counsel files Vakalatnama/Memo of Appearance/Written Authorization, it shall be affixed with the requisite Advocate Welfare Fund Stamp, and in case of urgency, if the Advocate Welfare Fund Stamp is not available, the same will be accepted subject to the undertaking as above.]

Court-
fees on
appeal
s.

5. No Court-fees shall be charged on appeals preferred on behalf of a prisoner by a pleader or by agent.

1. Amended vide Correction Slip No. 36 Rules/II.D4. dated 15.03.2018.

APPENDIX

*Form of declaration by a person confined to Jail
appointing a pleader for presenting an
appeal or revision on his behalf in a
criminal court.*

IN the Court

_____ of _____

Appellant.

Petitioner, *versus*

THE State _____
_____ Respondent.

Charge under section

_____ Sentence _____

Appeal

_____ from the order of _____ Magistrate,

Revision

exercising _____ powers at _____

I, _____, son of _____, caste
_____ resident of _____ now

a prisoner in the Jail at, hereby authorize to file an
appeal in the above case on
my behalf and to act, plead and take all other steps in
furtherance thereof.

Signatures or

thumb-impression _____

of the appellant

Or

petitioner.

Date _____

Station _____

Attestation by the Superintendent of Jail _____

The above declaration has been made by _____
prisoner No. _____, at present confined in
the _____ Jail which, is under my charge as
Superintendent. The contents of the declaration have been
read over to the prisoner who admits them to be correct. Let
this be given to his pleader for necessary action.

Signatures _____

Designation _____

Date _____

Station _____

PART B.—THE SUBMISSION OF RECORDS TO THE HIGH COURT FOR PURPOSES OF REVISION

1.—Cases submitted to the High Court for revision of sentence, under section 438 of the Code of Criminal Procedure, shall be accompanied by the records and by a statement of the case in English, giving—

Information to be sent along with record.

- (i) a brief abstract of the case;
- (ii) the sentence or order of the lower Court, and the name of, and powers exercised by, the Magistrate passing it;
- (iii) the particular portion of the sentence or order in which an error on a point of law is believed to exist;
- (iv) the grounds upon which the order of the lower Court should be reversed or modified.

It should also be noted how much of the sentence the accused has undergone; and, if he has been sentenced to fine whether the fine has been realised.

Note.—In cases tried summarily by a Magistrate or a Bench of Magistrates and in which there are no records except entries in the Register of Summary Trials (Criminal Register No. XVII), certified copies of the relevant entries in the Register should be submitted with the reference instead of the Register.

Cases wherein sentence requires alteration.

II.—A distinction should be drawn between cases in which the sentence or order is required to be altered, and cases in which irregularities of procedure have occurred which do not necessitate any alteration of the sentence or order. The former must in all cases be submitted to the High Court; because no other Court is competent to alter a sentence or order otherwise than on appeal. In the latter class of cases it is discretionary with the Sessions Judge or District Magistrate to refer the proceedings to the High Court for orders.

III.—It is not every irregularity of procedure that requires to be reported to the High Court for a formal order on the revision side. Where a similar irregularity has been reported before and disposed of by an order of the High Court, or where the irregularity is trifling and the accused has not been prejudiced, or

Cases of irregularity of procedure.

where there has been no failure of justice on account of the irregularity, the Sessions Judge or District Magistrate is authorized to point out the irregularity to the Court concerned in order to prevent its recurrence, and need only forward the proceedings to the High Court, if there are any special grounds for so doing.

Prescribed for
record.

IV. Cases should be reported for revision in the prescribed form on paper of durable quality. The form (No. 61 in Part B-1, Rules and Orders, Volume VI-B) is no longer printed but the prescribed headings should invariably be filled in on a typewriter.

Revision
petitions by
prisoners in
jail.

V. All petitions for revision presented to Sessions Judges and District Magistrates by prisoners in Jail, through the jail authorities, should be forwarded to the High Court for disposal. In no other case should petitions for revision be submitted to the High Court unless a *prima facie* case for the Courts interference is made out, in which case the records should be submitted and the case reported for revision in the manner prescribed by these rules.

PART C.—PROCEDURE IN HEARING CRIMINAL
APPEALS

The attention of all Criminal Appellate Courts subordinate to the High Court is invited to the procedure laid down in sections 421 to 423 of the Code of Criminal Procedure.

Introductory

2. If, on a perusal of a petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel, or authorised agent, if he appears the Appellate Court considers that there is no sufficient ground for questioning the correctness of the decision or interfering with the sentence or order appealed against, it may reject the appeal summarily. In acting under section 421 of the Code of Criminal Procedure, the Court may, and when the records are readily forthcoming ordinarily should, call for and examine the proceedings of the lower Court, but is not bound to do so. When a petition of appeal is presented by the appellant in person or by his counsel or duly authorised agent, the Court should, of course, intimate to such person the day on which it will be prepared to hear him, if the appeal is not brought forward for hearing on the day on which it is presented or if the hearing is adjourned.

Summary
disposal.
Appellant to be
heard.

3. If the Appellate Court decides to hear the appeal, notice of the day fixed for hearing should be given to the appellant or his pleader and notice must also be given to such officer as the State Government may appoint in this behalf. The attention of Sessions Judges and District Magistrates is invited to the notifications published in Part C appointing the District Magistrate and in certain cases the Advocate-General to be the officers to receive, on behalf of the State, notice of the time and place fixed for the hearing of appeals admitted to a hearing under section 422 of the Code of Criminal Procedure. Attention is also invited to notifications in the same part directing notice of the hearing of certain appeals to be given to the head of the Railway Administration and the Postmaster-General, Punjab. The notice to the appellant or his pleader need not be a formal notice in writing, if either of them is present in person when the day of

Notice of date
of hearing.

hearing is fixed. It will be seen from section 4(r) of the Code that the term 'Pleader' includes (1) an Advocate, a Vakil, or an Attorney of a High Court, and (2) any Mukhtar or other person appointed, with the permission of the Court, to act on behalf of the appellant.

The order fixing the date should state under what section the hearing is.

4. In every case in which a day is fixed for the, hearing of an appeal, the order fixing the date should distinctly state whether or not the hearing is to be under section 423 of the Code. It is understood that information on this point is not always given, and the consequence is that in appeals disposed, of by Sub-ordinate Courts it is often very difficult to distinguish between appeals rejected under section 421, and appeals in which the sentence is confirmed after hearing under section 423.

Appeal should not be dismissed in default.

5. Sessions Judges sometimes dismiss criminal not be dismissed appeals in default. Their attention is drawn to the rulings reported under Criminal Judgments No. 21 of the Punjab Record of 1895 and No. 11 of the Punjab Record of 1905. These lay down that a criminal appeal must be disposed of on its merits and cannot be dismissed in default.

If appeal cannot be rejected summarily it should be admitted to hearing.

6. The practice Which prevails in some Courts of counting to proceed under section 421, even in cases in which it is found necessary to direct a further inquiry under section 428, is irregular. If it appears that an appeal cannot be properly rejected on the record as it stands, it should be admitted to a hearing under section 422.

Contents of Judgment.

7. The attention of Subordinate Appellate Courts is drawn to the judgments reported as 31 Punjab Record 1884 (cr) and Indian Law Reports, II Lahore 308. According to sections 367 and 424 of the Code of Criminal Procedure, the judgment of an Appellate Court should contain the points for determination; the decision thereon and the grounds for that decision. It is not necessary that the Courts should in every case record their decision upon each point raised in the appeal, however petty. It is quite sufficient in many cases to note that on other point raised by the appellant appears to have any force.

8. It is desirable to point out that though Appellate Courts cannot enhance sentence themselves, Sessions Judges and District Magistrates have the power under section 438 to refer inadequate sentences to the High Court for enhancement. When a sentence comes before a subordinate Court on appeal which is manifestly inadequate the Judge should, if a Sessions Judge or an Additional Sessions Judge report the case for revision and if an Assistant Sessions Judge bring the case to the notice of the Sessions Judge, with a view to its being reported.

Cases for enhancement of sentences to be reported to High Court.

9. Whenever a criminal appeal is sent back for further inquiry under section 428 of the Code of Criminal Procedure, the Appellate Court should invariably fix a date for re-hearing the case, taking care that the date so fixed is in each instance sufficiently remote to allow of a return being made to the order of remand, and that the case is duly entered under such date in the appropriate register.

Remand.

PART D- NOTICE OF APPEAL

The following notification under Section 422 of the Code of Criminal Procedure, prescribing the officer or authority to whom notice is to be given of an appeal which is not summarily rejected, is printed for information and guidance.

I- PUNJAB GOVERNMENT, HOME/JUDICIAL NOTIFICATION NO.
4717-©/56/52148,
DATED THE 25TH JUNE, 1956:-

In the suppression of all notifications issued in this behalf and in pursuance of the provisions of section 422 of the code of Criminal Procedure, 1898, the Governor of Punjab is pleased to appoint the following persons or authorities to whom-notice of appeal shall be given if the appellate court does not dismiss the appeal summarily:-

- (a) In an appeal preferred by a railway employee in a case in which he has been convicted of an offence in his capacity as a railway employee, to the administrative head of the railway administration concerned as well to the District Magistrate concerned;
- (b) In an appeal preferred by a postal employee in a case in which he has been convicted of an offence committed in his capacity as a postal employee, to the post master general concerned as well as to the District Magistrate concerned;
- (c) In an appeal which lies to the High Court, to the advocate-General, Punjab, in all cases in which the sentence is one of death, imprisonment for life or imprisonment for a term exceeding four years as well as to the District Magistrate concerned; and
- (d) In all other cases to the District Magistrate concerned;

PART E.-APPEALS FROM ORDERS OF ACQUITTAL.

Sessions Judges and District Magistrates should bear in mind the following order of the State Government regarding appeals against acquittals under section 417 of the Criminal Procedure Code.

Appeal to be filed in certain cases.

The State Government will not direct an appeal-

- (1) Where the case is trifling in itself and the acquittal involves no erroneous principles of law, the correction of which is of public importance;
- (2) Where, however, serious or otherwise important the case, the legal guilt of the accused is fairly questionable or the evidence admits of any reasonable doubt, and the Court has considered and Weighed it with impartiality, intelligence and care;
- (3) *merely* on account of ,the production of fresh evidence after the acquittal;
- (4) where there is no distinct probability that the appeal will result in an order of re-trial.

2. In cases where it is decided that an appeal ought to be filed, the Central Government consider that the accused should have legal assistance at his trial and, with this end in view, the Judges are pleased to direct that the District Magistrate, on receipt of a notice for service upon the person acquitted to show cause why he should not be convicted, shall, if he is satisfied that the accused is unable because of poverty to proceed to the High Court, provide him with sufficient funds to enable him to do so and, in the event of the apprehension of the person concerned and his custody in a lock-up, arrange that the accused be conveyed to the High Court for the purpose of attending the hearing of the appeal against his acquittal.

Travelling expenses for the accused.

3. With the same object in view, namely, to give every reasonable protection to the defence, a reasonable fee to enable him to engage counsel, if such is his intention, shall be paid by the Government to the accused in all such cases, whatever may be the result

Legal Assistant to the accused.

of the appeal and whether he is or is not in attendance when the appeal is heard. He would be at liberty to supplement this himself in order to obtain counsel of superior, calibre, should he so desire. The payment of the fee herein referred to shall be arranged and paid by the District Magistrate concerned in consultation with the Legal Remembrancer to Government, Punjab, in the form of a letter of credit which the accused person's counsel can cash after actual appearance in the High Court.

Legal Assistance
in cases of
enhancement of
sentence.

4. In the case of an application for enhancement of sentence made by the State Government the same procedure should be followed in the matter of provision of counsel for the accused as is prescribed in paragraph 3 above.

High Court
cannot alter
conviction from
section 304 to
302 IP Code
unless there is
an appeal under
section 417 Cr.
P.C.

5. In this connection it should be noted that the Privy Council has held that when a person is tried for an offence under section 302, Indian Penal Code, but is convicted under section 304, Indian Penal Code, and sentenced to a term of imprisonment, the Sessions Judge's order amounts to an acquittal under section 302. On application to a High Court for revision of sentence, the High Court has no jurisdiction in view of the provisions contained in clause (4) of section 439, Criminal Procedure Code, to alter the conviction to one under section 302 and sentence the accused to death. In such cases an appeal under section 417 of the Code is required to give the High Court jurisdiction, if it is desired to, alter the conviction. (Indian Law Reports, Allahabad, Volume 50, page 722)

Requisition for
records for
scrutiny when
appeal for
acquittal is
contemplated.

6. For securing the original records of trial court for scrutiny in cases where an appeal against an acquittal, etc., is under contemplation the following procedure should be observed:-

- (a) where there has been a complete acquittal by the Sessions Court of all the accused in a case, the Sessions Judge should, on a certificate furnished by the District Magistrate that an appeal from acquittal is in contemplation, hand over to the District Magistrate the sessions record of the case

and such other connected papers in the custody of the Sessions Court as the District Magistrate may require;

- (b) in cases where some of the accused have been convicted and others acquitted by the Sessions Court and no appeals against convictions are pending the procedure laid down in (a) above should be followed, but where appeals from convictions are pending, the records should, on receipt of a certificate from the District Magistrate that an appeal from an acquittal is in contemplation, be forwarded to the High Court;
- (c) when sending records to District Magistrate, Sessions Judges should see that the Sessions records of the case are complete in all respects and include the Committing Magistrate's records and Police papers if they are in the possession of the Sessions Court.

7. Section 417 of the Code has been substituted by Act No. 26 of 1955. Now where an order of acquittal is passed in a case instituted upon complaint, the complainant can file an appeal from the order to the High Court if he has been granted special leave to appeal on an application made under section 417(3). After the High Court has refused such an application the State Government would be debarred from filing an appeal from the order of acquittal.

Complainant's
appeal

PART F.-APPEALS IN SECURITY CASES.

The proviso to section 406 of the Code of Criminal Procedure under which the State Government was authorised to direct that appeals from orders passed by Magistrates under section 118 shall lie to the District Magistrates and not to the Court of Sessions has been omitted by Act No. 26 of 1955.

Appellate Court
in appeals in
security cases.

PART G.- SUPPLY OF COPIES TO APPELLANTS AND
APPLICANTS FOR REVISION, AND TRANSMISSION
OF APPEALS AND APPLICATIONS OF PRISONERS
TO APPELLATE AND REVISIONAL COURTS.

