HANDBOOK FOR THE MAGISTRATES

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FOREWORD

The Handbook for the Magistrates is nothing more than a handy reference book for the serving Magistrates and others who are involved and interested in the matters of criminal justice. It was prepared with the financial assistance of the Asia Foundation to former Civil Officers` Training Academy (COTA), now merged with the Bangladesh Public Administration Training Centre (BPATC). The draft was based on the assessed needs of the serving Magistrates. It was then circulated among more than one hundred working Magistrates and professionals. Their comments were discussed and considered in a Workshop and some revisions were made on its recommendations. A group of experts then reviewed the revised draft and the comments of the experts were taken care of as far as possible. The book as a whole was then discussed by the authors and the Project Co-ordinator under the Chairmanship of the Project Director threadbare and it was finalised and made ready for printing.

This handbook must not be taken as a substitute for any text book on law. It only tries to help the Magistrates in finding appropriate laws and in organizing their mind about the matters to be considered under different situations. The responsibility of finding and consulting the appropriate text books on law lies with the Magistrates. They are advised to check the original text whenever and wherever it is quoted in the handbook. We would like to emphasize repeatedly that this handbook only provides some guidelines particularly for the new Magistrates so that they can learn their subject a bit quickly.

The handbook is the result of a team work and the work will be highly prized if the serving Magistrates find it useful for the purpose. As this handbook had to be prepared in a very short time it is possible for some unintended mistakes to creep in it. So any comment, suggestion or correction of the handbook will be welcome and would be considered as valuable contribution for and incorporation in the Second Edition, if and when it is published.

I must appreciate the hard work done by Dr. M. Nayimuddin, MDS,(and the Project Co-ordinator) and all the authors. Mr. Z.A. Shamsul Haq and Mr. M. Safiur Rahman had to shoulder much more responsibility than mere authorship towards publishing this book. The Asia Foundation, Ministry of Establishment , and Mr. Fazlul Hassan Yusuf, the former Principal, COTA (and later MDS,BPATC) deserve thanks for many reasons. Thanks and due also to Mr. Mosharraf Hossain, the then Additional Director of COTA and now Director, BPATC for the valuable contributions he made while preparing the project.

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There are also a number of other persons who have helped in many ways in preparing and publishing this handbook but whose name we are not in a position to mention individually. To these persons we express our gratitude in silence.

June, 1985

Dr.Shaikh Maqsood Ali
Project Director

PREFACE TO THE SECOND EDITION

The first edition of the book "Handbook for the Magistrates" was published in June, 1985. Soon after its publication we noticed a great demand for the book and it became out of stock within a short period. It is gratifying that the book has been appreciated not only by the serving magistrates but also by many other legal practitioners, legal experts and academicians. Continuous requests from different corners encouraged Bangladesh Public Administration Training Centre (BPATC) venture publishing the second edition of the book.

The Asia foundation provided necessary funding for preparation of the book under a project with Dr. S. Maqsood Ali, former-Rector, BPATC and now Member, Planning Commission as the Project Director and Mr. M. Naimuddin, former-Member Directing Staff, BPATC as the Project Coordinator. We gratefully acknowledge the support provided by the Asia Foundation for publication of the book. We also recognise with great appreciation the hard work rendered by the Dr. S. Maqsood Ali and Mr. M. Naimuddin for bringing out the first edition of the book.

The second edition of the book has some changes made by the authors. Mr. Z. A. Shamsul Huq, Mr. Gazi Shamsur Rahman, Mr Jalal Ahmed and Mr. Rafiqur Rahman, Bar-at-Law made singificant contribution by offering valuable suggestions and comments for improvement of the book. We are thankful to all of them.

We are greatful to Mr. A. Z. M. Shamsul Alam, former-Rector, BPATC and Dr. Ekram Hossain, the present Rector whose active support have made it possible to bring out the second edition of the book.

Mr.M. Safiur Rahman, Member Directing Staff (Management and Public Administration), Mr. Hiralal Bala, Director and Mr. Kazi Abdul Murtoza, Director BPATC deserve our praise for organising and processing publication of this edition.

Dr. M. Tareq, Deputy Director, BPATC provided necessary guidance for word processing and computer composition of this edition. He deserves special appreciation for his generous services. Thanks are due to Mr. Mohammad Hossain, Mr. Rafiqul Islam and Mr. Matiur Rahman of the BPATC Computer Center for their painstacking work to word processing.

We would also like to thank Mr. A.K. Fazlul Huq, Deputy Director (Publication), Mr. Emamul Haque, Publication Officer and Mr. Mollah Mosharrof Hossain, Assistant Publication Officer of BPATC and the Gonomudran Limited for their active involvement in the publication process of this edition.

This hand book should not be regarded as a substitute for the Code of Criminal Procedure or any other law. This will, we hope, give some guidance in the application of law in the criminal courts. We shall be very happy if this book serves some useful purpose to the concerned persons.

Dated, Savar.
November, 1990.

(Dr. Ekramul Ahsan)
Member Directing Staff
(Research and Consultancy)

PREFACE TO THE FIRST EDITION

Along with the administrative decentralization in the country, the judiciary has also been decentralized to a large extent. Court establishments have been set up in the far-flung rural areas in order to help the vast majority of the people to seek and secure justice at their door-steps. Now, the seat of administration of justice, the Courts for first instance, is located at the Upazilas. Since February, 1984 the Courts of Magistrates have been established and are functioning in all Upazilas of the country. A large number of newly-recruited or promoted officers have been entrusted with the duties of Magistrates and they have been working as such towards dispensation of criminal justice. Most of them have had no opportunity to receive adequate training, nor do they have necessary knowledge or experience to conduct the proceedings of a Court in accordance with the provisions of law.

Delay in the administration of criminal justice does not only cause serious harm to the society, but also defeat the very purpose of justice. Such delays in investigation and trial of crimes, more often than not, lead to miscarriage of justice. Therefore, the imperative need for holding expeditious trials by the criminal Courts can never be over-emphasized. With this end in view, the Code of Criminal Procedure, 1983 (Act V of 1898) was amended recently and meaningful and effective changes were brought therein. Some of these amendments are drastic in nature and revolutionary in character. They are also very important and, at times, complicated. The newly-appointed Magistrates posted in the Upazilas are designated as Upazila Magistrates and they have been given all the powers of the former Sub-divisional Magistrates (Sec. 13A of the Cr.P.C.). With the recent amendments of the procedural law the jurisdiction of Magistrates has been widened and the largest chunk of the criminal cases are now triable in the Courts of Magistrate. Magistrates are now engaged in judicial duties in the Upazilas and they have to discharge their functions independently. But, most of them have little or no scope to secure advice or assistance from senior colleagues, experienced lawyers and efficient court-officials. Library facilities are also very limited in many places. Owing to the lack of proper knowledge and experience, some of the Magistrates posted at the Upazilas are Likely to make mistakes and irregularities while discharging their functions. Sometimes problems may be created in the administration of criminal justice and ends of justice may suffer. The interest of justice must be maintained at all costs and suitable steps should be taken by all concerned.

Magistracy is the most important segment of the criminal justice system in our country. The role of Magistrates is very important in the administration of criminal justice. It is, therefore, essential that they should be conversant not only with the important provisions of the substantive and procedural laws, but also with the necessary techniques and strategies of their job. The discussions of subjects in the different chapters of the handbook are intended to make an exposure of a Magistrate to the

various transactions of a criminal Court and are aimed at making him more knowledgeable, resourceful and effective.

In these back-ground and perspective, the Bangladesh Public Administration Training Centre (BPATC) undertook the task of compiling and preparing a book titled " Handbook for the Magistrates". It has been so designed that all necessary laws along with their important and common provisions have been incorporated in it. Particular care has been taken to select such subjects of the criminal justice which are of day to day requirement of the Magistrates. Judicial system, the criminal Courts, its jurisdictions and powers, various segments of the criminal justice system, viz., detection of crime, investigation, prosecution, trial, imprisonment, etc. have been discussed in the various chapters of the book. Necessary details regarding different steps to be taken by the Magistrates during investigation and trial of criminal cases have been repleted with as much precision as possible keeping in view the provisions of law. Various stages of different types of criminal cases and the requisite steps to be taken thereof, have been elaborately discussed in the chapters. In the selection of subject-matters and their treatment, emphasis has been laid more on the law of procedure and practice to make the handbook really help full to the working Magistrates. RElevant case-laws have been cited wherever necessary. A few chapters have also been written to acquaint the Magistrates with the important provisions of the Penal Code, 1860, the Evidence Act, 1872 and the Village Courts Ordinance, 1976. The book also contains a few chapters on the administrative and miscellaneous functions of the Magistrates. The duties of the Bench Clerks, opening of various Court Registers and their maintenance, etc. have also been touched upon.

In order to keep the book handy in size for day to day use by the Magistrates, efforts were made to discuss the subjects very briefly and precisely as far as practicable. It is hoped that the book will be helpful to all Magistrates and other personnel engaged in the he administration of criminal justice in the country.

We are grateful to Dr. Shaikh Maqsood Ali, Rector, BPATC and the Project Director for kindly assigning us with the responsibility of drafting this handbook and for his continuous guidance. Dr. M. Nayimuddin, MDS, BPATC and the Project Co-ordinator had always been or source of inspiration. His constant drive to complete the work is extremely praiseworthy. A large number of experts like Barrister Matiur Rahman, Barrister Rafiqur Rahman, Mr. S.A.Mahmood, Mr. M. Faizullah, Dr. A.M.M.Shawkat Ali, Messers A.M.M. Bahadur Munshi, M. Nasim, Badiur Rahman, A.R. Pathan, S.M.Matiur Rahman, Majibur Rahman, M. Delwar Hossain and others helped us by their valuable advice and suggestions for which we are very grateful to them. Sheikh Sirajuddin and Sheikh M. Ismail of the Publication Branch of BPATC and M. Mokaddas, Manager of the Polwel Printing Press deserve credit for speedy publication of the handbook.

The handbook is the result of our team work over several months. We shall feel very happy if it is found useful by our kind readers. We shall welcome any comment and suggestions towards its improvement for future editions.

June, 1985

Z. A. Shamsul Haq
M. Safiur Rahmam
M. A. Sattar
M. Aftabuddin Khan
Dr. M. Tareque

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PART ONE

CHAPTER I

THE JUDICIAL SYSTEM OF BANGLADESH

Judiciary which protects our legal rights and punishes the wrong-doers has a glorious history and well-founded legacy in Bangladesh. Courts are regarded sacred wherefrom people expect justice. For this reason, in spite of several constitutional changes, the basic structure and functions of our judiciary have remained almost unaltered over the decades. Supreme Court owes its origin to the constitution and other basic laws[1], while the subordinate Courts are products of Acts, Ordinances or other similar instruments[2] in Bangladesh.

The Supreme Court

At the top of the hierarchy of the Courts in the Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division which have both Civil and Criminal Jurisdiction. It is alone the superior Court of the country. The functions of the two divisions are distinct and separate and are governed by two separate set of rules as regards practice and procedure.The Chief Justice of the Supreme Court who is appointed is constitutionally known as the Chief Justice of Bangladesh.

Appellate Division

The Appellate Division hears and determines appeals from judgments, decrees, orders or sentences of the High Court Division. An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where :

(a) the case involves a substantial question of law as to the interpretation of the constitution;

---

1. Amongst the basic law that shaped and sustained our superior courts are the laws Continuance Enforcement Order, 1971, the Provisional Constitution of Bangladesh Order, 1972. the High Court of Bangladesh Order (P.O.5), the Bangladesh (Legal Proceedings) Order, 1972 (p.O.12), the Bangladesh (Legal Proceedings) (Second) Order, 1972 (P.O.69), the Bangladesh (Legal Proceedings) (Third) Order, 1972 (P.O.90), the High Court of Bangladesh (Amendment) Order, 1972 (P.O.91), the Constitution of the People's Republic of Bangladesh, 1972, the Proclamation of 24th March, 1982, the Proclamation (First Amendment) Order, 1982 etc.

2. Important amongst them are the Civil Courts Act, 1887, the Code of Criminal Procedure, 1898, the Code of Civil Procedure, 1908, etc.

(b) where a sentence of death is imposed or where a sentence of transportation for life is imposed;

(c) where punishment on any person has been imposed for contempt of that Division.

Appeal shall also lie to the Appellate Division against all others of the High Court Division if the Appellate Division grants special leave to appeal. The Appellate Division also enjoys a Constitutional Advisory jurisdiction. It may give its opinion on any question of law of public importance if the President desires to obtain its opinion. The Appellate Division can also review any judgment pronounced or any order made by it. The Supreme Court is a Court of record. A Court of record has the authority to fine and imprison for contempt of its authority.

High Court Division

The Jurisdiction of the High Court is very wide. Its jurisdiction can be divided under the heads, viz, original, Appellate, and other Jurisdictions. Its jurisdiction extends to both civil and criminal matters besides its constitutional and other responsibilities.

Under Civil Jurisdictions, the High Court Division enjoys Appellate power, Revisional Power and power in the matter of reference made to it.

As an Appellate Court, the High Court Division can hear and determine appeals from decrees and orders passed by the Subordinate Courts depending upon the valuation of the suit. Appeal lies to the High Court Division where valuation of the suits or proceedings exceeding Taka seventy thousand[3].

The High Court Division exercises the power of revising any order of the subordinate Civil Courts in which no appeal lies thereto, if the record.

In suit, appeal or execution case where the decree is not appealable and where a question of law arises, the Court may suo motto or on application of any party make a reference to the High Court Division for opinion.

3. vide The Civil Courts Act, 1887 Sec. 21(1) as amended by Ordinance II of 1983.

Constitutional Jurisdiction or Writ Jurisdiction[4].

Under Article 102(1) of the Constitution, the High Court Division may, on the application of any aggrieved person, give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of the Constitution.

The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law :

(a) on the application of any person aggrieved make an order:

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that whichhe is not permitted by law to do or to do that whichhe is required by lato do; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without any lawful authority and is of no legal effect; or

(b) on the application of any person make an order:

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office[5].

Special and Statutory Jurisdiction

This jurisdiction of the High Court Division extends to the Admiralty jurisdiction under the Courts of Admiralty Act, 1891, statutory jurisdiction under the Company Law, Banking Companies Ordinance, law relating to Income tax and other tax statutes.

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4. Partially revived under the Constitution (Partial Revival) (Section) Order, 1985.

5. Article 102 Clause (1) and (2) of the Constitution of the People's Republic of Bangladesh.

Appellate and other Jurisdictions

The High Court Division decides appeals from the Order of conviction passed by the Sessions Judge or Addl. Sessions Judge or Assistant Sessions Judge. Prior to the coming into force of the Law

Reforms Ordinance of 1978, only the Government could present an appeal before the High Court Division against an original or appellate order of acquittal passed by any other Court. On the report of the Law Reforms Committee, the right to appeal has now been given to the complainant in a case instituted on complaint.[6]

The Criminal revisional power of the High Court is of supervisory nature and is exercised to correct miscarriage of justice arising from misconception of law irregularity of procedure, lack of proper appreciation etc. In criminal revision the High Court may call for and examine any record of any inferior Court for the purpose of satisfying itself as to the correctness, legality of the findings, sentence or order and the regularity of any proceeding before such inferior Court. This discretionary power is exercised to further the ends of justice.

The High Court Division enjoys some inherent power which is used to see that substantial justice is done. The inherent power may be exercised by stopping proceedings at an interlocutory stage when there is abuse of process of the Court. The High Court Division has been given the power of superintendence and control over all Courts subordinate to it.

Subordinate Courts

Chapter II of Part VI of the Constitution deals with subordinate Courts. There shall be in addition to the Supreme Court such Courts subordinate thereto as may be established by law'.

The subordinate Courts referred to in Article 114 of the Constitution are the Civil and Criminal Courts in the country subordinate to the Supreme Court. After the establishment of High Court in Calcutta, a regular hierarchy of Civil Courts were established in Bengal by the Civil Courts Act, 1877 (Act XII of 1887) and the hierarchy has been maintained in the Code of Civil Procedure, 1908 (Act V of 1908). At the base of the hierarchy is the Court of Assistant Judge next above is the Court of Subordinate Judge, next above the Courts of the Additional District Judge and the District Judge.

---

6. Law Reforms Ordinance, 1978.

Criminal Courts

The hierarchy of Criminal Courts has been given in Chapter II of Part II of the code of Criminal Procedure, 1898 (Act V of 1898). In the Chapter under caption ' Classes of Criminal Courts', five Classes of Criminal Courts, besides the Supreme Court, have been given. They are the Courts of Session, Metropolitan Magistrates, Magistrates of the First Class, Magistrates of the Second Class and Magistrates of the Third Class.

Sessions Courts

For purpose of administration of Criminal justice, Bangladesh has been divided into a number of Sessions divisions and every sessions division is for the purposes of the Code of criminal procedure (Section 7(i)) a district or consists of districts.

A Court of Sessions is established in every district under the Code and a Judge is appointed for such Court. As a rule , the District Judges of the districts concerned are appointed Sessions Judges and the Additional District Judges are appointed Additional Sessions Judges. When a Subordinate Judge is given sessions power he acts as Assistant Sessions Judge.

The Sessions Judge is the principal judicial officer of the district to try criminal cases. He exercises original, appellate and revisional jurisdictions.

A Sessions Judges or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division (Section 31 (2)). Ordinarily, an appeal lies to the High Court Division from an order of conviction and sentence passed by the Sessions judge.

A Sessions Judge hears appeal cases from Assistant Sessions Judges. District Magistrate or a Magistrate of the First Class. No second appeal lies from the judgment of the Sessions Judge but it is revisable by the High Court Division.

Under revisional jurisdiction the Sessions judge may call for and examine the records of any subordinate Court within his jurisdiction to satisfy himself as to the correctness, propriety or legality of the finding, sentence or order and the regularity of any proceeding before such subordinate Court. Bail petitions are heard under this jurisdiction.

When Sessions power is conferred upon an Additional District Judge, he acts as Additional Sessions Judge. He tries those cases which are transferred to him by the Sessions Judge of the district.

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The Court of Assistant Sessions Judge

Below the Additional Sessions Judge is the Assistant Sessions Judge. An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of imprisonment for a term exceeding ten years.

An Assistant Sessions Judge deemed to have been appointed as Additional Sessions judge under the proviso to sub-section (3) of Section 9 may pass any sentence authorized by law except sentence of death.

Against his order of conviction and sentence upto five years appeal lies to the court of Sessions and above five years before the High Court Division.

Courts of Magistrates

The Code of Criminal Procedure, 1898, has provided for establishment of four classes of Criminal Courts for trial by Magistrates, namely, the Courts or Metropolitan Magistrates, Magistrates of the First Class, Magistrates of the Second Class and Magistrates of the Third Class. The Code has defined their jurisdictions and powers.

Metropolitan Magistrates

In a Metropolitan Area the Government shall for the purpose of the Code, appoint a Chief Metropolitan Magistrate and such other Metropolitan Magistrates as it may deem fit.

The Govt. may appoint one or more Additional Chief Metropolitan Magistrates and such Magistrates shall have all or any of the powers of the Chief Metropolitan Magistrate under the Code.

Metropolitan Magistracy has to discharge judicial functions for trial of all cases under the Cr.P.C., Metropolitan Magistrates may pass sentence of imprisonment for a term not exceeding five years including such solitary confinement as is authorized by law and a fine not exceeding taka ten thousand and whipping. Metropolitan Magistrates have no jurisdiction in regard to section 133 Cr. P.C. and 144 Cr. P.C. Such matters are taken care of by the Police Commissioner under the Metropolitan police Ordinance. A Metropolitan Magistrate possesses inherent powers of taking cognizance u/s 190 Cr. P.C. and of summary trial u/s 260 Cr. P.C. For the purposes of the Cr. P.C. all Metropolitan Magistrates including the Additional Chief Metropolitan Magistrates, and the Bench of such Magistrates shall be subordinate to the Chief Metropolitan Magistrate, who may , from time to time, make rules or give special orders consistent with the Cr. P.C., as to the distribution of business among such Magistrates.

District Magistrate, Additional District Magistrate and Magistrate of the First Class

In every district outside a Metropolitan Area, the Government shall appoint a Magistrate of the First Class, who shall be called the District Magistrate.

The Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrate First Class outside a Metropolitan Area and the Government, or the District Magistrate, subject to the control of the Govt. may, define their local jurisdiction and powers.

The District Magistrates and the Additional District Magistrates are also Magistrates of the First Class. Section 29C of the Cr.P.C. enables the government to invest the Chief Metropolitan Magistrate. District Magistrate or any Additional District Magistrate with power to try as a Magistrate all offenses not punishable with death; and to invest any Magistrate of the First Class with power to try a Magistrate all offenses not punishable with death or with transportation or with imprisonment for a term exceeding ten years.

The Other Magistrates functioning within the jurisdiction of the District are subordinate to the District Magistrate who defines the local area of their jurisdiction.

The Government or the District Magistrate, subject to the general or special orders of the Govt. may empower any Magistrate to take cognizance under sec 190 sub-section (I) clause (a) or clause (b) of offenses for which he may try or send for trial.

A Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding five years including such solitary confinement as is authorized by law and fine not exceeding taka ten thousand and whipping.

Magistrates of the Second Class and the Third Class

A Magistrate of the Second Class may pass a sentence of imprisonment for a term not exceeding three years including such solitary confinement as is authorized by law and fine not exceeding taka five thousand. A Magistrate of the Third Class may pass a sentence of imprisonment not exceeding two years and fine not exceeding taka two thousand. Appeal against order of conviction passed by Magistrate of the Second Class and Third Class lies to the District Magistrate and the order of the District Magistrate is revisable by the Court of Sessions.

Other Courts and Tribunals of Special Jurisdiction

In addition to the Civil and Criminal Courts mentioned in this chapter, there are a number of Courts set up under different laws and statutes such as: (I) Labour Courts, (2) Labour Appellate Tribunal, (3) Special Tribunal created under the Special Power Act, 1974, (4) Courts of Special Judges, etc.

Conciliation Boards

The Conciliation Boards adjudicate small civil and petty criminal cases in municipal areas. Conciliation Boards are constituted under the Conciliation of Disputes (Municipal Areas) Ordinance 1979.

Village Courts

Village Courts are established under the Village Courts Ordinance, 1976 for adjudication of petty civil and criminal cases in rural areas.

Family Courts

Family Courts are established under Family Courts Ordinance, 1985 with a view to safeguarding the legal rights of the womenfolk. The Courts of Assistant Judge have been given jurisdiction to adjudicate cases related to (a) divorce, (b) restitution of conjugal rights, (c) dower, (d) maintenance, (e) care and guardianship of children.

Juvenile Court

A Juvenile Court has been set up under the Children Act, 1974 at Tongi, Dhaka, to try cases connected with juvenile delinquency.

Administrative Tribunals

Administrative Tribunals exercised jurisdiction on matters relating to (a) the terms and conditions of persons in the service of the Republic, (b) the acquisition, administration, management and disposal of any property vested in or managed by the Govt. by or under any law, including the operation and management, and service in any nationalised enterprise or statutory public authority and (c) any law to which clause (3) of Article 102 of the constitution applies.

CHAPTER II

CRIMINAL COURTS AND THEIR JURISDICTIONS

Chapter I introduced the judicial system of Bangladesh in brief. This Chapter aims at describing the Criminal Courts of the country in terms of their types and jurisdictions. Broadly speaking,there are three types of Criminal Courts in Bangladesh:

(a) The Supreme Court,
(b) The Courts constituted under any law other than the Criminal Procedure Code, and
(c) Courts constituted under the Cr.P.C.

If in any other law there is no specific mention of the Court competent to try offenses thereunder they shall be tried by Courts competent to try such offenses under the eight column of the second schedule of the Cr.P.C. (section 29 Cr. P.C.). And these Courts , constituted under the Cr. P.C. are of five classes, namely:

(I) Courts of Session;
(ii) Metropolitan Magistrates;
(iii) Magistrates of the First Class;
(iv) Magistrates of the Second Class;
(v) Magistrate of the Third Class
(section 6 Cr. P.C.).

Court of Sessions

As it has been pointed out in the previous chapter, Bangladesh consists of sessions divisions and every sessions division is, for the purpose of the Cr. P.C. a district or more than one district. However, the Government may, alter the limits or the number of such divisions and districts. A Metropolitan Area is, for the purpose of the Cr. P.C. deemed to be a .PG session division (sec. 7 Cr. P.C.) At present, there are 56 (fifty six) sessions divisions in Bangladesh.

The Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts (section 9 (3) Cr.P.C.). All Assistant Sessions Judges are subordinate to Sessions Judge. Sessions Judge may, make provisions to dispose of urgent applications by Additional Sessions Judges or Assistant Sessions Judges or by District Magistrate where there will be no Additional or Assistant Sessions Judges in the sessions divisions (section 17(3) & (4) Cr.P.C.).

District Magistrate

In every district outside a Metropolitan Area, the Government appoint a Magistrate of the first class who is called the District Magistrate. The Government may appoint any Magistrate of the first class to be an Additional District Magistrate (ADM) and such ADM shall have all or any of the powers of a District Magistrate under the Cr.P.C. or under any other law for the time being in force. ADM is deemed to be subordinate to the District Magistrate (section 10 Cr. P.C.).

