

The Code of Criminal Procedure, 1898

(ACT NO. V OF 1898)

[22nd March, 1898]

¹An Act to consolidate and amend the law relating to the Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:

PART I

PRELIMINARY

CHAPTER I

Short title 1.(1) This Act may be called the Code of Criminal Procedure, 1898; and it
Commencement shall come into force on the first day of July, 1898.

Extent (2) It extends to the whole of Bangladesh; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special ²[* * *] law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Repealed 2. [Repealed by the Repealing and Amending Act, 1914 (Act No. X of 1914).]

(1) Omitted 3.(1) [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

(2) Expressions in former Acts (2) In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," ³[***] the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," ⁴[***].

Words referring to acts (2) Words which refer to acts done, extend also to illegal omissions; and

Words to have same meaning as in Penal Code

all words and expressions used herein and defined in the Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Definitions

4.(1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:-

⁵[(a) "advocate", used with reference to any proceeding in any Court, means an advocate or a mukhtar authorised under any law for the time being in force to practise in any such Court and includes any other person appointed with the permission of the Court to act in such proceeding;

(aa) "Attorney-General" means the Attorney-General for Bangladesh, and includes also the Additional Attorney-General, the Deputy Attorney-General or the Assistant Attorney-General for Bangladesh, or, a Government advocate or such officer as the Government may, from time to time, appoint in this behalf:]

(b) "bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

(c) "charge" includes any head of charge when the charge contains more heads than one:

(d) [Repealed by section 3 and Schedule II of the Repealing and Amending Act, 1923 (Act No. XI of 1923).]

(e) Clerk of the State includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the State:

(f) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant:

(g) [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

(h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer:

⁶[(hh) "Court of Session" includes a Metropolitan Court of Session;]

(i) [Omitted by the Schedule of the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950).]

⁷[(j) "High Court Division" means the High Court Division for criminal appeal or revision:]

(k) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court:

(l) "investigation" includes all the proceedings under this Code for the Collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorised by Magistrate in this behalf:

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath:

(n) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, may not arrest without warrant:

(o) "offence" means any act or omission made punishable by any law for the time being in force;

it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871:

(p) "officer in charge of a police-station" includes, when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the Government so directs, any other police-officer so present:

(q) "place" includes also a house, building, tent and vessel:

(r) [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)]:

(s) "police-station" means any post or place declared, generally or specially, by the Government to be a police-station, and includes any local area specified by the Government in this behalf:

(t) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor ⁸[* * *]:

⁹[(u) "Upazila" means a Upazila as defined in the Upazila Parisad Act, 1998 (Act. No. 24 of 1998)]

(v) and (w) [Omitted by section 2 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).]

Construction of references.

¹⁰[4A. (1) In this Code, unless the context otherwise requires, any reference-

(a) without any qualifying word, to a Magistrate, shall be construed as a reference to a Judicial Magistrate;

(b) with a qualifying word not being a word clearly indicating a Judicial Magistrate shall be construed as a reference to a Magistrate as indicated

in sub-section (2) (b);

(c) to a Sub-divisional Magistrate shall be construed as a reference to-
(i) the District Magistrate if the functions exercisable are of the nature specified in clause (b) of sub-section (2); or

(ii) the Chief Judicial Magistrate or as the case may be, the Chief Metropolitan Magistrate, if the functions exercisable are of the nature specified in clause (a) of sub-section (2);

(d) to an Assistant Sessions Judge, shall be construed as a reference to a joint Sessions Judge;

(e) to any area which is included in a Metropolitan area, shall be construed as a reference to such Metropolitan area;

(f) to any reference to a Magistrate of the first, second or third class in relation to an area which is included in a Metropolitan area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in that area;

(g) to a Magistrate of the first, second or third class in relation to an area outside a Metropolitan Area, shall be construed as a reference to a Judicial Magistrate of the first, second or third class exercising jurisdiction in that area.

(2) Where, under any law for the time being in force other than this Code, the functions exercisable by a Magistrate relate to matters-

(a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty of detention in custody pending investigation, inquiry or trial or other proceeding or would have the effect of sending him for trial before any Court, they shall subject to the provision of the Code, be exercisable by a judicial Magistrate; or

(b) which are administrative or executive in nature, such as the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.]

Trial of offences under Penal Code

5.(1) All offences under the Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

Trial of offences against other laws

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

PART II

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES

CHAPTER II

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES

A.-Classes of Criminal Courts

Classes of Criminal Courts

¹¹[6.(1) Besides the Supreme Court and the Courts constituted under any law for the time being in force, other than this Code, there shall be two classes of Criminal Courts in Bangladesh, namely:-

(a) Courts of Sessions ; and

(b) Courts of Magistrates.

(2) There shall be two classes of Magistrate, namely: -

(a) Judicial Magistrate; and

(b) Executive Magistrate.

(3) There shall be four classes of judicial Magistrate, namely: -

(a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas;

(b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate;

(c) Magistrate of the second class; and

(d) Magistrate of the third class.

Explanation: For the purpose of this sub-section, the word "Chief Metropolitan Magistrate" and "Chief judicial Magistrate" shall include "Additional Chief Metropolitan Magistrate" and "Additional Chief judicial Magistrate" respectively.]

B. -Territorial Divisions

Sessions divisions and districts

7.(1) Bangladesh shall consist of sessions divisions: and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

Power to alter divisions and districts

(2) The Government may alter the limits or the number of such divisions and districts.

Existing divisions and districts

. (3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

maintained till altered	¹² [(4) ¹³ [A] Metropolitan Area shall, for the purposes of this Code, be deemed to be a sessions division.]
Power to divide districts into Upazilas etc	¹⁴ [8. The Government may divide a district into Upazilas and, by notification in the official Gazette, fix or alter the limits of a Upazila or merge the areas of more than one Upazila into one Upazila and in so fixing, altering or merging, the Government shall ensure that the area of a Upazila is identical with the local area included in a Police Station.]
Existing sub-divisions maintained	(2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.-Courts and Offices

Court of Sessions	<p>9.(1) The Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court ¹⁵]; and the Court of Session for ¹⁶[a] Metropolitan Area shall be called the Metropolitan Court of Session.]</p> <p>(2) The Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.</p> <p>(3) The Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.</p> <p>¹⁷[***]]</p> <p>¹⁸[(3A) The members of the Bangladesh Judicial Service shall be appointed as Sessions Judge, Additional Sessions Judge and Joint Sessions Judge in accordance with the rules framed by the President under the proviso to Article 133 of the constitution to exercise jurisdiction in one or more of such areas.]</p> <p>(4) A Sessions Judge of one sessions division may be appointed by the Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Government may direct.</p> <p>(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.</p>
Executive Magistrates	¹⁹ [10.(1) In every district and in every Metropolitan Area, the Government shall appoint as many persons as it thinks fit to be

Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The Government may also appoint any Executive Magistrate to be an Additional District Magistrate, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the Government may direct.

(3) Whenever in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive in the administration of the district, such officer shall, pending the orders of the Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The Government may, or subject to the control of the Government, the District Magistrate may, from time to time, by order define local areas within which the Executive Magistrate may exercise all or any of the powers with which they may be invested under this Code and, except as otherwise provided by such definition, the jurisdiction and powers of every such Executive Magistrate shall extend throughout the district.

(5) The Government may, if it thinks expedient or necessary, appoint any persons employed in the Bangladesh Civil Service (Administration) to be an Executive Magistrate and confer the powers of an Executive Magistrate on any such member.

(6) Subject to the definition of the local areas under sub-section (4) all persons appointed as Assistant Commissioners, Additional Deputy Commissioners or Upazila Nirbahi Officer in any District or Upazila shall be Executive Magistrates and may exercise the power of Executive Magistrate within their existing respective local areas.

(7) Nothing in this section shall preclude the Government from conferring, under any law for the time in force, on a Commissioner of Police, all or any of the powers of an executive Magistrate in relation to a Metropolitan area.]

Judicial Magistrates

²⁰[11. (1) In every district outside a Metropolitan Area, the Chief Judicial Magistrates, Additional Chief Judicial Magistrates and other Judicial Magistrates shall be appointed from the persons employed in the Bangladesh Judicial service in accordance with the rules framed by the President under the proviso to Article 133 of the constitution.

(2) An Additional Chief Judicial Magistrate shall have all or any of the powers of the Chief Judicial Magistrate under this Code or any other law for the time being in force, as the Government may direct.

²¹[(2A) The Government may, by general or special order in the official Gazette, direct at what place or places the Court of Chief Judicial

Magistrate, Additional Chief Judicial Magistrate and other Judicial Magistrates shall hold its sitting.]

(3) The Government may, or subject to the general or special orders issued by the Government in consultation with the High Court Division, the Chief Judicial Magistrate may, from time to time, define local areas within which the Judicial Magistrates may exercise all or any of the powers with which they may be invested under this Code, and except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

(4) Notwithstanding anything contained in this section, the Government may require any Executive Magistrate to perform the functions of a Judicial Magistrate for a period to be determined in consultation with the High Court Division and during such period, the Magistrate shall not perform the functions of an Executive Magistrate.]

Special Magistrate

²²[12. (1) The Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on an Executive Magistrate in respect of particular cases or a particular class or classes of cases, or in regard to cases generally in any local area outside a Metropolitan area:

Provided that no power shall be conferred under the sub-section on any police officer below the grade of an Assistant Superintendent of Police and no powers shall be conferred on a such police officer except so far as may be necessary for preserving the peace, preventing crime and detecting apprehending and detaining offenders, in order to bring the offender before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

(2) The persons on whom the powers under sub-section (1) are conferred shall be called Special Executive Magistrates and shall be appointed for such term as the Government may by general or special order direct.

(3) The Government may, in consultation with the High Court Division confer upon any Magistrate all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the first, second or third class in respect of particular cases or a particular class or classes of cases or in regard to cases generally in any local area outside a Metropolitan area.

(4) The Magistrate on whom the powers under sub-section (3) are conferred shall be called Special Magistrates and shall be appointed for such term as the Government may, in consultation with the High Court Division, by general or special order direct.

(5) The Government may in consultation with the High Court Division confer upon any Metropolitan Magistrate all or any of the powers conferred or conferrable by or under this Code on Metropolitan Magistrate in respect of particular cases or a particular class or classes, or in regard to cases generally in any Metropolitan Area.

(6) The persons on whom the powers under sub-section (5) are conferred shall be called Special Metropolitan Magistrates and shall be appointed for such term as the Government may in consultation with High Court Division by general or special order direct.]

Benches of Magistrates

15.(1) The Government may direct any two or more Magistrates in any place ²³[outside ²⁴[a] Metropolitan Area] to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or, such classes of cases only, and within such local limits, as the Government thinks fit.

Powers exercisable by Bench in absence of special direction

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Power to frame rules for guidance of Benches

16. The Government may, or, subject to the control of the Government, the ²⁵[Chief Judicial Magistrate] may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:-

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;
- (c) the constitution of the Bench for conducting trials;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

Subordination of Executive, Judicial and Metropolitan Magistrates.

²⁶[17. (1) All Executive Magistrate appointed under section 10 and 12 (1) shall be subordinate to the District Magistrate who, from time to time, give special order consistent with this Code as to the distribution of business among such Magistrates.

(2) All Judicial Magistrates appointed under section 11 and 12 (3) and all Benches constituted under section 15 shall be subordinate to the Chief Judicial Magistrate who may, from time to time give special orders consistent with this Code and rules made by the Government under section 16 as to the distribution of business among Magistrates and Benches.

(3) All Metropolitan Magistrates including Additional Chief Metropolitan Magistrate, and Special Metropolitan Magistrate appointed under section 12 (5) and Benches constituted under section 19, shall be subordinate to the chief Metropolitan Magistrate, who may, from time to time, give special

orders consistent with this Code and rules made by the Government under section 16 as to the distribution of business among such Magistrates and Benches.

(4) All Judicial Magistrates including the Chief Judicial Magistrate shall be subordinate to the Sessions Judge and all Metropolitan Magistrates including the Chief Metropolitan Magistrate shall be subordinate to the Metropolitan Sessions Judge.

Subordination of Joint Sessions Judges

²⁷[17A. (1) All Joint Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and the Sessions Judge may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such joint Sessions Judges.

(2) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Joint Sessions Judge and such Judge shall have jurisdiction to deal with any such application.]

D.-Courts of Metropolitan Magistrates

Appointment of Metropolitan Magistrates

18. ²⁸[(1) In every Metropolitan Area, the Chief Metropolitan Magistrate, Additional Chief Metropolitan Magistrate and other Metropolitan Magistrates shall be appointed from among the persons employed in the Bangladesh judicial Service.]

(2) The Government may appoint one or more Additional Chief Metropolitan Magistrates, and such Additional Chief Metropolitan Magistrates shall have all or any of the powers of the Chief Metropolitan Magistrate under this Code or under any other law for the time being in force, as the Government may direct.

²⁹[***]

Benches

19. Any two or more of Metropolitan Magistrates may, subject to the rules made by the Chief Metropolitan Magistrate, sit together as Bench.