The particular attention of Sessions Judges and District Magistrates is invited to the following directions relating to the supply of copies to appellants and applicants for revision, and for the transmission of appeals and applications of prisoners to the Courts to which they are addressed. Superintendents of jails have been supplied with these directions to guide them in dealing with applications for copies made by prisoners under their custody.

Introductory.

2. Section 419 of the Code of Criminal Procedure requires every petition of appeal presented to copy Criminal Court to be accompanied (unless *the Court to which it is* presented otherwise directs) by a copy of the Judgment of order appealed against, or in cases tried by jury by a copy of the heads of the charge recorded or a copy of the charge taken down in shorthand under Section 367 of the Code. This copy (or a translation of the judgment where the accused desires to have a translation), when the appellant has been convicted in any case other than a summons-case and a copy of the finding and sentence when the accused has been sentenced to imprisonment, must under the provisions of section 371 of the Code, be given free of cost.

Appeal to be accompanied by copy of judgment or order. Free supply of copy in certain cases.

3. Similarly, applications for revision will not be received in the High Court unless accompanied by copies of the judgment or judgments impeached, unless the Court otherwise directs under section 419, Criminal Procedure Code. If it is intended that the High court should give such directions, it should be stated clearly why the person convicted is unable to furnish the copy. When the applicant has been convicted in any case other than a summons case, he entitled to get, free of charge, a copy or translation of the judgment of the court which convicted him and if he has been sentenced to imprisonment, also of the finding and sentence. If he has appealed, he is entitled, in view of section 424 of the Code, to get free of cost, all

Application for revision to be accompanied by copy of judgment. Free supply of copy to accused.

these copies or if so desired a translation of the judgment of the Appellate Court also. This does not however entitle him to get copies of the judgment, finding or sentence of the trial court a second time.

No application for revision to be detained for more than a week for copy.

No application for revision is to be detained for more than a week for the purpose of granting a copy of the judgment impeached. If a copy cannot be given within that time, the application must be forwarded to the High Court without a copy of the judgment, with an explanation of the cause of not granting a copy, for orders.

Immediate supply of copies when sentence of imprisonment is pronounced just before holiday.

Applications for copies made by a person sentenced, to imprisonment, on a working day preceding a holiday, should be treated as urgent. Such copies should be supplied on the same day as far as possible, and if that is not found practicable at least on the next day.

Free supply of copies to jail prisoners in summons cases.

4. The High Court has decided that notwithstanding anything contained in paragraphs 2 and 3, when the accused is in jail, a copy of the judgment or order in a summons case may be supplied free of cost if he or his agent requires it for purposes of filing an appeal or petition for revision and not otherwise, provided that second copy of the judgment or order of the original Court shall not be supplied free of cost for purposes of revision if he has already obtained one for the purposes of filing an appeal.

Appeal by jail prisoner to be sent through District Magistrate.

5. Petitions of appeal preferred by prisoners through the Superintendent of the Jail should be sent to the District Magistrate to be forwarded to the Appellate Court with the records of the case.

Proper channel for sending records to High Court.

6. When the appeal lies to the High Court, the District Magistrate should, if the appeal is from a sentence passed by himself in exercise of the powers conferred under section 30 of the Code of Criminal Procedure, transmit the petition of appeal, copy of judgment and District Magistrate's records (which should always include the Police papers connected with the case), with a copy of the order, if any, passed

by the Sessions Judge, under section 380 of the Code, direct to the High Court. In other cases the petition of appeal, copy of judgment, District Magistrates' records (including the Police papers, as above provided) should be forwarded to the Sessions Judge in order, that the record of the Sessions Court may be transmitted therewith.

7. Whenever the appeal of a person, convicted by a record a Court of Sessions is forwarded to the High Court, particular care should be taken to see that the petition of appeal is accompanied by a typewritten copy, in English, of the whole proceedings of the Sessions trial. When the sentence is one of the death or imprisonment for life, two typewritten copies of the record should be sent.

Typewritten copies of record and judgment to be sent to High Court.

8. So far as possible, stenographers in typing from dictation evidence and judgments in all classes of cases should prepare by duplication all extra copies likely to be required for this purpose, as well as for supplying the accused or any other person requiring a free copy. This should avoid the preparation of fresh copies by the Copy Clerk. Similarly these copies should be duplicated when they are likely to be required by any subordinate Court.

Extra copies to be prepared in advance by stenographers.

9. Applications for revision sent to the District Magistrate by the Superintendent of the Jail should be forwarded to the High Court unaccompanied by records, unless the District Magistrate sees fit to report the case for revision, in which case he must follow the procedure laid down in Chapter 25-B of this volume.

Despatch of records in revision applications by jail prisoners.

10. Whenever an application is made under the provisions of section 548 of the Code of Criminal Procedure; in a case in which the records are before the High Court, by a prisoner in jail, and such application is submitted through the jail authorities with the prisoner's grounds of appeal, the petition of appeal should be forwarded at the same time.

Applications under section 548. Criminal Procedure Code.

11. Attention may here be drawn to Punjab Government notification No. 10495, dated 27th March, 1922, by which the Court-fees on copies of certain documents furnished to accused persons and prisoners by Criminal Court have been remitted. The notification will be found in Volume IV, Chapter 4.-"Court Fees and Stamps."

Court-fees on copies supplied to accused and prisoners.

PART H.-TRANSMISSION OF APPELLATE COURTS’ ORDERS
TO LOWER COURTS

The following rules should be observed in regard to the transmission of Appellate Courts orders to Lower Courts : -

Rules re
transmission of
Appellate Court's
order to Lower
Courts.

RULES.

- 1. ¹[The Sessions Judge or the Additional Sessions Judge will send copies of all his judgments on appeal to the Chief Judicial Magistrate.
- 2. The Chief Judicial Magistrate will transmit the copies to the original Courts for information and return direct to the Record-Keeper, to whom the original records will be sent at once.
- 3. Appellate Courts will attach to the original record the following form:-

Date

Copy of judgment despatched by the Chief Judicial Magistrate

..... Copy of judgment despatched by the original Court to Record-Keeper.

Copy of judgment received by Record-Keeper

.....

is

(Translation _ attached.)

is not

(It. will be simpler to have only one form.)]

- 4. (a) The Record-Keeper will maintain a running list prepared from the above form of all case in which copies of judgments have been sent out. When the copies of judgments are returned to him by the Original Courts, he will add them to the records, fill in the date of receipt, and strike those cases of his running list.
- (b) If copies are not returned within 10 days of dispatch, he will issue a reminder (which should be on a printed form) and if that is ineffective, report the matter to the despatching Court.
- (c) The running list will be in the following form:-

Name of case	Date of despatch	Date of reminder, if any

1. Substituted vide Correction Slip No. 14dated 13.12.1968

(d) The reminder will be in the following printed form:-

To the Court of _____

A copy of the judgment of _____

was dispatched to you by the _____
on _____ and has not yet been received by
the Record-Keeper. Please return at once.

Date _____

Record-Keeper.

5. Officers presiding over subordinate Courts held at District Headquarters, if in any particular case they desire to see their original record, will be allowed to call for it provided that it must not leave their Court room.

6. (a) Translations of judgments will be sent if any non-English knowing officer asks for them. If they are sent, they will be attached to the English copies, and the same procedure will be followed. .

(b) Appellate Courts will maintain lists of officers of subordinate Courts requiring translations so that translations may be made as a matter of course for the presiding officers of those Courts.
If a translation is attached, the fact will be noted on the form described in rule 4 above

CHAPTER 26

Transfer of Cases
PART A.—GENERAL

1. Under section 526, Criminal Procedure Code, the High Court has power to transfer any case from one Court, subordinate to it to another on any of the grounds specified therein. This power of transfer extends to all classes of cases. In view of the amendments made in sections 526 and 528 of the Code by Act No. 26 of 1955 no application shall now lie to the High Court for the transfer of a case from one Court to another court in the same Sessions division unless an application for such transfer has been made to the Sessions Judge and has been rejected by him.

Power of High Court re: transfer of cases.

2. Under section 528(4) of the Code, a District Magistrate also has general power to withdraw any case from any subordinate Magistrate and either try it himself or refer it for trial to another subordinate Magistrate. The new sub-section (IC) enables any Sessions Judge to transfer a case from one criminal court to another criminal court in the same Sessions division when an application has been made to him in this behalf and when he is of the opinion that it is expedient for the ends of justice to do so. It may be noticed that in sub-section (IC) the word used is ‘Court’ and in sub-section (2) the word used is ‘Magistrate’.

Power of transfer of Sessions Judge and District Magistrate.

3. Section 528(5) of the Code requires that a Magistrate making an order under the section shall record in writing his reasons for making the same. This applies to all cases whether the order of transfer is made as a result of an application or on the Magistrate’s own motion or on administrative grounds.

Note.-In districts in which the experiments of separation of *the* Judiciary from the Executive is being tried, the work of transfer of cases from one Judicial Court to another is to be performed by the Additional District Magistrate. (Punjab Governmen Letter No. 9062-G(C)-54/35339, dated the 8th December, 1954).

Cases triable in more than one district. Forum to be determined with regard to public convenience.

4. The necessity for transfer of a case may arise purely on grounds of jurisdiction or in the ends of justice. As regards the former, sections 179 to 183 of the Code should be consulted when a case is to be instituted in Court. In carrying out the provisions of these sections, cases which are triable in more than one district should not be transferred unnecessarily from one district to another. A Magistrate or Court should *act* under these sections solely with reference to the public convenience. Ordinarily, the proper district for the enquiry in to, and trial of, offences falling under those section would be the district in which the witnesses could, with the least inconvenience, attend.

Procedure when a Magistrate thinks the case should be tried in another district.

5. If a Magistrate is of opinion that it would be more convenient if an enquiry or trial were held in another district he should at once address the District Magistrate.

If the District Magistrate considers the transfer of the case to another district desirable, he will forward the paper to the District Magistrate of the latter district. If the District Magistrate so addressed concurs, the case should be transferred to that district accordingly. If he dissents, the Magistrate should either proceed with the enquiry, or refer the question to the High Court, which will, under the provisions of section 185 of the Code of Criminal Procedure, decide in what district the enquiry or trial should be held.

Reasons to be given for proposal to transfer.

6. When a transfer is proposed by any Magistrate his proposal should always be accompanied by a short statement of the case and of the reasons for making the proposal.

Common ground on which applications for transfer are made.

7. Applications for transfer of criminal cases are frequently made by accused persons on the allegation that such transfer is necessary in the interest of justice. The most common grounds on which such applications for transfer are made are (a) that the Judge or Magistrate is personally interested in the case, or (b) that he is connected with one or the other party to the case by relationship, friendship, etc., and is, therefore, likely to be partial, or (c) that he has already formed or expressed an opinion on the subject-matter of the enquiry or trial, or (d) that he has conducted himself in such a manner that no fair or impartial enquiry or trial can be expected from him.

8. As regards (a), the provisions of section 556 of the Code which prohibit a Judge or Magistrate from trying certain cases without the permission of the Appellate Court should be carefully borne in mind. The section is founded on the maxim that no man can be judge of his own cause or give judgment concerning his own rights. The general rule as to disqualification is, that a person who, by reason of his interest pecuniary or personal, is likely to have a bias in the matter of the prosecution, ought not to sit as a judge in the case. The interest, however, must be a substantial interest giving rise to a real bias, and not merely to the possibility of a bias. The question frequently arises as to whether the connection of a Magistrate with a local body disqualifies him from trying a case to which that body is a party. This must be decided on the facts of each case. The mere fact, for instance, that a Magistrate is a member of a Municipal Committee does not necessarily and of itself, disqualify him from trying cases in which a breach of a by-law is charged. Still, there may be circumstances connected with the Magistrate being also a Municipal Commissioner, which may disqualify him from acting as judge in a case arising under a by-law. Where such circumstances exist, it is desirable that the Magistrate should abstain from exercising jurisdiction, and steps should be taken to have the case transferred to a Magistrate whose qualification is unquestionable. The following are further illustrations of the rule. The fact of a Magistrate having joined in the passing of a by-law or of a resolution, which in general terms proposes to give effect to the provisions of a by-law, would not of itself ordinarily disqualify him from trying cases instituted under the by-law or resolution, as there would be no reason to suppose that the Magistrate had any real bias in the matter. Where, however, a resolution of the nature described above is to be resisted on the ground that the Committee had no power to pass such a resolution; the case would at once become different. In this case the Magistrate would, if he tried the case have, to decide judicially a matter which he had already prejudged as a member of the Committee, and hence would, to a certain extent, be a judge in his own cause, and, as such disqualified. So, also, a Magistrate who has taken part in Municipal proceedings affecting the rights of an

Remarks on those grounds, Cases of local bodies with which Magistrate is connected.

individual, or directing the institution of a prosecution or set of prosecutions, might be supposed to have a personal interest in the matter such as would be likely to bias his judgment, and render it improper for him to act as Judge.

Connection
of the
Magistrate
with a party.

9. In cases where the judge or Magistrate happens to be connected with one or the other party by relation-ship; friendship, etc., it is advisable for him to move the proper authority at once to transfer the case to some other Court; for however straight forward and impartial he may be, there is always the danger of his actions being regarded with suspicion and misinterpreted. An immediate transfer of the case would avoid the possibility of an application for transfer being made later stage and consequent delay in the disposal of the case.

Cases in which
Magistrate has
already
expressed his
opinion.

10. The same course would be advisable in cases in which the Judge or Magistrate has already formed and expressed a definite opinion on the material issues requiring decisions, against the accused concerned.

Cases wherein a
party appre-
hends that he
will not have a
fair trial.

11. As regards the last category, the presiding officers of Courts should carefully bear in mind that it is their duty not only to be thoroughly impartial, but to conduct themselves in such a manner as not to give rise to any reasonable apprehension in the mind of an accused person that he will not have a fair and impartial enquiry or trial. In dealing with an application for transfer the Court has to consider not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. As observed by Lush J. In *Serjeant versus Dale* [(1877) 2 Q. B. D. 558] "the law has regard, not so much perhaps to the motives which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important object, at all events, is to

clear away everything which might engender suspicion and distrust of the tribunal, are so to promote the feeling of confidence in the administration of justice which is essential to social order and security." (*vide* I.L.R. 3 Lah. 443 and I.L.R. 6 Lah. 396) .