Besides the District Magistrate, Government may appoint Magistrates of the first, second or third class in any district outside a Metropolitan area and if not otherwise said, the jurisdiction and powers of such Magistrates extend throughout such district (section 12 Cr. P.C.). And all such Magistrates are subordinate to the District Magistrate (section Cr.P.C.). Where a Magistrate is transferred from one district to another, he loses jurisdiction to try a case after he has delivered over the charge.
50 Cal. 664 Baisnab Das Vs. Amin Ali.

Upazila Magistrate

The Government may place any Magistrate of the first or second class as a Upazila Magistrate in a Upazila and he shall have all the powers of a Sub-divisional Magistrate under the Cr.P.C. (section 13A Cr.P.C.).

Metropolitan Magistrate

The Government, in a Metropolitan ARea, shall appoint a Chief Metropolitan Magistrate and other Metropolitan Magistrates. The Government may also appoint one or more Additional Chief Metropolitan Magistrates in a Metropolitan Area (section 18 Cr. P.C.). A Metropolitan Magistrate's local limits of jurisdiction is confined within the Metropolitan Area for which he is appointed (section 20 Cr.P.C.) At present there are 3(three) Metropolitan Magistracies in Bangladesh, namely, Dhaka, Chittagong and Khulna.

Every Court must satisfy itself before entertaining a complaint that it has territorial jurisdiction to the offense in question. If the complaint does not show it, the Magistrate may dismiss the complaint 1966 Cr.L.T. 423 (427). Every offense shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed (section 177 Cr.P.C.). Whenever two Courts have concurrent jurisdiction, the lower Court should be approached at the first instance unless the party concerned gives special reasons for a direct approach to the higher one.

An offense is triable in district where act is done or where consequence ensues (sec. 179 Cr. P.C.) This rule applies to those offenses where act and its consequence taken together constitute the offense which is charged. It should be remembered that consequence should be closely related to the act and not merely a remote and contingent result.

Jurisdiction of Related Offense

Where an act is offense by reason of its relation to other offenses, the first-mentioned offense may be inquired into or tried by a Court within whose local jurisdiction either act was done (section) 180 Cr.P.C.). The related offense (the later one in the domain of time) may be tried either at the place where it was committed or at the place where the principal offense was committed. 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 offense abetted was committed. Similarly, 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 any of them were at the time dishonestly received or retained.

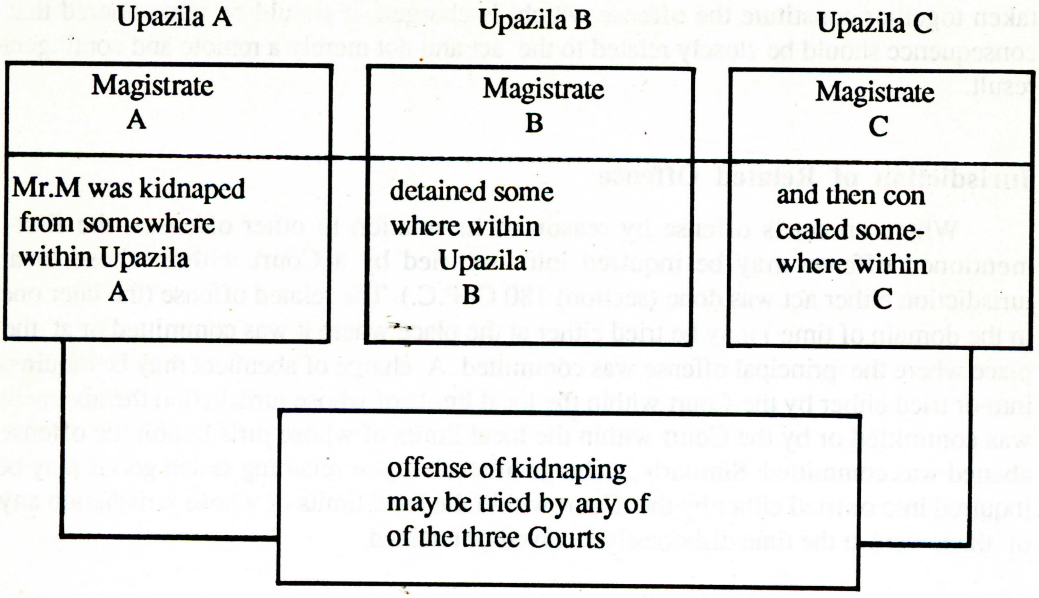
Dacoity and Thugery

The following offenses may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is: (i) of being a thug, (ii) of being a thug and committing murder, (iii) of dacoity, (iv) of dacoity with murder, (v) of having belonged to a gang of dacoits, and (vi) of having escaped from custody (section 181 (I), Cr. P.C.).

Kidnaping or Abduction

The offense of kidnaping or abduction may be inquired into or tried by a court within the local limits of whose jurisdiction the person was kidnaped or abducted or concealed or detained (section 181(4) Cr. P.C.).

Example: (Kidnaping or abduction)



Theft

The offense of theft, or any offense 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 offense was committed or the property stolen was possessed by the theft or by any person who received or retained the same knowing or having reason to believe it to be stolen, (section 181(3) Cr.P.C.).

Criminal Misappropriation and Criminal Breach of Trust

The offense 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 offense was received or retained by the accused person or the offense was committed (section 181(2) Cr.P.C.).

Continuing Offense

When it is uncertain in which of several local areas an offense was committed or where an offense is committed partly in one area and partly in another or where the offense 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 (section 182 Cr.P.C.), This section does not apply when there is definite allegation as to the place where the offense was committed.

Offense Committed during Journey or Voyage

If a person is accused before a court of an offense committed during a journey or voyage, he may be tried by that Court if any part of that journey or voyage during which the offense was committed is within the local limits of court's jurisdiction and the court competent to try the case of an offense in respect of an offense committed on a journey are the courts through or into the local limits of whose jurisdiction the offender in the course of journey passed at the time the offense was committed (section 188 Cr. P.C.).

Offense Committed outside Jurisdiction

When a Metropolitan Magistrate or a District Magistrate or a Upazila Magistrate or a Magistrate of first class, specially empowered in this behalf, sees reason to believe that any person within his local jurisdiction committed without such limits an offense triable in Bangladesh he may inquire into the offense and may compel to appear before him and send such person to the Magistrate having jurisdiction to inquire into and try such offense (section 186 Cr.P.C.).

Offense Committed outside Bangladesh

When an offense is committed by:

(a) any citizen of Bangladesh at any place without and beyond Bangladesh, or

(b) any person on any ship or aircraft registered in Bangladesh, he may be dealt with in respect of such offense as if it had been committed at any place within Bangladesh at which he may be found subject to some proviso (section 188 Cr.P.C.).

Effect of Trial in a Wrong Place

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district or upazila unless it appears that such error has, in fact, occasioned a failure of justice (section 531 Cr.P.C.). Objection as to place of trial as envisaged by section 531 must be taken at the initial stage of trial. It can not be allowed where trial has been concluded. When no prejudice caused to the accused for holding trial, irregularity is curable u/s 531.

CHAPTER III

TYPES OF CRIMINAL CASES

Criminal cases are categorised as follows:

a.	Cognizable cases and Non-cognizable cases	depending on the gravity of offense
b.	Preventive cases and Punitive cases	depending on the nature of offense
c.	Police cases or general Register cases	depending on the nature of lodging a complaint
d.	Complaint cases	
e.	Non-G.R.(Non-General Register) cases	
f.	Counter cases and Miscellaneous cases	
g.	Sessions cases and Cases triable by the the Magistrate	depending on who will try cases

Out of these cases, only the first two types of cases are specifically defined in the Criminal Procedure Code. The other types of cases as noted above are called by such names to mean certain types of cases.

Cognizable and Non-Cognizable Cases

Cognizable cases correspond to cognizable offenses and mean cases in which a police officer may, in accordance with the Second Schedule of the Cr. P.C. or any other law for the time being in force, .PG arrest without warrant and non-cognizable case correspond to non-cognizable offense and mean cases in which a police offense, shall not arrest without warrant (section 4(1) Cr.P.C.).

Punitive and Preventive Cases

The penal Code defines offenses and provides for punishments and the Code of Criminal Procedure provides provisions for preventing offenses and to bring the offenders to justice. Criminal Procedure Code lays down certain procedures to prevent offenses as under sections 107, 133, 144 and 145 of the Cr.P.C. and these proceedings are conventionally termed as `preventive cases'. A `punitive case ' means a case where after the commission of an offense, a complaint is lodged with a view to punishing the offenders. The preventive cases are also called MR cases as the particulars of the proceedings of such cases are maintained in the Miscellaneous Register (MR) kept and maintained by the Bench clerk.

Police Case (General Register Cases) and Complaint Cases (Complaint Register Cases)

A Police Case or a General Register Case means a case where the information regarding the commission of a cognizable or non-cognizable offense is given orally or in writing to police i.e. officer-in-charge of a police station and such information is entered in the General Diary kept by the police under Sections 154 and 155 of the Cr.P.C. On the other hand, in a complaint case, the complaint is lodged before the Magistrate empowered in this behalf who takes cognizance u/s 190, Cr. P.C. and examines the complainant under section 200 Cr.P.C.

Non-General Register (Non-G.R.) Cases

In such cases police suo moto submits non-FIR prosecution against offenders to the Magistrate empowered to take cognizance.

Counter Cases (Cross Cases)

Where two parties lodge two different cases on the same occurrence, such cases are known as counter-cases. Both the cross-cases may be complaint cases or police cases or session cases or one of them may be a complaint case and the other a police case or one of them may be a sessions case and the other may be a case triable by the Magistrate.

Miscellaneous Cases

Different persons in accordance with different minor Acts, as for example, Sanitary Inspector in accordance with the Pure Food ordinance, Forest officer (or police officer) in accordance with the Forest Act and the Jute Inspector according to the Jute Ordinance, may submit prosecution of some alleged violation of law against the offenders and the Magistrate may take cognizance of such offenses. The cases are termed as Miscellaneous Case (Misc. Case). And like the Preventive Proceedings, records of these cases are also kept in the Miscellaneous Registers.

Sessions Cases and Cases Triable by Magistrate

There are certain criminal offenses which could only be tried by the Sessions Courts according to Schedule II of the Cr. P.C. The cases relating to these offenses ar known as Sessions Cases. All other criminal cases are triable by the Metropolitan Magistrates or by the Additional District Magistrates, or by the Magistrates specially empowered, or by the Magistrates of the first or of the 2nd or of the 3rd class. However, there are certain offenses which according to the Village Courts Ordinance, are triable by the Village Courts.

CHAPTER IV

PRELIMINARY STEPS FOR POLICE CASES

2. First Information Report (FIR)

First Information Report, popularly known as FIR, is the report relating to the commission of an offense recorded at the police station under section 154 and 155 of the Cr.P.C. It is an important piece of evidence in criminal trials because it records a criminal activity at the earliest opportunity before there are chances of being forgotten and being embellished.

Every information relating to the commission of a cognizable offense when 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 information, and every such information , whether given in writing or reduced to writing, shall be signed by the person giving it, and the substance thereof shall be entered in a book kept by such officer in a form prescribed by the government (section 154 Cr. P.C.).

FIR is the basis upon which the police commences investigation and the machinery of criminal law is set into motion. The essentials of FIR disclosed by section 154 of the Cr. P.C. are:

a. The information should be first in point of time;
b. It should be definite and not merely a rumour;
c. It must be given to the O/C, of the P.S.;
d. It must relate to the commission of a cognizable offense;
e. It should be such that the police can start investigation;
f. It should be in writing. If oral, it should be reduced to writing;
g. It should be read over to the person who made it and should be signed by him; and
h. The information should be entered in the book kept by the police for the purpose.

Some very Important Legal Intricacies of the FIR

Unsigned telegrams and telephone messages are not First Information Reports (FIRs) and if after the receipt of a telegram or a telephonic message, the police proceeds to the spot and takes down the information and gets it signed, the statement would be First Information Report. First Information Report was made within half an hour of the

occurrence but it was sketchy and made no mention of motive. Held: The FIR gives an impression of being genuine and reliable (1970 22 DLR (WP) 158 -- Murad Ali vs. The State). Accused inthe FIR making a confession -- such confession not admissible (13 DLR 62 WP -- The State vs. Crandal).

The Magistrate should always keep in mind the following principles, laid down by superior courts of the sub-continent:

(a) An FIR can be lodged by any person. He need not necessarily be the victim or the injured or an eye-witness.

(b) Promptness in filing FIR speaks that there is the least possibility of concoction and the report so filed is a strong piece of corroborative evidence. When there is delay in filing F.I.R. and the delay is not explained, it is fatal. Delay in making FIR, however, is only a suspicious circumstance which puts the Courts on its guard and can not be itself be held to be a reason for rejecting evidence which is otherwise fully entitled to credit.

(c) Preliminary enquiry/investigation before recording FIR u/s 154 Cr.P.C. is not necessary. Because it would be to destroy the value of the FIR and equally to provide room for fabrication of cases.

(d) An FIR need not contain the facts of the case in all details. It is sufficient, if it sets out all the important facts. The Court should specially consider as to who has filed FIR, whether the eye-witness or a person, on the information derived from third persons.

(e) The absence of name of the accused from the FIR is, however, not by itself the proof of the innocence of the accused not the presence of the name of an accused in FIR is the positive proof of the guilt of the accused. In dacoity cases, omission of the names of the accused is not material as the victims often fail to recognize the dacoits.

(f) The mere fact that the witness is not named in FIR, is no ground for holding that the witness has not seen the occurrence. But the failure to produce witnesses named in FIR is viewed with great concern by the Court causing great reflection of the prosecution story and cases are thrown out on this ground alone and when the informant is not examined, the FIR can not be admitted in evidence. The writer of the FIR must also be examined.

(g) The omission to state a fact (in the FIR) may at the most, discredit the informant and not the other witnesses. FIR can not be used to contradict any prosecution witness. It can be used to contradict only the witness who lodged it.

(h) The absence of signature of the FIR by the informant, however, is not necessary to the extent that it will vitiate and nullify such report. The FIR is still admissible in evidence.

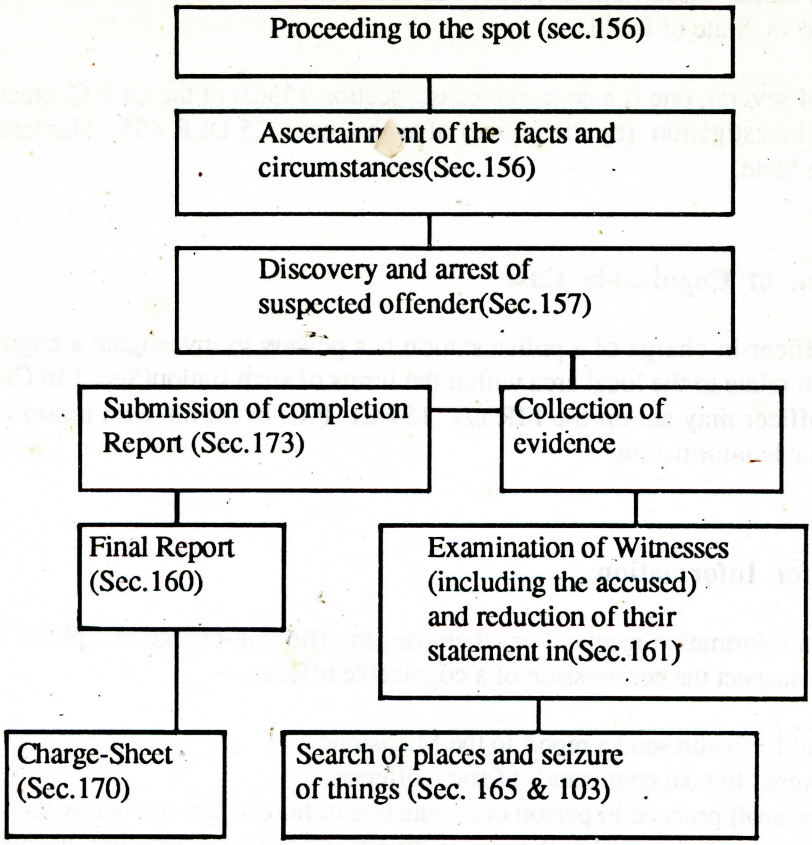
Evidentiary Value of FIR

FIR is not a piece of substantive evidence but it is nevertheless of importance as it gives in writing the earliest information regarding the occurrence and be used for corroboration or contradiction. It can not be preferred to the evidence given b the witness in the Court. In the absence of oral evidence, it can not form the basis of conviction or an acquittal of an accused. Where the FIR has been recorded, the prosecution must tender the FIR in evidence. If the FIR is not produced, it creates suspicion in the mind of the Court and prompts the Court to draw adverse inference against the prosecution.

b. Investigation

After the FIR is lodged, the stage of investigation comes in. Investigation includes all proceedings under the Criminal Procedure Code for the collection of evidence conducted by a police officer. Under the Cr.P.C., investigation consists generally of the steps shown in the following schematic chart:

A Schematic Chart



Information (FIR) as to Non-cognizable Case and Investigation of the same

The offenses of non-cognizable nature are minor offenses and hence, on FIR being lodged relating to these offenses, the police officer cannot investigate the offense without the order of the Magistrate. The following points should be remembered:

(a) On receipt of such report the officer-in-charge of a police station has to record it in the book and refer the informant to the Magistrate.

(b) If the Magistrate of the first or second class havingpower to try the case ordersfor investigation, it is only then the police officer who will investigate the case and he should have all the powers (except the power to arrest without warrant) as he exercises in a cognizable case (section 155 Cr. P.C.).

(c) If investigation has been done without the order of the Magistrate, trial is not vitiated unless miscarriage of justice has been caused thereby. AIR 1955 SC 196 - Rishbad vs. State of Delhi.

(d) If out of several, one is a cognizablecase, section 155(2) of the Cr.P.C. creates no bar for investigation (by the police) of such a case. 25 DLR 455 - Haider Jahan vs. The State.

Investigation of Cognizable Case

The Officer-in-charge of a police station has powers to investigate a cognizable offense which relate to the local area within the limits of such station(Sec. 156 Cr.P.C.). The police officer may act on the FIR u/s 154 Cr. P.C. or on his own motion or on receipt of reliable information.

Procedure for Information

If, from information received or otherwise, an officer-in-charge of a police station has reason to suspect the commission of a cognizable offense:

(a) He shall forthwith send a report to the Magistrate empowered to take cognizance of such offense.
(b) Then he shall proceed in person or depute one of his officers not below the rank of Sub-Inspector to proceed to the spot in investigate the facts and circumstances and if necessary, to apprehend the offender (sec. 157(1) Cr.P.C.

(c) Inspection of the scene of occurrence is considered most important duty of the investigating officer.
(d) Sketch map or site-plan though not required by law, is considered an invaluable piece of evidence.

Collection of Evidence

Any police officer making an investigation may examine orally any persons supposed to be acquainted with the facts and circumstances of the case and take down his statements (sec 161 Cr. P.C.). He may, by order in writing, require the attendance of such persons (sec.16). Cr.P.C.). An accused may also be examined under section 161 Cr. P.C. None shall be asked to sign the statements.

Statement can be used only to Contradict the Witness

A statement made by any person to a police officer in the course of investigation can not be used for any purpose except by the accused and to contradict such witness as laid down by section 145 Evidence Act. Statement to the police recorded under section 161 Cr. P.C. cannot by used by the prosecution to corroborate or explain the evidence of the witness in Court but the defence can use it for testing veracity.

Search and Seizure

If necessary an investigating officer may search or cause a search under the following terms and conditions (Section 165 Cr. P.C.):

(a) He must record the reasons;
(b) The provisions of 102 and 103 Cr. P.C. must be observed search must be conducted and seizure list should be prepared in presence of at least two witnesses;
(c) I.O. shall, if practicable, conduct the search in person;
(d) Place to be searched must be within the local limits of the P.S., when the place to be searched does not lie within the local limits, the police officermustproceed in accordance withthe procedure laid down in section 166 of the Cr.P.C.; and
(e) Copies of any record (Seizure list) must under this section shall be sent forthwith to the nearest. Magistrate empowered to take cognizance of the offense. This section does no authorise general search but search of specific articles related to the commission of offense.

Charge Sheet or Final Report

The investigating officer shall day by day enter his proceedings of investigation in a diary setting forth, (i) the time, the information reached him, (ii) the time, he began investigation, (iii) the place/places visited by him, and (iv) a statement of the circumstances (section 172 Cr. P.C.).

(a) After the completion of investigation, if the investigating officer finds no sufficient evidence against the accused,he submits Final Report (section 169 Cr. P.C.).

(b) But if he finds sufficient evidence against the accused, he submits charge sheet (Section 170 Cr. P.C.), and sends it to the Magistrate empowered to take cognizance for trial of the offense.

(c) When any subordinate police officer has made any investigation he shall report the result of such investigation to the officer-in-charge of the police station (section 168 Cr.P.C.).

It is open to an informant to submit a naraji petition against a final report submitted by the police . The Magistrate may treat such petition as a petition of complaint, take cognizance u/s 190(1) (a) Cr. P.C. and examine the complainant u/s 200 Cr. P.C.

The Magistrate may, irrespective of whether any Naraji petition has been filed or not, take cognizance u/s 190 (1) (b) of the Cr. P.C. on the information contained in the police report. If in his opinion the facts stated therein constitute an offense, he may issue process u\s 204 of the Cr. P.C. The Magistrate may also direct further investigation on specified points under the powers conferred upon him u/s 156(3) of the Cr. P.C.22. Under the same section, the Magistrate may, without taking cognizance of an affiance, send the case for investigation to police. If there is constraint due to time limit for investigation, the Magistrate may considered to send the case for a judicial enquiry under section 200 of the Cr. P.C.

C. Remand of the Accused Persons

If the investigation can not be completed within 24 hours after arrest of accused who has to be produced before Magistrate within that time, but accusation or information is well founded. The investigation officer shall forward accused to the nearest Magistrate along with a copy of the entries in the diary relating to the case. The Magistrate may, after perusing the diaries, authorise the detention in police custody for a term not exceeding 15 days on whole, i.e. one or more than one remand orders (section 167 Cr. P.C.).

However, following conditions will have to be fulfilled:

(a) A Magistrate authorising detention in police custody shall record his reasons for so doing (sec. 167(3) Cr. P.C.).

(b) No Magistrate of the third class and no Magistrate of the second class not specially empowered in this behalf by the Government, shall authorise detention in the custody or the police (section 167 (2) Cr. P.C.) and

(c) Any Magistrate other than the District Magistrate, Chief Metropolitan Magistrate or Upazila Magistrate making such order, shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate (section 167 (4) Cr. P.C.)

Some Crucial Points of Remand

The crucial point for the Magistrate to decide is whether he is judicially satisfied, after having perused the case diaries that a case for remand exists.

(a) Magistrate before granting remands must study police diaries to ensure as to accusations against the accused and evidence secured to justify remand. -20 PLR 264 WP - The State vs. Wazir Khan.

(b) The provision as to sending of copy of entries in diary is mandatory and therefore it is imperative that every officer answering the description should also send along with the remand report a copy of the case diary. -AIR 1957 AP 561.

(c) A Magistrate should grand remand only for specified period. A remand for an indefinite period is illegal. - LR 6 Mad. 63 - Mankam Mudali vs. The Queen.

(d) The accused must be produced before the Magistrate before the latter can remand the accused to police custody u/s 167. An order of remand without producing the accused before the Magistrate is illegal. - 13 Cr.L.J 65 (106) Cal. - Pearey Mohan Das vs. Weston.

D. Completion Report

After the completion of investigation which shall be completed within the prescribed time limits as laid down in section 167(5) Cr. P.C., the officer-in-charge of a police station shall forward to the Magistrate empowered to take cognizance of the offense, a report in a prescribed form (section 173 Cr. P.C.). There are three sections in the Cr. P.C. relating to completion report viz., 169, 170 and 173. Section 169 relates to cases in which no person is sent up for trial, section 170 to cases in which some person is sent up and section 173 contains general directions relating to both.

Final Report

If after the investigation is over, the investigating officer finds that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall release him on executing a bond with or without sureties when such person is in custody. Such officer may direct the accused, if and when so required before a Magistrate empowered to take cognizance of the offense on a police report (section 169 Cr. P.C.).

Charge-sheet

If upon investigation, the officer-in-charge of the Police Station, finds that there is sufficient evidence or reasonabl ground of the charge made against the accused he shall charge-sheet the accused and shall forward him to the Magistrate empowered to take cognizance of the offense. If the offense is bailable and the accused is prepared to gibe security, the officer-in-charge shall take security for his appearance before the Magistrate. The officer- in-charge shall also perform the following formalities in the process:

(a) he shall also send the weapon or other articles (alamat) which may be necessary to produce before the Magistrate;

(b) he shall take bond from the complainant and witnesses for their appearance before the Magistrate (section 170 Cr. P.C.).

Some other Essentials of Section 173 Cr. P.C.

(a) Where a superior officer of police has been appointed u/s 158 Cr. P.C., the report shall be submitted through that officer; he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation.

(b) When it appears from the police-report that the accused has been released on his bond, the Magistrate shall make order for the discharge of such bond;

(c) With the charge-sheet the police officer shall also send all documents or relevant extract other than those already sent to the Magistrate and all statements recorded u/s 161(3) Cr. P.C.