Local limits of jurisdiction

20. Every Metropolitan Magistrate shall exercise jurisdiction in all places within ³⁰[a] Metropolitan Area for which he is appointed.

Chief Metropolitan Magistrate

21.(1) The Chief Metropolitan Magistrate shall exercise within the local limits of his jurisdiction all the powers ³¹[conferred on him or on a Metropolitan Magistrate under this Code, or under any law for the time being in force] and may, from time to time, with the previous sanction of the Government, make rules consistent with this Code to regulate-

- (a) the conduct and distribution of business and the practice in the Courts of Metropolitan Magistrates;
- (b) the constitution of Benches of Metropolitan Magistrates;
- (c) the times and places at which such Benches shall sit;
- (d) the mode of settling differences of opinion which may arise between Metropolitan Magistrates in session; and
- (e) any other matter which could be dealt with by a ³²[Chief Judicial Magistrate] under his general powers of control over the Magistrates subordinate to him.

³³[***]

E.-Justices of the Peace

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| Justice of the peace for the mafassal | 22. ³⁴ [The Government] may, by notification in the official Gazette, appoint such persons resident within Bangladesh and not being the subjects of any foreign State as it thinks fit to be Justices of the Peace within and for the local area mentioned in such notification. |
| Repealed | 23 and 24. [Repealed by section 4 of the Criminal Law Amendment Act, 1923 (Act No. XII of 1923).] |
| Ex-officio Justices of the Peace. | 25. In virtue of their respective offices, the Judges of the ³⁵ [Supreme Court] are Justices of the Peace within and for of the whole of Bangladesh, Sessions Judges, ³⁶ [Chief Judicial Magistrate] and Metropolitan Magistrates] are Justices of the Peace within ³⁷ [their respective jurisdictions]. |

F.-Suspension and Removal

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| Repealed | 26 and 27. [Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.] |
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CHAPTER III POWERS OF COURTS

A.-Description of Offences cognizable by each Court

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| Offences under Penal Code | 28. Subject to the other provisions of this Code any offence under the Penal Code may be tried- <ul style="list-style-type: none"> (a) by the High Court Division, or (b) by the Court of Session, or (c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable. |
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Illustration

A is ³⁸[tried by] the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

Offences under other laws

29.(1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried ³⁹[* * *] subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

Omitted

29A. [Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950).]

Jurisdiction in the case of juveniles

⁴⁰[29B. Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by ⁴¹[Chief Judicial Magistrate] ⁴²[or the Chief Metropolitan Magistrate], or by any Magistrate specially empowered by the Government to exercise the powers conferred by ⁴³[or under any law] providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.]

Offences not punishable with death

⁴⁴[29C. Notwithstanding anything contained in section 29, the Government may ⁴⁵[in consultation with the High Court Division]-

(a) invest the ⁴⁶[Chief Metropolitan Magistrate,] ⁴⁷[Chief Judicial Magistrate or any Additional Chief Judicial Magistrate] with power to try as a Magistrate all offences not punishable with death;

(b) invest ⁴⁸[Metropoliton Magistrate or] any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with transportation or with imprisonment for a term exceeding ten years.]

Omitted

30. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

B.-Sentences which may be passed by courts of various Classes

Sentences which High Court Division and

31.(1) ⁴⁹[The High Court Division] may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any

Sessions Judges may pass	<p>such Judge shall be subject to confirmation by the High Court Division.</p> <p>(3) A ⁵⁰[Joint] Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding ⁵¹[ten] years or of imprisonment for a term exceeding ²⁵²[ten] years.</p> <p>⁵³[***]</p>
Sentences which Magistrates may pass	<p>32.(1) The Courts of Magistrates may pass the following sentences namely:-</p> <p>(a) Courts ⁵⁴[of Metropolitan Magistrates and] of Magistrates of the first class: Imprisonment for a term not exceeding ⁵⁵[five years], including such solitary confinement as is authorized by law;</p> <p>Fine not exceeding ⁵⁶[ten thousand taka]; Whipping.</p> <p>(b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding ⁵⁷[three years], including such solitary confinement as is authorized by law;</p> <p>Fine not exceeding ⁵⁸[five thousand taka];</p> <p>(c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding ⁵⁹[two year];</p> <p>Fine not exceeding ⁶⁰[two thousand taka].</p> <p>(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.</p>
Power of Magistrates to sentence to imprisonment in default of fine	<p>33.(1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default:</p>
Higher powers of certain Magistrates	<p>⁶¹[33A. The Court of a Magistrate, specially empowered under section 29C, may pass any sentence authorized by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years.]</p>
Proviso as to certain cases	<p>Provided that-</p> <p>(a) the term is not in excess of the Magistrate's powers under this Code;</p> <p>(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.</p>

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Omitted 34. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

Omitted 34A. [Omitted by Schedule of the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950).]

B.-Sentences which may be passed by courts of various Classes

Sentence in cases of conviction of several offences at one trial
Maximum term of punishment

35.(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Penal Code sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) if the case is tried by a Magistrate ⁶²[* * *], the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

B.-Sentences which may be passed by courts of various Classes

Deduction of imprisonment in cases

⁶³[35A.(1) Except in the case of an offence punishable only with death, when any court finds an accused guilty of an offence and, upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total

**where
convicts
may have
been in
custody**

period the accused may have been in custody in the meantime, in connection with that offence.

(2) If the total period of custody prior to conviction referred to in subsection (1) is longer than the period of imprisonment to which the accused is sentenced, the accused shall be deemed to have served out the sentence of imprisonment and shall be released at once, if in custody, unless required to be detained in connection with any other offence; and if the accused is also sentenced to pay any fine in addition to such sentence, the fine shall stand remitted.]

C.-Ordinary and Additional Powers

**Ordinary
powers of
Magistrates**

36. All ⁶⁴[Judicial and Executive Magistrate] have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers".

**Additional
powers
conferrable
on
Magistrates.**

⁶⁵[37. In addition to his ordinary powers, any Judicial or Executive Magistrate may be invested by the Government or the Chief Judicial Magistrate or the District Magistrate, as the case may be, with any powers specified in the schedule IV:

Provided that, the Government may authorize a District Magistrate to invest any Executive Magistrate subordinate to him with any of its powers specified in the schedule IV:

Provided further that any Judicial Magistrate may be invested with such additional powers in consultation with the High Court Division.]

**Control of
District
Magistrates
investing
power**

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Government.

D.-Conferment, Continuance and Cancellation of Powers

**Mode of
conferring
powers**

39.(1) In conferring powers under this Code the Government may by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

**Powers of
officers
appointed**

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is appointed to an equal or higher office of

the same nature, within a like local area ⁶⁶[***], he shall, unless the Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

**Withdrawal
of powers.**

⁶⁷[41.(1)The Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it:

Provided that where the conferring of a power is, under this code, required to be made in consultation with the High Court Division, the withdrawal thereof shall be made in consultation with that Court.

(2) Any powers conferred by the Chief Judicial Magistrate or the District Magistrate may be withdrawn by the chief Judicial Magistrate or the District Magistrate respectively.]

PART III

GENERAL PROVISIONS

CHAPTER IV

**OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS
MAKING ARRESTS**

**Public
when to
assist**

42. Every person is bound to assist ⁶⁸[any Magistrate whether Judicial or Executive] or police officer reasonably demanding his aid,-

(a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

**Aid to
person,
other than
police-
officer,
executing
warrant**

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

**Public to
give
information
of certain
offences**

44.(1) Every person, aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of

proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of Bangladesh which would constitute an offence if committed in Bangladesh.

Village-headmen, accountants, landholders and others bound to report certain matters.

45.(1) Every village-headman, village-accountant, village watchman, village-landholder, police-officer, owner or occupier of land, and the agent of any such owner or occupier in charge of the management of that land, and every officer employed in the collection of revenue or rent of land on the part of the Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station whichever is the nearer, any information which he may possess respecting-

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender;

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Penal Code;

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances; or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;

(e) the commission of, or intention to commit, at any place out of Bangladesh near such village any act which, if committed in Bangladesh, would be an offence punishable under any of the following sections of the Penal Code, namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489A, 489B, 489C, and 489D;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Government, has directed him to communicate information.

(2) In this section-

(i) "village" includes village-lands; and

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Government in any part of Bangladesh, in respect of any act which if committed in Bangladesh, would be punishable under any of the following sections of the Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Appointment of village-headman by District Magistrate ⁶⁹[*] in certain cases for purposes of this section**

(3) Subject to rules in this behalf to be made by the Government, the District Magistrate ⁷⁰[***] may from time to time appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.

CHAPTER V OF ARREST, ESCAPE AND RETAKING

A.-Arrest generally

Arrest how made

46.(1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest

(2) If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with ⁷¹[transportation for life].

Search of place entered by person sought to be arrested

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable

48. If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to

enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

**Breaking
open
zanana**

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

**Power to
break open
doors and
windows
for
purposes of
liberation**

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

**No
unnecessary
restraint**

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

**Search of
arrested
persons**

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

Whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

**Mode of
searching
women**

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

**Power to
seize
offensive
weapons**

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.-Arrest without Warrant

When police may arrest without warrant

54.(1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest-

firstly , any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly , any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

thirdly , any person who has been proclaimed as an offender either under this Code or by order of the Government;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh ⁷²[* * *];

seventhly , any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

eighthly , any released convict committing a breach of any rule made under section 565, sub-section (3);

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Arrest of vagabonds, habitual robbers, etc.

55.(1) Any officer in Charge of a police-station may, in like manner, arrest or cause to be arrested-

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

Procedure when police-officer deposes subordinate to arrest without warrant

56.(1) When any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

Refusal to give name and residence

57.(1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in Bangladesh, the bond shall be secured by a surety or sureties resident in Bangladesh.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Pursuit of offenders into other jurisdictions

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, pursue such person into any place in Bangladesh.

Arrest by private persons and procedure

59.(1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.

on such arrest	<p>(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.</p> <p>(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.</p>
Person arrested to be taken before Magistrate or officer in charge of police-station	60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.
Person arrested not to be detained more than twenty-four hours	61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.
Police to report apprehensions.	62. Officers in charge of police-stations shall report ⁷³ [in ⁷⁴ [a] Metropolitan Area, to the Chief Metropolitan Magistrate, and in other areas, to the District Magistrate, ⁷⁵ [and also to the Chief Judicial Magistrate] the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.
Discharge of person apprehended	63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.
Offence committed in Magistrate's presence	64. When any offence is committed in the presence of a Magistrate ⁷⁶ [whether Executive or Judicial] within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail commit the offender to custody.
Arrest by or in presence	65. Any Magistrate ⁷⁷ [whether Executive or Judicial] may at any time arrest or direct the arrest, in his presence, within the local limits of his

of Magistrate.	jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.
Power, on escape, to pursue and retake	66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in Bangladesh.
Provisions of sections 47, 48 and 49 to apply to arrest under section 66	67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

CHAPTER VI OF PROCESSES TO COMPEL APPEARANCE

A.-Summons

Form of summons	68.(1) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the ⁷⁸ [Supreme Court] may, from time to time, by rule, direct.
Summons by whom served	(2) Such summons shall be served by a police-officer, or subject to such rules as the Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.
Summons how served	69.(1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.
Signature of receipt for summons	(2) Every person on whom a summons is so served shall if so required by the serving officer, sign a receipt therefor on the back of the other duplicate. (3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in Bangladesh. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.
Service when	70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates

person summoned cannot be found for him with some adult male member of his family, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

Procedure when service cannot be effected as before provided 71. If service in the manner mentioned in sections 69 and 70 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Service on servant of Republic 72.(1) Where the person summoned is in the active service of the ⁷⁹[Republic], the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.
(2) Such signature shall be evidence of due service.

Service of summons outside local limits 73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases and when serving officer not present 74.(1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.
(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.-Warrant of Arrest

Form of warrant of arrest Continuance 75.(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench, and shall bear the seal of the Court.

of warrant of arrest	(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.
Recognizance to be forwarded	(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.
Court may direct security to be taken	<p>76.(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.</p> <p>(2) The endorsement shall state-</p> <p>(a) the number of sureties;</p> <p>(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and</p> <p>(c) the time at which he is to attend before the Court.</p>
Warrants to whom directed	77.(1) A warrant of arrest shall ordinarily be directed to one or more police-officers, ⁸⁰ [and, when issued by a Metropolitan Magistrate, shall always be so directed; but any other Court] issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.
Warrants to several persons	(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.
Warrant may be directed to landholders, etc.	<p>78.(1) ⁸¹[Magistrate of the first class] may direct a warrant to any landholder, farmer or manager of land within his ⁸²[local Jurisdiction] for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.</p> <p>(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, his land or farm, or the land under his charge.</p> <p>(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.</p>
Warrant directed to	79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the

police-officer	officer to whom it is directed or endorsed.
Notification of substance of warrant	80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so require, shall show him the warrant.
Person arrested to be brought before Court without delay	81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.
Where warrant may be executed	82. A warrant of arrest may be executed at any place in Bangladesh.
Warrant forwarded for execution outside jurisdiction	<p>83.(1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any ⁸³[Executive Magistrate or District Superintendent of police] ⁸⁴[or, the Police Commissioner in ⁸⁵[a Metropolitan Area]] within the local limits of whose jurisdiction it is to be executed.</p> <p>(2) The Magistrate or District Superintendent ⁸⁶[or Police Commissioner] to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.</p>
Warrant directed to police-officer for execution outside jurisdiction	<p>84.(1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to ⁸⁷[an Executive Magistrate] or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.</p> <p>(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.</p> <p>(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the</p>

local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

Procedure on arrest of person against whom warrant issued

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than ⁸⁸[the Executive Magistrate] or District Superintendent of Police ⁸⁹[or the Police Commissioner in ⁹⁰[a Metropolitan Area]] within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or ⁹¹[Police Commissioner or District Superintendent of Police].