12. The procedure to be followed when notice is given by any party of his intention to apply for the transfer of a case is laid down in sub-section (8) of section 526 of the Code and should be strictly followed. In view of the amendments made by Act No. 25 of 1955 it is obligatory for the Court to adjourn the case so as to give the party a reasonable time to apply under section 526 or under section 528 of the Code for the transfer of the case. An adjournment is not necessary where a second or subsequent notice is given by the same party of his intention to make an application to the same court or where an adjournment under section 526(8) has already been obtained by one of several accused and a subsequent notice is given by any other accused. Notwithstanding what has been said above, a Judge presiding in a Court of Sessions may refuse to adjourn the case if he is of the opinion that the party has had a reasonable opportunity of making an application and has failed without sufficient cause to take advantage of that opportunity. [Section 526(9)]¹

Adjournment
when a party
wants to apply
for transfer of a
case.

Ordinarily a period of about 15 days is a reasonable time to allow for the making of an application. When the Court is satisfied that the application has been made and is pending, it must adjourn the case until orders or intimation is received from the Court to which the application has been made. Attention is invited to I.L.R. 1943 Lah. 331. The Court should ordinarily insist on the bond without sureties referred to in section 526(8) of the Code. If the conditions of such bond are not fulfilled, it should be forfeited, unless good cause is shown.

13. Applications for transfer, whether to the District Magistrate or the Sessions Judge or the High Court should always be supported by affidavits in support of the grounds of transfer. Except under the circumstances mentioned in section 526(9) it would now be obligatory to stay proceedings and adjourn the hearing for the purposes of enabling a party to make an application for the transfer of a case, whether

Affidavits.
Notice to
opposite party.
Checks on
frivolous
applications.

it lies to the High Court under section 526 or to a District Magistrate or to the Sessions Judge under section 528. Notice to the opposite party is not obligatory under section 528 but is advisable except when the application appears on the face of it to be frivolous and is summarily rejected. District Magistrates and Sessions Judges should carefully inquire into the grounds on which the application is based and deal with the same *seriatim* in their order. This will serve as a check on frivolous applications for transfer which are at times made merely to delay the case and defeat the ends of justice.

Only one adjournment claimed for making transfer applications.

14. Attention is drawn to the changes made by the Code of Criminal Procedure (Amendment) Acts, XXI of 1932 and No. 26 of 1955 in section 526 of the Code. The main object of the changes is to put a check on the abuse of power by the accused by repeatedly notifying his intention to apply for transfer. Under the amended law only one compulsory adjournment for an application to the same Code has been provided. The Court is not bound to adjourn on subsequent intimation by the same party for an application intended to be made to the same court or even on the first intimation by an accused, when one of the several accused has already obtained an adjournment. Sub-section (10) provides for an adjournment during appeal. The Court can call upon the party intimating its intention to apply for transfer to execute a bond that he will make the application within the time fixed by the Court.

De novo trial not necessary after the case is transferred.

15. When a case is transferred from one Court to another the provisions of section 350 of the Code, as recently amended shall apply and a de novo trial would not be necessary. The court may however permit such further examination, cross-examination or re-examination of witness(es) whose evidence has already been recorded, as may in its opinion be necessary in the interests of justice and the Court may resummon such witness(es) for the purpose.

Sessions Judge may transfer a case to his Additional Sessions Judge.

16. A Sessions Judge may, with due regard to convenience, transfer a case under section 526 of the of

Code of Criminal Procedure to a Judge in another district when that judge is acting as an ex officio additional Sessions Judge of the district from which the case is to be transferred. In such cases no reference to High Court is necessary except when any difficulty is experienced in making transfers

PART B. – RECORDS IN TRANSFER CASES.

1. Applications for transfer of criminal cases and the proceedings therein should form files separate from the record of the main case sought to be transferred and the records of such transfer applications should be separately consigned to the Record Room. The original order on the transfer application should be kept on the record of the transfer proceedings and a copy of this order should be sent to the Court concerned.

Separate
record for
transfer
cases.

2. Such applications should be entered in the Register of Applications for transfer of Criminal Cases (Criminal Register No. XX) and not in the Register of Miscellaneous Applications.

Register.

3. Cases transferred by a Court of its own motion or on administrative grounds should not be entered in any register and it is unnecessary to keep any statement of cases so transferred. It is not necessary in such cases to make any separate record of the transfer proceedings and the original order of transfer, instead of a copy, may be sent to the Court concerned.

Transfers on
administrative
grounds. No
record necessary.

CHAPTER 27

Judicial Lock-ups

The annexed consolidated and amended rules and instructions, regulating the management of, and control over, judicial Lock-ups, are issued by the High Court, with the concurrence of the Inspector-General of Prisons and the approval of the State Government in supersession of previous orders on the subject.

Introductory.

GENERAL REMARKS

- 1. The essential difference between and a Police Lock-up is-
 - (i) that in a judicial Lock-up no prisoner can be kept without the written order of a Judicial Officer to the Jailor or other officer in charge, stating the offence for which he is detained and whether bail is allowed or not, nor can a prisoner be removed without such written order;
 - (ii) that in a Police Lock-up no prisoner can be detained longer than twenty-four hours, exclusive of the period necessary for journey from the place of arrest to the Magistrate's Court without the special order of a Magistrate.
- 2. Judicial Lock-ups contain-
 - (i) persons under-trial before Magistrate, including persons remanded at the request of the Police as well as persons in cases remanded to the Police;
 - (ii) persons under trial before the Sessions Judge; and
 - (iii) in certain districts prisoners under sentence for shaft terms who are detained in Lock-ups for the whole period of their sentence, and prisoners under sentence for long terms, who are similarly detained until opportunity offers for their transfer to the nearest jail.

Difference between a Judicial and a Police Lock-up.

Persons to be kept in Judicial Lock-up.

When other lock-ups are to be treated judicial lockups.

3. Every Lock-up which is used for purposes other than that for which the Police are *entitled to* use a Lock-up [as explained above in clause (ii) of paragraph (1)] must *ipso facto* be regarded and treated as Judicial Lock-up. In several districts the Judicial Lock-up at the headquarters of District is located in the Jail and is managed by the Jail authorities. In some districts the Lock-ups at headquarters of the Tahsil are located in the local Police Station, and are used for confining persons in temporary Police custody as well as those in Magisterial custody. In all such cases the Lock-up is to be regarded and treated as a Judicial Lock-up. The mere fact that in several districts no special establishments have been sanctioned for Judicial Lock-ups does not show that no such lock-ups exist in such districts. The Lock-up or one of the lock-ups at the headquarters of every District and Tahsil must necessarily be a Judicial Lock-up. District Magistrates are required by the rules [rule XVI, clause (iii)] to assign proper places for Judicial Lock-ups and their guards at all Court houses, and should see that this rule is at once complied with in regard to the Courts at the headquarters of the District and at each Tahsil.

Management of Police lock-ups and their use as Judicial lock-ups.

4. Purely Police Lock-ups are under the exclusive control of the Police Department. Police Officers Judicial are strictly responsible for any infringement of the law in regard to them, and the Magistrate is bound, of his own motion, to take cognizance of such infringement. Where a Police Lock-up comes to be used as a Judicial Lock-up the District Magistrate immediately becomes responsible for the enforcement therein of these rules.

Certain lock-ups declared to be subsidiary jails.

5. The lock-ups at Gurgaon and Kulu were declared to be subsidiary jails by Punjab Government Notification No. 484, dated the 21st December, 1896.

Financial control of Inspector General of Prisons over Judicial lock-ups

6. The Inspector-General of Prisons has hitherto exercised financial control over all Judicial Lock-ups in regard to such matters as sanctioning expenditure, approving of budget arrangements and dealing with questions relating to the entertainment special establishments and other similar matters. It is not

7. District Magistrates should see that all Lock-ups within their districts are efficiently managed; that prisoners confined therein are properly cared for; and that these rules are duly observed. It should be regarded as an important part of the Sessions Judge’s duty to inspect Judicial Lock-ups on all convenient occasions; and a brief report of the result of every such inspection should be communicated to the Inspector-General of Prisons, the Government and the High Court.

Inspection of Judicial Lock-ups by Sessions Judge, Responsibility of District Magistrate for efficient management.

8. Prisoners under trial should not needlessly be taken about from place to place when a Magistrate goes on tour.

9. Officers are requested to consider the disposal of cases where the accused is in custody as urgent and as having the first claim on their attention.

Quick disposal of the cases of lock-up prisoners.

10. Under-trial prisoners confined in a Lock-up should not be permitted to converse with people outside; but provision should be made under the rules to enable them to hold interviews with their friends and advisers, subject to such limitations as to times and places as may be proper and convenient.

Interview with prisoners in lock-ups.

11. Care should be taken that prisoners are not exposed to any unnecessary inconvenience, suffering or degradation.

Harassing of prisoners in lock-up.

RULES REGULATING THE MANAGEMENT OF, AND CONTROL OVER, JUDICIAL LOCK-UPS AND THE TREATMENT OF UNDER-TRIAL PRISONERS.

I. (i) Judicial Lock-ups located within or attached to a Jail shall be managed entirely by the Jail Department, provided that they shall be subject to these rules in regard to inspection by the Sessions Judge of the Division in which they are situate and to the submission of the monthly statements and weekly reminders hereinafter prescribed.

Control, Management and inspection of judicial lock-ups in jail.

(ii) The Judicial Lock-up at Kulu in the Kangra District, which is also used a subsidiary jail for shot-term prisoners, shall be subject to the orders of the

Inspector-General of Prisons so far as may be necessary for the purpose of dealing with prisoners under-going sentences of imprisonment therein and subject to the same proviso as that contained in clause (i) of this rule.

(iii) Subject to the provisions of clauses (i) and (ii) of this rule, every judicial lock-up shall be under the direct control of the State Government to be exercised through the Commissioner and the District Magistrate. The Sessions Judge will, however, be responsible for the inspection of all judicial lock-ups subject to the general control of the High court.

(iv) For the under mentioned purposes every Judicial Lock-up shall be regarded as being subject to the orders of the Inspector-General of Prisons, namely:

- (a) adjustment of budget estimates;
- (b) sanction to expenditure;
- (c) entertainment of establishments.

For the purposes of this clause the Inspector-General of Prisons will from time to time issue such instructions as may be necessary direct to District Magistrates.

Control over other lock-ups.

II. The immediate supervision and control over every judicial Lock-up, other than a Lock-up referred to in clause (i) of rule I, shall vest in the District Magistrate of the District in which it is situated: provided that, in the case of a Judicial Lock-up situated within a Sub-Division or a Cantonment, the immediate control shall vest in the Sub-Divisional or Cantonment Magistrate (as the case may be) subject to the supervision and orders of the District Magistrate.

Office in charge of judicial lock-ups.

III. Every Judicial Lock-up situated at the headquarters of a district, other than a Lock-up referred to in clause (i) of rule I, shall be in the charge of the Sheriff., and every Judicial Lock-up situated else-where shall be in charge of such officer as the District Magistrate may from time to time appoint in that behalf.

Responsibility of Police to guard lock-ups and to conduct prisoners.

IV. The Police Department will be responsible for the security of every Judicial Lock-up not located within or attached to a Jail, and will supply the necessary guards for its protection and for the conduct

of prisoners to and from the Courts, both at the headquarters of Districts and in Sub-Divisions, Tahsils and Cantonments, in accordance with the orders of Government and the rules of that Department.

V. Account shall be taken morning and evening of the prisoners in every Judicial Lock-up not located within or attached to a jail. At the evening count the number of prisoners in each ward or the Lock-up shall be entered in a register to be maintained for the purpose and the entry initialled as correct by the officer-in-charge of the Police Guard. At the morning count, if the number of the prisoners in the Lock-up is found to be correct, the entry shall be initialled by the officer-in-charge of the Lock-up.

VI. In the case of Judicial Lock-ups other than those referred to in clause (i) of rule I, the officer in immediate charge shall, subject to the Magisterial supervision and control specified in rule II, be responsible for the maintenance of discipline amongst, and the dieting of, the prisoners confined therein.

"VII. For ever prisoner confined in a judicial Lock-up card-board ticket shall be maintained in form P.J.F. 92. on which shall be written:-

Date of First Admission to Lock-up
Under trial Ticket

Register No. _____

Name_ _Father's name_

Date or admission to this Jail

Offence and Section

Committing Court

Height_ Weight_ Health_ Age

Dates of peshies in Court Letters Interviews",

VIII. The date of hearing of the case shall be entered in the warrant directing the confinement of a person to a Judicial Lock-up.

Notes. (1) The Magistrate of the District will be responsible for the due observance of this rule by all Subordinate Magistrates in the District.

(2) The Jailor or Superintendent of Jail in charge of a Judicial Lock-ups should not refuse admittance to a prisoner where the provisions of this rule have not been observed but he should draw the immediate attention of the Magistrate concerned to the defect, and ask rectification at once, sending at the same time a copy of his letter to the Magistrate of the District for his information.

Weekly reminder
of cases in which
prisoner has
been in the lock-
up for more than
a month.

IX. (i) The officer in charge of every judicial Lock-up shall submit to the Magistrate, to whom he is subordinate (i.e., District Magistrate, Sub-Divisional Magistrate or Cantonment Magistrate, as the case may be), a weekly reminder, in the form prescribed, showing every case in which a prisoner has been in confinement for more than a month since the date of his first admission to the Lock-up, except cases in which the prisoner is awaiting trial by the Sessions Judge under a warrant of committal to the Sessions.

(ii) In the case of Lock-ups situated within Sub-Divisions and Cantonments, the Sub-Divisional Magistrate or Cantonment Magistrate (as the case may be) receiving a reminder under the preceding clause of this rule, will initial and date it, and forthwith submit it, with any remarks which he may deem necessary, to the District Magistrate, for information and orders.

Monthly return.

(iii) In every case in which a prisoner has been detained for a longer period than one month, the reminder shall be forthwith submitted by the District Magistrate to the Sessions Judge with an explanation of the cause of the delay.

X. (i) A Judicial lock-up return, in the form prescribed, shall be submitted monthly by the District Magistrate in regard to every Judicial Lock-up in his district, whether located within or attached to a Jail or not, to the Sessions Judge. The Sessions Judge will make such remarks and pass such orders there-upon as he may deem fit, and shall then forward the return to the Inspector-General of Prisons for information.

(ii) For the purposes of this rule every officer-in-charge of a Lock-up located within or attached to a Jail or of a Lock-up mentioned in clause (ii) of rule I, shall forward a copy of the monthly return to the District Magistrate, the original being submitted to the Inspector-General of Prisons.

(iii) The monthly return for the district shall be submitted by the District Magistrate to the Sessions Judge on or before the tenth of every month. A copy of the monthly return shall also be submitted by the District Magistrate to the Commissioner of the division at the same time.