If the police officer who submitted the charge-sheet does not attend the court on summons, warrant of arrest might be issued to enforce attendance. - 34 DLR 73 - Solicitor vs. Yasin Ali. it is needless to point out that such steps are to be taken during the trial of a case by the Magistrate. It should also be ensured that summons was received by him earlier to attend the court. When police submitted final report as no evidence was forthcoming, but later on evidence was available police applied for re-investigation which the Magistrate granted. This is in accordance with law. - 20 DLR 56 SC - Abdur Rahman vs. The State. When Police challan u/s 173 showed some persons as not being accused yet Magistrate ignoring police-report summon them. Magistrate's competency to do so can not be challenged. - 19 DLR 426 SC-Falaksher vs. The State. Failure by the prosecution to examine the investigating officer is a serious defect which can not be cured. - 9 DLR 594 - A.K.M. Riza vs. The State.

B. PRELIMINARY STEPS IN COMPLAINT CASES

a. Complaints

Complaint means the allegation made orally or in writing to Magistrate with a view to taking action under the Criminal Procedure Code that some person, whether known or unknown, has committed an offense; but it does not include report of a police officer.(sec. 4(1) (h) Cr. P.C.. The essential ingredients of a complaint are given below:

(a) it must be an allegation,
(b) made orally or in writing,
(c) to a Magistrate,
(d) with a view to taking action under the Cr. P.C.,
(e) disclosing an offense committed by person known or unknown.

Some Basic Aspects of a Complaint

(a) Complaint need not necessarily be made by any person aware of the offense except otherwise specified. Some such exceptions are specified in the Cr. P.C., section 195 to section 199. Also some minor acts/Ordinances/ Regulations specify some public servants as competent person to lodge complaintunder those Acts/Ordinances/Regulations.

(b) The omission to sign the complaint i a mere irregularity, the irregularity is removed when the complainant is examined u/s 200 Cr. P.C. and the complainant signs the statement made by him.

(c) When the complaint is lodged by aperson other than a public servant or amunicipal officer or a servant of Bangladesh Railway court-fee stamp is payable on a complaint as per schedule II, part 1(b) of the Court Fees Act, 1870 and

(d) Delay in filing a complaint is no ground by itself for dismissing a complaint but the prosecution, however, must explain the delay satisfactorily.

b. Cognizance

The word "cognizance" with reference to a Court or Judge means to "take notice judicially". Cognizance occurs as soon as the Magistrate applies his mind to the suspected commission of an offense.

No formal action is necessary to take cognizance of an offense. As to when cognizance is to be taken of an offense will depend upon the facts and circumstances of each case.

Taking Cognizance

Any Metropolitan Magistrate, District Magistrate or Upazila Magistrate and any other Magistrate specially empowered in this behalf, may take cognizance of any offense.

(a) upon receiving a complaint or facts which constitute such offense (section 190 (1)(a) Cr.P.C.);

(b) upon a report in writing of such facts made by any police officer (section 190 (1)(b) Cr.P.C.); and

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offense has been committed (section 190 (1) (c) Cr.P.C.);

The Government or the District Magistrate may empower any Magistrate to take cognizance of offenses for which he may try or commit for trial (section 190 (2) Cr.P.C.. But only the Govt. may vest any Magistrate of the first or of the second class with the power of 190(1) (c) (section 190 (3) Cr.P.C.).

The report of a police officer in a non-cognizable offense not ordered by the Magistrate for investigation would be a complaint under Section 190(1)(a) Cr.P.C. The Magistrate is bound to examine the complaint, and then can either issue summons to the accused, or order an inquiry under section 202 Cr.P.C. or dismiss the complaint under section 203 Cr.P.C. While cognizance taken upon complaint without examining on solemn affirmation, Cognizance was not legally taken.

Transfer of Cases

When a Magistrate takes cognizance of an offense upon information received from a person other than a police officer or on his own knowledge, the accused should be informed that he is entitled to have the case tried by another Court and if the accused objects to be tried by such Magistrate, the case is committed to the court of Session or to another Magistrate (section 191 Cr.P.C.). A Metropolitan Magistrate or a District Magistrate or Upazila Magistrate may transfer a case of which he has taken cognizance to

any subordinate Magistrate. A District Magistrate may empower a first class Magistrate to transfer a case to any other specified Magistrate in his district who is competent to try it (section 192 Cr.P.C.).

Examination of the Complainant

A Magistrate taking cognizance of on officer on complained shall at once examine upon oath the complainant and as such of the witnesses present, it any, as he may consider necessary. The substance of the examination shall be reduced to writing and shall be signed by the complainant or witness, so examined and also signed by the Magistrate.

(a) When a complaint in writing is made by Court or a public servant in the discharge of his official duties; and

(b) when the case is transferred to another Magistrate under section 192 after the complainant is examined (section 200 Cr.P.C.).

The Magistrate must examine the complainant even though the facts are fully set out in the written complaint. The examination of the complainant can only succeed and not precede the taking of cognizance. The object of the examination is to find out whether the complaint is justifiable and a prima facie case stands or whether it is frivolous and vexatious.

Some Important Case Laws

Failure to record the statement of the complainant u/s 200 is a mere irregularity curable u/s 537 Cr.P.C.(21 DLR 284 WP-Md.Sarif vs.Khan Mr. Wali). If person who is directed to show cause why a complaint u/s 182 Penal Code should not be filed against him, he is entitled to lead evidence and a complaint u/s 182 of the Penal Code can only be filed by the Magistrate after himself making up his mind and not on the direction of another authority.

If a complaint is made to a Magistrate who is not competent to take cognizance of the case:

(a) if the complaint is in writing, returns it for presentation to the proper Court;

(b) if the complaint is oral, direct the complainant o the proper Court (section 201 Cr.P.C.).

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C. Inquiry

Inquiry includes every inquiry other than a trial conducted under the Cr.P.C. by a Magistrate or Court (section 4(1) (k) Cr.P.C.) and on the other hand, "investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by the Magistrate in this behalf (section 4(1) (1) Cr.P.C.).

Any Magistrate taking cognizance may, for reasons to be recorded in writing. postpone the issue of process for compelling the attendance of the person complained against and either:

(a) inquire into the case himself; or

(b) if he is a Magistrate other than a Magistrate of the third class direct an inquiry or investigation by a subordinate Magistrate or a police officer or any other person for ascertaining the truth or falschood of the complaint.

No such direction is made unless the complainant has been examined under section 200 Cr.P.C. except where the complaint has been made by a Court. The Magistrate inquiring into a case may take evidence of witnesses on oath. When it appears to the Magistrate that the offense complained of is triable exclusively by a Court of session, the Magistrate may postpone the issue of process of compelling the attendance of the person complaint against and may make or cause to be made an inquiry or investigation (section 202 Cr.P.C.).

Some Important Information about Inquiry

(a) Where the Magistrate directs inquiry under section 202 of the Cr.P.C. he should not issue process against the accused until the report of the inquiry is received. Where owing to delay, theMagistrate recalls inquiry but the report of the inquiry is received later, the Magistratecan act on such report.

(b) Where a person has been asked to make inquiry under section 202 Criminal Procedure Code,he can not delegate his power to make inquiry.

(c) When the Magistrate proceeds u/s 202 he must give reasons. However, failure to record reasons is purely an irregularity and does not vitiate the trial unless the omission has resulted in a failure of justice.

(d) The Magistrate must examine the complainant before ordering inquiry u/s 202. In some cases it has been held that the omission to examine the complainant is not mere irregularity curable by section 537 Cr.P.C. but is illegality and vitiates the trial.

(e) After the issue of the process, the Magistrate should proceed with the trial, he can not direct an inquiry or investigation u/s 202 Cr.P.C.

D. Dismissal

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 of the complainant and the witnesses, and the result of the investigation or inquiry, there is no sufficient ground for proceeding. He mist briefly record his reasons for so doing (section 203 Cr.P.C.).

Some Essential Legal Aspects of Dismissal

(i) Sufficient grounds do not connote sufficient ground for conviction. Sufficient ground for proceeding with the complaint is one matter and sufficient ground for convicting an accused person is quite a different matter.

(ii) A complaint should not be dismissed on the mere ground of delay or because there exists civil remedy.

(iii) The Magistrate must record reasons for the dismissal. If no reasons are given for the dismissal of the complaint, order is illegal and not merely irregular curable u/s 537 of the Cr.P.C.

(iv) Dismissal of complaint u/s 203 is neither discharge nor acquittal hence the bar of section 403 of the Cr.P.C. does not operate. Fresh complaint may be filed under exceptional circumstances. Appeal does not lie against the order of dismissal of complaint but the complaint may go to the Court of session or to the High Court under section 436 of the Cr.P.C. in revision for order for further inquiry.

(v) The opposite party can not claim compensation u/s 250 of the Cr.P.C. through the Magistrate may prosecute the complainant u/s 211 Penal Code.

(vi) An order of dismissing the complaint without examining the complainant is illegal.

(vii) Complainant dismissed u/s 203, is a matter still at inquiry stage.

E. Issuance of Process

No summons or warrant in C.R. cases shall be issued until:

(a) it is accompanied by a copy of complaint;
(b) a list of the prosecution witnesses have been filed;
(c) Proper court-fees are paid (section 204 Cr.P.C.).

If a summons is issued, the Magistrate may dispense with the personal attendance of the accused and permit to appear by his pleader (section 205 Cr.P.C.).

In Cases, in which as per column 4 of the Second schedule of the Cr.P.C. a warrant shall ordinarily be issued in the first instance, the Magistrate has discretion and he may issue summons in the first instance and the Courts in such cases usually issue summons in the first instance. In the Case of a women accused, summons should ordinarily be issued in the first instance. The Magistrate may instead of issuing a summons at the first instance, after recording reasons in writing, issue a warrant of arrest if before the time fixed for his appearance her sees reason to believe that the accused has absconded or will not obey the summons (section 90 Cr.P.C.).

The provisions as to the filing of the list of witnesses is mandatory. The Court's jurisdiction to summon the accused is not affected because the copies of the complaint has not been filed nor will invalidate or nullify the process issued. Where the process against the accused could not be issued owing to failure of the complainant to file the same with or without fees, the proper course for the Magistrate is to dismiss the complaint u/s 204(3) Cr.P.C.

CHAPTER V

TRIAL OF CASES BY MAGISTRATES

Perusal of Papers and Hearing

When the accused appears or is brought before the Magistrate, the Magistrate on perusal of the record of the case and the documents submitted with the record and making such examination, if any, of the accused as the Magistrate thinks necessary. Then he gives the prosecution and the accused an opportunity of being heard, and if after all these he considers the charge to be groundless, he shall discharge the accused and record his reasons for doing so (section 241A Cr.P.C.)

Farming of Charge

If after such considerations and hearing as said above the Magistrate is of opinion, there is ground for presuming that the accused has committed an offense, a formal charge shall be framed relating to the offense of which he is accused and it shall be read over to him and also he shall be asked whether he admits that he has committed the offense with which he is charged (section 242. Cr.P.C.). Failure to comply with section 242 of the Cr.P.C. is not mere irregularity but effects the validity of the trial and vitiates it:

Conviction on Admission of Guilt

If the accused admits that he has committed the offense 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 should not be convicted, the Magistrate may convict him accordingly (sec. 243 Cr.P.C.) Plea of guilt does not amount in law that the accused, has committed the offense. Court's duty is to see whether the facts brought on record amount to an offense in law. A conviction without taking of any evidence and purporting to be based on a plea of guilty can not be sustained when the accused denies having pleaded guilty and the said plea is not found recorded in accordance with the provision of section 243 Cr.P.C.

Revision

Where a plea of guilty bars the remedy of appeal u/s 412, it does not bar a revision u/s 435 and 439 or 439A Cr.P.C.

When Accused Pleads not Guilty

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:

a. hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and
b. hear the accused and take all such evidence as he produces in his defense section 244(1) Cr.P.C.

Magistrate's Discretion to Summon any Witness and Produce any Document

The Magistrate does not hear any person as complainant in any case in which the complaint had been made by a Court (section 244(1) Cr.P.C.). The Magistrate may, if he thinks fit on the application of the complainant or accused, issue summons to any witness directing him to attend or to produce any document or other thing (section 244(2) Cr.P.C.).

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purpose of the trial, be deposited in the Court (section 244(2) Cr.P.C.).

Examination of the Prosecution Witnesses

(a) If the accused does not make the admission u/s 243, the Magistrate is bound to hear the complainant and his witness and he is not competent to acquit the accused without examining the complainant and his witness. Any such acquittal is illegal and is liable to be set aside.

(b) The Magistrate must record the evidence of all the witnesses which the prosecution intends to examine.

(c) Though u/s 244, the Magistrate has discretion in summoning witnesses but that discretion has to be exercised judicially.

(d) The power given by section 244 to the Court to hear the accused can be exercised at any time when the accused wants to be heard.

Examination of the Accused

After the prosecution is closed, the Magistrate shall examine the accused or all the accused where they are more than one in number, u/s 342 of the Cr. P.C., if he finds that there are incriminating circumstances requiring an explanation by the accused. If there is no evidence implicating the accused, no explanation from him is necessary and he need not be examined u/s 342 Cr.P.C. Each accused must be examined separately and personally.

Examination of Defence Witnesses

There after, the Magistrate must proceed to take all such evidence as may be produced by the accused. The accused has every right to adduce evidence in defence and the Magistrate must examine all the witnesses whom the accused wants to produce in defence. Where the right is denied, the conviction is liable to be set aside.

Argument

After the defence evidence, if any, has been led in the case, a day shall be fixed for arguments. During the course of arguments, pleaders of both the prosecution and defence sides present picture of the whole case, justify their respective party's case and attack the correctness of case taken by the opposite party.

Acquittal

If the Magistrate upon taking the evidence and such further evidence (if any) as he may, of his own motion, cause to be produced, and examining the accused and hearing the arguments finds the accused not guilty, he shall record an order of acquittal (sec. 245(1) Cr.P.C.).

Conviction

Where the Magistrate does not proceed in in accordance with provisions of section 349 (where Magistrate cannot pass any sentence) or section 562 (where the accused is released on bond),he shall if he finds the accused guilty, pass sentence upon him according to law (section 245(2) Cr.P.C.).

Non-appearance of the Complainant

If the summons has been issued on complaint and upon the day fixed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall acquit the accused, unless, for some reason the Magistrate things proper, he may adjourn the hearing of the case to some other day. When 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 (sec.247 Cr.P.C.). If the cognizance is taken upon a police charge-sheet, section 247 Cr.P.C. does not apply. In cases instituted otherwise than upon complaint, the Magistrate may, for reasons to be recorded by him, stop proceedings without pronouncing Judgment and release the accused if witnesses do not appear days after days (sec.249 Cr.P.C.). However, when the concerned Magistrate is not a Magistrate,of the Ist class should take prior sanction of the District Magistrate. The complainant does not appear means that the complainant having knowledge or information of the date of trial or adjournment fails to appear.

When the complainant does not appear, three courses are open to the Magistrate:

a. he may acquit the accused;
b. he may adjourn the case; or
c. he may proceed with the trial, if personal attendance is dispended with.

The general rule is to acquit the accused whereas an adjournment is an exception. But where the accused has not been served with a summons but with warrant, it will be sound exercise of the discretion to adjourn the hearing.

Revision

Section 403 bars Fresh Trial for the same Charge. No revision is competent, but if the acquittal is without jurisdiction, revision lies discretion to allow the complainant to continue by proper and fit complaint.

Appeal

Where the order of acquittal u/s 247 is legal and competent, it will not be interfered within appeal preferred u/s 417(2) Cr.P.C. by the complainant, if the reason for his non-appearance on the date fixed for hearing is unconvincing. - 21 Cal. 103: 15 Bom. L.R. 61.

Withdrawal of Complaint

If a complainant, at any time before a final order is passed in any case 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 there upon acquit the accused (section 248 Cr.P.C.).

Complainant alone can withdraw the complaint

It is the complainant alone who can withdraw the complaint and it is the Magistrate alone who is competent to entertain application for withdrawal of complaint. A complaint can be withdrawn at any time before final order is passed. In revision the High court may set aside an order of withdrawal if the order is improper.- LLR 1948 ALL 743.

CONSIDERATION OF CHARGE

The framing of a proper charge is vital to a criminal trial and this is a matter on which the court should bestow most careful attention. It is one of the elementary principles of criminal law that an accused person must know what the precise accusation against him is and this requirement is fulfilled by the court by framing charge against the accused. The omission to frame a charge or a defective charge may be so serious that by itself it would vitiate a trial and render it illegal, prejudice to the accused being taken for granted.

2. However one should be clear about what things are to be considered before framing a charge or discharging the accused and according to section 241A, the following things are to be taken into account:

(a) In Complaint Cases,-the complaint itself and any documents submitted with it such as, medical report, forsenic report, any expert's report, etc.

(b) In General Register (Police) Cases,-FIR, seizure list, case diary, charge sheet and other relevant reports.

(c) If Magistrate thinks it necessary, examination of the accused, and

(d) Hearingof both prosecution and the accuseds.

After going through all these stages, if the Magistrate comes to an opinion that there is ground for presuming that the accused has not committed the offense, he shall

discharge the accused but if he come to an opinion that he has committed the offense, he shall frame a charges stating the offense and ask the accused whether he admits the charge or not.

The object of framing a charge is two-fold:

a. to ensure that the accused has sufficient notice of the exact nature of accusation against him so that he may defend himself and
b. to tell the prosecution what evidence it has to lead in the case.

Where from the facts admitted or proved, offense other than the offense of which he is charged, the accused appears to have committed an offense, the Magistrate may convict the accused of such other offense. It is not illegal to convict an accused of an offense not specified in the charge-sheet laid by the police. Thus where the accused has been charged with criminal tress-pass only (sec.447 Cr.P.C.), the Magistrate may convict him of the offense of assault (352 Cr.P.C.) and mischief (sec. 426 BPC). But the Magistrate must see that the accused is not prejudiced by the consideration of the charge which he know nothing. Where the Magistrate decides to convict the accused for an offense other than the offense of which he is originally charged it is not necessary for him to reopen the trial and follow again the procedure of sections 243 and 244.

CHAPTER VI

TRIAL OF COMPLAINT CASES

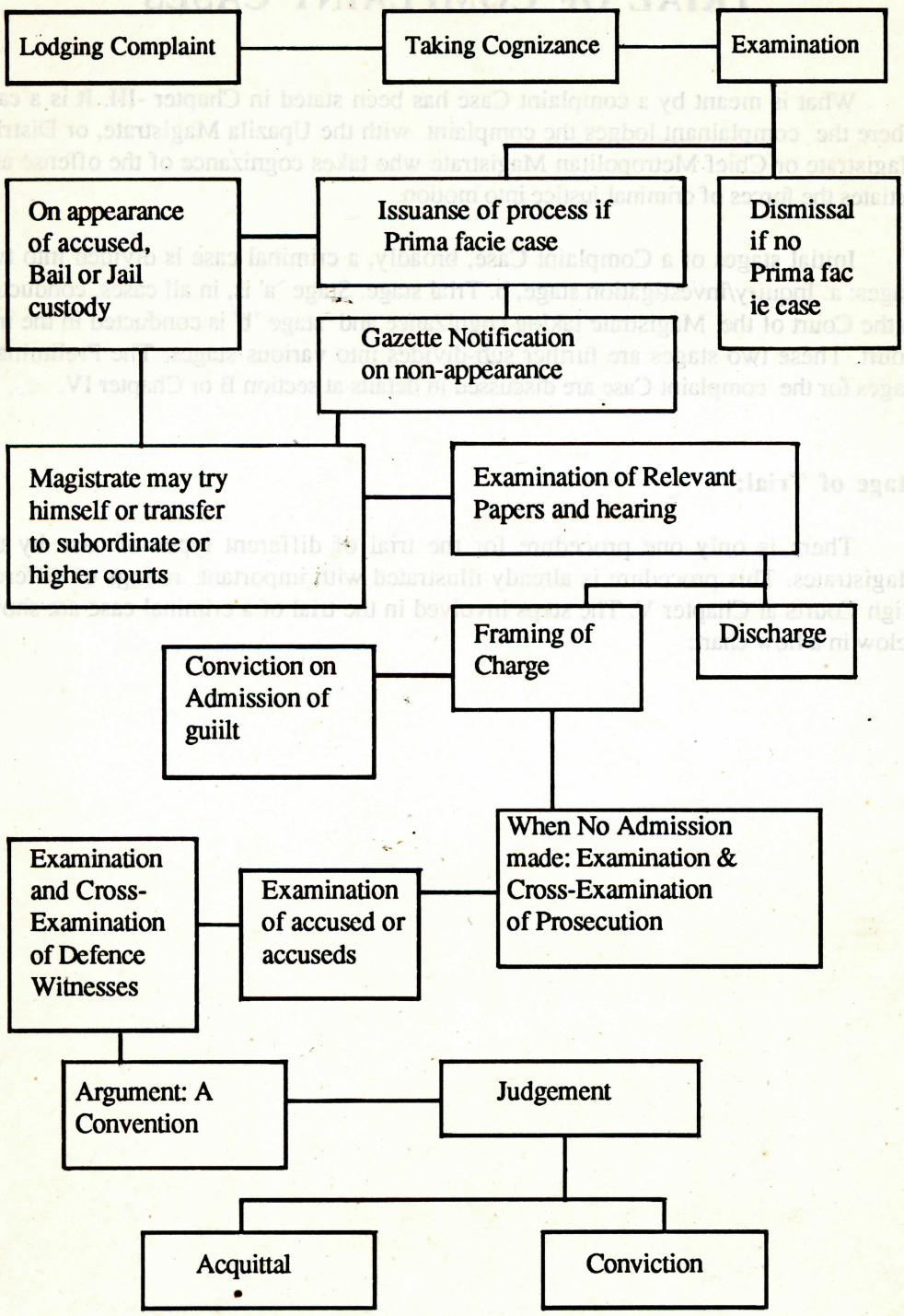
What is meant by a complaint Case has been stated in Chapter -III. It is a case where the complainant lodges the complaint with the Upazila Magistrate, or District Magistrate or Chief Metropolitan Magistrate who takes cognizance of the offense and initiates the forces of criminal justice into motion.

Initial stages of a Complaint Case, broadly, a criminal case is divided into two stages: a. Inquiry/investigation stage, b. Trial stage. Stage `a' is, in all cases, conducted in the Court of the Magistrate taking cognizance and stage `b' is conducted in the trial Court. These two stages are further sub-divides into various stages. The Preliminary stages for the complaint Case are discussed in details at section B or Chapter IV.

Stage of Trial:

There is only one procedure for the trial of different types of case by the Magistrates. This procedure is already illustrated with important rulings of different High Courts at Chapter V. The steps involved in the trial of a criminal case are shown below in a flow chart:

Flow Chart Showing Stages of Cr. Cases



When the complaint does not appear, the Magistrate may dismiss the complaint at any stage of trial even on the date of argument but not on the day fixed for judgment unless the Magistrate has specifically ordered for the presence of the complainant.- 46 Cal. 867.

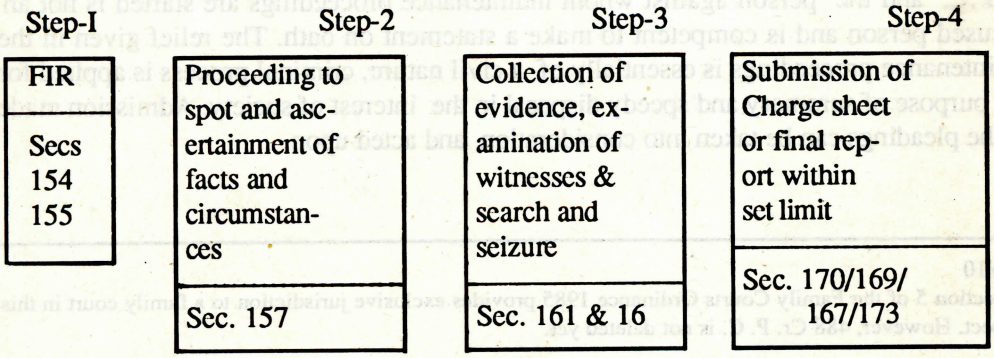
Withdrawal of Complaint: At any time before a final order is passed, if the complainant can satisfy the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the complaint and there upon acquits the accused(section 248, Cr.P.C.). The Magistrate should not proceed to permit withdrawal of a case by the complainant unless there is clear indications in the petition that there has been a compromise between parties.

When it appears to the Magistrate during the trial/inquiry of a CR case that a police case is under investigation over the same fact, the Magistrate shall stop the proceedings and call for a report from the police,.If the police submits charges sheet, then the Magistrate will try both the cases as one on the basis of the police report. If no charge-sheet is submitted, the Magistrate will hold an inquiry or trial into the complaint case (section 205D, Cr.P.C.).

TRIAL OF GENERAL REGISTER (G.R.) CASES

Definition of the GR cases has already been given in Chapter-III and a GR case is defined as a case where the first information about the commission of an offense is given to the police officer-in-charge of police station and this information is noted down in the General Diary and the FIR Book maintained in each police station.

Initial steps of GR Cases: The initial stage of a GR or police case are quite different from those of Complaint (CR) Cases and are already discussed at section A of Chapter IV. These steps are presented below in a very summarised way for recapitulation:



Stage of Trial: Trial procedure for all the cases whether it's a CR or GR or a Non-GR case is the same. And this procedure is already enunciated in details at Chapter VI. A summarised statement showing different steps of trial is also given above in connection with the discussion of Cr cases.

However, it is important to keep it in mind that the provision of 247 of the Cr.P.C. does not apply in the GR cases. -34 DLR 73. And it is the complain at alone not the police officer who can withdraw the complaint. -15 Cr.L.J 299.