Procedure by Magistrate before whom person arrested is brought.

86.(1) ⁹²[Such Executive Magistrate or] ⁹³[District Superintendent of Police] ³⁹⁴[or Police Commissioner] shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, ⁹⁵[District Superintendent of Police] ³⁹⁶[or Police Commissioner] or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction the Magistrate, ⁹⁷[District Superintendent of Police] ³⁹⁸[or Police Commissioner] shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant ⁹⁹:

Provided further that, if the offence is a non-bailable offence or no direction has been endorsed under section 76 on the warrant, the Sessions Judge or The Metropolitan Sessions Judge, the Chief Judicial Magistrate or the Chief Metropolitan Magistrate or a Magistrate of the first class Specially empowered in this behalf, in whose local jurisdiction the person is arrested, may, subject to the provisions of section 497 and for reasons to be recorded in writing, release the person on an interim bail on such bond or security as the Judge or the Magistrate thinks fit and direct the person to appear by a specified date before the Court which issued the warrant and forward the bond to that Court.]

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.-Proclamation and Attachment

Proclamation for person

87.(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be

absconding

executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding

88.(1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the ¹⁰⁰[local area] in which it is made; and it shall authorize the attachment of any property belonging to such person without such ¹⁰¹[local area] when endorsed by the District Magistrate ¹⁰²[Chief Judicial Magistrate] ¹⁰³[or Chief Metropolitan Magistrate] within whose ¹⁰⁴[local area] such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the Government, be made through the Collector of the district in which the land is situate, and in all other cases-

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under ¹⁰⁵[Order XL of the First Schedule to the Code of Civil Procedure, 1908].

(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate, ¹⁰⁶[Chief Judicial Magistrate] ¹⁰⁷[or Chief Metropolitan Magistrate] in accordance with the provisions of sub-section (2), in the Court of such Magistrate.

(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a ¹⁰⁸[Chief Judicial Magistrate] ¹¹⁰⁹[or Chief Metropolitan Magistrate] such Magistrate may make it over for disposal to any Magistrate ¹¹⁰[***] [or to any Metropolitan Magistrate, as the case may be] subordinate to him.

(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Government, but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section, unless it is subject to speedy and natural decay, or the Court

considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Restoration of attached property

89. If, within two years from the date of the attachment any person whose property is or has been at the disposal of the Government, under subsection (7) of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.-Other Rules regarding Processes

Issue of warrant in lieu of, or in addition to, summons

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person ¹¹¹[* * *] issue, after recording its reasons in writing, a warrant for his arrest-

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Power to take bond for appearance

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

Arrest by breach of bond for appearance

92. When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear, the officer presiding in such Court, may issue a warrant directing that such person be arrested and produced before him.

Provisions of this Chapter generally applicable to

93. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall so far as may be, apply to every summons and every warrant of arrest issued under this Code.

**summonses
and
warrants of
arrest**

E.-Special Rules regarding processes issued for service or execution

**Sending of
warrants
for
execution
outside
Bangladesh**

93B. Notwithstanding anything contained in section 82, where a Court in Bangladesh desires that a warrant issued by it for the arrest of an accused person shall be executed at any place outside Bangladesh within the local limits of the jurisdiction of a Court established or continued by the authority of the Government in exercise of its foreign jurisdiction, it may send such warrant, by post or otherwise, to the presiding officer of that Court to be executed.

**Sending of
summons
for service
outside
Bangladesh**

93A.(1) Where a Court in Bangladesh desires that a summons issued by it to an accused person shall be served at any place outside Bangladesh within the local limits of the jurisdiction of a Court established or continued by the authority of the Government in exercise of its foreign jurisdiction, it shall send such summons, in duplicate, by post or otherwise, to the presiding officer of that Court to be served.

(2) The provisions of section 74 shall apply in the case of a summons sent for service under this section as if the presiding officer of the Court to whom it was sent were a Magistrate in Bangladesh.

**Service and
execution
in
Bangladesh
of
processes
received
from
outside
Bangladesh**

93C.(1) Where a Court has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by a Court established or continued by the authority of the Government in exercise of its foreign jurisdiction, outside Bangladesh it shall cause the same to be served or executed as if it were a summons or warrant received by it from a Court in Bangladesh for service or execution within the local limits of its jurisdiction.

(2) Where any warrant of arrest has been so executed the person arrested shall so far as possible be dealt with in accordance with the procedure prescribed by sections 85 and 86.]

CHAPTER VII

**OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER
MOVABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY
CONFINED**

A.-Summons

**Summons
to produce**

94.(1) Whenever any Court, or any officer in charge of a police-station considers that the production of any document or other thing is necessary

**document
or other
thing**

or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order:

Provided that no such officer shall issue any such order requiring the production of any document or other thing which is in the custody of a bank or banker as defined in the Bankers' Books Evidence Act, 1891 (Act No. XVIII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except,-

(a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and sections 421 to 424 (both inclusive) and sections 465 to 477A (both inclusive) of the Penal Code, with the prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court Division.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

**Procedure
as to letters
and
telegrams**

95.(1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, ¹¹²[Chief Judicial Magistrate] ¹¹³[Chief Metropolitan Magistrate] High Court Division or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any ¹¹⁴[other Magistrate, whether Executive or Judicial] ¹¹⁵[Police Commissioner] or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, ¹¹⁶[Chief Judicial Magistrate], [Chief Metropolitan Magistrate] or Court.

When search-warrant may be issued

96.(1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition, or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate, ¹¹⁷[Chief Judicial Magistrate, as the case may be] [or Chief Metropolitan Magistrate] to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

Power to restrict warrant

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house

98.(1) If a District Magistrate, ¹¹⁸[or an Executive Magistrate specially empowered by the Government in this behalf,] upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

or, if a District Magistrate, ¹¹⁹[or an Executive Magistrate specially empowered by the Government in this behalf,] upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Penal Code or that any such obscene objects are kept or deposited in any place; he may by his warrant authorize any police-officer above the rank of a constable-

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials or of any such obscene objects as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials or such obscene objects before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials or such obscene objects knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported.

(2) The provisions of this section with respect to-

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to-

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into Bangladesh in contravention of any notification for the time being in force under ¹²⁰[section 16 of the Customs Act, 1969],

(b) pieces of metal suspected to have been so made or to have been so brought into Bangladesh or to be intended to be issued in contravention of the former of those Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.

Disposal of things found in search beyond jurisdiction

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Application to High Court Division to set aside order of forfeiture	99B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the High Court Division to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain ¹²¹ [any such matter, word or visible representation,] as is referred to in sub-section (1) of section 99A.
Hearing by Special Bench	99C. Every such application shall be heard and determined by a Special Bench of the High Court Division composed of three Judges.
Order of Special Bench setting aside forfeiture	99D.(1) On receipt of the application, the Special bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained ¹²² [any such matter, word or visible representation] as is referred to in sub-section (1) of section 99A, set aside the order of forfeiture. (2) Where there is a difference of opinion among the judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those Judges.
Evidence to prove nature or tendency of newspapers	99E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid or the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper in respect of which the order of forfeiture was made.
Procedure in High Court Division	99F. ¹²³ [The Supreme Court] shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.
Jurisdiction barred	99G. No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of section 99B.]
Power to declare certain publications forfeited and to issue	¹²⁴ [¹²⁵ [99A.(1) Where any newspaper, or book or any document wherever printed, appears to the Government to contain- (a) any matter the publication of which is punishable under section 123A or section 124A or section 153A or section 292 or section 295A or section 505 or section 505A of the Penal Code (Act XLV of 1860), or

search warrants for the same

(b) any matter which is defamatory of the President of Bangladesh, ¹²⁶[***], the Prime Minister of the Government, the Speaker of Parliament or the Chief Justice of Bangladesh, or

(c) any matter which is grossly in-docent or is scurrilous or obscene, or

(d) any words or visible representations which incite, or which are likely to incite, any person or class of persons to commit any cognizable offence,

the Government may, by notification in the official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, words or visible representations, and every copy of such book or other document to be forfeited to Government, and thereupon any police-officer may seize the same wherever found in Bangladesh and any Magistrate may by warrant authorise any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1), "newspaper", "book" and "document" have the same meaning as in the Printing Presses and Publications (Declaration and Registration) Act, 1973 (XXIII of 1973).]

C.-Discovery of Persons Wrongfully Confined

Search for persons wrongfully confined.

100. If any ¹²⁷[Metropolitan Magistrate], Magistrate of the first class or ¹²⁸[or an Executive Magistrate] has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search- warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.-General Provisions Relating to Searches

Direction, etc., of search-warrants

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply, to all search-warrants issued under section 96, section 98, section 99A or section 100.

Persons in charge of closed place to allow search

102.(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section

48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

Search to be made in presence of witnesses

103.(1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Penal Code.

E.- Miscellaneous

Power to impound document, etc., produced

104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

Magistrate may direct search in his presence

105. ¹²⁹[Any Magistrate, whether Executive or Judicial] may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV

PREVENTION OF OFFENCES

CHAPTER VIII

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

A.-Security for keeping the Peach on Conviction

Security for keeping the peach on conviction

106.(1) Whenever any person accused of any offence punishable under Chapter VIII of the Penal Code, other than an offence punishable under section 143, section 149, section 153A or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before High Court Division, a Court of Session, or the Court of ¹³⁰[a Metropolitan Magistrate], ¹³¹[***] or a Magistrate of the first class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court ¹³²[***] or by the High Court Division when exercising its powers of revision.

B.-Security for keeping the peach in the Cases and Security for Good Behaviour

Security for keeping the peace in other cases

107.(1) Whenever ¹³³[a District Magistrate or any other Executive Magistrate] is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate if in his opinion there is sufficient ground for proceeding may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, ¹³⁴[other than the] ¹³⁵[***] District Magistrate, unless both the person informed against and the place where the breach of the peace or

disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

Procedure of Magistrate not empowered to act under sub-section (1)

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this Chapter.

Security for good behaviour from persons disseminating seditious matter

108. ¹³⁶[Whenever the ¹³⁷[District Magistrate, or any other Executive Magistrate"] specially empowered by the Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing or in any other manner intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of,-

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 123A or section 124A of the Penal Code, or

(b) any matter the publication of which is punishable under section 153A of the Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Penal Code,

such Magistrate, if in his opinion there is sufficient ground for proceeding may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the [provisions of the Printing Presses and Publications (Declaration and Registration) Act, 1973], with reference to any matters contained in such publication except by the order or under the authority of the Government or some officer empowered by the Government in this behalf.

Security for good behaviour

109. Whenever ¹³⁸[District Magistrate or an Executive Magistrate] receive information-

from vagrants and suspected persons	<p>(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or</p> <p>(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.</p>
Security for good behaviour from habitual offenders	<p>110. Whenever a ¹³⁹[District Magistrate, or any other Executive Magistrate] specially empowered in this behalf by the Government receives information that any person within the local limits of his jurisdiction-</p> <p>(a) is by habit a robber, house-breaker, thief, or forger, or</p> <p>(b) is by habit a receiver of stolen property knowing the same to have been stolen, or</p> <p>(c) habitually protects or harbours thieves or aids, in the concealment or disposal of stolen property, or</p> <p>(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Penal Code, or under section 489A, section 489B, section 489C or section 489D of that Code, or</p> <p>(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or</p> <p>(f) is so desperate and dangerous as to render his being at large without security hazardous to the community,</p> <p>such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.</p>
Repealed	<p>111. [Repealed by section 8 of the Criminal Law Amendment Act, 1923 (Act No. XII of 1923).]</p>
Order to be made	<p>112. When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.</p>

Procedure in respect of person present in Court

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under section 112 to accompany summons or warrant

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information

117.(1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that:-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties of the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112.