XI. (i) ^{1&2}[Under-trial prisoners confined in Judicial Lock-ups shall be dieted according to the following scale:-

DIET SCALE FOR UNDER-TRIAL PRISONERS

Description of prisoners.	Twice a week	Twice a week	Three times a week	Four times a week	Three times a week		Daily
	Wheat	Barley or Jowar	Bajra or Makki	Dal Urd or Moong	Dal Urd or Moong	Grams for parching	<u>Salt</u> <u>Condiments</u> <u>Firewood</u> <u>Vegetables</u> <u>Oil</u>
	Grams	Grams	Grams	Grams	Grams		<u>Grams</u> <u>Grams</u> <u>Grams</u> <u>Grams</u> <u>Grams</u>
For male Prisoners above 16 years of age	580	695	1218	115	85	115	<u>200</u> <u>12</u> <u>350</u> <u>230</u> <u>15</u>
For female prisoners and Juveniles under 16 years of age.	465	580	580	65	60	60	<u>200</u> <u>12</u> <u>350</u> <u>230</u> <u>15</u>

Note:- In regard to the issue of inferior granins, see paragraphs 921 and 922 of Punjab Jail Manual.

The proportion of the different ingredients for one day’s ration of condiments for eight prisoners should be:

- Coriander: 11 Grams
- Garlic : 22 Grams
- Turmeric : 15 Grams
- Chillies : 11 Grams

Note: II The ration of vegetables prescribed should consist of one or other of the following vegetables according to the season:-

Cabbage, carrot, Cauliflower, Knol Khol, Onion, Parnship, Spinnach, Turnip, radish, red sag, white sag, French bean, sword bean, Cucumber, Pumpkin, squash, sweet potato, bottle gourd, egg plant, country pumpkin, Karela.

Note III. If and when, the grains of the varieties specific in the table above are not available, the dieting of under trial prisoners confined in Judicial Lock-ups shall be such as may be ordered by Government in consultation with the High Court of Punjab and Haryana and the Inspector-Generals of Prisons, Punjab or Haryana as the case may be.]

Provided that if an under-trial prisoner belongs to such a class of life that the ordinary jail diet is reasonably distasteful to him, or, in any case, if the Medical Officer considers it necessary, arrangements shall be made for the supply to him, in the former

1. Substituted vide Correction Slip No. 11 Rules/III.C.9, dated 25.02.1966.

2. Substituted vide Correction Slip No. 16 Rules/II.II.4, dated 23/24.03.1971.

case at his own expense and in the latter at the cost of articles of extra diet:

Provided further that A and B class under-trial prisoners confined in judicial lock-ups shall receive the same diet as is prescribed foriaetter class prisoners when confined in jails, by paragraph 920 read with paragraph 576-E of the Punjab Jail Mph 1.

When articles of diet arte supplied at the expense of the prisoner, they shall be supplied to him through the officer-in-charge of the Lock-up.

Notwithstanding anything contained in the above instructions, the under-trial prisoners confined in judicial lock-ups may supplement their requirements in the matter of food by receiving the articles mentioned below from their relatives or friends at the time of interview:-

<i>Food</i>	<i>Anti Scorbutics and Condiments</i>
1. Ghee	1. Lemons
2. Gur	2. Galgals
3. Shakkar	3. Mangoes
4. Sugar	4. Onions
5. Fruits	5. Pickles and chutney
6. Sweets	6. Amla
7. Cooked Eggs	
8. Mustard oil or Toria oil	
9. Almonds	

Under-trial prisoners who desire to have skimmed milk are permitted to have skimmed milk @ 8 ozs. Per day at their won expense through the canteens or other similar sources approved by the Inspector-General of Prisons, Punjab.

(ii) No alcoholic liquors or intoxicating drugs shall be supplied to under-trial prisoners except on the order of the Medical Officer, who should give a written order specifying the daily quantity to be allowed in each case.

In the case of an under-trial prisoner, addicted to the use of opium, who cannot be conveniently taken before the Medical Officer at once, a proper quantity of opium may be given daily by the Officer-in-charge of the lock-up until the Medical Officer has seen the prisoner provided that the prisoner or his friends supply the opium and that the quantity given shall be limited to what is actually necessary to maintain the health of the prisoner.

Such under-trial prisoners as are not under the age of sixteen and are addicted to tobacco may be allowed to smoke four cigarettes or eight *biris* per day at their own expense after meals. Save as aforesaid no tobacco will be supplied to under-trial prisoners without a written order specifying the quantity in each case of the Medical Officer. No under-trial prisoner shall, however, smoke in kitchens, barracks and other places of common resort and at places where smoking is likely to cause offence to other prisoners.

XII. (i) The Inspector-General of Prisons, in his annual tours, will inspect all Judicial Lock-ups in order to see that the sanitary arrangements are satisfactory, and that financial management is efficient. He will bring to the notice of the Sessions Judge, the District Magistrate and the Commissioner of the Division any defects which he may observe, submit a brief report of the result of every such inspection Government; and will review the general management of the Judicial Lock-ups in his annual Jail Report.

(ii) The Inspector-General of Prisons may at any time bring to the notice of the Government any matter connected with the management of any Judicial Lock-up which he considers to be unsatisfactory or to need attention.

XIII. The Sessions Judge should, as often as may be possible, inspect every Judicial Lock-up in his Division, and should bring to the notice of the District Magistrate any defects in the management which he may observe, and pass such orders as he may consider necessary. A brief report of every such inspection should be submitted to the High Court; copies thereof being sent to the Inspector-General of Prisons, the Home Secretary to the Punjab Government the District Magistrate.

Inspection
by Sessions
Judges.

¹[XIII-A. The problems of the under-trials and those confined in the Judicial lock ups and also in Jail are the concern of the three main officers in the district, namely, the Sessions Judge, District Magistrate and the Senior Superintendent of Police. The Sessions Judge, District Magistrate and the Senior Superintendent of Police should inspect every Judicial Lock-up in their jurisdiction jointly atleast once in a quarter. They should not depute anyone else on their behalf for this purpose. A note on each such inspection should be recorded by the Sessions Judge, and sent to all concerned for information and necessary action.

Inspection
by Sessions
Judge,
District
Magistrate,
Senior
Superinten
dent of
Police
together.-

Sub-Divisional and Cantonment Magistrate to see to the sanitation, discipline, etc., of lock-ups under their control.

XIV.-(i) The District Sub-Divisional of Cantonment Magistrate having a Judicial Lock-up under his control, is at all times responsible that, though the strict rules as to sanitation and discipline observed in regular jails are not in force in judicial Lock-ups, the points are duly attended to. As to sanitation, the Magistrate should see that sanitary precautions similar to those observed in Jails are taken; that the buildings are not crowded or badly ventilated; and that the food is of proper quality and according to the prescribed scale of diet.

In regard to discipline, the Magistrate should take Measures to ensure proper behavior amongst the prisoners. He should see that prisoners are not permitted to be noisy or turbulent, or to quarrel or fight with one another, and that they behave in a quiet and orderly manner, and are respectful and obedient to the officer in charge of the lock-up. Prisoners confined in a lock-up should not be permitted to Communicate with persons outside; nor should they be permitted to procure or to endeavor to procure any article from outside except on the written order of the Magistrate in-charge of the lock-up.

Separate accommodation for female and juvenile prisoners.

(ii) Separate accommodation should be provided for female prisoners, who should be allowed sufficient privacy. Juveniles should not be placed in the same ward with adults.

Receipt for prisoners taken out, Police to conduct prisoners.

XV.- The officer in charge should invariably give a receipt to the Jailor, turnkey or other officer, as the case may be, for the body of every prisoner taken charge of by him, and should invariably use the agency of the Police to conduct prisoners to and from Court or

any other place to which they may be sent under proper authority.

XVI. (i) No prisoner under-trial should be permitted to remain in a police Lock-up except under the orders of a Magistrate or when in transit. A prisoner in a case remanded to the police should not be sent to the police Lock-up without the written order of the Magistrate, even though his case may be with the police.

Prisoners not to be kept in Police Lock-up without orders of Magistrate.

(ii) If a Magistrate proceeds on tour and prisoners under-trial accompany him, they are still to be considered as being constructively in the Judicial Lock-up of such Magistrates station for the purposes of these rules.

Prisoners accompanying Magistrate on tour should be taken to be in Judicial Lock-up.

(iii) In each Court-house or in the buildings attached to it, a proper place shall be provided for prisoners under-trial and their guard.

Provision of a Lock-up in each Court-house.

Note.-The amount of space which should be available in a Judicial Lock-up should ordinarily be not less than 648 cubic feet of air space and 36 feet of floor area per prisoner. Lateral ventilation exclusive of iron bars and door jambs should not be less than ten square feet. Separate accommodation should be provided for females and juveniles.

XVII (i) Under-trial prisoners shall not received into or removed from a Judicial Lock-up except on the written order of a Magistrate.

Prisoners received or taken out orders of Magistrate.

The order should be made on the prescribed form of warrant. Whenever a prisoner is sent out of the Lock-up, the officer-in-charge should, after making the necessary endorsement, send the warrant with him to the Magistrate for the purpose of having the return endorsement made thereon by the Magistrate, as noted on the form.

(ii) When a prisoner under-trial transferred from one place to another under the orders of the Magistrate, the Magistrate under whose order the prisoner is transferred shall pay, in advance, the travelling expenses for the whole journey, and not merely to the headquarters of the nearest district *en route*.

Expenses of transfer of a prisoner.

Sick prisoners to be kept in Jails hospitals.
Transfer of sick prisoners.

(iii) Under-trial prisoners shall not be transferred while suffering from serious illness; and if there is a dispensary at the place where a Lock-up is situated, no prisoner who is ill shall be transferred until previous medical examination has shown him to be in a fit state of health to undergo the journey. Sick or wounded prisoners under-trial at the headquarters of district shall be confined in jail hospitals whenever medical advice or treatment may be necessary.

Clothing.

XVIII. Prisoners under-trial shall be allowed to wear their own clothing; but in order to provide for persons who are insufficiently clad a supply of blankets shall be kept in stock at each Judicial Lock-up. The blankets shall be obtained from the jail of the district or from a neighbouring Jail on indent prepared by the District Magistrate and passed by the Inspector-General of Prisons.

Handcuffs, fetters and other restraints.

XIX. Under-trial prisoners are to be subjected to no further restraint than is necessary for their safe custody, and shall not ordinarily be confined in fetters or placed under mechanical bodily restraint. Provided that the officer-in-charge may, with the permission in writing of the Magistrate having control over the Lock-up, have recourse to fetters or other necessary mechanical bodily restraint in the case of any under-trial prisoner who is violent or turbulent, or who is considered to be otherwise dangerous.

Under-trial prisoners while being escorted to and from Court by the Police should not be handcuffed, unless there is a reasonable expectation that such prisoners will use violence, or that an attempt will be made to rescue home.

Habitual offenders and previous convicts to be reported.

XX. Whenever it shall come to the knowledge of officer-in-charge of a Lock-up that a prisoner confined therein is an habitual offender or has been previously convicted of any offence, he shall forthwith report the fact to Magistrate.

Restriction re under-trial prisoners

Note.- Under-trial prisoners should not be permitted to crop their hair or to alter their personal appearance in any way so as to make it difficult to recognize them.

XXI. When an under-trial prisoner is discharged in open Court or released on bail while attending the Court, the Presiding Officer of the Court shall intimate the fact in writing, under his signature, the same day, to the officer-in-charge of the Judicial Lock-up from which the prisoner was sent to such Court.

Information to be sent to Officer-in-charge when a prisoners is discharged or released on bail.

XXII. Prisoners under-trial shall be given all reasonable facilities for communicating, either personally or by letter, with their friends, or legal advisers. Interviews may be allowed and letters forwarded under the authority of the Magistrate having control over the Lock-up.

Interviews and correspondence.

XXIII. Money or other property found on the persons of under-trial prisoners, other than necessary wearing apparel shall be taken charge of by the Court Inspector. A list of such articles shall be recorded on the back of the prisoner's warrant, and the Court Inspector shall be held responsible for seeing that they are made over to the prisoner, or duly forwarded to him, if he is discharged or acquitted or punished otherwise than with imprisonment, or that they are forwarded to the officer-in-charge of the Jail in which he is, or is to be confined if he is sentenced to imprisonment.

Disposal of money or other property found on the person of the prisoner.

XXIV. (i) The punishments awardable for breaches of rules shall be as follows:-

Punishment for breach of discipline.

(a) Isolation in a cell or separate ward for a period not exceeding seven days;

(b) Penal diet consisting of bread and water for a period not exceeding three days; the quantity of bread to be 8 chittacks of wheaten flour made *into chapatis*;

(c) *In the case* of turbulent or dangerous prisoners, confinement in fetters;

(ii) Punishments may be inflicted under the written order of the Magistrate having control over the Lock-up.

XXV. Prisoners under sentence who may be temporarily confined in a Lock-up or who may be required to undergo their sentence in a Lock-up which is a subsidiary jail shall, as far as may be, be subject

Prisoners under sentence temporarily confined in Lock-up.

to the same rules with regard to labour and discipline as are in force in regular jails.

Register of
under-trial
prisoners.

XXVI. A register, in the form prescribed showing every admission to and removal from a Judicial Lock-up shall be maintained by the officer-in-charge.

Appointment
of non-official
visitors.

XXVII. The State Government may appoint such number of persons to be non-official visitors in respect of any Judicial Lock-up as it may think fit, after consulting the Sessions Judges and the District Magistrates concerned. Normally the scale of non-official visitors for Lock--ups will be:-

(i)Judicial Lock-ups situated at the
Headquarters of a 1st Class Magis-
trate

....2

(ii)Judicial Lock-ups situated at the
Headquarters of a 2nd or 3rd Class
Magistrate

....1

Qualifications
for appointment
of non-official
visitors.

XXVIII. (a) A non-official visitor to a judicial lock-up should be a local person commanding respect of the public:

(b)) He should be associated with public
acti- vities;

(c)) He should be a social worker doing work in public societies like the Prisoners Aid Societies or having general interest in jail reforms and after care of under-trials;

(d)) He should not, be a practising lawyer.

Term of Office.

XXIX. Every non-official visitor so-appointed shall hold office as such for two years, but may be re-appointed on the expiration of that term.

Non-official
visitors to be
gazetted.

XXX. The names of such gentlemen as are willing to undertake the important duties and are appointed non-official visitors of specified judicial

Lock-ups shall be notified in the *Punjab Government Gazette*.

Note-When the period of appointment of a non-official visitor is drawing to a close, the District and Sessions Judge of the District in which the Judicial Lock-up is situated shall represent the fact to Government and at the same time in consultation with the District Magistrate of the District submit recommendations for filling the appointment for a further period of two years.