TRIAL OF NON-GR CASES

What is meant by a Non-GR case is already spelt out in Chapter-III. A non-GR case is not a CR case, because the complaint (called non-FIR prosecution) is lodged by the police, not by a commoner. It's not also a GR case because the First Information Report(FIR) is non-existing or speaking in other works, not entered into FIR book.

On receiving a non-FIR prosecution from the police, the Upazila Magistrate, Chief Metropolitan Magistrate or District Magistrate issues process to secure the attendance of the accused and there upon trial procedure for the Non-GR case follows the same sequence as that of CR and GR cases.

PROCEEDINGS FOR MAINTENANCE OF WIVES AND CHILDREN (Section 488,489,and 490 Cr.P.C.)[1]

Nature of Proceedings: Maintenance proceedings are not criminal proceedings, they are proceedings of quasi Civil nature, though governed by the provisions of Criminal Procedure Code. They are neither an enquiry not a trial. An application u/s 488 is not a complaint within the meaning of section 4(1) (h) of the Cr.P.C. and the person against whom maintenance proceedings are started is not an accused person and is competent to make a statement on oath. The relief given in the maintenance proceedings is essentially of a civil nature, criminal process is applied for the purpose of summary and speedy disposal in the interest of society. Admission made in the pleadings can be taken into consideration and acted upon.

CW10

1. Section 5 of the Family Courts Ordinance 1985 provides exclusive jurisdiction to a family court in this respect. However, 488 Cr. P. C. is not deleted yet.

Stages of Proceedings:

Notice to Opposite Party: Though the Section 488 does not expressly provide but by implication it provides that after receiving an application seeking relief under this section, a Metropolitan Magistrate or a District Magistrate or a Upazila Magistrate of the First Class shall issue a show cause notice, as to why actions under this section won't be taken, to the person from whom maintenance is claimed.

Reply and Recording of Evidence: The husband or father, being noticed, files his reply to the court. The Magistrate peruses the papers and if he thinks it necessary, he hears both the parties. Then the Magistrate proceeds to record evidence in the presence of the husband or father and where his personal attendance has been dispenses with the presence of his pleader(section 488(6).

Place where Proceeding to be started. Maintenance proceedings can be against a person in any district:

(a) where the husband or father resides or is;
(b) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child (sec. 488, sub-section (8).

The proper Court to take cognizance of the complaint of the wife is the Court within the jurisdiction of which the husband resides. The Allahabad High Court has held that a wife who is living a part from there husband for a good cause may institute an application for maintenance in the district in which she resides.

Ex-parte Determination: If the Magistrate is satisfied that the respondent is wilfully avoiding service, or wilfully neglects to attend the court, the Magistrate may proceed to hear and determine the case ex-parte. Any order so made may be set aside for good cause shown, on application within three months from the date thereof (sec. 488(6). When three months' Limitation has expired, application u/s 5 of the Limitation Act, seeking condonation of the delay should be moved. When sufficient cause is shown, the Court may condone the delay. Where the notice was served on the husband and he files written statement but disappears after the filing of the written statement and ex-parte order is passed, application by the husband for setting aside the ex-parte order must the rejected.

Order of Maintenance: If a person having sufficient means neglects or refuses to maintain his(1) wife or (2) legitimate or illegitimate child unable to maintain itself, he may, upon proof of neglect or refusal, be ordered to make a monthly allowance for the

maintenance of his wife or child, at a rate not exceeding Tk. 400. It is payable form the date of (1) the order or (2) application for maintenance (sub-section (1) and (2) of 488 Cr.P.C.).

The Magistrate may make alteration in the allowance if circumstances of the person receiving it change, provided that the monthly rate of take 400 is not exceeded (section 489). A copy of the order of maintenance is given without payment to the person in whose favour it was made.

Who Can Apply for Maintenance: It is only the wife or the legitimate or illegitimate child of the person proceeded against, can file application for maintenance . In the case of children, their mother can apply for maintenance on their behalf. A second wife can claim maintenance on the ground that the husband is living with the first wife. Divorced wife can not file petition for maintenance. The order for maintenance ceases to operate as soon as the wife is divorced by her husband. Though it remains effective so long as the divorced wife is in her iddat.

It is only the husband or the father of the legitimate or illegitimate child who can be ordered to pay maintenance allowance. Father can not be jointly made liable with his son for the maintenance of allowance of his daughter-in-law.

Person directed to pay Maintenance must have sufficient means. The words `sufficient means' not only connote the visible means but include the capacity of the husband to earn money if he is compelled to work. If a husband has earning capacity, he must give maintenance to his wife even if he is an insolvent, is a sadhu or monk or minor or unemployed. If a man is hale and hearty and able-bodied man, he must be presumed to have means to support his wife and children. In the case of able bodied husband, he must prove that he lacks earning capacity.

Alteration in Maintenance Allowance: Alteration in the maintenance can be made as many times as the circumstance justify. Before the original order of maintenance can be disturbed, change in the circumstances of either party must be proved. A change in the circumstances has to be established by proof and not by the mere ipes dixit of the petitioner. A Magistrate can make alteration in the order of maintenance only on the application moved for the purpose.

Wife When not Entitled to Maintenance. A wife shall not be entitled to any maintenance allowance if:

(a) she is living in adultery;
(b) without any sufficient reason she refuses to live with her husband;

(c) the wife and husband are living separately by mutual consent (sub-sec. (4), sec. 488).

However, if the husband has contracted with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him. Husband's treatment to the wife should be also taken into account in considering the justification of the wife's refusal to live with her husband.

Enforcement of Maintenance Order: An application for enforcement of the maintenance order must be made within a period of one year from the date on which it becomes due (Proviso to sub-section (3), sec. 488). The maintenance order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and non-payment of the allowance due(sec.490 Cr.P.C.).

If the person ordered to pay maintenance allowance fails without sufficient cause to comply with the order, the Magistrate, may for every breach of the order:

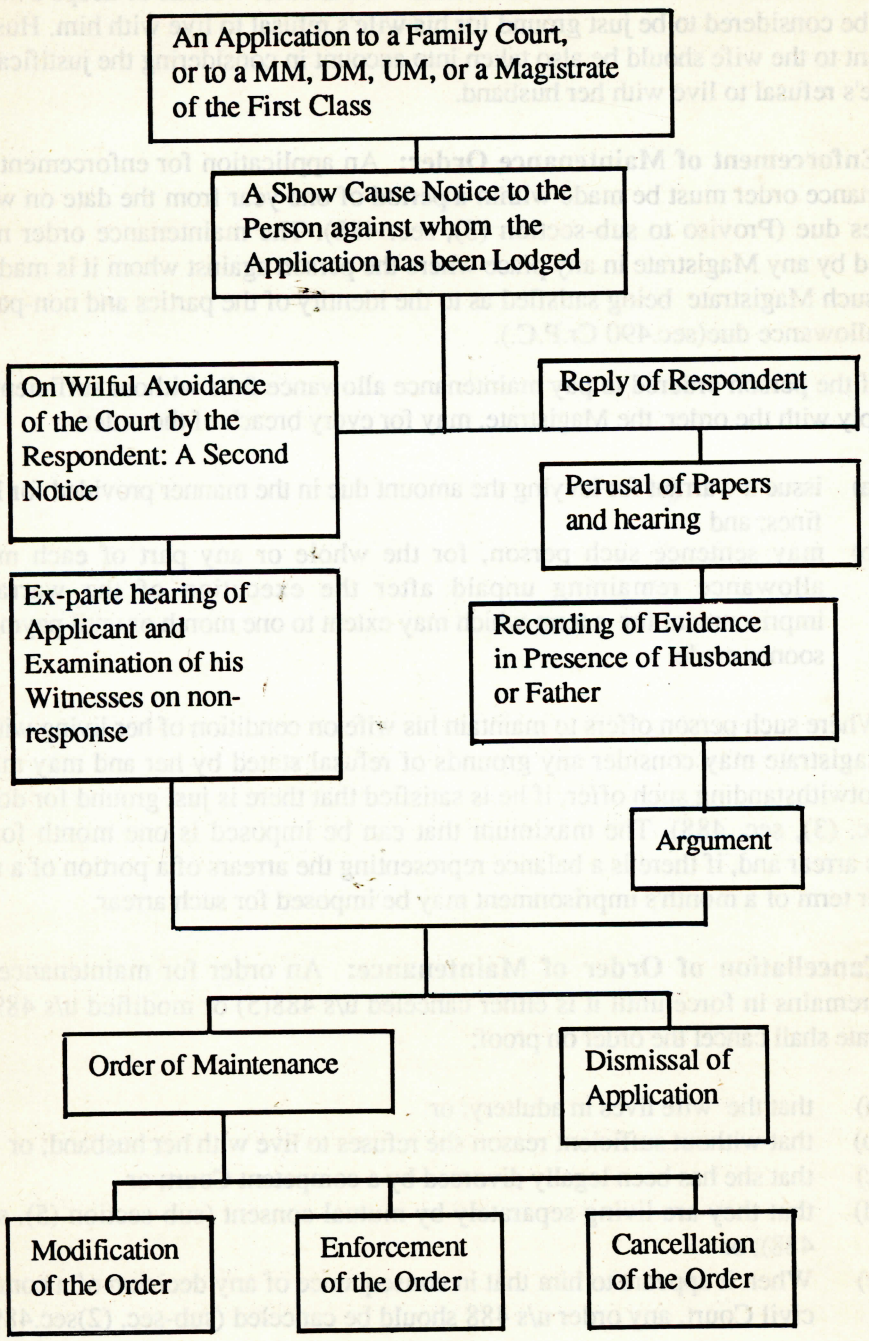
(a) issue a warrant for levying the amount due in the manner provided for levying fines; and
(b) may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extent to one month or until payment, if sooner made.

Where such person offers to maintain his wife on condition of her living with him, such Magistrate may consider any grounds of refusal stated by her and may make an order notwithstanding such offer, if he is satisfied that there is just ground for doing so (sub-sec. (3), sec. 488). The maximum that can be imposed is one month for each month's arrear and, if there is a balance representing the arrears of a portion of a month, a further term of a month's imprisonment may be imposed for such arrear.

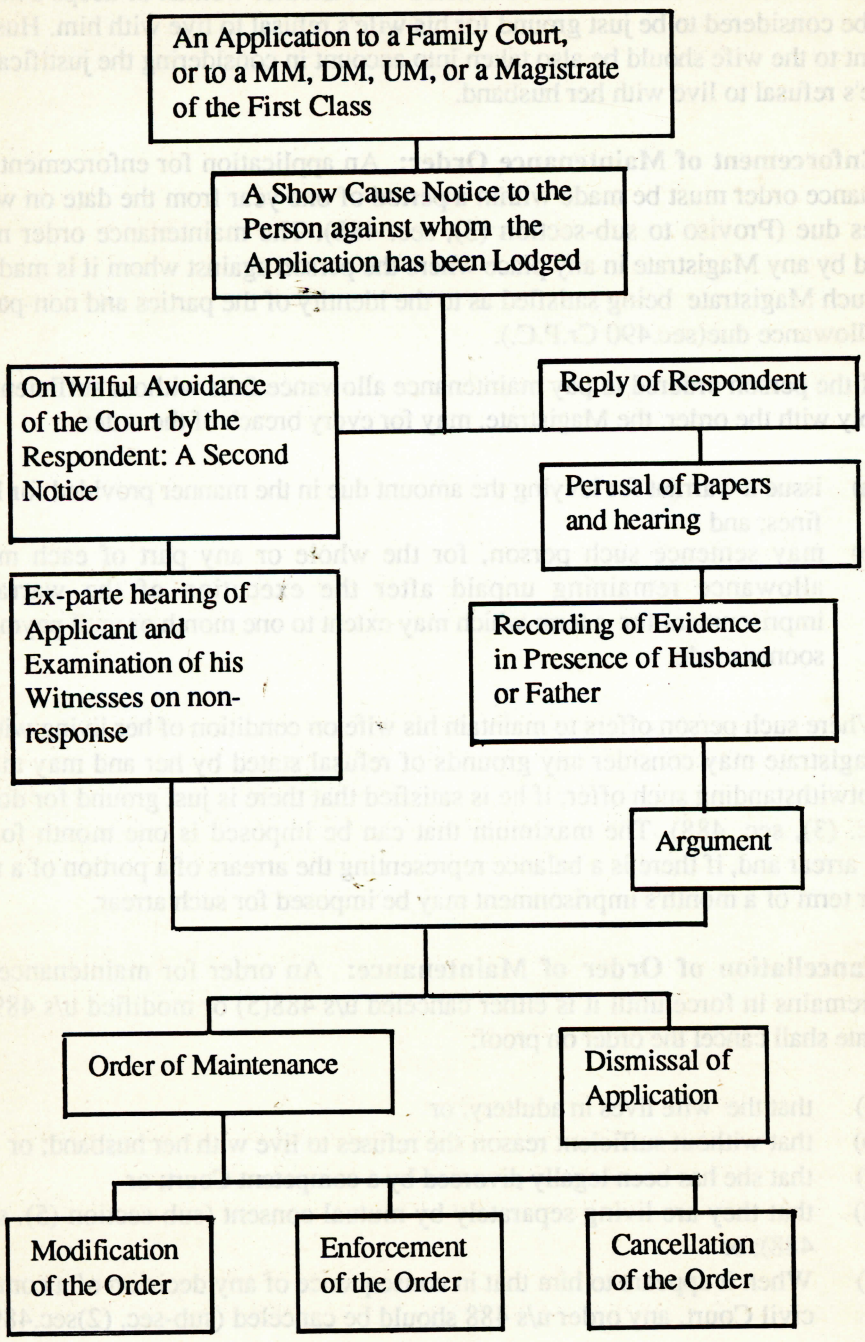
Cancellation of Order of Maintenance: An order for maintenance once passed remains in force until it is either canceled u/s 488(5) or modified u/s 489. The Magistrate shall cancel the order on proof:

(a) that the wife lives in adultery; or
(b) that without sufficient reason she refuses to live with her husband; or
(c) that she has been legally divorced by a competent Court; or
(d) that they are living separately by mutual consent (sub-section (5). section 488); or
(e) When it appears to him that in consequence of any decision of a competent civil Court, any order u/s 488 should be canceled (sub-sec. (2)sec.489).

Stages of Proceeding u/s 488
A flow chart



Stages of Proceeding u/s 488
A flow chart



Only the order awarding maintenance allowance to wife can be canceled; on order giving maintenance to a child can not be canceled. Please see the chart of the previous page which showed different stages of proceeding under section 488 of the Cr.P.C.

TRIAL OF MISCELLANEOUS CASES

1. In the criminal terminology what is meant by the term "Misc. case" has already been defined in Chapter III.

2. Usually, public servant, as defined under section 21 of the Penal Code, submits prosecution under different minor acts; therefore, the provision of section 200 Cr.P.C. of examining the complainant is not necessary in Misc. Cases and so the provision of the section 247 of the Criminal Procedure Code also does not apply rigidly. Otherwise the trial of Misc. Case follows the same procedure as that of other type of criminal cases.

3. However, it is very important to note that, some minor acts make provisions for summary disposal. Procedure for summary trial is discussed in Chapter XIV of Part II.

TRIAL OF CROSS-CASES

1. Definition of Cross-cases (counter-cases) has already been provided in Chapter III. It is common to find cross-cases started by parties to counter affect the case filed against them and to pressurise the other party to compromise the matter though a times they are genuine.

2. Trial by the same judge desirable. There is no objection in law to two cross-cases being tried separately or by two separate Judges. But it is most desirable that such cases should be tried by one and the same Judge or Magistrate.-AIR 123 Cal. 644 (645).

3. Where one of the two cross-cases is triable by a Court of session, it is desirable that the other case should be committed to the Court of Session. -1929 Mad. WN 881.

4. There should be separate but simultaneous trial of cross-cases. The cross-cases should be tried separately but simultaneously and contemporaneously.-AIR 1924 Cal. 634 (636). The file of two cross-cases should be kept separate, the evidence in the two cases should be recorded separately and the conclusions in each case must be found on and only on the evidence in each.- Air 1924 Lah. 104.

5. Appeal and Cross-cases. The procedure laid down above applies to applies also. However, it should be kept in mind that the Criminal Procedure Code is silent with regard to the procedures to be adopted in cross-cases. Each case should be decided on its on its own merit.

Only the order awarding maintenance allowance to wife can be canceled; on order giving maintenance to a child can not be canceled. Please see the chart of the previous page which showed different stages of proceeding under section 488 of the Cr.P.C.

TRIAL OF MISCELLANEOUS CASES

1. In the criminal terminology what is meant by the term "Misc. case" has already been defined in Chapter III.

2. Usually, public servant, as defined under section 21 of the Penal Code, submits prosecution under different minor acts; therefore, the provision of section 200 Cr.P.C. of examining the complainant is not necessary in Misc. Cases and so the provision of the section 247 of the Criminal Procedure Code also does not apply rigidly. Otherwise the trial of Misc. Case follows the same procedure as that of other type of criminal cases.

3. However, it is very important to note that, some minor acts make provisions for summary disposal. Procedure for summary trial is discussed in Chapter XIV of Part II.

TRIAL OF CROSS-CASES

1. Definition of Cross-cases (counter-cases) has already been provided in Chapter III. It is common to find cross-cases started by parties to counter affect the case filed against them and to pressurise the other party to compromise the matter though a times they are genuine.

2. Trial by the same judge desirable. There is no objection in law to two cross-cases being tried separately or by two separate Judges. But it is most desirable that such cases should be tried by one and the same Judge or Magistrate.-AIR 123 Cal. 644 (645).

3. Where one of the two cross-cases is triable by a Court of session, it is desirable that the other case should be committed to the Court of Session. -1929 Mad. WN 881.

4. There should be separate but simultaneous trial of cross-cases. The cross-cases should be tried separately but simultaneously and contemporaneously.-AIR 1924 Cal. 634 (636). The file of two cross-cases should be kept separate, the evidence in the two cases should be recorded separately and the conclusions in each case must be found on and only on the evidence in each.- Air 1924 Lah. 104.

5. Appeal and Cross-cases. The procedure laid down above applies to applies also. However, it should be kept in mind that the Criminal Procedure Code is silent with regard to the procedures to be adopted in cross-cases. Each case should be decided on its on its own merit.

CHAPTER VII

RECORDING OF EVIDENCE AND EXAMINATION OF THE ACCUSED

Recording of Evidence of Prosecution

When the accused is charged and he pleads not guilty the Magistrate shall proceed to hear the complainant and take all such evidence as may be produced by the prosecution (section 244(1), Cr.P.C.).

Before a witness is examined, he must take oath under the Oaths Act, 1873. The Oath in the case of all Courts other than the Supreme Court shall be administered by the presiding officer of the Court itself, and omission or irregularity in oath, however, does not invalidate the proceedings (secs. 4, 6 & 7 of the oaths Act, 1873). When the evidence of a witness is recorded the other witnesses may be asked to go out of the Court. But this rule may be relaxed in the case of witnesses like Medical Officers and Experts.

Evidence in Presence of the Accused

All evidences shall be taken in presence of the accused, or when his personal attendance is dispensed with, in presence of his lawyer (section 353, Cr.P.C.) If the witnesses are examined in the absence of the accused and there is nothing to show that his personal attendance has been dispensed with, the trial is invalid and the conviction will be set aside. (Not applicable in the cases tried in-absentia).

Recording of Evidence

The Magistrate shall record the evidence of each witness with his own hand and this shall form part of the record. However if he is prevented from doing so, he shall record the reasons and cause such evidence to be written from his own dictation in the open Court and sign the same (section 355, Cr.P.C.). The .pg Magistrate must sign the record; if he omits to do so, the illegality vitiates the trial.

In trials of cases under sections 133, 144 and 145, Cr.P.C. and in all inquiries regarding disputes to immovable property (Chapter XII of the Cr.P.C.). the evidence of each witness shall be taken down 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 (sec. 356(1), Cr.P.C.). Normally, such evidence should be taken in narrative form. Moreover, in his discretion the Magistrate or Sessions Judge may take down any particular question and answer (sec. 359, Cr.P.C.).

When a witness gives his evidence in English, the Magistrate or Session Judge may take it down in English with his own hand, but if the accused is not familiar with English, an authenticated translation of such evidence in the language of the Court shall form part of the record (section 356(2), Cr.P.C.). If the deposition is not put down by the Magistrate or Session Judge, he shall make a memorandum of substance of each deposition, and sign it. Such memorandum shall form a part of the record. When he fails to do so, he shall record the reason (section 356 (3 to 4).

When evidence of each witness taken u/s 356 Cr.P.C. is completed, it shall be read over to him in his understandable language in presence of the accused or in presence of his pleader and shall be corrected if necessary (section 360 Cr.P.C.). Whenever, and evidence given in a language not understood by the accused or by the advocate appearing for the accused, it shall be interpreted to him in the open Court in a language understandable to him (or to his advocate) (sec. 361(1), Cr.P.C.). The Magistrate shall also record such remarks (if any) as he thinks material regarding the demeanour of such witness while under examination (section 363 Cr.P.C.). Omission to read over of deposition the witnesses, can not be cured under section 537,Cr.P.C.

Stages of Examination of a Witness

A witness is first examined by the party who has called him; this is called examination-in-chief. Then he is cross-examined by the adverse party. Subsequent to his cross-examination, a witness may be examined by the party who has called him to explain the matters referred to in cross-examination; this is termed as re-examination (Section 137 & 138 of the Evidence Act, 1872).

The examination and cross-examination must relate to relevant fact; but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. The re-examination shall be directed to the explanation of matters referred to in cross-examination.

Hostile Witness

Under section 154 of the Evidence Act, the Court may in its discretion permit the person who calls a witness to put any question to him which might be put in cross-

examination by the adverse party on the ground of his being hostile. However, permitting to cress-examine a party's own witness does not necessarily render the latter to be a hostile one.

Examination of Accused Under Section 342 Cr.P.C.

The accused is to be examined by the Court for the purpose of enabling him to explain any circumstances appearing in the evidence against him, at any stage of the inquiry or trial without previous warning. However, the Court shall question the accused generally on the case after the witnesses for the prosecution have been examined and before he is called upon for his defence. No oath shall be administered during such examination (sec. 342, Cr.P.C.). The object of section 342 Cr.P.C. is to enable the accused to explain each and every circumstance appearing in the evidence against him. It is to be noted that:

(a) When in a case tried summarily, the provisions of section 342 Cr.P.C. are applicable. Examination of the accused on the conclusion of prosecution evidence is mandatory.

(b) Failure of the Magistrate to record the statement of the accused made under section 342 Cr.P.C. materially prejudice the accused and this defect can not be cured under section 537 of the Cr. P.C.

The following formalities should be observed in examining an accused (section 364 Cr.P.C.):

(a) The Court should record in full the examination of the accused including every question put to the accused and answer thereto given by the accused. As far as possible the statement of the accused should be recorded in the exact words used by him.

(b) The examination of the accused should be recorded in the language used by the accused or if that is not possible, in the language of the Court.

(c) After examination of the accused is recorded, the record of the examination shall be shown or read to the accused or, if he does not understand the language in whichit is written shall be interpreted to him in the languagewhichhe understands.

(d) When the statement has been shown and explained to the accused, the accused shall be at Liberty to explain or add to his answers.

(e) After the statement has been recorded, shown or explained to the accused and corrected where found necessary by the accused, it shall be signed by the accused and the Magistrate or the Judge with a statement in this regard. Where the accused can not sign his name, his thumb mark is sufficient.

Any person accused of an offense before a Criminal Court shall be a competent witness for the defence and may give evidence on oath is disproof of the charges made against him or any person changed together with him of the same deed (section 340(3) Cr.P.C.).

Recording of Evidence of Defence Witness

When the examination of the accused is over, the Magistrate must proceed to hear the accused and to take all such evidence as may be produced by him (sec.244 Cr.P.C.).

The mode of taking down the evidence of Defence Witnesses is similar to that of taking down the evidence of prosecution witnesses as stated before.

Under section 540 Cr.P.C. the Court may summon or recall any witness at any stage of the case. The section also imposes a statutory duty on the Court to summon, examine, re-call or re-examine any person, if:

(a) the evidence is essential and
(b) it is essential to the justdecision of the case.

The power conferred by this section is a special power that should be used sparingly on appropriate occasions and its use should be avoided to fill up gaps deliberately left by parties.

The Court may exercise the powers at any stage of inquiry or trial or any other proceeding. The word `trial' in section 450 continues until the judgment in the case is delivered. The Court can examine witnesses u/s 450 even though the evidence of both sides have been closed and the arguments over. -AIR 1965 Orissa 129. Both the prosecution and the accused must be given opportunity to cross-examine a Court witness and if the evidence of the Court witness is prejudicial to the accused, he should be questioned again u/s 342, Cr.P.C. for giving any explanation and an opportunity to rebut the evidence, if need be. - 1968 Ker IJ 114. The Court should not make section 540 as an agency for further investigation into the case. Where the prosecution chooses not to examine a material witness, it is the duty of the Court to examine such witness u/s 540. - AIR 1965 SC 328.

CHAPTER VIII

ARGUMENT

In the Code of Criminal Procedure there is no specific provision of argument during trial by Magistrates.