(4) for the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

**Order to
give
security**

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties the Magistrate shall make an order accordingly:

Provided-

firstly , that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

**Discharge
of person
informed
against**

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and

if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.-Proceedings in all Cases subsequent to Order to furnish Security

Commencement of period for which security is required 120.(1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

Contents of bond 121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties 122.(1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond:

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing:

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

Imprisonment in default of 123.(1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period

security	for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.
Kind of imprisonment	<p>(5) Imprisonment for failure to give security for keeping the peace shall be simple.</p> <p>(6) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108 be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.</p>
Proceedings when to be laid before High Court Division or Court of Sessions	<p>(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge; and the proceedings shall be laid, as soon as conveniently may be, before such Judge.</p> <p>(3) The Sessions Judge, after examining such proceedings and requiring from the Magistrate any further information or evidence which he thinks necessary, may pass such order on the case as he thinks fit:</p> <p>Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.</p> <p>(3A) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.</p> <p>(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or ¹⁴⁰[Joint] Sessions Judge and upon such transfer, such Additional Sessions Judge or ¹⁴¹[Joint] Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings</p> <p>(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.</p>
Power to release	124.(1) Whenever the District Magistrate ¹⁴² [***] is of opinion that any person imprisoned for failing to give security under this Chapter may be

**persons
imprisoned
for failing
to give
security**

released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the ¹⁴³[***] District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate ¹⁴⁴[***], by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate ¹⁴⁵[***].

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate ¹⁴⁶[***], may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

**Power of
District
Magistrate
to cancel
any bond
for keeping
the peach**

125. The ¹⁴⁷[***] District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

**or good
behaviour**

**Discharge
of sureties**

126.(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a ¹⁴⁸[District Magistrate or any other Executive Magistrate] to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

**Security for
unexpired
period of
bond**

¹⁴⁹[126A.] When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX

UNLAWFUL ASSEMBLIES

**Assembly
to disperse
on
command
of
Magistrate
or police
officer**

127.(1) Any ¹⁵⁰[Executive Magistrate] or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

**Use of civil
force to
disperse**

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any ¹⁵¹[Executive Magistrate] or officer in charge of a police-station, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer, soldier, sailor or airman in the armed forces of Bangladesh ¹⁵²[***] for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of military force	129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the ¹⁵³ [Executive Magistrate] of the highest rank who is present ¹⁵⁴ [or the Police Commissioner in ¹⁵⁵ [a Metropolitan Area]] may cause it to be dispersed by military force.
Duty of officer commanding troops required by Magistrate to disperse assembly	130.(1) When ¹⁵⁶ [an Executive Magistrate] ¹⁵⁷ [or the Police Commissioner] determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in the Bangladesh Army ¹⁵⁸ [* * *] to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate ¹ [or the Police Commissioner] may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law. (2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.
Power of commissioned military officers to disperse assembly	131. When the public security is manifestly endangered by any such assembly, and when ¹⁵⁹ [no Executive Magistrate] can be communicated with, any commissioned officer of the Bangladesh Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with ¹⁶⁰ [an Executive Magistrate], he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.
Protection against prosecution for acts done under this Chapter	132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Government; and- (a) no Magistrate or police-officer acting under this Chapter in good faith, (b) no officer acting under section 131 in good faith, (c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and (d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby committed an offence: Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in the Bangladesh Army except with the sanction of the Government.

CHAPTER X

PUBLIC NUISANCES

Application	¹⁶¹ [132A. The provisions of this Chapter shall not apply to ¹⁶² [a Metropolitan Area.]]
Conditional order for removal of nuisance	<p>133.(1) Whenever a District Magistrate, ¹⁶³[or any other Executive Magistrate] considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,</p> <p>that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or</p> <p>that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or</p> <p>that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or</p> <p>that any building, tent or structure, or any tree is in such condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or</p> <p>that any tank well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or</p> <p>that any dangerous animal should be destroyed, confined or otherwise disposed of,</p> <p>such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,</p> <p>to remove such obstruction or nuisance; or</p> <p>to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or</p> <p>to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or</p> <p>to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or</p>

to remove or support such tree; or
to alter the disposal of such substance; or
to fence such tank, well or excavation, as the case may be; or
to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;
or, if he objects so to do,
to appear before himself or some other ¹⁶⁴[Executive Magistrate] at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation-A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Service or notification of order

134.(1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to obey or show cause or claim jury

135. The person against whom such order is made shall-

(a) perform, within the time and in the manner specified in the order, the act directed thereby; or

¹⁶⁵[(b) appear in accordance with such order and show cause against the same.]

Consequence of his failing to do so

136. If such person does not perform such act or appear and show cause ¹⁶⁶[* * *] he shall be liable to the penalty prescribed in that behalf in section 188 of the Penal Code, and the order shall be made absolute.

Procedure where he appears to show cause

137.(1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter ¹⁶⁷[in the manner provided in Chapter XX].

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

Omitted & 139. Omitted	138 and 139. [Omitted by the Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]
Procedure where existence of public right is denied	<p>¹⁶⁸[139A.(1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of anyway, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 ¹⁶⁹[* * *], inquire into the matter.</p> <p>(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 ¹⁷⁰[* * *].</p> <p>(3) A person who has, on being questioned by the Magistrate under subsection (1) failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial ¹⁷¹[* * *].]</p>
Procedure on order being made absolute Consequences of disobedience to order	<p>140.(1) When an order has been made absolute under section 136 ¹⁷²[or section 137], the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Penal Code.</p> <p>(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.</p> <p>(3) No suit shall lie in respect of anything done in good faith under this section.</p>
Omitted	141. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]
Injunction pending	142.(1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or

inquiry injury of a serious kind to the public, he may ¹⁷³[* * *] issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Magistrate may prohibit repetition or continuance of public nuisance 143. A District Magistrate or ¹⁷⁴[any other Executive Magistrate] empowered by the Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Penal Code or any special ¹⁷⁵[* * *] law.

CHAPTER XI

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

Power to issue order 144.(1) In cases where, in the opinion of a District Magistrate, ¹⁷⁶[or any other Executive Magistrate] specially empowered by the Government or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk or obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, ex parte.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section

by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Government, by notification in the official Gazette, otherwise directs.

¹⁷⁷[(7) The provisions of this section shall not apply to ¹⁷⁸[a Metropolitan Area].]

CHAPTER XII

DISPUTES AS TO IMMOVABLE PROPERTY

Procedure where dispute concerning land, etc., is likely to cause breach of peach

145.(1) Whenever ¹⁷⁹[a ¹⁸⁰[District Magistrate, or an Executive Magistrate specially empowered by the Government in this behalf] is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water of the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

Inquiry as to possession

(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully

dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

Party in possession to retain possession until legally evicted

(6) If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Power to attach subject of dispute

146.(1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

Provided that ¹⁸¹[¹⁸²such Magistrate]may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of

the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the ¹⁸³[Code of Civil Procedure, 1908]:

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Disputes concerning rights of use of immovable property, etc.

147.(1) Whenever, ¹⁸⁴[any ¹⁸⁵[District Magistrate, or Executive Magistrate specially empowered by the Government in this behalf,] is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right: Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

Local inquiry

148.(1) Whenever a local inquiry is necessary for the purposes of this Chapter, ¹⁸⁶[* * *] any District Magistrate ¹⁸⁷[***] may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

Order as to costs

(3) When any costs have been incurred by any party to a proceeding under this Chapter the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. Such costs may include any expenses incurred in respect of witnesses, and of ¹⁸⁸[advocate] fees, which the Court may consider reasonable.

CHAPTER XIII

PREVENTIVE ACTION OF THE POLICE

Police to prevent cognizable offences

149. Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Information of design to commit such offences

150. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences

151. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property

152. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark use for navigation.

Inspection of weights and measures

153.(1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XIV

Information in cognizable cases	154. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.
Information in non-cognizable cases	155.(1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.
Investigation into non-cognizable cases	(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or ¹⁸⁹ [send] the same for trial ¹⁹⁰ [***]. (3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.
Investigation into cognizable cases	156.(1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial. (2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under section 190 may order such and investigation as above mentioned.
Procedure where cognizable offence suspected	157.(1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the

case, and, if necessary, to take measures for the discovery and arrest of the offender:

Where local investigation dispensed with

Provided as follows:-

(a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

Where police-officer in charge sees no sufficient ground for investigation

(b) if it appears to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Government, the fact that he will not investigate the case or cause it to be investigated.

Reports under section 157 how submitted

158.(1) Every report sent to a Magistrate under section 157 shall, if the Government so directs, be submitted through such superior officer of police as the Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

Power to hold investigation or preliminary inquiry

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Police-officer's power to require attendance of witnesses

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Examination of

161.(1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Government may, by general

**witnesses
by police**

or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.

**Statements
to police
not to be
signed; use
of such
statements
in evidence**

162.(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination:

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Evidence Act, 1872 or to affect the provisions of section 27 of that Act.

**No
inducement
to be
offered**

163.(1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Evidence Act, 1872, section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation

under this Chapter any statement which he may be disposed to make of his own free will.

Power to record statements and confessions

164.(1) ¹⁹¹[Any Metropolitan Magistrate, any Magistrate of the first class] and any Magistrate of the second class specially empowered in this behalf by the Government may, if he is not a police-officer record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, 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 as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:-

"I have explained to (name) 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 this 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.

(Signed) A.B.
Magistrate."

Explanation-It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Search by police-officer

165.(1) Whenever an officer in charge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station:

Provided that no such officer shall search, or cause search to be made, for anything which is in the custody of a bank or banker as defined in the Bankers' Books Evidence Act, 1891 (XVIII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except,-

(a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and section 421 to 424 both inclusive and sections 465 to 477A (both inclusive) of the Penal Code with the prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court Division.

(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and, so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

When officer-in-charge of police station may require another to issue search-warrant

166.(1) An officer in charge of a police-station or a police-officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the

commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Procedure when investigation cannot be completed in twenty-four hours

167.(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the ¹⁹²[nearest Judicial Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or ¹⁹³[send] it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

¹⁹⁴[(4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate.]

¹⁹⁵[(4A)] If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Chief Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.]

¹⁹⁶ [(5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation-

(a) the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

(b) the Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court:

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it:

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

Explanation-The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.]

(6)-(7A) [Omitted by section 2 of the Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).]

(8) The provisions of sub-section (5) shall not apply to the investigation of an offence under section 400 or section 401 of the Penal Code, 1860 (Act XLV of 1860).]

Report of investigation by subordinate police-officer

168. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Release of accused when

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such

**evidence
deficient**

officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or ¹⁹⁷[send] him for trial.

**Case to be
sent to
Magistrate
when
evidence is
sufficient**

170.(1) If, upon an investigation under this Chapter, it appears to the officer-in-charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or ¹⁹⁸[send] him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer-in-charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section , he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the ¹⁹⁹[Chief Metropolitan Magistrate,] ²⁰⁰[or the Chief Judicial Magistrate] is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

**Complainants
and
witnesses
not to be
required to
accompany
Police-
Officer**

171. ²⁰¹[(1)] No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

**Complainants
and
witnesses**

or shall be subjected to unnecessary restraint or incon-venience, or required to give any security for his appearance other than his own bond:

**not to be
subjected
to restraint**

**Recusant
complainant
or witness
may be
forwarded
in custody**

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

²⁰²[(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the police-officer to ensure that the complainant or the witness appears before the Court at the time of hearing of the case.]

**Diary of
proceedings
in
investigation**

172.(1) Every police-officers making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them, to refresh his memory or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

**Report of
police-
officer**

173.(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall in any cases in which the Government by general or special order so directs, be submitted through that officer, and he may,

pending the orders of the Magistrate, direct the officer-in-charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

²⁰³[(3A) When such report is in respect of a case to which section 170 applies, the police-officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(3B) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (1) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police-station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (1) to (3A) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (1).]

(4) a copy of any report forwarded under this section shall on application, be furnished to the accused before the commencement of the inquiry or trial:

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Police to inquire and report on suicide, etc.

174.(1) The officer in charge of a police-station or some other police-officer specially empowered by the Government in that behalf, on receiving information that a person-

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the ²⁰⁴[nearest Executive Magistrate] empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Government, or by any general or special order ²⁰⁵[of the District Magistrate], shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death,

describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted:

Provided that, unless the Government otherwise directs, it shall not be necessary under this sub-section, in any case where the death or any person has been caused by enemy action, to make any investigation or to draw up any report or to send any intimation to a Magistrate empowered to hold inquests.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to ²⁰⁶[the District Magistrate].

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

²⁰⁷[(5) The following Magistrates are empowered to hold inquest, namely, any District Magistrate or any other Executive Magistrate specially empowered in this behalf by the Government or the District Magistrate.]

**Power to
summon
persons**

175.(1) A police-officer proceeding under section 174 may, by order in writing summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

**Inquiry by
Magistrate
into cause
of death**

176.(1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in

connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Power to disinter corpses

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may, cause the body to be disinterred and examined.

PART VI

PROCEEDINGS IN PROSECUTIONS

CHAPTER XV

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

A.-Place of Inquiry or Trial

Ordinary place of inquiry and trial

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Power to order cases to be tried in different sessions divisions

178. Notwithstanding anything contained in section 177, the Government may direct that any cases or class of cases ²⁰⁸[sent] for trial in any district may be tried in any sessions division:

²⁰⁹[* * *]

Accused triable in district where act is done or where consequence ensues

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdictions of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be required into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y, or Court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to a may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court

Y, to deliver property to the person who put him in fear. The offence of extortion committed on a may be inquired into or tried either by X or Y.