Duties of non-official visitors of judicial Lock-ups.

XXXI. All non-official visitors shall visit judicial Lock-ups at least once a month and at every visit shall-

- (a) inspect buildings judicial Lock-ups and the cooked food to be supplied to under trial prisoners;
- (b) ascertain if considerations of health, cleanliness and security are attended to, proper management and discipline are maintained in every respect, and if under-trial prisoner is detained for an undue length of time;
- (c) examine-lock-up registers and records;
- (d) hear and attend to all representations and petitions made by or on behalf of under-trial prisoners: and
- (e) direct, if deemed advisable, that any such representations or petitions be forwarded to Government.

XXXII. There should be one visitors' book in every judicial Lock-up. Every non-official visitor shall, after he has completed his visit to the judicial Lock-up, record in the visitors' book, the date and hour of his visit, and may enter therein any remarks or suggestions he may wish to make.

Date of visit to be recorded. Copy of remarks to be sent to certain officers.

A copy of the record made by every visitor, together with the reply of the officer-in-charge of the judicial Lock-up thereto, shall be forwarded to the Inspector-General of Prisons, Punjab, and in case of any remark relating to the long detention of any unconvicted prisoner, a copy of such remark shall also be forwarded to the District Magistrate of the district.

(*Punjab Government letter No. 106I-JL-54 / 17560 dated the 26th. March, 1954*).

CHAPTER 28

Jurors

PART A.- TRIALS BY JURY

1. In pursuance of the provisions of section 269 of the code of Criminal Procedure, 1898 the chief Commissioner, Delhi has been pleased to direct that the trial of all offences before the Court of Session in the State of Delhi shall be by the Judge himself. (*Delhi Government notification no. F.2(242)/55-Home, dated the 2nd April, 1956.*)

Notification
by Delhi
Government.

2. The Punjab Government have decided that at present the system of trial by jury should not be followed in the Punjab State. (*Punjab Government letter no. 65-J-56/16374, dated the 16th April, 1956.*)

Direction by
Punjab
Government.

PART B.- SELECTION OF JURY

1. The following rules have been made by the High Court under Section 276 of the Code of Criminal Procedure:-

Selection of jurors for trial of a case.

- (1) In order to nominate a jury for the trial of any prisoner or other person to be tried by jury, the sessions Judge shall cause to be put together in one box or bag or cards or pieces of paper containing the names of all the persons summoned to attend, except such of the said persons as shall have been excused by the Sessions Judge from serving on that day. Such cards or pieces of paper shall be, as nearly as may be, of equal size, and each shall bear the name of one person summoned to attend. The Sessions Judge shall then, in open court, draw, or cause to be drawn out of the said box or bag, one after another, as many of the said cards or pieces of paper as may represent the number of Jurors required to try the case, and if any of the Jurors whose names shall be so drawn shall not appear, or if any be objected to, and the objection be allowed, then such further number shall be drawn as may be necessary to complete the number of Jurors required for the case.
- (2) When the Jurors have been finally selected there names shall be enter on the fly-leaf, prescribed for records of Sessions Trial, the 'foreman' being specially designated as such.

2. For the form of oath to be administered to Jurors see Volume IV, Chapter 12, "Oaths' Affirmations and Affidavits ."

Oath for jurors.

PART C.-PAYMENT OF EXPENSES TO JURORS

1. Every person who attends in obedience to a summons issued under Chapter XXIII of the Code of Criminal Procedure, in order to serve as a Juror at a trial-

Travelling expenses.

- (a) before the High Court;
- (b) before any Court of Sessions;

shall be entitled to his *bona fide* travelling expenses, if his place of residence be not less than five miles distant from the Court which he attends. Such travelling expenses shall not exceed the railway fare to and from the Court when the person summoned can perform the journey by rail.

Note.- Government servants are entitled to bona fide travelling expenses from the Court as provided for in this paragraph, vide, Rule 2.137 of the Civil Services Rules (Punjab), Volume III:

2. Every person summoned as a Juror shall be entitled to subsistence allowance for each day's necessary absence from his residence and attendance at Court, such subsistence allowance not to exceed rupees five *per diem*.

Subsistence allowance.

Note.-No subsistence allowance shall be paid to Government to a Government Servant acting as a Juror.

3. In every case in which a person is summoned as a Juror the Court at which his attendance is required shall, if he is entitled to travelling allowance under Rule 1, determine the class by rail which he is entitled, by reason of his rank or position, to make use of; or in the event of his being unable to travel by rail, the *bona fide* travelling expenses which he has incurred coming to Court and must incur on his journey homewards, and shall also determine the rate *per diem* at which subsistence allowance is to be granted under rule 2.

Trial Court to fix expenses. Certificate of expenses actually incurred.

Certificate to be furnished by a Juror before payment of expenses.

I HEREBY certify that the travelling expenses *bona fide* incurred by me in attending this Court as a Juror

In obedience to a summons (my place of residence being not less than miles distant) are as noted below, viz:-

	Coming	Returning	Total
Railway fare			
Carriage hire			
Total			

Dated

The

)

)

Juror

PART D.- PERSONS EXEMPTED FROM LIABILITY TO SERVE AS JURORS

I.-BY ACT V OF 1898

(Copy of Section 320, Criminal Procedure Code, 1898).

320. *Exemption.*- The following persons are exempt from liability to serve as jurors-

- (a) Officers in Civil employ superior in rank to a District Magistrate;
- (aa) Members of Parliament or members of the Legislature of any State;
- (b) salaried Judges;
- (c) Commissioners and Collectors of Revenue or Customs;
- (d) Police-Officers and persons engaged in the Preventive Service in the Customs Department;
- (e) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;
- (f) persons actually officiating as priests or ministers of their respective religions;
- (g) persons in the Indian Army, Navy, or Air Force except when, by any law in force for the time being, they are specially made liable to serve as jurors;
- (h) surgeons and other who openly and constantly practice the Medical profession;
- (i) legal practitioners (as defined by the Legal Practitioners' Act, 1879), in actual practice;
- (j) persons employed in the Post-office and Telegraph Department;
- (k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, Sections 640 and 641;
- (l) other persons exempted by the State Government from liability to serve as jurors.

II.- By Notifications of the Punjab Government.

(Copy of Punjab Government Notification No. 205, dated 20th February, 1886.)

The 20th February, 1886.

No. 205.-Under sections 320(b) of the Code of Criminal Procedure, 1882, the Hon'ble the Lieutenant-Governor (now Governor) is pleased to exempt the following Officers of the Northern. Railway from service as jurors in criminal trials held in the Punjab:-

- (1) Engineers in charge of the open line.
- (2) Engineering Inspectors employed on the open line.
- (3) Locomotive Foreman and Drivers in charge at changing stations.
- (4) Drivers of Pilot Engines;
- (5) Station Masters.
- (6) District Superintendent of Traffic:
- (7) Assistant Superintendent of Traffic.
- (8) Guards.
- (9) District and Assistant Superintendents of the Locomotive Department.

(Copy of Punjab Government Notification No. 688, dated the 15th September, 1911.)

The 15th September, 1911.

No. 668.-Notification.-Under Section 320(1) of the Code of Criminal Procedure, 1898, the Lieutenant-Governor (now Governor) is pleased to exempt all Assistants Station Masters of the Northern Rail-way from service as jurors in criminal trials held in the Punjab.

(Copy of Notification No. 562-Home, dated 14th July, 1913.)

No.562. Home.-Under section 320(l) of the Code of Criminal Procedure, 1861, the Lieutenant-Governor (now Governor) is pleased to exempt all District

and Assistant Superintendents of Traffic, Station Masters and Gurads employed by the Eastern Railway from liability to serve as jurors at criminal trials held in the Punjab.

(Copy of Punjab Government Notification No. 198-Jud1-1, dated 3rd April, 1916.)

Notification No. 198-Jud1-I.-Under section 320(1) of the Code of Criminal Procedure, the Lieutenant-Governor (now Governor) is pleased to exempt the Travelling Auditor attached to the Northern Railway from liability to serve as a juror or assessor at criminal trials held in the Punjab.

III. By Letters from the State Government

(1) Secretaries and Joint, Under and Assistant Secretaries to Government in all Departments (*Secretary's No. 3460, dated the 28th December, 1880, to the Commissioner, Lahore Division*).

(2) *The Deputy Superintendent of the Civil Secretariat Office (Secretary's No. 1289, dated the 26th December, 1887, to the Commissioner, Lahore Division),*

(3) The Superintendent of the Home and Gazette Branches of the Punjab Civil Secretariat (*Secretary's letter No. 491-Home, dated 3rd May, 1910, to the Registrar, Chief Court, Punjab*).

(4) *Deputy Controller of Military Accounts (Administration).*

(Punjab Government's endorsement No. 45/J-38/4556, dated the 8th February, 1938, to Registrar, High Court of Judicature at Lahore).

(5) Controller, Printing and Stationery, Punjab.

(Punjab Government endorsement No. 3006-J-41/ 25340, dated the 30th April, 1941. to the Registrar, High Court of Judicature at Lahore).

(6) Registrar and Superintendents in the Public Works Department, Irrigation Branch, Registrar and Superintendents in the Public Works Department, Buildings and Roads Branch, and the Assistant Engineer in the Central Designs Office.

(Punjab Government letter No. 7333-J-41/65163, dated the 17th December, 1941, to the Registrar, High Court.)

(7) Controller of Stores, Deputy Controller of Stores and District Controller of Stores of the Northern Railway.

(Punjab Government letter No. 8234-J-42, dated the 15th December, 1942).

(8) Assistant Works Manager, Air Raid Precautions Officers and Production Engineer, "Mechanical" of the Northern Railway.

(9) The Personal Assistant to the Elections Commissioner, Punjab.

(Punjab Government letter No. 6462-J-44/99945, dated the 17th November, 1944).

(10) Junior Assistant (Movement) and

(11) Assistant Secretary to the General Manager.

(Punjab Government endorsement No. 5726-J-44/ 77241, dated the 9th October, 1944.)

(12) Assistant Superintendent, Northern Railway Press.

(Punjab Government letter No. 2954-J-28251, dated the 7th June, 1945).

¹[CHAPTER 29]

Public Prosecutors

PART A.-APPOINTMENTS OF PUBLIC PROSECUTORS

1. (a) All matters relating to the appointment, remuneration, transfer or removal of Public Prosecutors rest with the Executive and not with the Judicial Department.

Appointment, Transfer, etc.
- (b) Except temporary additional Public Prosecutors appointed by the Government or the Legal Remembrancer, Punjab, under the rules contained in the Punjab Law Department Manual, the Public Prosecutors are now designated as District Attorneys and Assistant District Attorneys.
2. The District Attorneys and the Assistant District Attorneys are whole time Government servants, in a regular cadre of service called the District Attorney Service, and their recruitment and conditions of service are regulated by the Punjab District Attorney Service Rules, 1960 reproduced in Part B of this Chapter.

Recruitment and conditions of service of District Attorney and Assistant District Attorney.
- 3.(i) When the State of work so requires, temporary additional Public Prosecutors may be appointed, under the provisions of the Punjab Law Department Manual, for period not exceeding three months by the Legal Remembrancer and for periods exceeding three months by the Government.

Temporary Additional Public Prosecutors.
- (ii) Temporary Additional Public Prosecutors are not whole time Government servants and are ordinarily allowed the pay of Rs 400 per mensem.
4. Public Prosecutors are required by Law (section 270 of the Code of Criminal Procedure, 1898) to conduct the prosecution in all Criminal trials held in a Court of Sessions, but it rests entirely with

Cases in which Public Prosecutors may be required to appear.

1. Inserted vide Correction Slip No. 5 Rules/XXII-A-2 dated 7th November 1963.

Executive to decide in what appeals or revision cases Public Prosecutors are to appear in the Sessions Court. They will be required to appear on behalf of the Government in the following cases-

- (a) all Sessions Cases;
 - (b) all Section 30 cases at headquarters where the Public Prosecutor is posted;
 - (c) all section 30 cases in out-stations when required to appear by the District Magistrate;
 - (d) all commitment cases at headquarters, except ordinary section 75 cases where appearance is unnecessary;
 - (e) all similar commitment cases in out-stations when required to appear by the District Magistrate;
 - (f) all criminal appeals where on or after the admission of the appeal the Sessions Judge notes that he considers appearance necessary, and in all criminal appeals which the District Magistrate considers of sufficient importance to require representation of the Government;
 - (g) subject to the time being available all original cases which the District Magistrate considers of sufficient importance to require representation; and
- they will also furnish opinion in all criminal cases when required by the District Magistrate and by a Sub-Divisional Officer through the District Magistrate.

Public Prosecutors shall also appear in any cases or give opinion regarding any matter when required by the Legal Remembrancer.

5. On the request of a Public Prosecutor who appears before a Sessions Judge, the Sessions Judge will certify that the Public Prosecutor had so appeared.

6. A brief diary should be maintained by each Public Prosecutor showing the work done by him during each month. This diary is to be submitted to the Legal Remembrancer at the end of the month in accordance with instructions issued from time to time.

PART B.-RULES RELATING TO RECRUITMENT AND
CONDITIONS OF SERVICE OF DISTRICT ATTORNEYS
AND ASSISTANT DISTRICT ATTORNEYS

THE PUNJAB DISTRICT ATTORNEYS SERVICE
RULES, 1960.

1. (1) These rules may be called the Punjab District Attorneys Service Rules, 1960.

(2) These shall come into force from the date of their publication in the official Gazette.

2. In these rules, unless there is anything repugnant in the subject or context-

(a) "Commission" means the Punjab Public Service Commission;

(b) "direct appointment" means an appointment made otherwise than by promotion within the Service, or by transfer of an official already in the service of a State Government or of the Union of India;

(c) "Government" means the Punjab Government in the Administrative Department;

(d) "Legal Remembrancer" means the Legal Remembrancer and Secretary to Government, Punjab, Legislative Department;

(e) "Recognised University" means-

(i) any University incorporated by law in any of the States of India;

(ii) in the case of Degree or Diplomas obtained as a result of examination held before the 15th August, 1947, the Punjab, Sind or Dacca University; and

(iii) any other University which is declared by Government to be a recognized University for the purposes of these rules; and

(f) "Service" means the Punjab District Attorneys Service.

Short title
and
commence
ment.

Definitions

Composition
of Service.