According to K.J. Aiyer's Judicial Dictionary (popularly known as Manual of Law Terms and Phrases) argument means "The process by which references are drawn; the discussion by a counsel of the evidence in a suit and the placing of various authorities for legal positions before a Judge to arrive at a decision;....." Unlike magisterial trials there is provision in the Code of Criminal Procedure for summing up of the evidence in the Sessions trial. Normally after the conclusion of the evidence, arguments are heard by the Court.

Complainant/Prosecution puts forward the argument first if no defence evidence is adduced by the accused. In case, the defence evidence is accused by the accused, arguments are advanced by the defence first.

Though there is no specific provision for argument in the Code of Criminal Procedure in respect of trials held by the Magistrate, arguments are heard by the Magistrates with reference to section 340 of the Code of Criminal Procedure. During the submission of arguments, the parties sum up the evidence on record, discuss the intricate legal positions with reference to the provisions of law and CAse-laws, the merits and demerits of evidence and try to establish their respective cases.

Section 340 of the Code of Criminal Procedure provides as follows:

340 (1) Any person accused of an offense 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.

This section not only contemplates that the accused should be at liberty to be defended by a pleader at the time the proceedings are actually going on but also implies that he should have reasonable opportunity, if in custody of the Police, of getting into communication with his legal adviser for the purpose of preparing his defence-

Defence of accused includes the right to address arguments. Conviction and sentence may be set aside in case of denial of such right .

The accused has got the legal right of advancing arguments before the trying Magistrate. The right of being defended by an advocate means the right of making such representation or submissions to the Court as may be available to an accused person meeting charges leveled against him. In other words, the accused has been given a right of advancing arguments in a criminal trial. The accused had a right that his pleader must be heard. It is not question of indulgence-

Some other Rulings in support of argument are cited below:

(1) Even the complainants have been held to have legalright to be represented buy counsel; of course; when Government takes up the prosecution, the Officer acting on behalf of the Government will take the lead. - 5 Beng L R (APP) 709.

(2) It is neither right nor proper for a Judge to remarkthat no useful purpose will be served by hearing the parties or their counsel- 1954 Cr.L J 1366. But where the pleaders do not attend on the day fixed for hearing arguments, the Court canpronounce judgment without hearing them-23 Cr. L J 1366.

(3) A Court is bound to hear arguments, if offered, inevery criminal trial or proceedings - Baij nath, 25 Cr. L J 1380.

According to the Lahore High Court it is not correct to say that the hearing of argument is not part of the hearing of the case before a Magistrate as arguments are not provided for in the trial of case by Magistrates but are only specifically provided for by the Code in the provisions relating to the trial of Sessions cases/or cases in the High Court. The procedure for Sessions trial has only laid down the specific order in which the prosecutor and the accused or his defender shall address the Court. This case is not to be taken as meaning that the accused is to be deprived in magisterial trial of his inherent right of putting his side of the case before the Magistrate- Toja Singh vs Harnam, AIR 1944 Lah. 10(11).

The long standing practice of hearing argument as implied under section 340 of the Code of Criminal Procedure being supported by the Case laws, buy the time acquired the force of law.

In the explanation of the term Judgment appearing in the rulings, there is also reference to argument Judgment means the expression of the opinion of the Judge or Magistrate arrived at after due consideration of the evidence and of the arguments. Since the Magistrate is to consider the arguments, it implies that the Magistrate has to hear argument. So the Magistrate should hear the arguments advanced by the parties.

Right to be defended is fundamental as enshrined in the constitution of the People's Republic of Bangladesh.

CHAPTER IX

JUDGMENT

Judgment is the concluding stage of a trial in any criminal Court or original jurisdiction. Contents of judgment have been enunciated under section 366-367 of the Code of Criminal Procedure.

There is no formal definition of Judgment in the Code of Criminal Procedure. Judgment in the Code of Criminal Procedure means only a judgment of conviction or acquittal.

According to K.J. Aiyer's Judicial Dictionary "Judgment means the reasoning given by the Court in support of its decision". Judgment is "Judicial determination or decision of a Court")Wherton's Law Lexicon).

In the absence of formal definition of the term Judgment, there are rulings defining the term.

A Judgment means the expression of the opinion of the Court arrived at after due consideration of the evidence and all the arguments. - Rahman Talukder vs. State of Bihar, 1956 (BLJR) 351:1956 Pat-LR 218, AIR 1957. Pat. 33 (DB).

A Judgment is the final decision of the Court intimated to the parties and to the world at large by formal "Pronouncement" or "delivery" in open Court. - Surendra A 1954, SC 194, 1954, SCR 330; 1954 Cr.L.J. 475.

Mode of delivering Judgment

(1) The judgment shall be pronounced or the substance of such judgment shall be explained - (a) in open Court either immediately after termination of the trial or at some subsequent time on service of due notice to the parties or their advocates, (b) in the language of the Court or in some other language which the accused or his advocate understands. The whole judgment shall be read out .pg by the presiding Judge on request by either party.

(2) The accused shall be required by the Court to attend to hear judgment deliveredexcept where his personal attendance during 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 advocate.

(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 advocate on the day or from theplacenotified for thedelivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, oranyof them, the notice of such day and place(S. 366, Cr.P.C.).

Contents of Judgment

(1) Every judgment shall be written by the presiding office of the Court or from the dictation of such presidingofficer in the language of the Court. The Judgment shall contain (a) the point or points for determination, (b) the decision thereon and (c) the reasons for the decision. The judgment shall be dated and signed by the Presiding Officer in open Courtat the time of pronouncing it and where the judgment is not written bythe presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) The judgment shall specify the offense (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.

(3) When the conviction is under the Penal Code and it is doubtful under which of the two sections, or under which of the two parts of the same section of the Code, the offense 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 offense of which the accused is acquitted, and direct that he (the accused) be set at liberty, if not wanted in connection with any other case.

(5) For the purpose of this section, an order under section 118 or section 123, sub-section(3)shall be deemed to be a judgment (section 367).

Section 367 of the Code of Criminal Procedure has not prescribed any particular form of judgment. It has merely stated that the judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision.

Therefore, after stating the prosecution case and mentioning the plea of the accused, the points for determination should be formulated and the evidence under each of the points should be analysed and discussed before taking a decision on that point. -48 Cr.L.J. 389.

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The Judgment should not be written in a slipshod manner. A Judgment written without discussing the evidence of witnesses or the circumstances appearing in corroboration of their evidence and without giving any cogent reasons for discarding the evidence of witnesses and the corroborative circumstances,is not a proper judgment. - PLD 1 1966 SC (71). It is, however, to be noted that judgment should not be unnecessarily long. - AIR 1933 Mad. 233.

A judgment properly written has the advantage that the litigant feels that the Judge has taken into consideration the evidence and his own view of it and that his point of view has not been left unnoticed. -52 Cr.L.J. 1477. Even in a summary trial, brief statement of reasons for the finding must be given. - Jankey, 20 Cr. L.J. 432.

Under sections 366 and 367 a judgment is not delivered until it is written, signed, dated and pronounced in open Court, the last three taking place at one and the same time. -17 Cr. L.J. 166.

An order of discharge is not a judgment and no reasons are necessary where such an order is passed, but it is desirable that the Magistrate should record his reasons for discharge. - Bom LR 250.

Till pronouncement, a judgment is inoperative and is nothing more than private expression of an opinion by a Judge which can be changed and altered. - AIR 1929. Lah. 602-31 Cr.L.J. 675.

The judgment should be pronounced soon after the arguments. Where the judgment was pronounced some three and a half months after the arguments were heard. the procedure was held to be open to serious objection. -36 Cr. L.J. 53.

The Dhaka High Court has held, after considering all previous decisions, that omission to write out judgment before pronouncing the sentence is an illegality and the defect is not curable under sec. 537 of the Code. The Court expressed the view that the judgment is delivered only when it is written, signed, dated and pronounced in the open Court. -PLD 1964, Dhaka 56. On signing and pronouncing its judgment, no Court has power to alter or review the same except to correct the clerical error.

After signing and pronouncing judgment, the Court becomes functus officio. - 53 Cr. L.J. 417.

A Judgment has not to be a resume of the entire evidence or a discussion of the relevancy of all the evidence. A Court is entitled to select such evidence as it considers important and sufficient to prove the point in issue. - A 55 All. 1040. But there should be no unreasonable delay in pronouncing judgment after the closing of the case. Such delay

is not only unjust to the accused as it prevents them from appealing against the sentence but it is also opposed to the general principle of law. - 5 CPLR (Cr.) 24.

Section 366 is not applicable to an order under section 195 of the Code - 1 Cr.L.J. 969 or to an order dismissing complaint under section 203. - 4 Cr.L.J. 234.

An interlocutory order in criminal CAse is not a judgment (Horirum, Supi Kuppu Swani Sap).

A final order under section 136 is a judgment. - A 1951, A 433.

All other expressions of opinion of the Criminal Court (other than a judgment of conviction or acquittal) fall in the category of orders (A 1956).

The language of the judgment should be temperate and sober. -13 Cr. L.J. 250.

Criticism may be made in restrained terms of matters relevant to the conduct and merits of the case and of the persons who are witness (A 2943); but no disparaging or libelous remarks should be made upon any person who had no opportunity of defending himself and who has not appeared as witness.

It is not proper to base a conviction merely on the appearance and manner so speech of the accused.- 23 Cr.L.J. 161.

Where there are several accused persons, the judgment should analyse evidence against each of them separately. - 1952 Cr.L.J.

Unfounded remarks against the conduct of a counsel should not find a place in the judgment. -AIR 1914, Oudh 171.

Though a humorous judgment is not necessarily a bad judgment, factious comments which do not contribute to the disposal of the case and which are likely to wound the feelings of persons should be avoided.-12 Cr.L.J. 465.

In Case which have assumed a communal aspect, the language of the judgment should not be such as to promote communal enmity.-AIR 1939, lAH. 429.

A conventional format of judgment is given below:

JUDGMENT

CR/GR Case No..... of 19
X/State .....Complainant.

Versus

Y.....Accused
u/s.....P.C/any other law.

(1) Prosecution case in brief-
(2) The charges-
(3) Defence CAse in short-
(4) Point/points for determination-
(5) Discussion of evidence-
(6) Decision and reasons for decision-
(7) Order-

(Seal of the Court)

Signature of the Magistrate
Date.....
Designation:

PART TWO

CHAPTER X

ARRESTS, PROCESSES AND SEARCH-WARRANTS

Arrest Without Warrant
(Section 54)

In the Code of Criminal Procedure, 1898. (Act V of 1898) provisions have been made regarding arrests by the police without a warrant and with a warrant. Cases where a police officer may arrest without a warrant are specified in Schedule II, column 3 of the Code. In the same column offenses have also been listed in which the police shall not arrest without a warrant.

Besides, in section 54 Cr.P.C. mention have been made about 9 categories of persons whom the police may arrest without a warrant and without an order from a Magistrate.

(1) Any police officer may arrest any person who has been concerned in a cognizable offense 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.

(2) Any police officer may arrest any person found in possession of an implement for house-breaking without lawful excuse, and the burden of proving the excuse lies upon the person in possession of such implement.

(3) Any police officer may arrest a person proclaimed as an offender either under the Cr.P.C. or by order of the Govt.

(4) Any police officer may arrest a person in possession of property which may reasonably be suspected to be stolen property and such person may reasonably be suspected of having committedan offensewith respect to such property.

(5) Any police officer may arrest any person who obstructs him while in the execution of his duty, or who has escaped or attempts to escape.

(6) Any person reasonably suspected of being a deserter from the armed forces of Bangladesh may also be so arrested.

(7) 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 existsof 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 offense, and for which he is, under any law liable to be apprehended or detained in custody in Bangladesh.

(8) Any released convict committing a breach of rule made under section 565, sub-sec.(3) of the Cr.P.C. This includes the arrest of habitual offenders, who having been directed by a Court to notify their residence or change of residence, commit a breach of rule in respect of that obligation.

(9) Finally, any person may be arrested by a police officer for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested as well as the offense 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.

It is necessary to point out here that there are other sections in the Cr.P.C. which confer similar powers on the police. There are:

Section 55 (arrest of vagabonds, habitual robbers, etc.), sec. 57 (refusal to give name and address by a person who has committed a non-cognizable offense in the presence of a police officer), sec. 151 (a person designing to commit a cognizable offense) and sec. 401(3) (persons committing breach of the condition on which a sentence has been suspended or remitted and the Govt. have canceled the suspension or remission).

Persons who have broken a condition of pardon or remission of sentence, or of release from imprisonment in default of security, may also be arrested without a warrant.

Generally, the police can not arrest a person accused of a non-cognizable offense without a warrant f rom a Magistrate though under certain circumstances the police can arrest for a non-cognizable offense also. But when a person is concerned in a cognizable offense the police can arrest him without warrant under section 54 of the Code. - 26 DLR 256 SC.

A comparison of section 54 and section 55 would make it at once clear that while a police officer can arrest a person without warrant, if there is a " reasonable suspicion" of

his having been concerned in a cognizable offense, a private person cannot arrest on mere suspicion, however, reasonable it may be.-11 DLR 131 WP.

Arrest effected in Karachi of a person accused of murder committed in India-sanction of central govt. for detention of accused obtained more than two months after arrest-Detention legal. -3 PLD 66 Sind.

Every person arrested without a warrant is to be sent to Magistrate within 24 hours of arrest, and is not to be detained in custody by the police for a longer period than is reasonable. Before the expiration of such period the arrested person has to be produced before the nearest Magistrate (sec. 61), who can under section 167(2) order his detention for a term not exceeding 15 days on the whole. Or he can be taken to a Magistrate who has jurisdiction to try the case, and such Magistrate can under section 344 remand the person into custody for a term not exceeding 15 days at a time. The intention of the Legislature is that an accused person should be brought before a Magistrate competent to try or commit with as little time as possible -Ponnusami (1882) 6 Mad, 69 and Engadu (1887 11 Mad. 98).

Period of 24 hours will be exclusive of the time necessary for the journey from the place or arrest to the Court of Magistrate (sec. 61).

A police officer may for the purpose of arresting without warrant any person whom he is authorised to arrest under this Chapter, pursue such person into any place in Bangladesh (sec.58). He must send, without delay, the person arrested before a Magistrate or the Officer-in-Charge of a Police Station.

A private person may arrest (1) a person committing a non-bailable and cognizable offense within his view, or (2) any proclaimed offender. He must, without delay, make over such person to a police officer or to the nearest Police Station (sec. 59).

The O/Cs of Police Stations shall report to the C.M.M. and D.M. or if the D.M. so directs, to the S.D.M. (Upazila Magistrate) the cases of all persons arrested without warrant , within the local limits of their respective stations, whether such persons have been admitted to bail or otherwise(sec. 62).

Investigation against persons arrested under section 54 Cr.P.C. are to be completed by police as quickly as possible and reports thereof should be sent to the Magistrate. If there is no evidence of any specific offense against such person he should be discharged forthwith.

When any offense is committed in the presence of a Magistrate 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 as to bail commit the offender to custody (sec. 64).

Persons arrested u/s 54 Cr.P.C. may generally be released on bail. They may not be released on bail as well in particular cases. It should be pointed out here that such arrests are always made on the basis of some offense which is either bailable or not-bailable. Granting of bail or rejecting a bail application will be depending largely on the type of allegations for or the circumstances in which the person has been arrested. In all such cases the forwarding memo, of the police officer has to be looked into and examined carefully by the Magistrate. He should apply his mind properly. In the absence of any specific nature of allegation or of committing a specific non-bailable offense by a person arrested u/s 54 Cr.P.C. the Magistrate will release him on bail. But in the cases of proclaimed offenders, escapees, deserters as well as those arrested on receipt of a requisition from another police officer, bail should be considered as per provisions of sec.497 Cr.P.C. in the light of discussions in Chapter XX under the heading "Matters Relating to Bail". This should also be stated here that bail applications for persons arrested u/s 54 Cr. P.C. should not be refused unless there are very clear and specific reasons for deciding otherwise, Practices and conventions on the matter are in favour of admitting such persons to bail.

Proclamation
(section 87)

Proclamation for person absconding:

(1) If any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and time not less than 30 days from the date of publishing such proclamation.

(2) The proclamation shall be published in the following manner:

(a) itshall be publiclyreadinsome 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 personordinarily 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 to 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 proclamation was published on such day.

Proclamation is a special means directed to the enforcement of the attendance of the persons in regard to whom it appears that they have absconded, or are concealing themselves so that the warrant issued against them cannot be executed.

Attachment
(section 88)

Attachment of property of person absconding:

(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 authorise the attachment of any property belonging to such person within the district in which it is made, and it shall authorise the attachment of any property belonging to such person without such jurisdiction when endorsed by the CMM/DM within whose district such property is situated.

For other details relating to attachment of debt or other movable property, immovable property, livestock or perishable in nature, powers, duties and liabilities of receiving claims or objections, release and disposal of the property etc. provisions of sub-sections (3), (4),(5), (6), (6A) ,(6B), (6C), (6D), (6E) and (7) of section 88 Cr.P.C. need be consulted.

Procedure as to the restoration of attached property has been described in section 89. Proclamation and attachment (P&A) orders can be issued against absconding accused only after a W/A has been issued against him. At least 30 days' time from the date of publishing the proclamation shall be given to the absconding accused for the appearance. Service of attachment orders are to be caused after the expire of 30 days from the date of publication of the proclamation.

The order of attachment is a coercive measure taken by a Court in addition to issuing a proclamation. Before attachment is effected of such property outside the territorial jurisdiction of the Court issuing the order, that order must be countersigned by the DM/CMM having jurisdiction where the property is situated. The attachment and

possible sale of the property to the determent of the proclaimed person must not be looked upon as a punishment for non-appearance, or for absconding, but simply as a means of enforcing appearance.

Production of Document and Other Movable Property
(section 94)

Summons to produce document or other thing:

Whenever any Court of O/C of a Police Station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Cr.P.C. by or before such Court or officer of 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 producing it, at the time and place stated in the summons or order. But no such order shall be issued to a Bank/Banker except with the permission in writing of the Sessions Judge for the purpose of investigating specified cases and in other cases with the prior permission in writing of the High Court as described in section 94(1) (a) and (b)of the Cr.P.C. It becomes frequently necessary to require a person to produce a document or a thing which may be in his possession or power and which may have a bearing on a case. This can be secured either by a summons (sections 94 and 95) or a warrant (sections 93-99). Sections 94 may be contrasted with section 165 as both these sections related to the accused. The term 'person' includes an accused person; the Magistrate has, therefore, the power to issue summons to an accused person to produce a document or other thing even when its production might tend to incriminate him. Bisser Misser (1913) 51 Cal. 261.

Search-Warrant
(Sections 96-100)

Section 96(1) provides for the situations and circumstances in which a search-warrant may be issued by a Court. But only the DM or CMM is competent to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities (section 96 sub-section (2).

Power to Restrict the Warrant
(section 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 Suspected to Contain Stolen Property. Forged Documents (Section 98)

Under the provision of this section only a D.M., S.D.M. (Upazila Magistrate), M.M. or M.F.C. (Magistrate of the first Class) upon information and after such inquiry as he thinks necessary,and in case of an offense under section 292 of the Penal Code a D.M./S.D.M. (Upazila Magistrate)/ MM may issue a S/W for the inspection of a place and recovery of the article specified in the warrant. Items as for the recovery of which a S/W may be issued as well as the mode of search and the functions of the conducting police officer have been enumerated elaborately in section 98 Cr.P.C. Any police officer above the rank of a constable may be authorised to execute a S/W. It may be mentioned here that provisions as to S/W u/s 98 Cr.P.C. are in respect to recovery of articles or movable properties only. If considered necessary, orders as to the jimma/custody of the articles/property on a suitable bond may also be passed and stated in the warrant. The place of search, particulars of the property/article and the name and address of the persons having custody, should be precisely mentioned in the S/W.

Discovery of Persons Wrongfully Confined
(Section 100)

Search for persons wrongfully confined:

If any MM, MFC, or SDM(UM) has reason to believe that any person is confined under such circumstances that the confinement amounts to an offense he may issue a S/W, 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 seem proper. General provisions relating to searches are given in sections 101, 102 and 103.

While issuing a S/W u/s 100 proper care should be taken by the Magistrate. Such orders may not be the cause of harassment for anybody. Instances are many that at the solicitation of the husband a S/W u/s 100 Cr.P.C. has been issued for the recovery of his wife who is staying at the house of her father, mother, brother or the like. In such cases it is advisable and if deemed proper to order for a S/W for the recovery of the wife, with orders to the effect that- if recovered she should be released/left in the jimma of her father/mother/brother or any other responsible person (may be according to her choice)

on a bond of Tk..... or so on condition that the jimmader would produce her before the Court on the next date fixed.

In the alternative, if so considered, a show-cause notice as to why a S/W u/s 100 Cr.P.C. shall not be issued for the search and recovery of Jamila Khatoon, wife of Sekander Ali to the person in whose house/custody the wife is allegedly confined may be served. This measure in such situations may prove just and fair for the persons concerned, and would help avoid delay as well as harassment.

As soon as the victim/recovered person is produced before the Magistrate she/he should be examined and the statement be recorded u/s 164 Cr.P.C. in the language of the maker as far as practicable. A format is given below:

Statement of..... daughter/wife/son of .....taken on S.A..... .....
Identified by.....s/o .....
of address.....

My name is .....daughter/wife/son of..... Village .....
P.S. .....District .....
I am aged ..... years .
.....
.....
.....

Read over and admitted to be correct.

Signature of Magistrate

Date .....

Signature of maker of statement.

CHAPTER XI

PREVENTIVE MEASURES BY MAGISTRATES

`Prevention is better than cure`, goes the old proverb. The Code of Criminal Procedure provides machinery for prevention of offenses before constructing the superstructure for punishment of offenses. In this respect, sections 106/126 provide for security proceedings for -

(a) Keeping the peace

  (i) On conviction (sec. 106)
  (ii) On likelihood of the breach of the peace (sec.107). and

(b) Good behaviour from

  (i) Persons disseminating seditious matters (sec. 108)
  (ii) Vagrant and suspects (sec. 109)
  (iii) Habitual Offenders (sec. 110)

The provisions under reference are preventive in their scope and object, and are aimed at persons who are a danger to the public. This preventive magisterial jurisdiction is a powerful adjunct to executive authority, salutary if used in moderation and caution.

Security for keeping the Peace on Conviction (Section 106)

Section 106 of the Code of Criminal Procedure makes provisions for keeping the peace on conviction. Security may be demanded, under this section when a person is convicted of any of the following offenses, viz,

(1) Rioting,
(2) Affray,
(3) Assault,
(4) Offense involving a breach of the peace,
(5) Abetment of any of the above,
(6) Criminal intimidation.

It is provided that whenever any person is accused of any offense punishable under

Chapter VIII of the Penal Code
other than an offense punishable under
sec. 143 (being member of an Unlawful Assembly),
sec. 149 (Liability of every member of an
Unlawful Assembly if an offense is committed
by that assembly),
Section 153A (Promoting enmity between classes),
Section 154 (Owner or occupier of land on which an unlawful assembly is held), or of assault, or other offenses, involving a breach of the peace or abetting the same, or of committing criminal intimidation.

is convicted of such offense before High Court Division, Court of Session or the Court of Metropolitan Magistrate, District Magistrate, Sub-Divisional Magistrate (Upazila Magistrate)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 3 years, as it thinks fit to fix.

The purpose of an order for security is not to punish but to prevent future commission of offenses. - 1929 Sind. 122. The works "offenses involving a breach of peace" must indicate an offense, one of the constituting elements of which is the commission of or the intention to commit a breach of the peace by the offender. - 1924 Lah. 311. An order of security under this section must be passed at the time of conviction and sentence. - 1924 All. 230. Before an order is passed, it is necessary that the Court must be of opinion that executing a bond by that person is a necessity. - 1927 Pat. 37. But in forming this opinion the Magistrate must take into consideration only legal evidence and should not act on the statement made by the prosecution. - 1943 Mad. 169. Normally, a bond is taken when the convict is to be released from jail.

Security for keeping the Peace in other Cases
(Section 107)

Section 107 Cr.P.C. provides that whenever a Metropolitan Magistrate, Sub-divisional Magistrate (Upazila Magistrate) or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb public

tranquillity, the Magistrate may 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.

Ordinarily no proceedings u/s 107 Cr.P.C. shall be taken before a Magistrate other than a Magistrate of the first class/Magistrate/District Magistrate/ Subdivisional Magistrate (Upazila Magistrate). When the proceedings are taken before a Chief Metropolitan Magistrate or District Magistrate, the person informed against or the place where the breach of the peace is apprehended should be within his jurisdiction. Either the person(s) or the place gives the CMM/DM the jurisdiction under this sub-section. But other Magistrates do not have such wide jurisdiction. In other cases both the person(s) and the place, must be within those Magistrate' jurisdiction.

A Magistrate not empowered to take such bond, may after recording his reasons, issue a warrant for the arrest of such person and may send him before a Magistrate empowered to deal with the case together a copy of his reason. Such Magistrate can detain him pending further action (sub-section (3) & (4).

The jurisdiction under this section can be invoked only where there is a likelihood of a breach of the peace, or of a disturbance of the public tranquillity in the future. If the breach of the peace has already occurred, the offender should be tried and dealt with under 106 and not under 107 Cr.P.C. Two things are necessary to warrant an action under this section:

(1) Information should be laid before a Magistrate;

(2) The Magistrate should be satisfied that there is sufficient ground for proceeding.