(d) A is wounded in ²¹⁰[Dhaka], and dies of his wounds in ²¹¹[Chittagong]. The offence of causing A's death may be inquired into and tried in ²¹²[Chittagong].

Place of trial where act is offence by reason of relation to other offence

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug or belonging to a gang of dacoits, escape from custody, etc.

181.(1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust

(2) The offence of Criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

Theft

(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or

the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

Kidnapping and abduction

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts

182. When 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 an offence is a continuing one, and continues to be committed in more local areas than one, or
where it 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.

Offence committed on a journey

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Repealed

184. [Repealed by section 3 and 2nd Schedule of the Federal Laws (Revision and Declaration) Act, 1951 (Act No. XXVI of 1951).]

High Court Division to decide, in case of doubt, district where inquiry or trial shall take place

185.(1) Whenever a question arises as to which of two or more Courts subordinate to ²¹³[* * *] High Court Division ought to inquire into or try any offence, it shall be decided by ²¹⁴[the] High Court Division.
(2). [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

Magistrate's procedure on arrest	(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court Division.
Power to issue summons or warrant for offence committed beyond local jurisdiction	186.(1) When ²¹⁵ [a Metropolitan Magistrate] ²¹⁶ [or a Magistrate of the first class], sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without Bangladesh, an offence which cannot, under the provisions of sections 177 to ²¹⁷ [183] (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in Bangladesh, such Magistrate may inquire into the offence as if it had been committed within such local limits and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.
Procedure where warrant issued by subordinate Magistrate	187.(1) If the person has been arrested under a warrant issued under section 186 by a Magistrate ²¹⁸ [such Magistrate shall send the person arrested to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate] to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued. (2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186 such Magistrate shall send such person to such Court.
Liability for offences committed outside Bangladesh	188. When a citizen of Bangladesh commits an offence at any place without and beyond the limits of Bangladesh, or ²¹⁹ [* * *] When any person commits an offence on any ship or aircraft registered in Bangladesh wherever it may be, he may be dealt with in respect of such offence as if it had been committed at any place within Bangladesh at which he may be found:
Political Agents to certify fitness of	Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in Bangladesh ²²⁰ [except with the sanction of the Government]:

inquiry into charge

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in Bangladesh shall be a bar to further proceedings against him under ²²¹[the Extradition Act, 1974], in respect of the same offence in any territory beyond the limits of Bangladesh.

Power to direct copies of depositions and exhibits to be received in evidence

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before ²²²[* * *] a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.-Conditions requisite for Initiation of Proceedings

Cognizance of offences by Magistrates

190.(1) Except as hereinafter provided, any ²²³[Chief Metropolitan Magistrate,] ²²⁴[Metropolitan Magistrate], ²²⁵[Chief Judicial Magistrate, Magistrate of the first class, and any other Magistrate specially empowered in this behalf under sub-section (2) or (3)], 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 his own knowledge or suspicion, that such offence has been committed.

²²⁶[(2) the Government may, and subject to any general or special order issued in this behalf by the High Court Division, the Chief Judicial Magistrate may empower any Magistrate of the second or third class to take cognizance under sub-section (1) clause (a) or clause (b) of offences which he may try or send for trial]

(3) The Government may empower any Magistrate of the ²²⁷[***] second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or ²²⁸[send] for trial.

²²⁹[(4) Notwithstanding anything contained to the contrary in this section or elsewhere in this Code, the Government may, by an order specifying the reasons and period stated therein, empower any Executive Magistrate to take cognizance under clause (a), (b) or (c) or sub-section (1), of offences and the Executive Magistrate shall send it for trial to the court of competent jurisdiction.]

Transfer ²³⁰[***] on application of accused	191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be ²³¹ [sent] to the Court of Session or transferred to another Magistrate.
Transfer of cases by Magistrates	192.(1) ²³² [²³³ [The Chief Metropolitan Magistrate], or ²³⁴ [any Chief Judicial Magistrate] may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate sub-ordinate to him. (2) Any ²³⁵ [Chief Judicial Magistrate] may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try accused or ²³⁶ [send] him for trial; and such Magistrate may dispose of the case accordingly.
Cognizance offences by Courts of Session	193.(1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been ²³⁷ [sent] to it by a Magistrate duly empowered in that behalf. (2) Additional Sessions Judges and ²³⁸ [Joint] Sessions Judges shall try such cases only as the Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make over to them for trial.
Omitted	194. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]
Prosecution for contempt of lawful authority of public servants	195.(1) No Court shall take cognizance:- (a) of any offence punishable under sections 172 to 188 of the Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;
Prosecution for certain offences against public justice	(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

Prosecution for certain offences relating to documents given in evidence

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the ²³⁹[Registration Act, 1908].

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

Prosecution for offences against the State

196. No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the ²⁴⁰[Government, or some officer empowered in this behalf by the Government].

Prosecution for certain classes of

²⁴¹[196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Penal Code,

**criminal
conspiracy**

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the ²⁴²[Government, or some officer empowered in this behalf by the Government], or.

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the ²⁴³[Government, ²⁴⁴[***] or a] District Magistrate empowered in this behalf by the Government, has, by order in writing consented to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.]

**Preliminary
inquiry in
certain
cases**

²⁴⁵[196B. In the case of any offence in respect of which the provisions of section 196 or section 196A apply, ²⁴⁶[²⁴⁷[***] a District Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).]

**Prosecution
of Judges
and public
servants**

197.(1) When any person who is a Judge within the meaning of section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the ²⁴⁸[previous sanction of the Government]-

²⁴⁹[* * *]

**Power of
Government
as to
prosecution**

(2) ²⁵⁰[The Government] may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

**Prosecution
for breach
of contract,
defamation
and
offences
against
marriage**

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a

complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf:

Provided further that where the husband aggrieved by an offence under section 494 of the said code is serving in any of the armed forces of Bangladesh under conditions which are certified by the Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other persons authorized by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

Prosecution for adultery or enticing a married woman

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed:

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf:

Provided further that where such husband is serving in any of the armed forces of Bangladesh under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorized by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

Objection by lawful guardian to complaint by person other than person aggrieved

²⁵¹[199A. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.]

Form of authorization under second proviso to section 198 or 199

²⁵²[199B.(1) The authorization of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by that Officer

to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorization and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.]

CHAPTER XVI

OF COMPLAINTS TO MAGISTRATES

Examination of complainant

200. A Magistrate taking cognizance of an offence on complaint shall at once examine ²⁵³[upon oath the complainant and such of the witnesses present, if any, as he may consider necessary,] and the substance of the examination shall be reduced to writing and shall be signed ²⁵⁴[by the complainant or witness so examined], and also by the Magistrate:

Provided as follows:-

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require ²⁵⁵[such examination] before transferring the case under section 192;

(aa) when the complaint is made in writing nothing herein contained shall be deemed to require ²⁵⁶[such examination] in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;

²⁵⁷[* * *]

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already ²⁵⁸[examined the complainant and witness if any,] the Magistrate to whom it is so transferred shall not be bound to ²⁵⁹[re-examine them].

Procedure by Magistrate not competent to take cognizance of the case

201.(1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Postponement for issue of process

202.(1) Any Magistrate, on receipt of a complaint of an offence of he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of

the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the ²⁶⁰[provisions of section 200 have been complied with] ²⁶¹:

²⁶²[* * *]]

²⁶³[Provided further that where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of Session, the Magistrate may postpone the issue of process for compelling the attendance of the person complained against and may make or cause to be made an inquiry or investigation as mentioned in this sub-section for the purpose of ascertaining the truth or falsehood of the complaint.]

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks, fit, take evidence of witnesses on oath ²⁶⁴:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.]

²⁶⁵[(2B) Where the police submits the final report, the Magistrate shall be competent to accept such report and discharge the accused.]

**Dismissal
of
complaint**

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under section 202; there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing.

CHAPTER XVII

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

**Issue of
process**

204.(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the

accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

²⁶⁶[(1A) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(1B) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.]

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

Magistrate may dispense with personal attendance of accused

205.(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

[Omitted] & 205B. [Omitted]

²⁶⁷[205A and 205B. [Omitted by section 13 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).]

Transfer of case of Court of Session when offence is trial exclusively by it

205C. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

- (a) send the case to the Court of Session;
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
- (d) notify the Public Prosecutor of the transfer of the case to the Court of Session.

Transfer of case to ²⁶⁸[Chief Metropolitan

²⁶⁹[205CC.(1) When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the ²⁷⁰[Chief Metropolitan Magistrate,] ²⁷¹[or Chief Judicial Magistrate], he shall-

**Magistrate,
Chief
Judicial
Magistrate],
etc.**

- (a) send the case to the ²⁷²[Chief Metropolitan Magistrate or, as the case may be, ²⁷³[Chief Judicial Magistrate];
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
- (c) send to the [Chief Metropolitan Magistrate or, as the case may be, ²⁷⁴[Chief Judicial Magistrate] the record of the case and the documents and articles, if any, which are to be produced in evidence.
- (2) The ²⁷⁵[Chief Judicial Magistrate or the Chief Metropolitan Magistrate] may direct that any case received by him under sub-section (1) or any class of such cases shall be heard by any ²⁷⁶[Additional Chief Metropolitan Magistrate or, Additional Chief Judicial Magistrate] subordinate to him.]

**Procedure
to be
followed
when there
is a
complaint
case and
police
investigation
in respect
of the same
offence**

- 205D.(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police-officer conducting the investigation.
- (2) If a report is made by the investigating police-officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.
- (3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code].

CHAPTER XVIII

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT DIVISION

**(206-220)
Omitted**

[Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

CHAPTER XIX

OF THE CHARGE

Form of Charges

**Charge to
state**

221.(1) Every charge under this Code shall state the offence with which the accused is charged.

offence

Specific name of offence sufficient description	(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.
How stated where offence has no specific name	(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
What implied in charge	(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.
Language of charge	(6) The charge shall be written either in English or in the language of the Court.
Previous conviction when to be set out	(7) If the accused having been previously convicted of any offence is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisions to that exception apply to it.

(b) A is charged, under section 326 of the Penal Code with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Penal Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without

reference to the definitions of those crimes contained in the Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

**Particulars
as to time,
place and
person**

222.(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:

**When
manner of
committing
offence
must be
stated**

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

**Words in
charge**

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by

**taken in
sense of
law under
which
offence is
punishable**

the law under which such offence is punishable.

**Effect of
errors**

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged under section 242 of the Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haider Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haider Baksh. The Court may infer from this that A was misled, and that the error was material.

Omitted

226. [Omitted by section 2 and Schedule of the Law Reforms Ordinance,

1978 (Ordinance No. XLIX of 1978).]

**Court may
alter charge**

227.(1) Any Court may alter or add to any charge at any time before judgment is pronounced ²⁷⁷[* * *].

(2) Every such alteration or addition shall be read and explained to the accused.

**When trial
may
proceed
immediately
after
alteration**

228. If the charge framed or alteration or addition made under ²⁷⁸[* * *] section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made proceed with the trial as if the new or altered charged had been the original charge.

**When new
trial may be
directed, or
trial
suspended**

229. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

**Stay of
proceedings
if
prosecution
of offence
in altered
charge
require
previous
sanction**

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

**Recall of
witnesses
when
charge
altered**

231. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined and also to call any further witness whom the Court may think to be material.

**Effect of
material
error**

232.(1) If any Appellate Court, or the High Court Division in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts

proved, it shall quash the conviction.

Illustration

A is convicted of an offence, under section 196 of the Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges

Separate charges for distinct offences

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Three offences of same kind within year may be charged together

234.(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code or of any special ²⁷⁹[* * *] law:

Provided that, for the purpose of this section, an offence punishable under section 379 of the Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Trial for more than one offence

235.(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Offence falling

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which

within two definitions

offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Acts constituting one offence, but constituting when combined a different offence

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by anyone, or more, of such acts.

(4) Nothing contained in this section shall affect the Penal Code, section 71.

Illustrations

to sub-section (1)-

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Penal Code.

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Penal Code.

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Penal Code.

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavoring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to sub-section (2)-

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Penal Code.

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to sub-section (3)-

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Penal Code.