3. (1) The Service shall comprise the posts shown in Appendix 'A' to these rules:

Provided that the posts of Grade II of the District Attorneys cadre shall continue as such only so long as the existing incumbents of erstwhile Pepsu State hold them. These posts when falling vacant will be added to either in Grade I of District Attorneys cadre or to the cadre of Assistant District Attorneys:

Provided further that there shall be one or more District Attorneys or Assistant District Attorneys for each District as the Government may from time to time determine.

(2) Nothing in these rules shall affect the right of Government to make addition to, or reduction in, the cadre of the service whether permanently or temporarily.

Appointing
Authority.

4. Subject to the provisions of rule 5, the appointments to the posts in the Service shall be made by the Government in consultation with the Commission:

Provided that temporary appointments for a period of not exceeding three months shall be made by the Legal Remembrancer.

Method of
recruitment.

5. Posts in the Service shall be filled in as under:-

(a) In the case of District Attorneys-

(1) the first appointments to such number of posts as Government may determine shall be made by the Government by selection, on the advice of a Committee consisting of the Legal Remembrancer and the Home Secretary to Government, Punjab, from amongst those Public Prosecutors who were in the employment of the erstwhile State of Punjab and Patiala and East Punjab States Union immediately before the 1st November, 1956;

(2) the remaining posts and all future vacancies shall be filled-

(i) by selection from amongst the District Attorneys Grade II or the Assistant District Attorneys; or

(ii) by transfer of an officer working under the Government of a State, or of Union of India; or

(iii) by direct appointment;

(b) in the case of District Attorneys Grade II by selection by the Government from amongst the Public Prosecutors in the employment of the erstwhile State of Pepsu, immediately before 1st November, 1956.

(c) In the case of Assistant District Attorneys-

(i) by selection from amongst the Legal Assistants and Superintendents of the office of Legal Remembrancer; or

(ii) by transfer of an officer working under the Government of a State, or of Union of India; or

(iii) by direct appointment;

(d) In the case of temporary vacancies not exceeding a period of three months by the Legal Remembrancer out of District Attorneys, Grade II, or Assistant District Attorneys or from the counsel on the State list.

6. (1) No person shall be appointed to the Service unless he is-

Domicile and qualifications for appointment.

(a) a citizen of India; or

(b) a subject of Sikkim; or

(c) a subject of Nepal or of a Portuguese or former French Possessions in India; or

(d) a person of Indian origin, who has migrated from Pakistan with the intention of permanently settling in India:

Provided that if he belongs to category (c) or (d) he must be a person in whose favour a certificate of eligibility has been given by the Government of India; or of the Punjab:

Provided further that if he belongs to category (d) the certificate of eligibility shall be valid only for a period of one year from the date of his appointment beyond which he may be retained in service only if he has become a citizen of India.

A candidate, in whose case a certificate of eligibility is necessary, may be admitted to an examination or interview conducted by the Commission or any other recruiting authority and he may also provisionally be appointed subject to the necessary certificate being eventually given to him by Government.

Disqualification.

7. No person who has more than one wife living, or in the case of a woman, is married to a person already having a wife living, shall be eligible for appointment to the Service:

Provided that the Government may in any exceptional case and for reasons to be recorded in writing exempt any person from the operation of this rule.

Age limit.

8. No person shall be appointed to the Service by direct appointment to the post of-

- (i) District Attorney, unless he is not less than 30 years and not more than 40 years of age on the date of selection;
- (ii) Assistant District Attorney, unless he is not less than 25 years and not more than 35 years of age on the date of selection:

Provided that in the case of candidates belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes, the maximum age limit shall be such as may be fixed by Government from time to time.

9. No person shall be appointed to the service unless he possessed the educational qualifications mentioned in column 2 below and no person shall be appointed by direct appointment unless he also possessed the other qualifications mentioned in column three below:-

Educational
and other
qualifications.

Name of post	Educational qualifications	Other qualifications
1.	2.	3.
District Attorney	Degree of Bachelor of Laws of a Recognized University or a Barrister of England or Ireland or a member of the Faculty of Advocates of Scotland.	Should have practiced at the Bar for a period of not less than ten years.
Assistant District Attorney	Ditto	Should have practiced at the Bar for a period of not less than five years.
-		

10. (1) A candidate for appointment to the Service shall state his qualifications and attach to his application a declaration stating the period for which he has been practicing as a Lawyer and/or the period, if any, for which he remained in Government Service or worked as a Public Prosecutor.

Certificates
and declara-
tions to be
attached with
application.

(2) No person shall be appointed direct to the service unless he

- (a) Has obtained from a Standing Medical Board in the State of Punjab a certificate of mental and physical fitness as required under rule 3.1 of the Punjab Civil Services Rules, Volume I, Part II; and
- (b) has produced a certificate of character from the Principal, academic officer of the university, college, school or institution last

Attended, if any; and similar certificate from two responsible persons, not being his relatives, who are well-acquainted with him in private life and unconnected with his university, college, school or institution.

Probation.

11. (1) Members of the service recruited by direct appointment shall remain on probation for a period of two years and those recruited otherwise for a period of one year:

Provided that the District Attorneys Grade I, who are selected for appointment from the Public Prosecutors of erstwhile States of Punjab and Patiala and East Punjab States Union and the District Attorneys Grade II, shall not be required to remain on probation.

Explanation.-The period of service as Public Prosecutor or the period of service as officiating District Attorney, Class I or officiating Assistant District Attorney may, at the discretion of Government, be allowed to count towards the period of probation fixed under the rule but no member of the Service, who is officiating in any appointment shall, on the completion of his period of probation be entitled to be confirmed, until he is appointed against a permanent vacancy.

(2) If the work or conduct of any member of the Service during the period of probation is, in the opinion of Government, not satisfactory, Government may dispense with his services, if recruited by direct appointment or revert him to his former post if recruited otherwise.

(3) On completion of the period of probation of any member, the Government may confirm such member in his appointment, if his work or conduct has, in the opinion of Government, not been satisfactory, dispense with his services if recruited by direct appointment or may revert him to his former post, if recruited otherwise, or may extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation:

Provided that the total period of probation including extensions, if any, shall not exceed three years.

12. (1) The seniority *inter-se* of members of the service holding the same class of posts shall be determined by the dates of their continuous appointments to such posts in the Service: Seniority

Provided that in the case of members appointed directly, the order of merit determined by the Commission shall not be disturbed:

Provided further that in the case of two or more members appointed to the same class or posts on the same date, their seniority shall be determined as follows:-

- (a) a member recruited by direct appointment shall be senior to a member recruited otherwise;
- (b) a member recruited by promotion shall be senior to a member recruited by transfer;
- (c) in the case of members who are recruited by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred;
- (d) in the case of members recruited by transfer from different cadres or by selection under rule 5 (a) (1) their seniority shall be determined according to pay, preference be given to a member who was drawing higher rate of pay in his previous appointment, and if the rates of pay drawn be also the same, then by their length of service; and in case their length of service also happens to be the same, and older member shall be senior to a younger member.

(2) The *inter-se* seniority of public prosecutors appointed together to the service shall remain undisturbed and they shall be senior to the persons otherwise recruited.

Pay of
Members of
Service.

13. Members of the Service shall be entitled to such scales of pay as may be authorised by Government from time to time. The pay scales at present in force are given in Appendix 'A':

Provided that a higher pay than the minimum pay may be allowed by Government in consultation with Finance Department, where qualification and experience so required.

Transfer.

14. Every member of the service shall be liable to transfer under the orders of the Government anywhere within the State of Punjab and shall also be liable to serve outside the State of Punjab.

Conditions of
service.

15. (1) The posts in the service shall be pensionable and members of the service shall be whole time Government servants.

(2) In respect of leave, pension and other cognate matters not expressly provided for in these rules members of the service shall be governed by such rules and regulations as may be applicable to Government servants or such other rules and regulations as are framed or issued from time to time under the proviso to article 309 of the constitution of India:

Provided that notwithstanding anything contained in the leave rules for the time being in force the members of the Service may be permitted to absent themselves from duty during the period of the Sessions Courts are closed for vacation by debiting the period of absence to their leave accounts.

(3) No member of the service shall have the right of private practice.

Penalty
discipline and
appeals.

16. (1) In the matters relating to discipline punishment and appeals, members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1952, as amended from time to time:

Provided that the nature of penalties which may be imposed and the authority empowered to impose such penalties shall be, subject to the provisions of any law or rules made under Article 309 of the Constitution of India, as specified in Appendix ‘B’ to these rules.

(2) The authority, competent to pass an order under clauses (c) and (d) of the rule 10 of the said rules shall be Government.

17. If any question arises relating to the interpretation of these rules, it shall be referred to the Government whose decision thereon shall be final.

Interpretation

18. Where the Government satisfied that the operation of any of these rules causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Power to relax.

APPENDIX “A”

Number of the posts	Designation of the posts	Scale
Eight	District Attorneys Grade I	Rs.500-30-800/30-1,100/50-1200
Nine	District Attorneys Grade II	Rs.250-25-375/25-700/25-750
Nine	Assistant District Attorneys	Rs.300-15-450/15-480/20-540/20-600

APPENDIX "B"

Designation of service	Nature of Penalty	Authority competent to impose penalty	Appellate Authority
Members of Service	(a) Censure	Legal Remembrancer	Government
	(b) With-holding of increments including stoppage at efficiency bar.	Ditto	Do
	(c) Reduction to lower stage in the time scale.	Government	Nil
	(d) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order	Do	Nil
	(e) Suspension	Do	Nil
	(f) Removal from service which does not disqualify for future employment.	Do	Nil
	(g) Dismissal from service which ordinary disqualifies from future employment.	Do	Nil

(Published in the PUNJAB GOVERNMENT GAZETTE, dated 22nd December, 1961/Pausa I, 1883 Saka, Legislative Supplement, Part IV, page 107, -*vide* notification No.G.S.R-8-Const/Art-309/61, dated 12th December, 1961).

PART C-Notification relating to Public Prosecutors.

I.- *Punjab Government Notification No. 698, dated the 18th May, 1899.*

In exercise of the powers conferred by section 492 of the Code of Criminal Procedure, 1898, the Lieutenant Governor is pleased to appoint the Legal Remembrancer to the Punjab Government and the Government-Advocate, Punjab, respectively, to be Public Prosecutors generally for the Punjab.

Legal Remembrancer and the Government Advocate appointed Public Prosecutors.

II.-*Punjab Government Notification No. 1789, dated the 11th December, 1899.*

In exercise of the powers conferred by Section 492 of the Code of Criminal Procedure, 1898, the Lieutenant Governor is pleased to appoint the Assistant Legal Remembrancer to the Punjab Government to be Public Prosecutor generally for the Punjab.

Assistant Legal Remembrancer appointed Public Prosecutors.

III.-*Punjab Government Notification No. 213, dated the 3rd March, 1887....*

In exercise of the authority conferred by section 13(1) of Act X of 1886 *(Section 495, Code of 1898) and with the previous sanction of the Governor-General in Council, the Hon'ble the lieutenant-Governor (now Governor) is pleased to prescribe the rank of Deputy Inspector as that below which an Officer of Police shall not be permitted by a Magistrate inquiring into or trying any case to conduct the prosecution.

Police Officers allowed to conduct prosecution.

IV.-*Punjab Government Notification No. 2204-J(C)-57/5256, dated the 24th March, 1957.*

In exercise of the powers conferred on him by section (1) of section 492 of the Code of Criminal Procedure, 1898 the Governor of Punjab is pleased to appoint-

Police Officers allowed to conduct prosecution.

- (i) the Prosecuting Deputy Superintendent of Police Ferozepure;

- (ii) the Prosecuting Deputy Superintendent, Police, Amritsar;
- (iii) the Prosecuting Inspectors of Police in the Hissar, Rohtak, Gurgaon, Karnal, Ambala, Hoshiarpur, Ludhiana, Jullundur, Kangra, Ferozepore, Amritsar and Gurdaspur;

to be Public Prosecutors for their respective districts;

V.-Punjab Government Notification No. 4372-J(C)-57/9649, dated the 24th May, 1957.

Police Officers
allowed to
conduct
prosecution.

In exercise of the powers conferred by sub-section (1) of 492 of the Code of Criminal Procedure, 1898, the Governor of Punjab is pleased to appoint the Prosecuting Inspector of Police in the Government Railway Police, Punjab to be a Public Prosecutor for the State of Punjab.

VI.-Punjab Government Notification No. 4672-J(C)-57/20594, dated the 13th September, 1957.

Police Officers
allowed to
conduct
prosecution

In exercise of the powers conferred by sub-section (1) of section 492 of the Code of Criminal procedure, 1898, the Governor of Punjab is pleased to appoint, all the Prosecuting Sub-Inspectors of Police in all the Districts of the Punjab State to be Public Prosecutors for their respective jurisdiction.

VII.- Punjab Government Notification No. 6769-J(C)-58/32147, dated the 21st September, 1958.

Police Officers
allowed to
conduct
prosecution.

In supersession of Punjab Government notification No. 399-J(C)-58/1214, dated the 16th January, 1958, in exercise of the powers conferred by section (1), of section 492 of the Code of Criminal Procedure, 1898, the Governor of Punjab is pleased to appoint the Prosecuting Deputy Superintendents of Police, and the Prosecuting Inspectors of Police, in the Patiala Range, to be Public Prosecutors for within the jurisdiction of local area for their respective division.

VIII.- *Punjab Government Notification No. 1217-J(C)-59/5036, dated the 18th March, 1959.*

In exercise of the powers conferred by section 492 of the Code of Criminal Procedure, 1898 (V of 1898), the Governor of Punjab hereby appoints the Public Prosecutor Central Investigating Agency as Public Prosecutor to conduct cases of the Special Police Establishment before the Courts of Magistrates, Special Judges and Sessions Judges in the State of Punjab.

Police Officers
allowed to
conduct
prosecution.

IX.-*Punjab Government Notification No. 12897-J-59/35653, dated the 17th December, 1959.*

In exercise of the powers conferred by section 492 of the Code of Criminal Procedure, 1898 (V of 1898), the Governor of Punjab is pleased to appoint the Company Prosecutor attached to the office of the Regional Director, Department of Company Law Administration, Kanpur, to be Public Prosecutor for conduct of the company Law Administration Department, cases in the original as well as appellate courts in the State of Punjab, with effect from the 23rd November, 1959.

Company
Prosecutor
attached to
Regional
Director,
Company Law
Administration,
Kanpur allowed
to conduct
prosecution.

C.S. No. 5-Rules/XXII-A-2, dated the 7th November, 1963.