The key terms under this section are `is informed', `is likely' and `wrongful act'. There must be satisfactory evidence that the person proceeded against has done something or taken some step that indicates any intention to break the peace or disturb tranquillity. The information must be of a clear and definite kind directly affecting the person against whom the process is issued. - 6 All. 26. Secondly, it is not necessary for taking action under this section to show that a person has actually done any of the acts mentioned in it; it is only a likelihood of doing such act that is necessary. - 1943 Nag. 88. Thirdly, it is the doing of wrongful act which may occasion a breach of the peace that is to be prevented. It means an act which is an offense under penal law or any other law and not merely an immoral or improper act. - 1920 Pat. 550.

A rightful act can not be made the subject of proceedings under this section even though it may provoke a breach of the peace or disturb public tranquillity. - 1942 Pat.

331. The section must be used to protect persons exercising their legal rights and not to interfere with such rights. The Magistrate to whom application is addressed has inherent power to refer the matter to the police or to a subordinate Magistrate for investigation or inquiry before he makes up his mind about it. -1938 Lah. 861. High Court Division will interfere in revision if the material on which an order is based is insufficient or if it gives equal treatment to the wrong doers and the likely sufferers. - 1939 Sind 167.

The Magistrates dealing with cases under this section sometimes make a mistake by granting bail to the persons(when they appear) proceeded against. A person under this section is not an accused of any offense bailable or non-bailable. Therefore, the question of bail does not arise. Only an interim bond u/s 117(3) can be asked for pending completion of inquiry. Before this interim bond is furnished by the person(s) under proceeding, inquiry has to commence.

Security for Good Behaviour from Person Disseminating SEditious Matter (Section 108)

Section 108 aims at preventing commission of crimes against:

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

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

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

Whenever the Chief Metropolitan Magistrate or District Magistrate or Metropolitan Magistrate or a Magistrate of first class specially empowered by the Government has information that somebody disseminates or attempts to disseminate or abets dissemination of any of the above matters, such Magistrate may 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 a period not exceeding one year as the Magistrate thinks fit to fix. It is to be noted that no proceedings under this section can be taken by a Magistrate unless he is a Magistrate of the First Class and specially empowered by the Govt. Only CMM, DM, and MM are competent to draw proceedings under this section.

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 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.

This section is not intended to provide for punishment of offenses already committed but to prevent the commission of offenses in the future. - 1942 Sind 122. If there is no attempt to promote enmity, the mere fact that the matter may have a tendency to promote enmity is not enough to take action under this section. - 1926 Cal. 1133.

Similarly, there is no ground to proceed if speeches and agitation are mainly to redress a particular grievance such as an insult of the religious sentiment of the students of a college. -1932 Lah. 559. There must also be danger of continuing seditious activities by the accused. - 1932 Lah. 7.

Security for Good Behaviour from Vagrants and Suspected Person (Section 109)

Section 109 Cr.P.C. provides that whenever a Metropolitan Magistrate, District Magistrate, Subdivisional Magistrate (Upazila Magistrate) or Magistrate of the first class receives information:

(a) that nay person is taking precaution to conceal hispresence within the local limits of such Magistrate's jurisdiction with a view to committing an offense; or

(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 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.

The object of this section is to prevent the criminal design of such persons before they are carried out. - 1929 All. 33. It is not intended to be used to get every suspected habitual offender confined in jail. It is only when the ordinary means of detection and prevention of crime have failed. Secondly, concealing a man's presence is not identical with his concealing himself. A man may not conceal his presence at a place and yet may conceal his identity by giving out false name or address. Thirdly, under `no ostensible means of subsistence', sustaining oneself by dishonest means is to be reasonably proved. Fourthly, satisfactory account of oneself must be looked upon in context of the place and circumstances. 1938. Cal 409.

It is mandatory on the part of the Magistrate drawing preceding under this section that he should make an order u/s 122 Cr.P.C. which should mandatorily embody the substance of information received. The failure in doing so will lead to miscarriage of justice.

Security for Good Behaviour from Habitual Offenders (Section 110)

Section 110 of Cr.P.C. provides that whenever a Metropolitan Magistrate, District Magistrate or a Subdivisional Magistrate (Upazila Magistrate) or Magistrate of the first class specially empowered receives information that any person within the local limits of his jurisdiction:

(a) is by habit a robber, house breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

(d) habitually commits or attempts to commit, or abets the commission of the offense of kidnaping, abduction, extortion, cheating, or mischief or an offense relating to coins and currency, or

(e) habitually commits, or attempts to commit or abets the commission of offenses involving a breach of the peace, or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

Such Magistrate may 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 3 years as the Magistrate thinks fit to fix.

The object of this section is preventive and not punitive and action under it is not intended as a punishment for past offense. - 1940 Bom. 416. It is aimed at protecting society from dangerous characters. It is intended to deal with ex-convicts and habitual criminals and dangerous and desperate out-laws who are hardened and incorrigible and not control able under the ordinary provisions of the penal law. Habit can be proved by adducing evidence of the commission of a number of similar acts. No specific offense

need be proved. Adducing evidence of general repute is sufficient. Harbouring must be done with the intention of protecting the offender from legal punishment or from being apprehended. A man of desperate and dangerous character can be proved if one threatens and beats people and shows reckless disregard of the safety of the person and property of his fellow beings. Fifthly, the general reputation of man is that which he bears amongst his fellow towns-man or in the neighborhood in which he lives. Mere suspicions of an isolated offense is not an evidence of general reputation. - 9 Lah. 586.

This provision was originally made for persons of high stratum of society like mischievous Zamindars and others for which evidence of crime could hardly be got for regular punishment. At present, in such cases detention is given under Special Powers Act 1974. Incidentally, there is no appeal from actions under Special Powers Act, but appeal can be made on the action under section 110 of Cr.P.C.

It should be noted that only CMM/DM/MM/SDM/(UM) and a Magistrate of the first class specially empowered is competent to take proceeding under this section. It should be borne in mind that person(s) under proceedings of this section is treated as accused and should be examined u/s 342 Cr.P.C. This is unlike previous sections. - DLR. 29 - Sujat Ali vs. The State.

SAMPLE ORDERSHEETS OF CASES U/S 107 Cr.P.C.

(No.I) Petr.present. Seen his petition for a proceeding against O.Ps u/s 107 Cr.P.C. Heard. O.Ps A,B, C and D are directed to show cause against a proceeding u/s 107 Cr.P.C. Issue Notice to them.

To.....U.M.

Petr. presetn.O.Ps A,B, C and D appear and pray for time to submit show cause. Heard. Time allowed.

To ..... U.M.

Petr. present. O.Ps present. Seen cause shown by them. Heard. It is stated that they are peaceful persons and will keep the peace. Seen their undertaking not to cause any breach of the peace in future. Hence the case is filed.

U.M.

(N0.2) Petr. present. Seen petn. for a proceeding against O.Ps u/s 107 Cr.P.C. Heard. Issue Notice upon O.Ps. A,B and C asking them to show cause agt. proceeding u/s 107 Cr.P.C.

To.....U.M.

Petr. present. No S.R. of Notices.
Issue Takid.

To.....U.M.

Petr. present All O.Ps appear. Seen the cause shown. Heard both parties. It appears that there are sufficient grounds for a proceeding. O.Ps. . A,B and C are directed to show cause as to why they should not be ordered to execute a bond with 2 sureties of Tk. 2 thousand each to keep peace for a period of one year.

To ..... U.M.

Petr. present. O.Ps present. Cause shown by O.Ps Heard both parties. O.Ps are asked to execute, pending completion of inquiry a Bond of Tk. 1,000,00 each with a local surety for keeping the peace, in default to hajat. The case is taken to my Trial file.

To..... for evidence

Magistrate

Petr. present. O.Ps present,Seen Hajiras or witnesses filed by both parties. Exd. and Cross-exd. 4 witnesses for the petr. and 2 witnesses for the O.Ps. Heard arguments.

To .....for order

Magistrate

(In cases when allegations are proved)
Both parties present.
(Reasons for finding to be stated in brief here)
Hence, this Court is of opinion that there are sufficient grounds to order for security from O.Ps A,B and C for keeping the peace. O.Ps are, therefore, ordered to execute a bond with 2 sureties of Tk. 1,000,00 each for keeping the peace (or not to disturb the public tranquillity) for a period of one year u/s 118 Cr.P.C.

Magistrate

(In cases when the allegations are not proved) Both parties present (Here persons for finding to be stated briefly) In the circumstances, this Court is of opinion that there are no sufficient grounds to order for any security from the O.Ps O.Ps are, therefore, released (if in custody) or discharged (if not in custody) u/s 119 Cr.P.C.

Magistrate

SPECIMEN BOND TO KEEP THE PEACE

(As per provisions of section 107 Cr.P.C.)

Whereas I (Name)..... inhabitant of (Place).....have been called upon to enter into a bond to keep the peace for the term of ..... or until the completion of inquiry into the matter of ..... now pending in the Court of ....., I hereby bind myself not to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, during the said term or until the completion of the said inquiry and, in the case of my making default therein I hereby bind myself to forfeit to Government....., the sum of Tk.....

Dated this day of ....., 19

.....

Signature

CHAPTER XII

EMERGENCY ACTIONS BY MAGISTRATES

Emergency provisions are the second branch of the preventive provisions of the Code of Criminal Procedure. A Magistrate is supposed to see that the law and order is maintained within his area and hence he is not only to try cases but also to administer preventive justice and also to meet emergent situation. The distinction between a Judge and a Magistrate is that a Magistrate not only tries cases but also acts as a law and order administrator. But while a Civil Judge will administer justice after a wrong has already been done, a Magistrate as an administrator of Criminal Justice has the responsibility to prevent wrong doing and violation of law which will create disturbance leading to law and order problems The Code of Criminal Procedure, however, gives an elaborate treatment to this.

Dispersing an Unlawful Assembly (Section 127)

Section 127 of the Cr.P.C. provides that any 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.

This section deals with an assembly which is unlawful under section 141 of the Penal Code or which is bent on breaking the peace. Such assembly may be ordered to disperse either by a Magistrate or by an O/C, P.S. If the assembly does not disperse, force may be used to disperse it 128 Cr.P.C. which sanctions such force and permits to require the assistance of any male person not being an officer, soldier,sailor, or air man in the Armed Forces of Bangladesh 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.

Where this was of no effect, the Magistrate of the highest rank who is present or the Police Commissioner in a Metropolitan area may cause it to be dispersed by military force. Section 130 Cr.P.C. provides that when a Magistrate 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 to disperse such assembly by military force and to arrest and confine such persons forming part of it as the Magistrate or the police officer may direct. The military must use the minimum force and cause minimum injury to person and property.

However, the likelihood of a breach of public peace being caused is a question of fact which must be proved by independent evidence. - 1933 Nag. 277. Disobedience of an order under section 127 Cr.P.C. etc, is chargeable under section 145 of the Penal Code in case of unlawful assembly and section 151 of the Penal Code in case of other assembly.

Removal of a Public Nuisance
(Section 133 Cr.P.C.)

Removal of public nuisance is the third branch of preventive jurisdiction of a Magistrate. Though not so dangerous like keeping peace or good behaviour or so emergent as unlawful assemblies, yet there are cases of public nuisance which warrant potential danger requiring summary action on the part of the Magistracy.

Section 133 Cr.P.C. provides that whenever a District Magistrate, a Sub-divisional Magistrate (Upazila Magistrate) or a Magistrate of the first class considers on receiving Police report or other information or on taking such evidence (if any) as he thinks fit.

(i) 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

(ii) that the conduct of any trade or occupation or the keeping of any goods or merchandise is injurious to health or physical comfort of the community;

(iii) that the construction of any building or disposal of any substance, is likely to occasion conflagration or explosion, should be prevented or stopped; or

(iv) 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 passerby; or

(v) 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

(vi) that any dangerous animal should be destroyed, confined or otherwise disposed of,

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance to take necessary action to remove, prevent, alter, or stop such

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things and to require the concerned offender to appear before himself or some other Magistrate of the first or second class at a time and place fixed by the order, and move to have the order set aside or modified.

Section 133 is always a conditional order in the sense that person causing nuisance under this section is required either to desist from the same activity or to move the Court to have the order set aside or modified.

The order can be served as it were summons (section 134 Cr.P.C.) and the person concerned may carry out the order in which case the proceedings will come to an end (section 135 (a) Cr.P.C.) or may show cause against that order by appearing before the Magistrate (sec. 135 (b) Cr.P.C.). If the person does not comply with the order and fails to appear before the Magistrate, he should be liable to the penalty as provided in section 188 of the Penal Code and the order shall be made absolute. When proceedings are taken under section 133 Cr.P.C. no order can be passed under section 144 Cr.P.C. -15 C.W.N.667.

Temporary Orders in Urgent Cases of Nuisance or Apprehended Danger (Section 144 Cr.P.C).

Section 144 Cr.P.C. provides that in cases where in the opinion of a District Magistrate, Sub-divisional Magistrate (Upazila Magistrate), or any other Magistrate not being a Magistrate of third class specially empowered by the Government or the District Magistrate that there is sufficient ground to take immediate prevention or speedy remedy to apprehended danger and he considers that such direction is likely to prevent or tends to prevent obstruction, annoyance or injury or risk of it to any person lawfully employed or may cause danger to human life, health or safety or a disturbance of the public tranquillity or a riot or an affary, he may issue a written order which must set forth the material facts of the case and served as summons.

The order must direct the person:

(a) to abstain from a certain act
(b) to take certain order with certain property in his possession or under his management

The order under the section may be made ex-party in case of emergency or in cases where the circumstances do not admit of the serving in due time of a notice. Secondly, the order may be directed to a particular individual or to the public generally when frequenting or visiting a particular place.

Any Magistrate may either on his own motion or on the application of an aggrieved person rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office. Where such an application is received, the Magistrate shall afford the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order. If the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

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 riot or an affray, the government by notification in the official gazette otherwise directs.

The discretion vested under this section should be used sparingly and only where all the conditions prescribed are strictly fulfilled. - 1942 Lah. 171. The power conferred by this section is an extraordinary power and the Magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are not sufficient. The Magistrate should use his authority under it in defence of rights and not in their suppression, in repression of illegal rather than in interference with lawful acts. - 1939 Sind 167.

The provisions of sections 133 and 144 Cr.P.C. shall not apply in a Metropolitan area.

Disputes as to Immovable Property
(Section 145)

Section 145. Cr. P.C. provides procedure where a dispute concerning land, water, boundaries etc. is likely to cause breach of the peace. It provides that whenever a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate (Upazila Magistrate) or the Magistrate of the first class is satisfied from a police report or other information that dispute exists which is likely to cause breach of the peace concerning land, water or the boundaries within the local limits of his jurisdiction, he shall make an order in writing stating the reason and requiring the parties concerned to attend his Court in person or by a pleader within a time fixed and to put in written statement of their respective claims in respect of actual possession of subject of dispute. Land or water under this section also include buildings, markets, fisheries, crops, or other produce of land and the rents or profits of any such property.

The order under this section will be issued will be issued in the form of summons and at least one copy of it shall be put in some conspicuous place at or near the subject of dispute.

If it appears to the Magistrate that any party has within two months next before the date of such initial order been forcibly or wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date. In case of emergency, the Magistrate may attach the subject of dispute pending the decision.

If the Magistrate decides that one of the parties was or should be treated as being in actual possession of the subject of dispute, 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 to it. He may restore possession to the party forcibly or wrongfully so dispossessed.

If the Magistrate is of opinion that any crop or other produce of the property which is the subject of dispute is subject of speedy or natural decay he may make an order for custody or sale of such property or the sale proceed thereof. The Magistrate may, at any time at any stage of proceedings, on the application of either party issue summons to any witness directing him to attend or to attend or to produce any document or thing.

Sub-section(4) provides that if the Magistrate considers the case is one of emergency, he may at any time attach the subject of dispute pending his decision under this section.

The section is, however, not in derogation of powers of the Magistrate under 107 Cr.P.C. An order under this section does not affect the rights of the parties. -1933 Lah. 409.

Attachment

Under section 146 Cr.P.C. if the Magistrate decides that none of the parties was then in such possession, or if he is unable to satisfy himself as to which of them was in such possession of the subject of dispute, he may attach it until a competent Civil Court determines the rights of the parties or possession. The concerned Magistrate may also withdraw the attachment any time if he is satisfied that there is no longer any likelihood of a breach of the peace in this regard.

But when the Magistrate attaches the subject of dispute, he may, if he thinks fit appoint a receiver, if there is no receiver appointed by any civil court. In such a case, the receiver appointed by the Magistrate shall have all the powers of a receiver under the Civil Procedure Code, 1908. It may be mentioned that order XL of C.P.C. details appointment, remuneration, duties, etc. of a receiver,. But if the Civil Court subsequently appoints a receiver, the receiver appointed by the Magistrate shall be discharged.

Under section 147 Cr.P.C., MM. DM, SDM (Upazila Magistrate) or Magistrate of first class may also prohibit any interference with the exercise of easement right provided such right has been exercised within 3 months next before the institution of the inquiry, and if it is seasonal, if the right has been exercised during the last season. Such order shall be subject to any subsequent decision by any competent Civil Court. Section 148 Cr.P.C. authorizes the Magistrate to order which party or parties would bear the cost.

Some Important Recent High Court Division(Dhaka) Rulings under 145 Cr.P.C.

Criminal Revision No. 192 of 1983 Reported in Bangladesh Legal Decisions, Vol. IV(March, 1984), PP.64-70.

A.B.M. Hasan Kabir vs. Umesh Chandra Dey and others

A person admittedly out of possession can not invoke jurisdiction of Magistrate on the alleged ground of apprehension of breach of the peace except as in proviso to sub-section 4 of section 145 Cr.P.C. Criminal Revision No. 49 of 1982 Reported in Bangladesh Legal Decisions. Vol. IV (Feb. 1984). pp 29-35.

Harunar Rashid Hawalader vs. Entaj Sheikh and others

A point for decision was whether fresh proceeding under section 145 Cr.P.C. between same parties over the same loand was maintainable. An order in such a proceeding is binding on the parties and an unsuccessful party cannot be allowed to start fresh proceeding. The purpose of such proceeding is not to decide title between the parties in a dispute but to maintain status quo till the party found not in possession by the Magistrate comes up with a decree from a Civil Court in his favour. Till that is done, the order of the Magistrate is final.

Criminal Revision No. 87 of 1282 Reported in BLD Vol. III (Oct.1983) pp. 262-67.

Mohammad Hossain Khalifa vs Kalachand Das and others

(a) A proceeding under section 145 Cr.P.C. is not a proceeding to decide disputed question of title. It is limited to the question as to who was in possession at the relevant time. Civil Court is to decide question of title. Law requires the other party who was not found to be in possession to establish his right, title, if any in a Civil Court and to get

recovery of possession in due course of law. Until that is done, the order passed by the Magistrate as to the right of possession will be final.

(b) Meaning of land and water under 145 Cr.P.C.- It includes crops standing on the land. Under section 517 Cr.P.C. also property includes its converted or exchanged form. The property in its converted form may be handed over to the party who was found to be entitled to possession under section 145(6) Cr.P.C

CHAPTER XIII

IMPORTANT OTHER FUNCTIONS OF A MAGISTRATE

Recording of Confession of an Accused, or Statement of a Witness (Section 164 Cr.P.C.)

Power to record confession (judicial and not extra-judicial) and statements lies with

(1) any Metropolitan Magistrate,
(2) a Magistrate of the First Class and
(3) a Magistrate of the Second Class specially empowered in this behalf by the Government.

Such a Magistrate may record any confession or statement made to him in the course of an investigation under Chapter XIV of the Cr.P.C. or at any time afterwards before the commencement of the inquiry or trial.

Such confessions shall be recorded and signed in the manner provided in sec. 364 Cr.P.C.

Such statements shall be recorded in such of the manners prescribed for recording evidence, as is, in his opinion best fitted for the circumstances of the case.

Such confessions or statements shall, then, be forwarded to the Magistrate by whom the case is to be inquired into or tried (or to the Court from which the case record was received for recording the confession/statement).

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.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made Voluntarily.

When the Magistrate records any confession, he shall make a memorandum at the foot of such record to the following effect:

"I have explained to accused Chand Mia that he is not bound to make a confession, and that if he does so, any confession he may make may be used as evidence

against him and I believe that his confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct and it contains a full and true account of the statement made by him.

Sd/-F.R. Chowdhury
Magistrate First Class,
Cahndina Upazila
Zila Comilla.

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

When questions were not put so as to elicit whether the confession was being made voluntarily, such confession is not only inadmissible under this section, but it also cannot be used under the other provisions of the Evidence Act, such as secs. 21 and 29. -(1937) Nag. 416.

Confession means admission of the guilt in terms of the offense. Confession must either admit in terms of the offense or at any rate substantiate all the facts which constitutes the offense. -(1973) 25 DLR 41.

Magistrate recording confessional statement did not tell the accused that he would not be sent back to police custody. Record shows that the accused made the judicial statement (confession) after orders for sending him to judicial custody had been passed within his knowledge. Held: Judicial confession, under the circumstances, was voluntary and true. -(1972)2 DLR 214.

A confessing accused must invariably be sent to the judicial lock-up as soon as possible after confession, and on no account be returned to police custody. If the police thereafter want the accused for any particular purpose, they must put an application stating the purpose for which the accused is required, and for that purpose he may be handed over to police. But even then there certainly ought to be an interval between the the taking of the confession and the handing over of the accused to the police for any subsequent purpose. -Surat Singh (1937) Lah. 740.

When an accused said to be confessing is produced before a Magistrate, he should be cautioned as to the consequences of his confession in details. If he insists on making a confession then he should be allowed time(generally 3 hours) for reflection and kept in such a place near his court room where no police officer has any excess. The Magistrate should again caution the accused sufficiently before the commencement of recording of

confession. All these are done with a view to ascertaining the voluntary character of the confession. The Magistrate should also carefully go through the prescribed form of recording confession and make necessary entries therein after questioning the accused step by step.

The substantive law in respect of confession is contained in secs. 24 to 30 of the Evidence. Act Section 164 has to be read together with these sections, which will reveal the following:

(1) a confession shall not be made to police officer;
(2) it must be made in the presence of a Magistrate;
(3) a Magistrate shall not record unless he is, upon inquiry from the person making it, satisfied that it is voluntary;
(4) he shall record it in the manner laid down in this section; and
(5) only when so recorded, it becomes relevant and admitted in evidence.

A Magistrate has his discretion to record or not to record a confession. A confession must either admit in terms of the offense, or at any rate substantially, all the facts which constitute the offense. A confession must relate to the particular crime with which the accused is charged. Confession should be recorded in open Court in day time and necessary warning as given in the Govt. Rules should be given to the accused, and after production sufficient time for reflection should be given to him before he is absolutely out of police influence. Confession not recorded in the manner prescribed by sec.164(3) is, held inadmissible in evidence and liable to be ruled out. When it is established that the Magistrate recording the confession of the accused took due care to ascertain that the confession made was voluntary, the fact that the Magistrate did not fill in col. 8 of the prescribed form does not tender the confession inadmissible. -32 DLR 227.

Confession of a co-accused is not evidence as defined in section 3 of the Evidence Act. Such confession can only lend assurance to other evidence. Confession means admission of the guilt in terms of the offense. -25 DLR 41.

Mandatory provisions of section 164(3) must be complied with before recording confession. The Magistrate should ask some such question also why he is making the confession; is he sorry for his crime, or has somebody told him that he will gain something by his confession. -20 DLR 780.

Warning has to be given to the accused before recording confession. Time should have to be given to the accused for reflection before confession. The matter as to give time is entirely in the discretion of the Magistrate who must determine what reasonable

time in the facts and circumstances of each case he finds it desirable to be given for such reflection-20 DLR 526. In a trap case confession of the accused before a Magistrate supervising the trap is judicial confession and such confession must be recorded.

The statement as to witnesses(victims) must be recorded in the manner prescribed in sec. 355 to 361 of the Cr.P.C. and as to the accused sec. 342 and 364 of the said Code. Thus, sec. 533 prevents justice being frustrated by reason of a Magistrate having neglected to comply strictly with the provisions of this section. Such statements of witnesses may be recorded in plain papers after administering oath to them. It should be, as far as possible, in the language of the maker. In such cases also voluntary character of the statement should be ascertained properly.

Recording of confessions of more than one accused, or statements of more than one person/victim under this section should be made separately beyond the sight and hearing of the other. Regarding the recording of confession by Magistrates the High Court has issued a **Circular Order, Criminal, No. 2 of 1937** which is reproduced below:

Magistrate should clearly understand the great importance of giving their closest attention to the procedure to be followed from first to last, in the recording of confessions. This procedure should be followed, without haste, with care deliberation, it being understood that this duty is not a distasteful and minor appendage or addition to their normal functions but, one which is of consequence to the confessing accused his co-accused and Courts responsible for the administration of of Criminal justice. A confession which is recorded perfunctorily and hastily is a source of embarrassment to the trial Courts, the prosecution and the defence. The provisions of section 24 to 28 of the Indian Evidence Act and of section 164 of the Code of Criminal Procedure should be carefully studied and the following safeguards, among others, shall be adopted-

(1) Confessions are to be recorded during the Court hours, and in the Magistrate's Court or other room in a building ordinarily used as a court house, unless the Magistrate, for reasons recorded by him on the form No. (M) 84, certifies that compliance with these conditions is impracticable or that he is satisfied that the ends of justice would be liable to be defeated thereby. It must be clearly understood that the recording of a confession at a Magistrate's private residence, or at any place other than the Magistrate's Court, shall be the exception and not the rule and that on Sundays and Holidays when it is necessary to record a confession the Magistrate arrangements for the production of the accused before him in that Court. If the confession is recorded in a room that is ordinarily open to the public, the Magistrate may, if he thinks fit, order that the public generally or any particular persons shall not have access to, or be or remain in, the room used for the purpose.