Where it is doubtful what offence has been committed

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property criminal breach of trust and cheating, or he

may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

When a person is charged with one offence, he can be convicted of another

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

When offence proved included in offence charged

238.(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations

(a) A is charged, under section 407 of the Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 in respect of the property but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged under section 325 of the Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

What persons may be charged jointly

239. The following persons may be charged and tried together, namely:-

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
- (c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last named offence;
- (f) persons accused of any offence under sections 411 and 414 of the Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and
- (g) persons accused of any offence under Chapter XII of the Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

Withdrawal of remaining charges on conviction on one of several charges

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

**CHAPTER XX
OF THE TRIAL OF CASES BY MAGISTRATES**

in cases	241. The following procedure shall be observed by Magistrates in the trial of ²⁸⁰ [cases].
When accused shall be discharged	²⁸¹ [241A. When the accused appears or is brought before the Magistrate, and if the Magistrate, upon consideration of the record of the case and the documents submitted therewith and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, considers the charge to be groundless, he shall discharge the accused and record his reasons for so doing.]
Charge to be framed	²⁸² [242. ²⁸³ [If, after such consideration and hearing as aforesaid, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, the Magistrate shall frame a formal charge] relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged.]
Conviction on admission of truth of accusation	243. If the accused admits that he has committed the offence ²⁸⁴ [with which he is charged], his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.
Procedure when no such admission is made	244.(1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence: Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court. (2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directed him to attend or to produce any document or other thing. (3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.
Acquittal	245.(1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence	(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 ²⁸⁵ [***], he shall, if he finds the accused guilty, pass sentence upon him according to law.
Omitted	246. [Omitted by section 18 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).]
Non- appearance of complainant	<p>247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he thinks proper to adjoin the hearing of the case to some other day:</p> <p>Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.</p>
Withdrawal of complaint	248. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.
Power to stop proceedings when no complainant	249. In any case instituted otherwise than upon complaint, ²⁸⁶ [a Metropolitan Magistrate], a Magistrate of the first class, or with the previous sanction of the ²⁸⁷ [Chief Judicial Magistrate, any other Judicial Magistrate], may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Frivolous Accusations in Cases tried by Magistrates.

False, frivolous or vexatious accusations	250.(1) If in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate or any offence triable by a Magistrate, and the Magistrate by whom the case is heard 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 Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.
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(2) The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding ²⁸⁸[one thousand Taka] or, if the Magistrate is a Magistrate of the third Class, not exceeding ²⁸⁹[five hundred Taka], as he may determine be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding ²⁹⁰[one hundred taka] may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if any appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

²⁹¹[(5) Notwithstanding anything contained in this section, the Magistrate may, in addition to the order directing payment of the compensation under sub-section (2), further order that the person ordered to pay such compensation shall also suffer imprisonment for a period not exceeding six months or pay a fine not exceeding three thousand Taka.]

CHAPTER XXI
OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES

(251-259) [Omitted by section 21 of the Code of Criminal Procedure (Second
Omitted Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).]

CHAPTER XXII
OF SUMMARY TRIALS

Power to
try
summarily

260.(1) Notwithstanding anything contained in this Code,-

²⁹²[(a) the Metropolitan Magistrate ²⁹³[***],

(b) ²⁹⁴[any ²⁹⁵[***] Magistrate] of the first class ²⁹⁶[***] , and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class ²⁹⁷[***],

²⁹⁸[shall] try in a summary way all or any of the following offences:-

(a) offences not punishable with death, transportation or imprisonment for a term exceeding ²⁹⁹[two years];

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Penal Code;

(c) Hurt, under section 323 of the same Code;

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed ³⁰⁰[ten thousand taka];

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed ³⁰¹[ten thousand taka];

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed ³⁰²[ten thousand taka];

(g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed ³⁰³[ten thousand taka];

(h) mischief, under ³⁰⁴[sections 426 and 427] of the same Code;

(i) ³⁰⁵[criminal trespass, under section 447, and] house trespass, under section 448, and offences under sections 451, 453, 454, 456 and 457 or the same Code;

(j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, ³⁰⁶[and offences under sections 509 and 510] of the same Code;

³⁰⁷[(jj) offence of bribery and personation at an election under sections 171E and 171F of the same Code;]

- (k) abetment of any of the foregoing offences;
 - (l) an attempt to commit any of the foregoing offences, when such attempt is an offence;
 - (m) offences under section 20 of the Cattle-trespass Act, 1871: Provided that no case in which a Magistrate exercises the special powers conferred by section ³⁰⁸[33A] shall be tried in a summary way.
- (2) [Omitted by section 22 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).]

Power to invest Bench of Magistrates invested with less power

261. The Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:-

- (a) offences against the Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 447 and 504;
- (b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine;
- (c) abatement of any of the foregoing offences;
- (d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

³⁰⁹[Procedure for summary trials]

262.(1) In trials under this Chapter, the procedure prescribed ³¹⁰[in Chapter XX] shall be followed ³¹¹[* * *] except as hereinafter mentioned.

Limit of imprisonment

(2) No sentence of imprisonment for a term exceeding ³¹²[two years] shall be passed in the case of any conviction under this Chapter.

Record in cases where is no appeal

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Government may direct the following particulars:-

- (a) the serial number;
- (b) the date of the commission of the offence;
- (c) the date of the report or complaint;
- (d) the name of the complainant (if any);
- (e) the name, parentage and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed;
- (g) the plea of the accused and his examination (if any);

- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;
- (i) the sentence or other final order; and
- (j) the date on which the proceedings terminated.

Record in appealable cases

264.(1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

(2) Such judgment ³¹³[and memorandum of the substance of the evidence as required by section 355] shall be the only record in cases coming within this section.

Language of record and judgment

265.(1) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately sub-ordinate so directs, in such officer's mother-tongue.

Bench may be authorised to employ clerk

(2) The Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

314 CHAPTER XXIII

OF TRIALS BEFORE COURTS OF SESSION

Trial to be conducted by Public Prosecutor

265A. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Opening case for prosecution

265B. When the accused appears or is brought before the Court in pursuance of section 205C, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Discharge

265C. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Court considers that there is no

sufficient ground for proceeding against the accused, it shall discharge the accused and record the reasons for so doing.

Framing charge

265D.(1) If, after such consideration and hearing as aforesaid, the Court is of opinion that there is ground for presuming that the accused has committed an offence, it shall frame in writing a charge against the accused.

(2) Where the Court frames a charge under sub-section (1), the charge shall be read and explained to the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Conviction of plea of guilty

265E. If the accused pleads guilty, the Court shall record the plea and may, in its discretion, convict him thereon.

Date for prosecution evidence

265F. If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 265E, the Court shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

Evidence of prosecution

265G.(1) On the date so fixed, the Court shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Court may, in its discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

Acquittal

265H. If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Court considers that there is no evidence that the accused committed the offence, the Court shall record an order of acquittal.

Entering upon defence

265-I.(1) Where the accused is not acquitted under section 265H, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Court shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Court shall issue such process unless he considers for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

Arguments

265J. When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his

pleader shall be entitled to reply:

Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Court, make his submissions with regard to such point of law.

**Judgment
of acquittal
or
conviction**

265K.(1) After hearing arguments and points of law (if any), the Court shall give a judgment in the case.

(2) [Omitted by section 3 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1983 (Ordinance No. XXXVII of 1983).]

**Previous
conviction**

265L. In a case where a previous conviction is charged under the provisions of sub-section (7) of section 221, and the accused does not admit that he has been previously convicted as alleged in the charge, the Court may, after it has convicted the said accused under section 265E or section 265K, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Court nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 265E or section 265K.]

CHAPTER XXIV

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

**Tender of
pardon to
accomplice**

337.(1) In the case of any offence triable exclusively by the ³¹⁵[***] Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Penal Code, with imprisonment which may extend to seven years, or any offence under any of the following sections of the Penal Code, namely, sections 216A, 369, 401, 435 and 477A, ³¹⁶[a Metropolitan Magistrate] or any Magistrate of the first class may, at any state of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making 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:

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the ³¹⁷[Chief Judicial Magistrate shall] exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and

the sanction of the ³¹⁸[Chief Judicial Magistrate] has been obtained to the exercise thereof.

(1A) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record:

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, [send] him for trial to the Court of Session ³¹⁹[* * *].

(3) Such persons, unless he is already on bail, shall be detained in custody until the termination of the trial.

Power to direct tender of pardon

338. At any time ³²⁰[before the judgment is passed, the Court of Session trying the case] may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any such offence, tender, or order ³²¹[* * *] ³²²[or the Chief Metropolitan Magistrate or the Chief Judicial Magistrate] to tender, a pardon on the same condition to such person.

Omitted

339D. [Omitted by section 4 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).]

³²³[Trial] of person to whom pardon has been tendered

339.(1) Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter:

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court

Division.

**Procedure
in trial of
person
under
section 339**

³²⁴[339A.(1) The Court trying under section 339 a person who has accepted a tender of pardon shall

(a) if the Court is ³²⁵[* * *] Court of Session before the charge is read out and explained to the accused under ³²⁶[section 265D, sub-section (2)], and

(b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and ³²⁷[* * *] shall, before judgment is passed in the case find whether or not the accused has complied with the conditions of the pardon and if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.]

**Trial in
absentia**

³²⁸[339B. ³²⁹[(1) Where after the compliance with the requirements of section 87 and section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order ³³⁰[published in at least two national daily Bengali Newspapers having wide circulation], direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.]

(2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.

**Time for
disposal of
cases**

339C.(1) A Magistrate shall conclude the trial of a case within ³³¹[one hundred and eighty days] from the date on which the case is ³³²[received by him] for trial.

(2) A Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial of a case within ³³³[three hundred and sixty days] from the date on which the case is received by him for trial.

³³⁴[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where a person is accused in several cases and such cases

are brought for trial before a Magistrate or a Court of Session, the time limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.]

³³⁵[(2B) Notwithstanding the transfer of a case from one Court to another Court, the time specified in sub-section (1) or sub-section (2) shall be the time for concluding the trial of a case.]

(3) [Omitted by section 3 of the Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992).]

³³⁶[(4) If a trial cannot be concluded within the specified time, the accused in the case, if he is accused of a non-bailable offence, may be released on bail to the satisfaction of the Court, unless for reasons to be recorded in writing, the Court otherwise directs.]

³³⁷[(5) Nothing in this section shall apply to the trial of a case under section 400 or 401 of the Penal Code (Act XLV of 1860), or to the trial of case to which the provisions of Chapter XXXIV apply.]

³³⁸[(6) In this section, in determining the time for the purpose of a trial,-

³³⁹[* * *]

(b) the days spent on account of the absconson of an accused after his release on bail, if any, shall not be counted.]

Right of person against whom proceedings are instituted to be defended and his competency to be a witness

340.(1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.

³⁴⁰[(3) Any person accused of an offence before a Criminal Court 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:

Provided that-

(a) he shall not be called as a witness except on his own request in writing; or

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any persons charged together with him at the same trial.]

Procedure where accused

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than High Court Division, if such ³⁴¹[proceedings

does not understand proceedings	result] in a conviction, the proceedings shall be forwarded to the High Court Division with a report of the circumstances of the case, and the High Court Division shall pass thereon such order as it thinks fit.
Power to examine the accused	<p>342.(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.</p> <p>(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court ³⁴²[* * *] may draw such inference from such refusal or answers as it thinks just.</p> <p>(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.</p> <p>(4) No oath shall be administered to the accused.</p>
No influence to be used to induce disclosures	343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.
Power to postpone or adjourn proceedings	344.(1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:
Remand	<p>Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.</p> <p>(2) Every order made under this section by a Court other than High Court Division shall be in writing signed by the presiding Judge or Magistrate.</p>
Reasonable cause for remand	Explanation- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Compounding offences 345.(1) The offences punishable under the sections of the Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:-

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
Uttering works, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323,334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.

Criminal trespass House-trespass	447 448	The person in possession of the property trespassed upon.
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery Enticing or taking away or detaining with criminal intent a married woman.	497 498	The husband of the woman.
Defamation Printing or engraving matter, knowing it to be defamatory. Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	500 501 502	The person defamed.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.
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(2) The offences punishable under the sections of the Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table

Offence.	Sections of Penal Code applicable.	Persons by whom offence may be compounded.
[Rioting.	147	The person against whom force or violence has been used.
Rioting armed with deadly weapon.	148	Ditto.]
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.

Voluntarily causing grievous hurt on grave and sudden provocation.	335	The person to whom hurt is caused.
³⁴³ [Act endangering human life or the personal safety of others.	336	Ditto.]
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others. House-trespass	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more	343	The person confined.
³⁴⁴ [Wrongfully confining for ten or more days.	344	Ditto.]
Wrongfully confining a person in secret.	346	Ditto.

³⁴⁵ [Wrongfully confinement to extort property or constrain to illegal act.	347	The person wrongfully confined.
Wrongful confinement to extort confession or compel restoration of property.	348	Ditto.]
³⁴⁶ [Assault or criminal force to women with intent to outrage her modesty.	354	The women assaulted or to whom the criminal force was used.]
³⁴⁷ [Assault or criminal force in attempt to commit theft of property worn or carried by a person.	356	The person assaulted or to whom criminal force is used.]
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
³⁴⁸ [Theft ³⁴⁹ [* * *].	379	The owner of the property stolen.]
³⁵⁰ [Theft in dwelling house.	380	Ditto]
³⁵¹ [Theft by clerk or servant of property in possession of master ³⁵² [* * *].	381	Ditto.]
Dishonest misappropriation of property.	403	The owner of the property misappropriated.

³⁵³ [Criminal breach of trust ³⁵⁴ [***].	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc. ³⁵⁵ [***].	407	Ditto.
Criminal breach of trust by a clerk or servant ³⁵⁶ [***].	408	Ditto.
Dishonestly receiving stolen property, knowing it to be stolen ³⁵⁷ [* * *].	411	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen ³⁵⁸ [* * *].	414	Ditto.]
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.
Cheating by personation	419	Ditto.

Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
³⁵⁹ [Fraudulent removal or concealment of property, etc. to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief by killing or maiming animal ³⁶⁰ [* * *].	428	The owner of the animal.
Mischief by killing or maiming cattle, etc. ³⁶¹ [* * *].	429	The owner of the cattle, or animal.]

Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person is possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto
³⁶² [Cohabitation caused by a man deceitfully including a belief of lawful marriage.	493	The woman with whom cohabitation was caused.]

Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.
³⁶³ [Attempting to commit offences punishable with transportation or imprisonment.	511	The person against whom such attempt was made for committing the offence.]

(3) When any offence is compoundable under this section, the abatement of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.

(5) When the accused has been ³⁶⁴[sent] for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is ¹³⁶⁵[sent] or, as the case may be, before which the appeal is to be heard.

(5A) The High Court Division acting in the exercise of its powers of revision under section 439 ³⁶⁶[, and a Court of Session so acting under section 439A,] may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) No offence shall be compounded except as provided by this section.

Procedure of ³⁶⁷[* * *] ³⁶⁸[Chief Judicial Magistrate] in cases which he cannot dispose of.

346.(1) If, in the course of an inquiry or a trial before a ³⁶⁹[Chief Judicial Magistrate] in any district, the evidence appears to him to warrant a presumption that the case is one which should be tried or ¹³⁷⁰[sent] for trial by some other ³⁷¹[Chief Judicial Magistrate] in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any ³⁷²[Chief Judicial Magistrate] to whom he is subordinate or to such other ³⁷³[Chief Judicial Magistrate], having jurisdiction, as the District ³⁷⁴[Chief Judicial Magistrate] directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or ³⁷⁵[send] the accused for trial.

Procedure when, higher punishment should be inflicted on accused

³⁷⁶[347. Notwithstanding anything contained in this Code, whenever a Magistrate of the first class is of opinion, after recording the evidence for the prosecution, that if the accused or, where more accused than one are being tried together, any of such accused is convicted he should receive a punishment more severe than that which such Magistrate is empowered to inflict, he may record his opinion and submit his proceedings, and forward the accused, or all the accused, to the Court of Session to which he is subordinate, whereupon the Court of Session shall try the case as if the case were exclusively triable by it under this Code.]

Trial of persons previously convicted of offences against coinage, stamp-law or property

348.(1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code, with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for ³⁷⁷[sending] the accused be ³⁷⁸[sent] to the Court of Session or ³⁷⁹[***] unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted:

Provided that, if any Magistrate in the district has been invested with powers under section 30, the case may be transferred to him instead of being ³⁸⁰[sent] to the Court of Session.

(2) When any person is ³⁸¹[sent] to the Court of Session ³⁸²[***] under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly ³⁸³[sent] unless the Magistrate discharges such other person under ³⁸⁴[section 241A].

**Procedure
when
Magistrate
cannot
pass
sentence
sufficiently
severe**

349.(1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the ³⁸⁵[Chief Judicial Magistrate or a Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate] to whom he is subordinate.

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the ³⁸⁶[Chief Judicial Magistrate or a Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate].

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law:

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

**Conviction
on
evidence
partly
recorded by
one
Sessions
Judge, etc.,
and partly
by another**

³⁸⁷[349A.(1) Whenever any Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction therein, and is succeeded by another Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, as the case may be, who has and who exercises such jurisdiction, the Judge so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the trial:

Provided that if the succeeding Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, as the case may be, is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Court of Session to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).]

Changes in constitution of Benches

³⁸⁸[350A. No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under ³⁸⁹[section 15 and 16 or, as the case may be, section 19 and 21] , and the Magistrates constituting the same have been present on the Bench throughout the proceedings.]

Conviction ³⁹⁰[*] on evidence partly recorded by one Magistrate and partly by another**

350.(1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial:

³⁹¹[Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.]

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 or in which proceedings have been submitted to a superior Magistrate under section 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).

Detention of offenders attending Court

351.(1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place ³⁹²[* * *] after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

Courts to be open

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to

which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

Evidence to be taken in presence of accused	353. Except as otherwise expressly provided, all evidence taken under Chapters ³⁹³ [* * *] XX, ³⁹⁴ [* * *] XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.
Manner of recording evidence	354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.
Record ³⁹⁵[***] in trials of certain offences by first and second class Magistrates	<p>355.(1) ³⁹⁶[In cases tried under Chapter XX or Chapter XXII] by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.</p> <p>(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.</p> <p>(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.</p>
Record in other cases	356.(1) In all other trials before Courts of Session and Magistrates and in all inquiries under ³⁹⁷ [Chapter XII] the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.
Memorandum when evidence not taken down by	(3) In cases in which the evidence is not taken down in writing by the Magistrate or Session Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the

the Magistrate or Judge himself	<p>Magistrate or Sessions Judge with his own hand, and shall form part of the record.</p> <p>(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.</p>
Evidence given in English	<p>(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.</p> <p>(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.</p>
Language of record of evidence	<p>357.(1) The Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.</p> <p>(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:</p> <p>Provided that the Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language or in the language of the Court, although such language is not his mother-tongue.</p>
Option to Magistrate in cases under section 355	<p>358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Government has made the order referred to in section 357, in the manner provided in the same section.</p>
Mode of recording evidence under	<p>359.(1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.</p>

section 356 or section 357	(2) The Magistrate or Sessions Judge may, in his discretion take down, or cause to be taken down, any particular question and answer.
Procedure in regard to such evidence when completed	<p>360.(1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.</p> <p>(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.</p> <p>(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.</p>
Interpretation of evidence to accused or his pleader	<p>361.(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.</p> <p>(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.</p> <p>(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.</p>
Omitted	362. [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]
Remarks respecting demeanor of witness	363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.
Examination of accused how recorded	364.(1) Whenever the accused is examined by any Magistrate, or by any Court other than High Court Division the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English: and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language

which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

Record of evidence in High Court Division

365. ³⁹⁸[The Supreme Court] shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the evidence shall be taken down in accordance with such rule.

**CHAPTER XXVI
OF THE JUDGMENT**

Mode of delivering judgment

366.(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained-

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties of their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

**Language of judgment
Contents of judgment**

367.(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or form the dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative

(3) When the conviction is under the Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

³⁹⁹[(5) If the accused is convicted of an offence punishable with death or, in the alternative, with ⁴⁰⁰[transportation for life] or imprisonment for a term of years, the Court shall in its judgment state the reasons for the sentence awarded.]

(6) For the purposes of this section, an order under section 118 or section 123, sub-section (3), shall be deemed to be a judgment.

Sentence of death.

368.(1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter judgment

369. Save as otherwise provided by this Code or by any other law for the time being in force ⁴⁰¹[* * *], no Court when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

Omitted

370. [Omitted by the Schedule of the Adaptation of Central Acts and

Ordinances Order, 1949.]

Copy of judgment, etc., to be given to accused on application. Case of person sentenced to death

371.(1) On the application of the accused a copy of the judgment, or when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a ⁴⁰²[case under Chapter XX], be given free of cost.

(2) [Omitted by section 2 and Schedule of the Law Reforms Ordinances 1978 (Ordinance No. XLIX of 1978).]

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the ⁴⁰³[Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, and District Magistrate] within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION

Sentence of death to be submitted by Court of Session

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court Division and the sentence shall not be executed unless it is confirmed by the High Court Division.

Power to direct further inquiry to be made or additional evidence to be taken

375.(1) If when such proceedings, are submitted the High Court Division thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

⁴⁰⁴[(2) Unless the High Court Division otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.]

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court Division, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court Division to confirm sentence or annul conviction

376. In any case submitted under section 374, ⁴⁰⁵[* * *] the High Court Division-

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation of new sentence to be signed by two Judges

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court Division, shall, when such Court consists of two or more judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion

378. When any such case is heard before a bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court Division for confirmation

379. In cases submitted by the Court of Session to the High Court Division for the confirmation of a sentence of death, the proper officer of the High Court Division shall, without delay, after the order of confirmation or other order has been made by the High Court Division, send a copy of the order, under the seal of the High Court Division and attested with his official signature, to the Court of Session.

Repealed

380. [Repealed by section 16 of the Probation of Offenders Ordinance, 1960 (Ordinance No. XLV of 1960).]

**CHAPTER XXVIII
OF EXECUTION**

Execution of order passed

381. When a sentence of death passed by a Court of Session is submitted to the High Court Division for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the

under section 376	High Court Division thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.
Postponement of capital sentence on pregnant woman	382. If a woman sentenced to death is found to be pregnant, the High Court Division shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to ⁴⁰⁶ [transportation for life].
Execution of sentence of transportation or imprisonment in other cases	383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.
Direction of warrant for execution	384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.
Warrant with whom to be lodged	385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.
Warrant for levy of fine	<p>386.(1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-</p> <p>(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;</p> <p>(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter:</p> <p>Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing is considers it necessary to do so.</p> <p>(2) The Government may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.</p>

(3) Where the Courts issue a warrant to the Collector under sub-section (1), Clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the Decree, and all the provisions of that Code as to execution of decrees shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Effect of such warrant

387. A warrant issued under section 386, sub-section (1), clause (a), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the attachment and sale of any such property without such limits, when endorsed by the District Magistrate ⁴⁰⁷[or Chief Metropolitan Magistrate] within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388.(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may-

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

Who may issue warrant	389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.
Execution of sentence of whipping only	390. When the accused is sentenced to whipping only, the sentence shall subject to the provisions of section 391 be executed at such place and time as the Court may direct.
Execution of sentence of whipping, in addition to imprisonment	<p>391. (1) When the accused-</p> <p>(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or</p> <p>(b) is sentenced to whipping in addition to imprisonment,</p> <p>the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.</p> <p>(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders is to be inflicted in his own presence.</p> <p>(3) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.</p>
Mode of inflicting punishment	392.(1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode and on such part of the person, and with such instruments, as the Government directs.
Limit of number of stripes	(2) In no case shall such punishment exceed thirty stripes and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.
Not to be executed by instalments	393. No sentence of whipping shall be executed by instalments: and none of the following persons shall be punishable with whipping, namely:-
Exemptions	<p>(a) females;</p> <p>(b) males sentence to death or to ⁴⁰⁸[transportation], or to imprisonment for more than five years;</p>

(c) males whom the Court considers to be more than forty-five years of age.

Whipping not to be inflicted if offender not in fit state of health

394.(1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Stay of execution

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure if punishment cannot be inflicted under section 394

395.(1) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, or to a fine not exceeding five hundred Taka, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term or a fine of an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Execution of sentences on escaped convicts

396.(1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, or transportation, shall take effect according to the following rules, that is to say-

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation-For the purposes of this section-

(a) a sentence of transportation shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence

397. When a person already undergoing a sentence of imprisonment, or transportation, is sentenced to imprisonment, or transportation, such imprisonment, or transportation shall commence at the expiration of the imprisonment, or transportation to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced:

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

Saving as to sections 396 and 397

398.(1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, or transportation, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Confinement of youthful offenders in reformatories

399.(1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

**Return of
warrant on
execution
of sentence**

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES

**Power to
suspend or
remit
sentences**

401.(1) When any person has been sentenced to punishment for an offence, the Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Government for the suspension or remission of a sentence, the Government, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Government not fulfilled, the Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provision of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or impose any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of the President ⁴⁰⁹[* * *] to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by the President ⁴¹⁰[* * *], any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Power to commute punishment

402.(1) The Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:-

death, transportation, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Penal Code.

Sentences of death

⁴¹¹[402A. The powers conferred by sections 401 and 402 upon the Government may, in the case of sentences of death, also be exercised by the President.]

CHAPTER XXX

OF PREVIOUS ACQUITTALS OR CONVICTIONS

Person once convicted or acquitted not to be tried for same offence

403.(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or

were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, or section 188 of this Code.

Explanation- The dismissal of a complaint, the stopping of proceedings under section 249, ⁴¹²[or the discharge of the accused] is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for dacoity on the same facts.