PART B.-THE SUPPLY OF COPIES TO THE ADVOCATE GENERAL
AND PUBLIC PROSECUTORS

I. When the Advocate-General as Public Prosecutor, has been ordered to undertake a case, he shall, if his appearance is required in any Court other than the High Court be supplied as soon as practicable with the following papers, according to the stage which the proceedings may have reached:-

Records and copies
to be supplied in
cases before
Subordinate Court.

- (a) In original trials and inquiries before a Magistrate (1) a list of the witnesses for the prosecution with a note of the evidence each is expected to give; (2) copies of any documents material to the case which are available.
- (b) In original trials before a Court of Sessions, a complete copy of the record of the Committing Magistrate except formal papers, which do not affect the merits of the case.
- (c) In appeals before a Court of Sessions, a complete copy of the record of the Lower Court, except formal papers not affecting, the merits of the case.
- (d) Copies, of the Police papers whenever, in the opinion of the officer applying for the services of the Advocate-General, they are likely to help materially to a proper understanding of the case.

Note.- Copies of records required by Local Public Prosecutors or the Legal Remembrancer should be supplied and their cost met by District magistrate or the Courts concerned. (Punjab Government notification No. 1025, dated 21st October, 1914).

2. In addition to the above any papers and records, including copies of depositions of witnesses recorded by the trying courts which may be required by the Law Officer, shall be supplied as soon as possible after receipt of his requisition.

Records and copies
to be supplied in
cases before
Subordinate Courts.

Note.- The Public Prosecutors should, however, use more and discrimination in their requests for full copies of evidence and should, as far as possible obtain the material required by them from inspection of judicial records; copies should not be obtained by them except in complicated cases, when inspection will not serve the purpose (Punjab Government letter No. 12012-Judl., dated the 7th May, 1926, and Legal Remembrancer's letter No. 1829, dated the 7th May, 1926.

Copies in
cases before
High Court.

1. In cases in which the Advocate-General is ordered to appear in an appeal or revision case before the High Court, it will ordinarily be for him to obtain copies of such parts of the record as he requires; but if in any case copies can be more conveniently obtained by the officer who has applied for his services, such officer may be required to obtain and transmit the necessary copies. In any case, the cost of obtaining copies shall be defrayed by the officer who has applied for the Advocate-General's Services.

CHAPTER 30

Judicial Powers – Criminal.

PART A.-POWERS OF CRIMINAL COURTS

The constitution and powers of the Criminal Courts are regulated by Chapters II and III, and Schedules III and IV, of the Code of Criminal Procedure. Column 8 of Schedule II of the Code indicates the class of Court competent to try each offence falling under the Indian Penal Code. In regard to offences falling under Local and Special Laws, the classes of courts by which such offences are triable are usually specified in the Act creating the offences. Where, in any such Act, the term ‘Magistrate’ is used without qualification, it includes all persons exercising all or any of the powers of a Magistrate under the Code. (*vide* section 2(32) of the Punjab General Clauses Act, 1898 or section 3(32) of the General Clauses Act, 1897.)

Powers defined in the Criminal Procedure Code and other Acts.

2. The general powers which Magistrates are entitled to exercise in addition to those conferred upon them by sections 32 and 33 of the Code will be found in the third and fourth Schedules of the Code. Besides their ordinary powers detailed in the third Schedule Magistrates of the first class may (1) require security for good behaviour under section 110, and (2) issue process for a person who within local jurisdiction has committed an offence outside such local jurisdiction section 186 (Punjab Government Notification No. 507, dated 5th April, 1904). The same notification empowers all Magistrates of the first and second classes (1) to make orders prohibiting repetitions of nuisances, section 143; (2) to make order under section 144 as regards nuisances; and (3) to take cognizance of offences upon information section 190. All Magistrates are empowered to take cognizance of offences upon (1) Complaint or (2) Police report, section 190.

Special powers.

3. For powers conferred by the State Government upon certain classes of officers, either under the Code of Criminal Procedure or any other Act, See Schedule A and B attached to this order.

Powers conferred by Government.

SCHEDULE A- MAGISTERIAL POWERS

Serial No.	Officer	Powers conferred	Limits	No. and date of Government Notification
1	Registrar, High Court, Punjab	Magistrate, 1 st Class	Within the limits of High Court building and compound	No.1004, dated 26 th July, 1897
2	Tahsildars (Permanent or Temporary)	Magistrates, 2 nd Class	Within the limits of any District to which the person may be posted	No.1081, dated 24 th August, 1910
3	Assistant Commissioners and Extra Assistant Commissioners (not invested with any higher powers)	Ditto	Ditto	No.3, dated 2 nd January, 1889
4	Naib-Tehsildars holding the office of Naib-Tehsildar of a Sub-Tahsil.	Ditto	Ditto	No.28643-Gaz., dated the 28 th August, 1935
5	Naib-Tahsildars (Permanent)	Ditto	Ditto	No.1536, dated 8 th November, 1899
6	Settlement Tahsildars employed in the work of colonization or settlement	Magistrates, 3 rd Class	Within the limits of any district or districts in which the Person may from time to time be employed, and only for the purposes of disposing of complaints brought by or against members of the District and settlement of Colony Establishment working under their orders.	No.1108, dated 13 th September, 1904

Note. -Permanent Naib-Tehsildars will, under serial No.4, exercise 3rd Class Magisterial powers. Officiating Naib-Tahsildars will not ordinarily be re-invested, but if likely to continue to act for a considerable period, an Officiating Naib-Tahsildar who has passed the prescribed examination, may be specially recommended.

SCHEDULE B- SPECIAL PROCESS

Seria 1 No.	Officer	Powers conferred	Limits	No. and date of Government Notification
1	Registrar, High Court, Lahore	To try summarily under section 260, Criminal Procedure Code of 1882, Offences against the Police Act.	Within the limits of High Court building and compound	No.1005, dated 26 th July, 1897
2	All Magistrates, 1 st Class	I. To require security for good behavior (Section 110, Criminal Procedure Code) II. To make orders as to local nuisances (Section 132) III. To issue process for persons within local jurisdiction who has committed and offence outside the local jurisdiction(section 186) IV. To spell property alleged or suspected to have been stolen (section524)		No.507, dated 5 th April, 1904
3	All Magistrates of the 1 st and the 2 nd Classes	(i) To make order prohibiting re- petition of nuisances (section 143) (ii) To make orders under section 144 (iii) To hold inquests (section 174) (iv) To make cognizance of offences upon information received from any person other than police officer or upon their own knowledge or suspicion [section 190(1)(c)]		No.507, dated 5 th April, 1904

SCHEDULE B- CONCLUDED

Note.-All the powers mentioned in serial numbers 2 to 5 will be exercised subject to the general control of the District Magistrates..				
Serial No.	Officer			Notification
4	All Magistrates	To take cognizance of offences upon complaint or police report [Section 190(i)(a) and (b)]	..	No.507, dated 5 th April, 1904
5	All Sub-Divisional Magistrates	To call for records(Section 435)	..	Ditto
6	All Magistrates, 1 st Class	Powers mentioned in Section 8(1) of the reformatory School Act, 1897	With the local limits of their jurisdiction	No.576, dated 7 th January, 1924
7	All stipendiary Magistrates,2 nd Class	Powers to authorised the detention of accused persons in the custody of the police under Section 167 (2) of the Code of Criminal Procedure)	..	No.11984, dated the 4 th January, 1924
8	All District Magistrates	Power to withdraw classes of cases from the Magistrate subordinate to them (section 528 of the Code of Criminal Procedure)	..	No.101, dated the 3 rd February, 1883
9	All Magistrates, 2 nd Class	Powers to take exercise all or any of the Powers conferred upon a court by the provisions of Section 562 of the Code of Criminal Procedure.	..	No.431 (Home Judl.), dated the 18 th April, 1910

PART B- CONFERMENT OF CRIMINAL MAGISTERIAL POWERS

The Hon'ble Judges have been pleased to issue the following instructions, which have been approved by the State Government, in regard to recommendations for the conferment of Criminal Magisterial Powers:-

Instructions in re recommendations for conferment of Criminal Magisterial Powers.

(1) Recommendations for the conferment of Criminal Magisterial Powers upon officers of the Indian Civil Service and Punjab Civil Service should ordinarily originate, as the circumstances of each case may require, with either the district Magistrate, the District and Sessions Judge, the Commissioner or the High Court.

For I.C.S. and Service Officers.

Proposals for the investiture of Tahsildars and Naib-Tahsildars with a higher Magisterial Powers than those which they exercise ex-officio should be made to the High Court through the commissioner and the Financial Commissioners for transmission to Government.

For Tahsildars

(2) Except when it is desire to confer enhanced powers, e.g., the Powers of a section 30 or 260 Magistrate, Additional District Magistrate, etc., upon an Assistant Commissioner or Extra Assistant commissioner, the district Magistrate may address the commissioner either direct or through the District and Sessions Judge. A proposal for the conferment of enhanced powers upon an Assistant Commissioner or Extra Assistant Commissioner, should however, be initiated by the District Magistrate, who will forward his recommendation to the Commissioner through the District and Sessions Judge. The Commissioner will then address the High Court. It is definitely irregular for officers' desires of obtaining these powers to address the Registrar, High Court, direct. In the rare cases where it is proposed to confer Magisterial Powers upon a Subordinate Judge, the proposal should originate with the District Magistrate and should be forwarded through the District and Sessions Judge and the commissioner to the High Court.

Channel of recommendation.

Note- In districts where the judiciary has been separated from the executive, such proposals will be initiated by the Additional District Magistrate who will submit the same to the District and Sessions Judge who in turn will forward his recommendation to the High Court.

When
Commissioner
shall consult
Sessions
Judge.

(3) In other cases, the Commissioner, before forwarding the proposal to the High Court, may consult the District and Sessions Judge if he thinks it necessary to do so: but he shall do so whenever it is proposed to confer on any person the enhanced powers mentioned in paragraph 2 and-

- (a) first class magisterial powers; or
- (b) the powers to commit persons for trial to the Court of Sessions, under section 206 of the Code of Criminal Procedure.

Statement of
previous exercise
of powers to be
sent along with
recommendations

(4) When recommendations for the investiture of Extra Assistant Commissioners and Tahsildars with criminal powers are submitted to the High Court, it should invariably be specified whether the officer recommended has exercised powers before of the same or of a lower class, and for what periods; the Government notification conferring such powers should be quoted in each case. If the officer has never exercised criminal powers before, the fact should be stated.

Necessary
qualifications for
exercise of
special powers.

(5) Special care should be taken when recommending the investiture of officers with the important powers of a Section 30 or 260 Magistrate, or with the powers of an Additional District Magistrate. Ordinarily the qualifications necessary for the conferment of powers under section 30 of the Code of Criminal Procedure are-

- (a) the exercise of first class magisterial powers for at least ten years;
- (b) the officer recommended must be reported to be a capable and reliable Magistrate;
- (c) he should keep his records and write judgments in English; and
- (d) his English should be intelligent and his hand writing legible.

For summary powers under section 260 of the Code of Criminal Procedure, the qualifications are the same except that the officer may have exercised first class magisterial powers for three years and should

Have at least seven years service, ¹[relaxable by two years in fit cases.] An officer recommended for the exercise of the powers of an Additional District Magistrate should have not less than ten years service.

Note—These conditions are not applicable to officers of the Indian Civil Service or the Indian Administrative Service who are governed by the order regulating the training of Assistant Commissioners, the condition that first class magisterial powers should have been exercise for at least ten years before an officer can be invested with powers under section 30 would, however, apply in their case also in view of the amendments of that section by Act, No. 26 of 1955.

(6) Government maintain confidential lists of officers of the Indian Administrative Service and Punjab Civil Service who are considered qualified to exercise or to be tried with certain enhanced civil and criminal powers. These lists are revised annually under instructions which are issued separately by the High Court. The channel prescribed in paragraphs 2 and 3 for the transmission of proposals applies only to the case of individual recommendations made from time to time during the year and not to the procedure for the revision of the annual confidential powers lists.

Recommendations should ordinarily be made at the time of revision of annual confidential powers lists.

Normally, recommendations for the investiture of officers with enhanced powers should be confined to the time of the annual revision of lists, save when enhancement of powers is essential in the interests of work. The records of all officers recommended at the time of such revision are very carefully examined and it means extra work and less accurate results if individual cases are taken up at other times.

(7) It sometimes happens that higher powers are conferred in an emergency upon officers not in every way competent to exercise them permanently: this, however, confers no claim to be given such powers permanently at the next revision of lists. Some officers are apt to consider that because they do not get higher powers, or their names do not appear on the confidential lists of officers qualified to exercise or to be tried with higher powers, as soon as they expect to, there are some undisclosed complaints against them, when the real reason may merely be that the High Court does not consider that they are quite ready to exercise them.

Conferment's of higher powers in emergency does not qualify permanently.

1. Inserted vide Correction Slip No. 28 Rules/II.D.4 dated 13.02.1984

PART C.--CONFERMENT OF CRIMINAL MAGISTERIAL
POWERS ON OFFICERS POSTED AT DELHI.

With the approval of the Delhi State Government, the Hon'ble Judges have been pleased to issue the following instructions in regard to the conferment of criminal Magisterial powers on officers posted at Delhi : -

(1) Instructions contained in Part 3 of this Chapter will apply *mutatis mutandis* to Punjab Officers posted at Delhi. Copies of the lists mentioned in paragraph 6 thereof will be forwarded to Delhi State Government for information. Officers whose names are included in the various powers lists may be invested with such powers without any reference to the High Court. If, however, the name of any officers is not included in any list, the procedure laid in paragraph 7 of Part 3 of that Chapter will be followed.

(2) The procedure regarding conferment of magisterial powers on Officers who do not belong to the Punjab Service will be as under: -

- (a) first and second class magisterial powers may be conferred by Government on the recommendation of the Deputy Commissioner provided that the officer concerned has exercised 3rd or 2nd Class powers, *as the case may be*, for six months. If it is considered necessary to confer first class powers on any officer who has not exercised second Class Powers for six months, a reference will be made to the High Court and its approval obtained;
- (b) higher powers, e.g., the powers of section 30 or 260 Magistrate. Additional District Magistrate, etc., will be conferred with the approval of the High Court. While making a reference to the High Court in this behalf, the fact that the Officer concerned has *al-ready* exercised such powers before his posting at Delhi will be communicated and

the personal file containing annual reports on the work of the officer will be forwarded to the High Court along with such other information as may be necessary;

- (c) the procedure outlined at (b) above will also be followed in the case of conferment of powers of District Magistrate on any Officer.