(2) When the accused is produced the Magistrate should ascertain when and where the alleged offense was committed, and by questioning the accused, should further ascertain when and where the accused was first placed under police observation, control or arrest.

(3) Magistrates shall not, except under circumstances which render delay impossible, record the confession of an accused person immediately the police bring him into Court. He shall be given at least three hours for reflection, during which period he shall not be in contact with any police officer and shall not be permitted to hold converse with any person.

(4) During the examination of the accused and the record of his statement a co-accused and, unless in the opinion of the Magistrate the safe custody of the prisoner cannot otherwise be secured, police officer should not be present. In particular the police officers concerned in the investigation of the case or in the arrest or production of the accused shall be excluded.

(5) The Magistrate should give the explanations required by section 164 (Code of Criminal Procedure) and the other explanations mentioned in the form in a careful and patient manner, not perfunctorily, but so as to ensure that they are fully understood.

(6) (a) The Magistrate should not proceed to record the statement of the accused unless and until he has reason, upon questioning him and observing his demeanour, to believe that the accused is speaking and is about to speak voluntarily.

(b) While it is not in general necessary or desirable to invite complaints of ill-treatment by the police, cognizance of such complaints when made should be promptly taken, and any indications of the use of improper pressure should be at once investigated. If any injuries are noticed on the body of the accused or are referred to by him he should be asked how he came by them, and, if necessary, in order to enable the Magistrate to be satisfied that the accused is about to speak voluntarily, the accused should be medically examined before his statement is taken.

(c) It must be clearly understood that the questioning of an accused person in order to discover if the making of a confession is voluntary, is not a mere formality. The Magistrate must apply his mind judicially and endeavour to base his finding upon definite premises and grounds.

(7) While carefully avoiding anything in the nature of cross-examination the magistrate should endeavour to record his statement in the fullest detail, and to this end may properly put such questions, not being leading questions, as may be necessary to enable the prisoner to state all that he desires to state and to enable the Magistrate clearly to understand the meaning.

Inquest
(Section 174)

Police to enquire and report on suicide, etc.

(1)The O/C of a P.S. or some other police officer specially empowered by the Govt. in that behalf, on receiving an information that a person-

(a) has committed suicide, or
(b) has been killed by any other , or by 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 offense,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests and shall

(i) proceed to the place where the body of such deceased person is and

(ii)there, in the presence of 2 or more respectable inhabitants of the neighbourhood, shall make an investigation, and

(iii) draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found in the body, and

(iv) stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted

(2) The report shall be signed by such police officer and other persons, or by so many of them as occur therein, and shall be forthwith forwarded to the CMM,DM or SDM(UM).

(3) When there is any doubt regarding the cause of death, or when for any other reasons the police officer considers it expedient so to do, he shall forward the body, with a view to its being examined (Postmortem examination(, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Govt.

Necessary precautions and security measures have to be taken by the police officer to ensure safe and timely arrival of such dead bodies to the concerned medical authority.

(4) Magistrate empowered to hold inquest are - the CMM,DM,SDM(UM),MFC and any Magistrate specially empowered in this behalf by Govt., the CMM or DM.

Inquiry by Magistrate into Cause of Death
(Section 176 sub-section (1))

Inquest by Magistrate,: When any person dies while in the custody of police the nearest Magistrate empowered to hold inquests. (except those mentioned in sec. 174) 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 shall record the evidence taken by him in any of the prescribed manners according to the circumstances of case.

The death of a person in custody includes deaths in the court hajat, court room and jails.

In inquests by Magistrates provisions of sec. 174 sub-sec. (1) of the Cr.P.C. need be fulfilled.

Disinter
(Section 176 sub-section (2))

Power to Disinter Corpses

When such Magistrate (Magistrate empowered to hold inquests) considers it expedient to make an examination of the deadbody of any person who has been already entered, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

This is also known as exhumnation of a deadbody after it has been buried. Proceedings under this section are judicial proceedings and the High Court exercises its jurisdiction over such proceedings under secs. 435 and 439 or u/s 561-A of the Cr.P.C.- (1928) 30 Bom. L.R. 1050.

Judicial Inquiry
(Section 202)

The word `Inquiry' has been defined in sec. 4(k) of the Cr.P.C. where it has been stated that an inquiry includes every inquiry other than a trial conducted under the Code by a Magistrate or Court. It may, therefore, be said that any inquiry held by a Magistrate or Court is a judicial inquiry. The scope of a judicial inquiry is generally created when a Magistrate taking cognizance of an offense on complaint (sec.200) postpones the issue of process for compelling the attendance of the person complained against either inquires the case himself or directs an inquiry to be made by any Magistrate subordinate to him, for the purpose of ascertaining the truth or falsehood of the complaint.

Any Magistrate inquiring into a case under sec. 202 may, if he thinks fit, take evidence of witnesses on oath. It has further been provided that if it appears to the Magistrate that the offense 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. The object and scope of an inquiry under sub-section (2A) of sec. 202 is to ascertain whether an offense has been prima facie committed. When the police do not recommend prosecution of the accused and submitted final report the Magistrate may direct a judicial inquiry and if in that inquiry the complainant deposes then he can take cognizance.-29 DLR 25.

A complaint cannot be sent for judicial inquiry or investigation under sec.202(1) Cr.P.C. unless the complainant, has been examined on oath. Order for judicial inquiry under sec.202 Cr.P.C. without examining the complainant. under sec. 200 Cr.P.C. is contrary to law and the proceeding of such inquiry and order passed thereon are void.

Examination of the complainant. under sec. 200 is necessary but non-examination is always not fatal. Cognizance of a case taken, after submission of final report by the police, on the basis of the complainant's deposition in a judicial inquiry directed by the Court is proper even though the complainant, is not exd. under sec. 200 Cr.P.C.-28 DLR 1. Order of inquiry without examination of the complainant. is illegal. 20 DLR 590.

At the stage of judicial inquiry under section 202(2A) of the Cr.P.C. into the allegations of a complaint directed under the provisions of section 202(1) of the Cr.P.C. the accused has no locus standi and cannot cross-examine the witnesses wither himself or by proxy through the mouth of the inquiring Magistrate. - 5 DLR 112.

What is ordinarily contemplated by section 202 is merely a preliminary examination of the complainant, and his witnesses in the absence of the accused. - AIR 1928 Bom. 290.

A Magistrate acts beyond the scope of section 202 in examining the accused before a prima facie case is made out. - AIR 1928 Lat. 97.

It is not desirable that an inquiry under this section should be converted into a full dress trial. 3 DLR (Part.) 18.

A person to whom a complaint is sent for inquiry under section 202 may impart his own personal knowledge into it or examine witnesses whom he knows to be able to throw light on the matter. -AIR 1930 Mdd. 443.

The High Court will not ordinarily interfere with the details of an inquiry or investigation on the ground that it was inadequate. -AIR 1930 Oat. 30.

It is advisable for the Magistrate to hold a judicial inquiry in his court room during the court hours. He will examine the complainant, and his witnesses on oath one after another. He will, however, critically examine them to ascertain the truth of the alleged occurrence and the complicity of the accused persons in the offense. He will also ask for the relevant documents, if any, in support of the allegations put forth by the complainant., verify them and try to ascertain the truth or falsehood. When all these are done the Magistrate will submit a report with his findings as to the alleged offense and involvement of the individual accuseds(When their number is more than one). These findings will be in the form of recommendations . It is better to mention specifically the penal section of the offense and the name of the individual accused, if the case is so made out through evidence. It should be borne in mind that the persons complained against in such cases have no locus standi in such proceedings and they cannot make any representation before the Magistrate at this stage.

Local Inspection
(Section 539B)

(1) Any Judge or Magistrate may at any stage of an inquiry, trial or other proceedings, after due notice to the parties, visit and inspect any place in which an offense is alleged to have been committed.

or Any other placer which, it is in his opinion, necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the public prosecutor, or accused so desires, a copy of the memorandum shall be furnished to him free of cost. A local inspection by Magistrate is only permitted by sec. 539B for the purpose of properly appreciating the evidence in the case and cannot take the place of evidence itself. - 23 Cr.L.J. 502.

The object of a local inspection is to enable a Magistrate to under stand and test the evidence of witnesses examined in Court and not to obtain additional information or to extract admission from the accused. -18 NLJ 320.

If the Magistrate goes to the spot without giving notice to the accused it is not a mere irregularity, but a serious illegality. -48 Cr.L.J. 428.

Under this section a Magistrate should make a Memorandum of inspection. - 2 DLR 143; AIR 1946 Cal. 537.

A Magistrate should not base his deduction on what he sees himself and which was not referred to by any other witness. - 54 CWN 186.

In case of local inspection by a Magistrate, memorandum of observation should be recorded immediately. Local inspection is really meant for the purpose of understanding the evidence in the case. The Magistrate can utilise the results of this local inspection in coming to his conclusion from the evidence. -AIR-1942 Pat. - 43 Cr.L.J 537.

Non-recording of inspection note is a curable irregularity.-AIR 1935 NAG. 23.

Failure to make memorandum of local inspection does not vitiate trial. - AIR 1938 NAG. 325.

A local inspection under sec. 539B of the Code is only permitted for proper appreciation of evidence, but that cannot take the place of evidence. -14 DLR 741.

A Magistrate cannot, without giving evidence as a witness, impart into a case his knowledge of particular facts. Any importation of personal knowledge in the judgment by a Magistrate without being a witness, is illegal.- 8DLR 718.

A Magistrate holding a local inquiry acts in contravention of the mandatory provisions of sec. 539B Cr.P.C. if he makes no memorandum of the relevant facts he observed at the time of his inspection. - 5 DLR 112.

Executive Enquiry

Executive enquiry generally refers to an enquiry by a Magistrate on police-firing. This action is taken in pursuance of the provisions of the Police Regulations, Bengal, 1943, commonly known as P.R.B. In Rule 153 of the P.R.B. the purposes in which the use of firearms by the police is permitted, have been fully described and all necessary details stated therein. The purposes are, namely :

(i) In exercise of the right of private defence of person or property; (sec.96-106 Cr.P.C.);

(ii) For the dispersal of unlawful assemblies (sec. 127 and 128 Cr.P.C.); and

(iii) To effect an arrest in certain circumstances (sec. 46 Cr.P.C.) General rules relating to the use of fire-arms, orders to fire and control of firing and actions to be taken after the police have used fire-arms are mentioned in Rules 154, 155 and 156 of the P.R.B.

Rule 157 provides for holding a full executive enquiry as soon as possible whenever the police have used fire-arms. The objective of the enquiry is to ascertain whether the firing was justified and whether the regulations as to the use of fire-arms by the police were obeyed.

(a) Such an enquiry shall be held:

(i) by theCommissioner, if aDistrict Magistrate, an Additional District Magistrate, a Superintendent, and Additional Superintendent or the Commandant. Eastern Frontier Rifles was concerned in firing;

(ii) by the District Magistrate or the Addl. District Magistrate, if a Sub-divisional Magistrate, an Assistant Superintendent or Deputy Superintendent or an Assistant Commandant, Eastern Frontier Rifles was so concerned; and

(iii) by the District Magistrate, Additional District Magistrate, Sub-divisional Magistrate or Magistrate selected by the DM.

(b) If a District Magistrate or a Commissioner so directs or if a Range Deputy Inspector-General or the Superintendent of district concerned so desires a police officer of rank superior to that of the police officer concerned in the occurrence and not below the rank of Inspector shall be associated with the enquiry. Such officer shall have the right to examine witnesses and his opinion or the case shall be submitted together with the Magistrate's or Commissioner's report.

(c) The executive enquiry shall be independent of any enquiries made by the police or by a Magistrate under the Cr.P.C., but evidence recorded in such enquiries may be used.

(d) The report prescribed in regulation 156 shall be laid before the officer holding the enquiry. (Action to be taken by the police after they have used fire-arms).

(e) The representation of parties by legal practitioners shall not be allowed at the enquiry; but any police officer whose conduct is at issue shall be allowed to examine and cross-examine witnesses and to make statements orally or in writing.

(f) On completion of the inquiry, the officer who has held it, shall at once send a report to the Government through the usual channel and make over a copy to the Superintendent or the Deputy inspector-General of Police of the Range, as the case may be, for submission to the Inspector-General.

Dying Declaration

The scope of dying declaration is created in section 32 of the Evidence Act, 1872, under the heading "statements" by persons who cannot be called as witness. Provisions have been made therein as to the case in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

A Magistrate recording a dying declaration on a requisition from the Police or Hospital authority will take action as quickly as possible. He will fix up the identity of the man whose declaration is to be recorded. The man is to be told that the state of this health is in a very serious condition and he might die any time and he should be asked as to the cause of the injuries on his person, or as to the precarious condition of the state of his health. The declaration shall be taken down in the language of the declarant as far as practicable. If possible, it may be read over to him and his signature taken. It may be written on any plain sheet of paper or a piece of paper. Except the attending Hospital personnel no one else should remain present at the time of recording a dying declaration.

A dying declaration is a valuable piece of evidence, and if it is free from suspicion and believed to be true, it may be sufficient for conviction.-9 DLR WPC (Lahore).

A dying declaration when admitted under section 32 of the Evidence Act stands on the same footing as any other evidence as to its value and creditability.-7 DLR 539 (546).

Before a dying declaration can be admitted in evidence, it must be proved to have been made by the deceased. It must narrate the cause and circumstances of his death. A conviction based upon an uncorroborated dying declaration is legal. -(1948) AU 122.

If the person making a dying declaration, has chances to live, his statement is inadmissible as a dying declaration, but might be relied on under the provisions of section 157-EA to corroborate his testimony when examined. -4 Bom. LR 434.

Test Identification Parade
(T.I. Parade)

(a) Provisions relating to identification of suspects have been made in regulation 282 of P.R.B. It states that whenever it is necessary to submit a person suspected to

have been concerned in any offense to identification, the proceedings should be conducted whenever possible in the presence of a Magistrate, or of a Sub-Registrar or if no such officer is available, in the presence of two or more respectable persons not interested in the case, who should be asked to satisfy themselves that the identification has been conducted under conditions Precluding Collusion.

(i) The identification proceeding should be undertaken as soon after the arrest of the suspected person or persons as possible, and care shouldbe taken that beforethe commencement of the proceedings the identifying witnesses are kept in charge of a Court peon or other person not being a police officer at such distance from the place where the proceedings are held as to have no chance of seeing the suspects.

(ii) The suspected person should, if possible, be paraded with 8 or 10 persons, or if there are more than one suspect, with as many as 20 or 30 persons, similarly dressed and of same religion and social status. Care should be taken that the mixing up of the suspect or suspects with the other persons does not take place in the view of the police officers and the witnesses.

(iii) Each identifying witnesse should then be brought up singly in charge of the Magistrate's orderly or some other person not being a police officer, to pick out the accused, if he is able to do so.

(iv) The identification by such witnessshouldbe conducted out of sight and hearing of other witnesses.

(v) If there is any fear that the identifying witnesses may be subjected to threats or injury, should they become known to the suspects or to their friends, the witnesses should be allowed to view the persons paraded from a place where they themselves cannot be seen, as for instance, through a window or an opening in a door or a wall.

(vi) When the officer conducting the identification has satisfied himself that no communication between the police and the witnesses was possible, he should give a certificate to this effect.

(b) A statement in the prescribed form (B.P. Form No. 45) should be prepared when suspects are presented for identification; when the identification is not held in the presence of a Magistrate, the witness should be prepared to testify the fairness of the manner in which the identification was affected in the proper columns.

(c) Testidentification shall, whenever circumstances permit, be held inside the jail. The rules are applicable in the case of an under-trial prisoner or a suspect in jail. Men on

bail shall not be mixed up with under trial prisoners except with the permission of the Magistrate. In the case of confessing accused, separate test identification parade shall be held unless the Magistrate insists that it is essential to mix confessing with non-confessing accused. and hold the test identification parade simultaneously. In Sub-jails the accused. shall, if necessary, be mixed up with outsiders for holding the test identification therein, as very few under-trial prisoners of similar nature and of the same social status are available there for the purpose.

(d) When a suspect refuses to attend a test identification parade no action can be taken in the absence of any evidence of identification. When, however, there is other evidence against a suspect and he refuses to appear at a T,I. Parade he shall be sent for trial on the strength of such other evidence. During trial evidence of such refusal shall be led in favour of the prosecution. At the time of trial, the suspect will be in the dock and available for identification by the witnesses.

Whenever a suspect refuses to attend a T. I. Parade, the Magistrate holding the parade shall made an appropriate note of the fact in the prescribed Form, and if the suspect is later sent for trial, the Magistrate shall be examined as a witness to prove the refusal.

(e) Police in rioting and other cases shall keep the persons arrested during the occurrence distinct from those arrested afterwards on suspicion of having taken part in it. Offenders caught red-handed shall be kept quite distinct from those arrested on suspicion.

(f) The primary object of identification proceedings is to test the ability of the witness to identify a suspected person and to ascertain whether there in sufficient evidence to place him on trial. A Magistrate is chosen merely as a person whose impartiality and honesty is less likely to be called into question by the defense when the case is under trial. When conducting the proceeding he is not acting in a judicial capacity (unless the case is under trial before him). Therefore, it is not his duty to record statements or put questions to suspects or witnesses except such as are necessary for the purpose of identification. While on the one hand the identification should be conducted with complete fairness and impartiality, on the other hand, no attempt should be made to confuse or puzzle a witness or to create conditions which would render a witness who is honestly capable of identifying incapable doing so.

When a witness identifies a suspect in a T. I. Parade the former should also be able to say the exact situation or circumstance he saw the suspect at the time of the alleged occurrence. The Magistrate should make a note of it in the appropriate column of the prescribed Form.

(g) The regulations as to T.I. Parade apply only to instances in which suspects have been arrested and have to be confronted with witnesses who express themselves able to recognise them either by their appearance or by their voice, his credibility is a matter for the Courts and no other rules shall be applicable.

(h) If any suspect placed in the T. I. Parade states anything in reference to his identification or about the identifying witness, it is desirable that the Magistrate makes a note of it in the 'remarks' column of the prescribed Form.

T. I. Parade of Articles/Properties, Such T. I. Parades may become necessary in respect of stolen or suspected articles or properties recovered or obtained by police during investigation of a case. In such cases as well the same principle and similar rules will be applicable for holding a T.I. Parade persons steps should be taken to mix up the suspected article with other articles of similar kind and type in the same proportion, and a report as to the particulars and findings is to be prepared in the same form.

It may be mentioned here that in a T. I. Parade of persons or articles, if the identifying witness or witnesses succeed in the identification, the Magistrate holding the T. I. Parade becomes a witness in the case and as such he cannot try such a case himself.

CHAPTER XIV

ABOUT PROCESSES

Issue, Service and Execution of Processes

A process of a Court include all kinds of communications made to some one in reference to a case asking him for compliance. Thus Notices, Summons, Warrants, Proclamations, Attachment orders, etc. may be termed as Processes.

The Cr.P.C. provides that

(1) Every summons issued by a Court shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the Supreme Court May from time to time, by rule, direct.

(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 (section. 68).

The summons is a milder form of process. It is either for the appearance (section. 68), or for producing a document or thing (section. 94). A summons for appearance is issued against an accused person (section. 204), or to any witness directing him to attend or to produce any document or other-thing (section 244 sub-section. 2).

A summons should be clear and specific in its terms as to the title of the Court, the place at which and the day and the time of day when the attendance of the person summoned is required, and it should go on to say that such a person is not to leave the Court without permission and, if the case in which he has been summoned is adjourned, without ascertaining the date of the adjournment. If the formalities are not duly observed, a conviction for non-attendance in obedience to the summons cannot be sustained.--5 All.7.

A Summons which is not sealed is not valid in law, and, therefore, disobedience to a summons not sealed is not an offense. Every summons should be signed by the officer by whom it is issued with the name of his office or the capacity in which he acts. It should hear the seal of the Court.

Dafaders and Chowkiders are public servants for the limited purpose laid down in rule 45 of the Rules under the Village Self Government Act.--7 DLR 344. This view

was, however, over--ruled and held that Dafaders and Chowkidars are public servants within the meaning of section. 21 of the Penal Code.--9DLR 323.

Magistrates are expected to be careful about issuing the processes soon after such orders are made. It should be ensured that such processes are handed over for service well ahead of the date mentioned therein. Routine check up of the Process Registers and supervision will be helpful. The form of summons has been given in Schedule V, Form I of the Cr.P.C.

Summons How Served
(Section 691)

(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.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore 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.

Section 69 speaks of personal service. The section prescribes also the mode of service on an incorporated company or other body corporate. When correct address and posting of a letter are proved there is a presumption of its delivery in due course. Every summons under that Code must be served as provided in this section. Service by registered post is illegal.--CWN 116.

Where the person summoned cannot by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates 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 there for on the back of the other duplicate (section 70).

Procedure when Service cannot be effected as provided under sections 69 and 70

If service in the manner mentioned is 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 person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served. (section 71).

Service by affixtures can only be availed of if service in the manner specified in sections 69 and 70 cannot by the exercise of due diligence be effected.--43 Cr.L.J. 113.

Where the person summoned is in the active service of the 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. Such signature shall be evidence of due service.

Service of summons Outside Local Limits
(Section 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.

When a summons issued by a Court issued 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. The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court (section 74)

Form of Warrant of Arrest
(Section 75)

Every warrant of arrest issued by a Court under the Cr.P.C. 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.

Every such warrant shall remain in force until it is canceled by the Court which issued it or until it is executed. Once canceled it cannot be re-issued.--I CWN 650.

To arrest is to apprehend by a legal authority and W/A is an order directing a certain person to arrest a named person who is to answer some charge and to produce him before the Court.

The requisite of a valid warrant under this section and the form of the W/A in Form II, Sch. V are:

(a) The warrant must be in writing.
(b) It must bear the name and designation of the person who is to execute it.
(c) It must give full name and description of the person to be arrested.
(d) It must state the offense charged.
(e) It must be signed by the presiding officer.
(f) It must bear the seal of the Court.

A Magistrate is, however, only competent to issue a W/A for production of a person before his own Court, and not before a police officer.--24 Call 320.

Court may Direct Security to be taken (Section 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 serrates 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.

(2) The endorsement shall state:

(a) The number of sureties;
(b) The amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and
(c) The time at which he is to attend before the Court.

(3) Recognizance to be forwarded: whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Section 76 does not sanction procedure for testing surety by SDPO. Only procedure is Sch. V appended to the Code of Criminal Procedure.--20 DLR 828.

Section 79 provides that 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 officer to whom it is directed or endorsed.

The police officer or other person executing the W/A shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant (section 80).

"Notify the substance" means to state clearly and briefly so that accused may know what is the charge and before what Court he is to appear. An arrest without notifying the substance of the warrant is unlawful.--20 Cal. 48.

The police officer or other person executing a W/A 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 (section 81).

A W/A may be executed at any place in Bangladesh (section 82).

Warrant forwarded for Execution outside Jurisdiction (Section 83)

When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, Court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any Magistrate, Superintendent of Police of the district or in case of a Metropolitan Area to Police Commissioner within the local limits of whose jurisdiction the W/A is to be executed.

The Magistrate, S.P. or Police Commissioner to whom such warrant is so forwarded shall endorse his name thereon and if practicable, cause it to be executed in aforementioned manner within the local limits of his jurisdiction.

Warrant directed to Police Officer for Execution outside Jurisdiction (Section 84)

Such W/A is to be taken to a Magistrate or to the O/C of the P.S. having jurisdiction for endorsement.

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.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within the 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. It will appear that in these circumstances endorsement mentioned earlier is not required.

It may be noted here that the police officer directed to execute a warrant is to execute it himself. But to have authority for the same, he is to get an endorsement from a Magistrate or police officer not below the rank of an officer-in-charge of a police station within the local limits of whose jurisdiction the warrant is to be executed.

When a W/A is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is with in 20 miles of the place of arrest or is nearer than the Magistrate or S.P. or limits of whose jurisdiction the arrest was made, or unless security was taken u/s 76, be taken before such Magistrate or Police Commissioner or S.P. (section 85).

Such Magistrate or Police Commissioner or S.P. 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 offense is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, S.P. or Police Commissioner or a direction has been endorsed u/s 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, S.P. 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.

Nothing in this section shall be deemed to prevent a police officer from taking security u/s 76 (section 86).

Proclamation, Attachment order and Search Warrants are also processes of a Court and discussion about these have already been made under Chapter X.

Notices issued to persons by a Court directing him/them to appear to show cause, etc. may also be termed as processes in a wider sense and the same principles and provisions of law will be applicable in respect to such processes. Notices to surety of various bonds are to be sent in prescribed forms as given in Sch. V of the Cr.P.C.

In complaint cases while taking cognizance of an offense the Magistrate may pass an order to issue process, viz. a summons or W/A against the accused. This actual issuance of process is done under the provisions of section 204 (1A) Cr.P.C.

But section 204 (1A) provides that no summons or warrant shall be issued against the accused under sub-section (1) until a list of prosecution witnesses has been filed. Again, in a proceeding instituted upon a complaint in writing every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint (sub-section. IB).