PART VII

OF APPEAL, REFERENCE AND REVISION

CHAPTER XXXI

OF APPEALS

Unless otherwise provided, no appeal to lie	404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.
Appeal from order rejecting application for restoration of attached property	405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.
Appeal from order requiring security for keeping the peace or for good behaviour	406. Any person who has been ordered by a Magistrate under section 118 to give security for keeping the peace or for good behaviour may appeal against such order- to the Court of Session: ⁴¹³ [***] Provided, ⁴¹⁴ [***], that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.
Appeal from order refusing to accept or rejecting a surety	⁴¹⁵ [406A. Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,- ⁴¹⁶ [(a) if made by the Chief Metropolitan Magistrate ⁴¹⁷ [or the Chief Judicial Magistrate] or a District Magistrate, to the Court of Session; (b) if made by a Metropolitan Magistrate other than the Chief Metropolitan Magistrate, to the Chief Metropolitan Magistrate; or (c) if made by any other Magistrate, ⁴¹⁸ [whether Executive or Judicial,] to the District Magistrate ⁴¹⁹ [***] ⁴²⁰ [or the Chief Judicial Magistrate.]
Appeal from sentence of Magistrate of the second or third class	⁴²¹ [407. Any person convicted on a trial held by any Magistrate of the second or third class may appeal to the chief Judicial Magistrate who may himself hear and dispose of the appeal or transfer it to any Additional Chief Judicial Magistrate for disposal, and may withdraw an appeal so transferred.]
Appeal from	⁴²² [408. Any person convicted on a trial held by a Joint Sessions Judge, Metropolitan Magistrate or any Judicial Magistrate of the first class,

sentence of Joint Sessions Judge and Magistrates of the first class	<p>may appeal to the Sessions Judge:</p> <p>Provided as Follows :</p> <p>(a)When in any case a Joint Sessions Judge passes any sentence of imprisonment for a term exceeding five years, the appeal of all or any of the convicted persons shall lie to the High Court Division;</p> <p>(b)When any person is convicted by a Metropolitan Magistrate or Judicial Magistrate specially empowered to try an offence under section 124A of the Penal Code, the appeal shall lie to the High Court Division.]</p>
Appeals to Court of Session how heard	<p>409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:</p> <p>Provided that an Additional Sessions Judge shall hear only such appeals as the Government may by general or special order, direct or as the Sessions Judge of the Division may make over to him.</p>
Appeal from sentence of Court of Session	<p>410. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court Division.</p>
Omitted	<p>411. [Omitted by the Schedule of the Adaptation of Central Acts and Ordinance, 1949.]</p>
Omitted	<p>411A. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978.)</p>
No appeal in certain cases when accused pleads guilty	<p>412. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by ⁴²³[* * *] a Court of Session ⁴²⁴[or any Metropolitan Magistrate] or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.</p>
No appeal in petty cases	<p>413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which ⁴²⁵[***] a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Court of Session or ⁴²⁶[Chief Judicial Magistrate] ⁴²⁷[or Metropolitan Magistrate] or other Magistrate of the first class passes a sentence of fine not exceeding fifty Taka only.</p> <p>Explanation- There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.</p>

No appeal from certain summary convictions	414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred Taka only.
Proviso to sections 413 and 414	415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any punishment therein mentioned is combined with any other punishment, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace. Explanation- A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.
Special right of appeal in certain cases	⁴²⁸ [415A. Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.]
Repealed	416. [Repealed by section 26 of the Criminal Law Amendment Act, 1923 (Act No. XII of 1923).]
Appeal in case of acquittal	⁴²⁹ [417. ⁴³⁰ [(1) Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal- (a) to the High Court Division from an original or appellate Order of acquittal passed by any Court of Session; (b) to the Court of Session from an original or appellate Order of acquittal passed by any Magistrate.] ⁴³¹ [(2) Notwithstanding anything contained in section 418, if such an order is passed in any case instituted upon complaint, and if the order involves an error of law occasioning failure of justice, the complainant may present an appeal- (a) to the High Court Division from an original order of acquittal passed by any Court of Session; (b) to the Court of Session from an original order of acquittal passed by any Magistrate.] (3) No appeal by the complaint from an order of acquittal shall be entertained by the High Court Division ⁴³² [or a Court of Session] after the expiry of sixty days from the date of the order of acquittal.

(4) If, in any case, the admission of an appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).

**Appeal
against
inadequacy
of sentence**

417A.(1) The Government may, in any case of conviction on a trial held by any court, direct the Public Prosecutor to present an appeal to the High Court Division against the sentence on the ground of its inadequacy.

(2) A complainant may, in any case of conviction on a trial held by any Court, present an appeal to the Appellate Court against the sentence on the ground of its inadequacy:

Provided that no appeal under this sub-section shall be entertained by the Appellate Court after the expiry of sixty days from the date of conviction.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Appellate Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

**Appeals on
what
matters
admissible**

418. An appeal may lie on a matter of fact as well as a matter of law.

Explanation-The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.]

**Petition of
appeal**

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against ⁴³³[* * *].

**Procedure
when
appellant in
jail**

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

**Summary
dismissal
of appeal**

421.(1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall pursue the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under ⁴³⁴[* * *] or section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal

423.(1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of Public Prosecutor, if he appears, and, in case of an appeal under ⁴³⁵[* * *] section 417, the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retired or ⁴³⁶[sent] for trial, as the case may be, or find him guilty and pass sentence on him according to law ;

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or ⁴³⁷[sent] for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

⁴³⁸[(bb) in an appeal for enhancement of sentence, (1) reverse the finding and sentence and acquit or discharge the accused or order him to be retired by a Court competent to try the offence, or (2) alter the finding maintaining the sentence, or (3) with or without altering the finding, alter the nature or the extent, or the nature and extent, or the sentence, so as to enhance or reduce the same;]

(c) in an appeal from any other order, alter or reverse such order;

(d) make any amendment or any consequential or incidental order that may be just or proper ⁴³⁹[:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed than might have been inflicted for that offence by the Court passing the order or sentence under appeal.]

(2) [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

**Judgments
of
subordinate
Appellate
Courts**

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than High Court Division:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

**Order by
High Court
Division on
appeal to
be certified
to lower
Court**

425. ⁴⁴⁰[(1) Whenever a case is decided on appeal by the High Court Division under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed:

Provided that where the finding sentence or order was recorded or passed by a Magistrate other than the Chief Metropolitan Magistrate, or the Chief Judicial Magistrate, the certificate shall be sent through the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be.]

(2) The Court to which the High Court Division certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court Division; and, if necessary, the record shall be amended in accordance therewith.

**Suspension
of sentence
pending
appeal
Release of
appellant
on bail**

426.(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court Division in the case of any appeal by a convicted person to a Court subordinate thereto.

(2A) When any person ⁴⁴¹[is sentenced to imprisonment for a term not exceeding one year] by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(2B) Where High Court Division is satisfied that a convicted person has been granted special leave to appeal to the ⁴⁴²[Appellate Division of the Supreme Court] against any sentence which it has imposed or maintained, it may if it so thinks fit order that pending the appeal the

sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.

(3) When the appellant is ultimately sentenced to imprisonment, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal

427. When an appeal is presented under ⁴⁴³[section 417 or section 417A, the High Court Division or any other Appellate Court, as the case may be,] issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate Court may take further evidence or direct it to be taken

428.(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is High Court Division, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken ⁴⁴⁴[* * *].

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

Procedure where Judges of Court of Appeal are equally divided

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 ⁴⁴⁵[, section 417A] and Chapter XXXII.

Abatement of appeals

431. Every appeal under ⁴⁴⁶[section 417 or section 417A] shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII

OF REFERENCE AND REVISION

- & 433.** 432 and 433. [Omitted by Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]
- Omitted**
- Omitted** 434. [Omitted by section 6 of the Criminal Procedure Amendment Act, 1943 (Act No. XXVI of 1943).]
- Power to call for records of inferior Courts** 435.(1) The High Court Division or any Sessions Judge, ⁴⁴⁷[***] may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
- Explanation-All Magistrates, ⁴⁴⁸[whether Executive or Judicial,] shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section ⁴⁴⁹[* * *].
- ⁴⁵⁰[***]
- (3) [Repealed by section 116 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).]
- ⁴⁵¹[***]
- Power to order inquiry** 436. On examining any record under section 435 or otherwise, the High Court Division or the Sessions Judge may direct the ⁴⁵²[Chief Metropolitan Magistrate or ⁴⁵³[Chief Judicial Magistrate]] by himself or by any of the Magistrates subordinate to him to make, and the ³⁴⁵⁴[Chief Metropolitan Magistrate or ⁴⁵⁵[Chief Judicial Magistrate]] may himself make, or direct any Sub-ordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence who has been discharged:
- Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.
- Omitted** 437. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]
- Omitted** ⁴⁵⁶[***]

**High Court
Division's
powers of
revision**

439.(1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court Division may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate ⁴⁵⁷[* * *], the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by ⁴⁵⁸[a Metropolitan Magistrate or] a Magistrate of the first class.

⁴⁵⁹[(4) Nothing in this section shall be deemed to authorize the High Court Division to convert a finding of acquittal into one of conviction, or to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439A].

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

**Sessions
Judge's
powers of
revision**

⁴⁶⁰[439A.(1) In the case of any proceeding the record of which has been called for by himself or which otherwise comes to his knowledge, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court Division under section 439.

(2) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final.

(3) An Additional Sessions Judge shall have and may exercise all powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Sessions Judge.]

**Optional
with Court**

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision:

to hear parties	Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).
Omitted	441. [Omitted by Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]
High Court Division's order to be certified to lower Court or Magistrate	442. When a case is revised under this Chapter by the High Court Division, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

⁴⁶¹CHAPTER XXXIIA

TIME FOR DISPOSAL OF APPEAL AND REVISION

Time for disposal of appeals and Revision	<p>442A.(1) An Appellate Court shall dispose of an appeal filed before it within ⁴⁶²[ninety days] from the date of ⁴⁶³[service of notice upon respondents].</p> <p>(2) A Court having power of revision shall dispose of a proceeding in revision within ⁴⁶⁴[ninety days] from the date of ⁴⁶⁵[service of notice upon the parties].</p> <p>⁴⁶⁶[(3) In this section, in determining the time, only the working days shall be counted.]]</p>
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PART VIII

SPECIAL PROCEEDINGS

CHAPTER XXXIII

(443-463) Omitted	[Omitted by the Schedule of the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (Act No. II of 1950).]
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CHAPTER XXXIV

LUNATICS

Procedure in case of accused being lunatic	464.(1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defense, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.
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⁴⁶⁷[(1A) Pending such examination and inquiry the Magistrate may deal with the accused in accordance with the provisions of section 466.]

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

**Procedure
in case of
person
being
lunatic
before
Court of
Sessions**

⁴⁶⁸[465.(1) If at the trial of any person before a Court of Session, it appears to the Court that such person is of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.]

**Release of
lunatic
pending
investigation
or trial**

466.(1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one on which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) 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, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Government:

**Custody of
lunatic**

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Government may have made under the Lunacy Act, 1912.

**Resumption
of inquiry
or trial**

467.(1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

**Procedure
on accused
appearing**

468.(1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court

before Magistrate or Court	<p>considers him capable of making his defence, the inquiry or trial shall proceed.</p> <p>(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.</p>
When accused appears to have been insane	<p>469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate ⁴⁶⁹[or, as the case may be, the Court is satisfied from the evidence given before him or it] that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate ⁴⁷⁰[or, as the case may be, the Court shall proceed with the case].</p>
Judgment of acquittal on ground of lunacy	<p>470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.</p>
Power of Government to relieve Inspector General of certain functions	<p>(2) The Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector General of Prisons under section 473 or section 474.</p>
Person acquitted on such ground to be detained in safe custody	<p>471.(1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the Government:</p> <p>Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Government may have made under the Lunacy Act, 1912.</p>
Repealed	<p>472. [Repealed by section 101 and Schedule II of the Lunacy Act, 1912 (Act No. IV of 1912).]</p>

Procedure where lunatic prisoner is reported capable of making his defence	<p>473. If such person is detained under the provisions of section 466, and in the case of a person detained in a jail, the Inspector General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.</p>
Procedure where lunatic detained under section 466 or 471 is declared fit to be released.	<p>474.(1) If such person is detained under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the Government may thereupon order him to be released or to be detained in custody, to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.</p> <p>(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Government, which may order his release or detention as it thinks fit.</p>
Delivery of lunatic to care of relative or friend	<p>475.(1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Government may, upon the application of such relative or friend and on his giving security to the satisfaction of ⁴⁷¹[the Government] that the person delivered shall-</p> <p>(a) be properly taken care of and prevented from doing injury to himself or to any other person, and</p> <p>(b) be produced for the inspection of such officer, and at such times and places as the Government may direct, and</p> <p>(c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,</p> <p>order such person to be delivered to such relative or friend.</p> <p>(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the</p>

provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.

CHAPTER XXXV

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

**Procedure
in cases
mentioned
in section
195.**

⁴⁷²[476.(1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

Provided that, where the Court making the complaint is High Court Division, the complaint may be signed by such officer of the Court as the Court may appoint.

⁴⁷³[For the purpose of this sub-section, a Metropolitan Magistrate shall be deemed to be a Magistrate of the first class.]

⁴⁷⁴[(2) A Magistrate to whom a complaint is made under sub-section (1) or section 476A or section 476B shall, notwithstanding anything contained in Chapter XVI, proceed, as far as may be, to deal with the case as if it were instituted on a police report.]

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

**Superior
Court may
complain
where
subordinate
Court has**

476A. The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the

committed to do so	making of such complaint; and, where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.
Appeals	476B. Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if its makes such complaint the provisions of that section shall apply accordingly.]
Repealed	477. [Repealed by section 129 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).]
[Omitted] & 479. [Omitted]	478 and 479. [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]
Procedure in certain cases of contempt	480. When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 or the Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred taka, and in default of payment, to simple imprisonment for a term which may extend to one month, unless s