(3) In accordance with the rules published with Delhi State Government Notification No. F. 2 (77) 54-Home, dated the 6th / 8th July, 1955 (a copy of which forms as annexure to this Chapter Hony. Magistrates are also appointed at Delhi. Rule 5 of these rules provided that summary powers will not ordinarily be conferred upon Hony Magistrates. If, however, it is considered necessary to confer such powers on any Hony, Magistrate, a reference will be made to the High Court and the procedure laid down in paragraph 2(b) above will be followed. A reference will also be made to the High Court, if and when, it is considered necessary to confer section 30 powers on an Hony, Magistrate.

(4) In all cases where a reference is made to the High Court by Delhi State Government for conferment of higher powers on a Magistrate already posted at Delhi, the views of the District and Sessions Judge, Delhi will be obtained and forwarded to this Court.

As far as possible, the qualifications mentioned in paragraph 5 in Part 'B' of this Chapter will be taken into consideration while conferring the powers of section 30 or 260 Magistrate, Criminal Appellate powers or powers of an Additional District Magistrate.

ANNEXURE

OFFICE OF THE CHIEF COMMISSIONER, DELHI

NOTIFICATION

Delhi, dated the 8th July, 1955.

No. F-2. (77)54.-Home-The Commissioner of Delhi is pleased to make the following revised rules for the appointment of Honorary Magistrates in the State of Delhi.

Revised rules regarding appointment of Honorary Magistrates. These rules are subject to any rules that may be framed by the High Court regarding appointment, training or removal of Honorary Magistrates.

1. (a) *Competent authority to make appointments of Honorary Magistrates.*-Appointment of Honorary Magistrates shall be made by the State Government on the recommendation of the Selection Committee consisting of the following:-

- (1) District and Sessions Judge, Delhi;
- (2) District Magistrate, Delhi;
- (3) Home Secretary to Government, Delhi State, Delhi.

The District and Sessions Judge will preside over the deliberation of the committee and the District Magistrate will be the convenor. The proceedings of the committee shall be confidential.

The committee shall consider names and suggestions which may be received by the District Magistrate from the individual desiring to be appointed as Honorary Magistrate or by way of recommendation from other sources, or put forward by any member of the committee. In all cases, the necessary inquiry shall be held by the District Magistrate and each case shall be put up before the committee with all the information and facts available.

information and facts available. The Committee shall draw up approved lists separately for persons considered suitable for appointment as 1st and 2nd Class Magistrates in case the number of candidates exceeds the number of vacancies. This list shall be prepared in order of merit. In the event of a vacancy occurring, the Convenor of the Committee shall notify the same to the other members indicating the person on the waiting list eligible for appointment to the vacancy. The members shall communicate their views to the Convenor and in case there is unanimity of views and the appointment is not for the post of a First Class Magistrate, the District Magistrate shall submit the recommendation to the State Government without calling a formal meeting of the Committee.

(b) The Committee shall meet once in every quarter, the first meeting being held in month of February.

2. *Qualifications of Candidates.*-Before recommending a person for appointment as an Honorary Magistrate, the Committee shall satisfy that he fulfils the following requirements:

- (a) *Age.*- He is not less than 30 years and more than 60 years of age;
- (b) *Educational Qualifications.*- He has passed an examination equivalent to or higher than Intermediate or Higher Secondary Examination and is liable to record the evidence and write judgments in English, Urdu or Hindi in his own hand and is capable of appreciating the evidence and forming a reasoned judgment. In case of those who have exercised powers as Honorary Magistrate before, the educational qualifications shall be relaxed to a minimum of High School or equivalent standard;
- (c) *Reputation.*-he has a good reputation and is a person of such character as to command the confidence of the public;

- (d) *Physical condition*.—He should be in good physical and mental health;
- (e) *Indebtedness*.—He is not heavily indebted. In determining whether the indebtedness is so heavy as to be a disqualification, regard shall be had to his assets and his ability to pay off his debts. In particular, the Committee shall consider whether the indebtedness is such that it may, in the opinion of the Committee, be a source of embarrassment to the Honorary Magistrate in the honest and impartial discharge of his duties or impair his usefulness as an Honorary Magistrate;
- (f) *Sufficient Time and Leisure at his disposal*.—he has sufficient time and Leisure at his disposal to be able to hold Court for at least three days in the week during normal court hours.

Note.—Ladies are eligible for appointment as Honorary Magistrates.

3. (a) *Persons not eligible for appointments as Honorary Magistrates*.—No member of Parliament or State Legislature shall be eligible for appointment as an Honorary Magistrate.

(b) No person who is the President or Chairman of a Local body or Gaon Sabha or holds an elected public office or is in active political life shall be eligible for appointment as Honorary Magistrate.

(c) No person who has been disqualified for having committed a corrupt practice in connection with an election to the Parliament or the State Legislature or to a Local Body and no legal practitioner who has been debarred from practice shall be eligible for appointment as an Honorary Magistrate.

(d) No person who has been convicted of an offence involving moral turpitude shall be eligible for appointment as Honorary Magistrate.

(e) Ordinarily, a member of the legal profession shall not be eligible for appointment as an Honorary Magistrate. However, on the recommendation of the Committee, a Practising member of the Legal profession may be appointment as an Honorary Magistrate on his giving up the practice.

4. *Training to persons appointed as Honorary Magistrates.*-Unless the person recommended has previous experience of law and procedure in Criminal Courts or has already served as an Honorary Magistrate, his appointment shall be subject to his undergoing a course of practical training under a senior Stipendary Magistrate. In the beginning he should familiarize himself with the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act under the guidance of such Stipendiary magistrate and should watch the progress of trials in his court. After that he should be asked to take notes of evidence in criminal cases and write out his own judgment and submit them for the approval of the Magistrate. The period of such training shall normally be three months but may at the discretion of the District Magistrate be extended by a period not exceeding 6 months. At the end of this period if the Magistrate certifies that the person selected is competent to conduct criminal trials and write proper judgments, magisterial powers, may be conferred.

The District Magistrate, shall prescribe the mode and details of the training such as the type and number of cases each trainee is required to submit with notes and judgment to be recorded by him independently.

5. *Powers to be conferred on Honorary Magistrates.*-On first appointment as an Honorary Magistrate will generally be invested with Second Class Powers. But a person who has previously exercised second class powers as an Honorary Magistrate at least for a period of one year or is a graduate of a recognized University or has practiced as a lawyer may, if he is considered fit by the Selection Committee, be originally invested with first class Magisterial powers. Summary powers will not ordinarily be conferred upon Honorary Magistrates unless they are retired Judicial Officers.

6. *Term of appointment of Honorary Magistrate.*-The first appointment of an Honorary Magistrate shall be for a period of one year or less, terminable on 31st March next following. After this period he may be appointed for a further term not exceeding three years. Thereafter the term may be renewed from time to time for further period not exceeding three years. The term of an Honorary Magistrate should not be renewed beyond the age of 61 years. Any Honorary Magistrate shall be liable to be called upon to do law and order duties under instructions from the District Magistrate. The Government may, if it considers necessary, grant an Honorary Magistrate such conveyance allowance as it may consider reasonable. An Honorary Magistrate will take the oath of loyalty when he assumes office. He will comply with such directions as may be issued to him by the District Magistrate or such Senior or Magistrate as may be empowered in this behalf by the District Magistrate. An Honorary Magistrate desiring to resign his office shall be required to give the District Magistrate a month's notice.

7. *Recommendations for renewal, enhancement and withdrawal of powers.*-All recommendations for the renewal of the terms of Honorary Magistrates and for the enhancement of their powers shall be made by the Selection Committee at least one month in advance of the date of expiry of the term. Recommendations for the withdrawal of powers of Honorary Magistrates shall be made by the District Magistrate with the concurrence of the Selection Committee. Such a recommendation will be made only in exceptional cases such as abuse of position or patent unfitness of the individual.

8. *Location of courts.*-The court of an Honorary Magistrate or a Bench of Honorary Magistrates shall, unless otherwise permitted by Government, be held at the District or tehsil headquarters or in Government or Government rented buildings.

9. *Courts hours.*-Every Honorary Magistrate or Bench of Honorary Magistrates shall hold court during the hours prescribed by the District Magistrate, which

should ordinarily be within the hours fixed for the sittings of Stipendiary Magistrates. The hours fixed by the District Magistrate, shall not be changed without his previous sanction.

10. *Fixation of days for holding courts by Honorary Magistrates.*-The District Magistrate shall fix at least three days in the week on which every Honorary Magistrate shall take part in any election on which he shall hold court. The days fixed by the District Magistrate shall not be changed without his previous sanction.

11. *Disabilities of Honorary Magistrates.*-No Honorary Magistrate shall take part in any election to a local body or to State Legislature or to the Parliament otherwise than by casting his vote as an elector.

12. *Disqualifications of Honorary Magistrates.*-Should any Honorary Magistrate subsequent to his appointment incur any of the disqualifications imposed in these rules he will render himself liable to the withdrawal of his magisterial powers.

13. *Inspection of Honorary Magistrates' Courts.*-The Court of every Honorary Magistrate or Bench of Honorary Magistrates should be inspected at least once a year by the District Magistrate or the Additional District Magistrate, whose report should be sent through the District and Sessions Judge to the State Government.

14. Rule 2 will not be applicable to persons appointed as Honorary Magistrate prior to the coming into force of these rules for their current term of office.

The Chief Commissioners' notification No. F.-2(83)/49-R & J. dated the 8th September, 1949 and No.F-2 (83)/49-R & J. dated 18th February. 1950 are hereby cancelled.

CHAPTER 31
Sessions Divisions.

1. Under section 7 of the Code of Criminal Procedure, the Punjab State is divided into Sessions Divisions; and each Division is either a district itself or consists of districts. The limits of the districts are fixed by the State Government and in the Punjab they follow the boundaries of the ordinary revenue districts except in territories which immediately before the 1st of November, 1956, comprised PEPSU State. The limits of the Divisions are also fixed by the State Government. The number of districts and divisions is fixed by the State Government.

Limits.

2. The number of Sessions Divisions at present fixed for Punjab is 15, as shown in the attached list. The constitution of each division is shown in the second column of the list. No entry in this column is to be taken as fixing under section 9(2) of the Code, the place at which the Court of Sessions ordinarily to hold its sitting. The place of sitting is dealt with in paragraph 3 below.

Number of
Divisions.

No.	Sessions Division		District
1.	Hissar	...	Hissar,
2.	Karnal	...	Karnal.
3.	Rohtak	...	1. Rohtak.
		...	2. Gurgaon.
4.	Ferozepore	...	Ferozepore.
5.	Ambala	...	1 Ambala
			2 Shimla.
6.	Ludhiana	...	Ludhiana.
e.	Jullundur	...	Jullundur.
8.	Hoshiarpur.	...	1 Hoshiarpur.
			2 Kangra.
9.	Gurdaspur	...	Gurdaspur
10.	Amritsar	...	Amritsar
11.	Patiala	...	1 Patiala.
			2 Kandaghat
12.	Bhatinda	...	Bhatinda.
13.	Sangrur	...	1 Sangrur.
			2 Mohendragarh
14.	Barnala	...	Barnala
15.	Kapurthala	...	1. Kapurthala
			1. Fatehgarh Sahib

Place of trial.

Additional Sessions Judge.

3. Ordinarily the trial of a Sessions case should take place at the headquarters of the district from which committed; but if in any particular case the court of Sessions is of the opinion that it will tend to the convenience of the parties and witnesses to hold its sittings at any other place in the Sessions division, it may with the consent of the parties sit at that place for the disposal of the case or the examination of the witness(es).

4. In exercise of powers conferred by sub-section (4) of section 9 and sub-section (2) of section 193 of the Code of Criminal Procedure, the State Government has been pleased to appoint the Sessions Judges and Additional Sessions Judges entered in the first column of the schedule hereto appended, to be, by virtue of their offices Additional Sessions Judges of the divisions, respectively entered opposite to them in the second column of the said schedule and of direct that for the disposal of cases every such Additional Sessions Judge may sit at the headquarters of either or any such division and that every such Additional Sessions Judge shall have the power to try all cases triable by the Sessions Judge of the division which he is an Additional Sessions Judge.

SCHEDULE	
Sessions Judges	Divisions of which the Sessions Judge and Additional Sessions Judges entered in the first column are <i>ex officio</i> Additional sessions Judges
1	2
1. Sessions Judge, Hissar	Karnal, Ambala, Delhi, Rohtak, Sangrur, Ferozepur.
2. Sessions Judge, Karnal	Ludhiana, Ambala, Delhi, Rohtak, Hissar.
3. Sessions Judge, Ferozepur	Ludhiana, Amritsar, Hissar, Bhatinda, Karnal
4. Sessions Judge, Ambala	Karnal, Ludhiana, Patiala, Hissar.
5. Sessions Judge, Ludhiana	Ferozepur, Hoshiarpur, Ambala, Amritsar, Jullundur, Barnala.
6. Sessions Judge, Jullundur	Hoshiarpur, Amritsar, Ludhiana, Kapurthala.

SCHEDULE

Sessions Judges		Divisions of which the Sessions Judge and Additional Sessions Judges entered in the first column are <i>ex officio</i> Additional sessions Judges
1		2
7	Sessions Judge, Hoshiarpur	Jullundur, Amritsar, Ludhiana
8	Sessions Judge, Gurdaspur	Amritsar, Hoshiarpur, Jullundur
9	Sessions Judge, Amritsar	Gurdaspur, Jullundur
10	Sessions Judge, Delhi	Hissar, Karnal
11	Sessions Judge, Rohtak	Sangrur, Delhi.
12	Sessions Judge, Barnala	Ludhiana, Bhatinda, Sangrur
13	Sessions Judge, Bhatinda	Ferozepur, Barnala, Kapurthala.
14	Sessions Judge, Kapurthala	Jullundur, Ludhiana, Hoshiarpur, Ferozepur, Gurdaspur, Patiala.
15	Sessions Judge, Patiala	Ambala, Hissar, Karnal, Kapurthala, Sangrur, Barnala.
16	Sessions Judge, Sangrur	Hissar, Rohtak, Patiala, Barnala
17	Additional Sessions Judge, Ferozepur	Jullundur, Ludhiana, Hoshiarpur, Ambala, Hissar, Amritsar, Karnal, Bhatinda.
18	Additional Sessions Judge, Ambala	Patiala, Ludhiana, Karnal, Hoshiarpur, Hissar.
19	Additional Sessions Judge	Jullundur, Gurdaspur.
20	Additional Sessions Judge, Bhatinda at Faridkot	Barnala, Sangrur, Patiala.