Both sub-section (1) and (1B) are mandatory. Further, sub-section (3) provides that 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.

In this connection it is advisable that every Court of Magistrate entrusted with taking cognizance of cases should notify for the information and action of all concerned within period processes with or without fees are to be submitted to his Court. In the context of present criminal justice system of the country and the provisions of criminal law a period of 3 days from the date of order may be considered a reasonable time. However, it may be decided according to local situation. According to the same principles a Notice to a person for showing cause issued by a Court in any proceeding under the preventive measures of the Cr.P.C., namely, sections 107, 109, 133, 145 etc., or under the maintenance provisions, namely section 488 should also be enclosed with a copy of such petition. The object is to to enable the Notice-receiver to know precisely what is the charge against him and to prepare himself for a reply. This will also facilitate speedy and fair disposal of the matter.

Issue, Service, Execution of Processes, namely, Summons and W/Ws to Witnesses and other Persons

Attendance of witnesses in a Court is undoubtedly a very important factor in any judicial proceeding. Hence, the Magistrate will ensure all necessary steps to issue summons to a witness stating clearly all necessary particulars, namely, the name and location of the Court, the name and address of the witness and the date and time of attendance, etc. The Magistrate will then put his signature affixing the seal of the Court. The prescribed form is given in Sch. V under No. XXI--summons to witness. Such summons shall be issued in duplicate and served as per provisions of section 69 Cr.P.C.

Steps need be taken to issue all summons to witnesses soon after the passing of order for their attendance and dispatched to the serving agency well ahead of the date fixed. It is suggested that summons to all PWs in police cases are sent to the O/C of the P.S. concerned for service, and the officer serving the summons obtains P.R. bonds from all witnesses and return those bonds along with the original copy of the summons

showing receipt of the duplicate copy to the issuing Court before the fixed date. In this connection provisions of section 171 Cr.P.C. may also be looked into.

In complaint cases the summons to witnesses are to be served by the process-servers of the Court and the Magistrate should ensure measures for timely issuance and proper service. Process Registers and Nazarat performance in this regard should be a matter of routine supervision by the Magistrate for this purpose.

While issuing warrants to witnesses (W/W) order relating to bail stating the amount of bail should be incorporated in the ordersheet of the case record. The will be in duplicate in the prescribed manner, dispatched to the O/C of the P.S. and after execution, the original will be returned to the issuing Court. For the failure of any witness to turn up action may be taken for the forfeiture of the said bond. A summary procedure for punishment for non-attendance by a witness in obedience to summons has been provided under section 485A Cr.P.C. In this connection a perusal of the provisions of section 484 Cr.P.C. may be helpful for the Magistrate.

CHAPTER XV

TRANSFER AND SENDING OF CASE RECORDS FOR TRIAL

Transfer of Cases for Trial to the Courts of Magistrates. (Section 192)

The CMM or DM or SDM (Upazila Magistrate) may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any DM 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 the accused or send him for trial; and such Magistrate may dispose of the case accordingly.

It is clear that cases for trial or inquiry can be transferred by CMM, DM or SDM (Upazila Magistrate) who has taken cognizance of the case to other Magistrate subordinate to him and competent to try such offenses. It may be pointed out her that any Magistrate having power to take cognizance has his Trial File as well. He can take (transfer) the case from the General File to his Trial File when it is ready for trial. In the Upazilas there are mostly the Court of Upazila Magistrates only. In some Upazilas there may be one or more Magistrates, Hence, the Upazila Magistrate in most cases, has to transfer case records for trial to his own Trial File. In such situations the action will be to take the case record to his Trial File from the General File. Strictly speaking it is not an instance/action of transfer as contemplated u/s 192. Cr.P.C. Same is the case in respect of CMM and/ or MM in Metropolitan areas.

Before transferring a case for trial to any subordinate Magistrate or to his own trial file the transferring Magistrate will ensure that all formalities required under law are complete and the case is ready for trial. With the insertion of provisions of statutory time-limit for trial this has become all the more necessary. In police cases the availability of case diary of I.O. is essential before transferring a case for trial. This is mainly because of the new provisions of sections. 241A and 242 Cr.P.C. Documents like title deeds, injury reports, payment receipts, seizure lists, expert opinion, etc. as well as compliance reports as to the requirements u/s 339B Cr.P.C. regarding absconding accuseds (if any) should be in the case record.

Sending of case Court of Session when Offense is exclusively triable by it.
(Section 205C)

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

(i) Send the case to the Court of Session;
(ii) Subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial.
(iii) send to that Court record of the case and the documents and articles, if any, which are to be produced in evidence;
(iv) notify the Public Prosecutor of the transfer of the casetothe Court of Session.

This is comparatively a new section. It was inserted in the Code through L.R.O. in 1978 and given effect to on and from June 1, 1976. Since committal proceeding under Chapter XVIII of the Code has been abolished in cases which are triable exclusively by the Court of Session, such cases have now to be sent to the Sessions Judge on receipt of the police report u/s 173 Cr.P.C. by the Magistrate who is competent to take cognizance. Regarding complaint cases triable exclusively by a Court of Session the inquiry into the complaint by the Magistrate u/s 202(2A) proviso would serve the purpose of a preliminary scrutiny. It is mandatory on the part of the Magistrate to call upon the compainant, to produce all his witnesses and examine them on oath. It is necessary for the Magistrate to ensure that all relevant papers and documents of the case are properly arranged before sending them to the Court of Session for trial. In the ordersheet he will pass an order as follows (sample order):

15.2.85: Accds. Chand Mia and Barek produced from hajat. Accds. Sona Gazi, Arab Ali and Jamiruddin on bail present. Accd. Aynal is still absconding. Seen the publication against him in the Newspaper and also the Gazette Notification directing him to appear before the Court of the Session Judge, Comilla, on or before 28.2.85. C.S. against all the 5 accds. for an offense u/s 395 P.C. already received. It is, therefore, ordered that:

(i) the case be sent to the Court of Session;
(ii) accds. in custody be produced before the Court of Session within 14 days next; and the sureties of the accds. on bail are directed to produce them before the Court of Session within next 14 days ;

(iii) all records of the case, documentsand articles including the case diary be sent quickly; and

(iv) send a copy of this ordersheet to the Public Prosecutor for information and necessary action.

Sending of Cases to District Magistrate, etc.
(Section 205 CC)

(1) When in a case instituted on a police report or other wise, the accused appears or brought before a Magistrate and it appears to the Magistrate that the offense is triable exclusively by the DM or ADM he shall:

(i) send the case to the D.M.;
(ii) subject to the provisions relating to the bail remand the accused to the custody during, and until the conclusion of the trial and
(iii) send to the D.M. the record of the case, and the documents and articles, if any, which are to be produced in evidence.

(2) The DM may direct that any case received by him under sub- section(1) section 205 cc of Cr.P.C. or any class of such cases shall be heard by any ADM subordinate to him.

It will appear from section 205C and section 205CC that the procedure to send cases to the Court of Session and the District Magistrate is almost same, except that in cases to be sent to the Court of Session Public Prosecutor has to be notified.

Action u/s 205C and u/s 205 CC can be taken only when the case is ready for trial. In Police cases where C.S. and all other documents including the C.D. are received by the Magistrate, the accused persons present and the necessary formalities completed only then the case will be sent to the Court of Session u/s 205C or District Magistrate u/s 205CC. It may be repeated that the only difference in the matter of taking action under these two sections is that while sending a case to the Sessions Judge for trial it will be necessary to notify the P.P., but while sending a case to D.M., P.P. need not be notified.

Finally, the under-mentioned points need be kept in mind before all such aforementioned transfer In view of the provisions of statutory time limit for the conclusion of trial of a case by a Court the should be of cases correctly and carefully observed.

(i) No case should be transferred or sent to any Court for trial till such time as all requirements and formalities are complete and all papers and documents

such as Case Diary, Publication u/s 339B Cr.P.C. etc. are available with the transferring Court.

(ii) While sending cases to the Court of Session or D.M. it should be ensured that requirements of sections 205C and 205CC respectively are fully attended to and observed.

Withdrawal and Transfer of Cases
(Section 528)

The superior Courts have the power to withdraw and transfer the proceedings of inferior Courts to any other competent Court. The Court to which the transfer is made must be competent judicially, but need not be competent territorially in respect of that particular case.

The D.M. and S.D.M. (Upazila Magistrate) have full powers in respect of the proceedings of their own Courts and of the Courts subordinate to them. Section 192 Cr.P.C. confers power to transfer any case, upon cognizance of it being taken, or at any subsequent time. No reason need be recorded for such transfer of a case to a subordinate Magistrate. The CMM has similar powers of transfer of cases. The D.M. under section 17 of the Code and CMM under section 21, have powers, in addition, to distribute business among the Courts subordinate to them.

Under section 528(2) of the Code the DM or CMM may withdraw a case from any Magistrate subordinate to him, or may recall any case which he has transferred to such a Magistrate, and may deal with such case himself, or may transfer it to any other subordinate Magistrate competent to dispose of it. SDMs (Upazila Magistrate) have the like power in regard to cases which are before, or have been transferred to Magistrate subordinate to them (section 528 sub-section 5). When a case is so withdrawn, or recalled, or transferred under this sub-section, the reason for making the order must be briefly recorded. Such reasons may be the impending transfer of a Magistrate, the posting of a new Magistrate, a more even distribution of work, or something arising out of the circumstance of the particular case. It is clear that all these powers give to DM, CMM and SDM(UM) complete control of the work in their respective jurisdictions. According to section. 528 sub-section (3) Government may empower the D.M. to make orders withdrawing classes of cases from any Magistrate or Magistrates. Apparently they will be withdrawn, in the first instance, to the DM's own file. The reason for making any such order, must be recorded, as in the case of other orders of withdrawals.

A Magistrate of the First Class can be empowered under section 192 of the Code to transfer any case of which he has taken cognizance and section 528 sub-section (4)

enables him to recall any such case upon condition that he records his reasons for doing so. If an order be made under either section 192 or section 528 erroneously and in good faith by a Magistrate not empowered to make it the resulting proceedings shall not be set aside merely because he was not empowered to make it (section 528).

Confidence, in the administration of justice is an essential element of good government and reasonable apprehension of failure of justice in the mind of the accused person should, therefore, be taken into serious serious consideration on an application for transfer.--33 Cr.L.J. 1183.

A transfer of the case would not be justified on the ground that the case caused a sensation in the district.--Cr.L.J. 106.

An accused person is competent to make an affidavit in support of his application for transfer, when a case has already been transferred on very strong grounds and required to transfer it for a record time.--AIR 1940 Lah. 324.

Nothing is to be done which creates even a suspicion that there has been no improper interference with the course of justice. It is a matter of public policy that justice should not merely be done, but should appear to be done.--AIR 1945 PC 38.

A fair trial postulates an independent approach to the evidence led and if the accused reasonably entertains the fear that he is not likely to have it there will not be any scope from the conclusion that he has been denied a fair trial.--13 DLR 56 WP.

Record shows that the Magistrate issued warrants in undue haste. High Court can so motu transfer the case to another Magistrate.--1 DLR 9 WP.

Impression that a Judge has developed an attitude towards convicting an accused is a ground of transfer.--12 DLR 12 WP.

When a transfer application is presented to the trial to stay the proceedings and the Court thereafter passes an order unfavorable to the opposite party, the action of the Court cannot fail create genuine apprehension in the mind of the other party that he would not get a fair and impartial trial.--10 DLR 3 WP.

The fact that the Magistrate followed the provisions of the law in dealing with the contempt committed in his presence is not a ground what ever for transferring a case from his file. Proceedings u/s 228 P.C. follow this procedure laid down in Cr.P.C. and the provisions of that sections have to be applied by the Court then and there before its rising.--2 DLR 80.

The provisions of section 526 sub-section(8), as they stand, are absolutely imperative in terms. The Magistrate is bound to adjourn the case on the application for transfer by the accused when the accuseds are within their rights, till such period as would afford a reasonable time for the application for transfer to be made, where the Magistrate without granting the adjournment proceeds with the case, the trial becomes illegal.--2 DLR 64 BJ.

Question of transfer arising on conclusion of examination in-chief of witness. Magistrate deciding to adjourn case after cross-examination discloses no malafides. Magistrate is not bound to stay proceedings in process of examining witnesses.--1 PLD 12B Bal.

Applications for transfer based upon the alleged prejudice and unfairness of the Magistrate of Judge are developed to an extent which is a scandal. An advocate is not the mouthpiece of his client, his duty is a very serious one. It is professional misconduct for an advocate to make such imputation on the instruction of his client without taking steps to verify the truth. Courts should not fail to remember that it is their duty not less to preserve and onward appearance of impartiality than to maintain the internal freedom from bias.--9 Cr.L.J. 251.

The basis of all applications for transfer of criminal cases, must be that the accused must have a reasonable apprehension that he will not receive a fair trial. In considering the expediency of directing a transfer for ends of justice, the Court has deemed it necessary to decide not merely the question whether there has been any real bias in the mind of the Magistrate or Judge, but also the further question whether incident may not have happened, which may be susceptible to create, in the mind of the accused, a reasonable apprehension that he may not have a fair and impartial trial--48 Cr.L.J. 721.

Unnecessary delay in the disposal of petty cases is a good ground for transfer. While it is true that convenience and expedition are factors to be considered in the trial of a case; it must be remembered that beyond even these considerations is the even more important consideration, that justice should be done, and the necessity for expedition should not be allowed to deprive the accused of reasonable opportunity to call evidence in defence on charge of an offense of which, at the outset of the proceedings he had no knowledge, he would be called upon to meet.

Scandalisation of Court is grossest form of contempt. Legal practitioners may be punished for contempt of Court even for language professedly used in discharge of their function as advocate. Advocate is guilty of contempt in making wild allegations of corruption against the trying Judge without verifying and satisfying himself that the allegations were in fact sustainable. He cannot claim any privilege if not acted in a

bonafide and diligent manner. Legal practitioners are not agents of persons who pay them, but act in the administration of justice.- DLR 264 WP.

Transfer of a case to be ordered where apprehension (not necessarily reasonable apprehension) exists. Held: It is expedient in the interest of justice that there should be a transfer of the case.--17 DLR 282.

Power of transfer can only be passed in accordance with law.--17 DLR 34 SC.

Court having formed a definite opinion in trying the accused not fit to try him on remand.--13 DLR 56.

Section 526 of the Code gives to the High Court sweeping powers of withdrawing any case or appeal, or class of cases or appeals from any Court and of transferring such case or appeal or class of either to any other Court of equal or superior jurisdiction, or of trying such case or appeal or appellate jurisdiction. The section lays down the procedure to be followed when a transfer is made. The principal points are that High Court may act either upon a report from the lower Court or upon the application of a party, or upon its own motion, and that an application from a party must be supported by affidavit or affirmation, and that an accused person making such an application, must give notice to the P.P. before making it or at the time of making it.

When in any inquiry, trial or appeal the complainant. or the accused, or the P.P. notifies the Court before which such case is pending that an application will be made for the transfer of the case, then the Court, whether the hearing before it has commenced, or not, must grant a sufficient adjournment to allow of such application being presented to the High Court Division. Subordinate Magistrate should generally report such cases to the DM in the first instance.

CHAPTER XVI

CHARGES

The Criminal Procedure Code has not specifically defined the charge. However, it is the precise formulation of the specific accusation against a person who is entitled to know its nature at the earliest stage. It consists of informing the accused of the offense which he is alleged to have committed and which he is required to meet. It is a written statement specifying the offense with which the accused is charged.

The charge should consist of such particulars as to the time and place of the alleged offense, and the person (if any) against whom or things (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. In the Code provisions relating to charge are intended to give the accused full notice of the offense alleged against him. Where a person is charged with criminal offense he must be told with particularity not only of the act he is alleged to have committed which is said to constitute it but also what is the law which he is said to have infringed. The accused is entitled to know with accuracy, certainty and the exact nature of the charge brought against him. 11 Cal. 106. It is a fundamental principle in criminal law that the accused is informed with certainty and accuracy the exact nature of the charge brought against him. 1936 Lah. 409 He can be convicted only on proof of the particular offense so satisfied and not of offenses not so satisfied 1985 All. 81.

Section 221 provides that every charge shall state the offense with which the accused is indicted. If the law which creates the offense gives it any specific name, the may be described in the charge by that name only otherwise so much of the definition of the offense must be stated as to give the accused notice of the matter with which he is charged. If the accused was convicted and an enhanced punishment is sought, the fact, date and place of the previous conviction shall be stated in the charge.

Joinder of Charges

Under the provisions of the Cr.P.C. for every district offense of which any person is accused, there shall be a separate charge and every such charge shall be tried separately. But following persons may be charged and tried together:

(a) Persons accused of the same offense committed in the course of the same transaction;

(b) Persons accused of an offense and persons accused of abetment or of an attempt to commit such abetment of offense;

(c) Persons accused of more than one offense of the same kind committed by them jointly within 12 months.

(d) Persons accused of different offense committed in the course of the same transaction;

(e) Persons accused of an offense which includes theft, extortion or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of property in the commission of those offenses;

(f) Persons accused of offenses of receiving and disposing of stolen property;

(g) Persons accused of any offense under Chapter XII of the Penal Code relating to counterfeit coin and persons accused of any other offense under the same chapter relating to the same coin or of abetment of or attempting to commit any such offense (section 229).

Under section 227 Cr.P.C. any Court may alter or add to any charge at any time before judgment is pronounced. Under section 225 Cr.P.C. no error in stating either the offense or the particulars required to be stated in the charge and omission to state the offense 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 - 1941 Lah. 214.

Consideration of Charge

In order to consider a charge against the accused, sections 241A and 242 Cr.P.C. are relevant. Section 241A provides that when the accused appears or is brought before the Magistrate, and the Magistrate on 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 the reason for so doing.

Section 242 Cr.P.C. provides that when the accused appears or is brought before the Magistrate, formal charge shall be framed relating to the offense with which he is charged and he shall be asked whether he admits that he has Committed the offense.

In a GR case, the Magistrate is to consider the FIR, chargesheet, evidence of witnesses taken by the police officer according to section. 161 Cr.P.C, 164 statements of the accused (if any) and other relevant papers, documents, Medical certificate, etc. Similarly in C.R. cases the Magistrate is to consider the complaint petition, preliminary statement of the complainant before the accused was summoned, statement of witnesses in his favour and other and documents. At this stage, the magistrate may for his own satisfaction ask questions to the accused about the charge, if he considers it necessary. For this, there is no need to write the statement of the accused formally. But when he reaches the conclusion about the charge, he will focus it briefly in the order sheet. The Magistrate will allow both the complainant and the accused to submit their own points while considering the charge. When the Magistrate is fully convinced that there is no sufficient ground to proceed with the case, he may discharge the accused under section 241A Cr.P.C., but he shall record reasons therefor.

But if after consideration of the above factors, the Magistrate is of opinion that there are grounds for presuming that the accused has committed an offense, the Magistrate shall frame a charge under the relevant section or sections of the Penal Code or other relevant laws. The Magistrate will write his name, designation, place, names of the accused, the date, place and description of the offense and other necessary information. At this stage, he will read out the charge to the accused, ask him whether he pleads guilty or not. If a charge is altered subsequently, the accused is to be given a chance to cross-examine the prosecution witnesses.

Under section 236 if a single act or series of acts are of such a nature that it is doubtful which of several offenses the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offenses.

A charge is to be signed by the Magistrate with date.

CHAPTER XVII

TIME-LIMIT FOR INVESTIGATION AND TRIAL

For Investigation

To ensure completion of investigation of cases by the police within a reasonable time section 167 Cr.P.C. has been amended by Ordinance No. XXIV of 1982, commonly known as the 2nd Amendment of 1982 published under a Notification dated 21.8.82. Sub-sections (5), (6) and (7) have been inserted to section 167 Cr.P.C. Subsequently, by the 3rd Amendment of the Cr.P.C. dated 30.12.82 sub-section (5) has been substituted and a new sub-section (7A) inserted. Statutory time-limit has been prescribed for the completion of investigation by Police. All these provisions namely, sub-section (5), (6), (7) and (7A), are mandatory. The Investigating Officer must complete investigation of a case within 60 days from the date of lodging the F.I.R., and on the expiry of the stipulated date, Magistrate shall be bound to stop further investigation of the case and to release the accused. In these provisions the law is very clear and categorical. Relevant provisions in this regard are as follows:

(i) Investigating officer has to complete investigation of a case within 60 days (Calender days) from the date of FIR.

(ii) If he is unable to do so, he can make a prayer stating reasons to the Magistrate having power of taking cognizance within the period of 60 days of extension of time in order to complete investigation.

(iii) The Magistrate, if satisfied, for special reason and in the interest of justice may extend the period for the completion of investigation upto another 30 days (Calender days).

(iv) If the I.O. fails to submit the completion report of a case u/s 173 Cr.P.C. within the specified time of 60 days or of the extended .pg time the Magistrate shall be bound to stop further investigation of the case.

(v) When further investigation has been so stopped the accused, if in custody, shall be released forthwith.

(vi) The Magistrate will pass orders regarding stopping of further investigation and release of the accused simultaneously.

(vii) An exception has been made in respect of cases in which sanction of appropriate authority is required to be obtained before submission of chargesheet against an accused. The time taken for obtaining such sanction shall be excluded from the prescribed limitation. The counting of such time shall commence on and from the day the case is submitted to the authority seeking sanction and end on the day of receipt of sanction.

(viii) If further investigation of a case is stopped by the Magistrate on the expiry of the specified time or of the extended time the Sessions Judge, if satisfied, on an application made to him or otherwise, may extend the time further and direct further investigation into the offense.

(ix) When an accused is so released as per provisions of sub-section (7) the case against him shall not be revived after the expiry of 6 months of the release and specific order of D.M. shall have to be obtained within 6 months for such revival. Government may, however, revive a case any time, if the case is exclusively triable by a Court of Sessions (sub-section 7A).

(x) Such limitations of time shall not apply to the investigation of an offense under section 400 or 401 of the P.C. (Gang cases).

In view of all these new provisions of section 167 Cr.P.C. and their mandatory character it is advisable that the Magistrate maintain a calender of dates during investigation for each police case carefully and systematically. Such a step will surely be helpful for correct calculation of days for the investigation of cases and receipt of completion reports from I.Os. within the statutory period of time-limit. Looking to the conveniences of all concerned, and considering all related factors it may be suggested that 3 slabs of dates in each police case may be maintained upto the receipt of completion report u/s 173 Cr.P.C. and these dates are to be counted from the date of lodging the F.I.R. Ordersheet of a case should be opened on the very day when the F.I.R. is received from the P.S. On that date the next date may be fixed on the 30th day from the date of F.I.R. and again, if necessary, the subsequent date be fixed on the next 30th day (i.e. the 60th day). If the completion report is not received and the time is extended on the prayer of I.O. the next date again may be fixed on the following 30th day (i.e. the 90th day). The total days covered by these three adjournments should be clear 90 Calender days, each date being fixed on the 30th day, from the date of F.I.R. To state briefly, fixing up of dates in a police case may be arranged from the date of F.I.R. counting 30 days, plus 30 days and again, if time is extended, another 30 days, thus making a total of 90 days. The days need be correctly calculated on the day when the FIR is received. For ready reference as well as to facilitate a quick action these may be pencil-written at the top of the title page on the left hand side of each case record.

For Trial
(Section 339C Cr.P.C)

Section 339C of the Cr.P.C. prescribes the time-limit for the conclusion of trial by a trial Court. For the Courts of all Magistrate the statutory time-limit is 120 working days (not calender days). For the Courts of Session Judges, Additional Session Judges and Assistant Session Judges time-limit is 240 working days. It has been provided in Section 339C(1) Cr.P.C that a Magistrate shall conclude trial of a case within 60 days (working days) from the date on which the case is received by him for trial. It has further been provided in sub-section. (3) of the said section 339C that if for any reason to be recorded in writing a Magistrate or a Judge is unable to conclude the trial of a case within the specified time, he shall conclude such trial within 30 days (working days) after the expiry of the specified time.

But for the trial of cases under summary way (section 260 Cr.P.C.) no such extension of time is permissible. In all such cases time-limit is 60 working days only.

Sub-section 2(A) of section 339C Cr.P.C. provides that where an accused in involved in several cases and such cases are brought for trial before a Magistrate or a Court of Session the specified time-limit for the trial of such cases shall run consecutively (not concurrently).

Sub-section (4) of section 339C also provides that where a trial cannot be concluded within the specified time or the extended time further proceedings in respect of the trial shall stand stopped and the accused person shall be released. The provisions are mandatory and these are applicable in the trial of all types of case. The only exception has been made in respect to trial of cases for offenses under section 400 or 401 of the P.C (Gang cases) as has been done in respect of investigation as well stated before.

It is necessary to repeat here that the period of time-limit shall be counted on the basis of calender days for investigation of a case by police and of working days for trial of a case by the Courts. Working days are those days which have not been declared as holidays by the Government.

Provisions of time-limit for investigation as well as trial is a new insertion in the Cr.P.C.It is mandatory in character. Hence Magistrates should be very careful about it . For the trial of a case within the statutory time-limit of working days (including allowable 30 working days when extended on valid reasons) may be, for example, distributed and utilized in the manner suggested below. While calculating 150 working days generally 24 weeks (roughly a period of 6 months) are available to a Magistrate. In the model 150

given below maximum period has been indicated for each transaction of (.....) during trial from the date of receipt of a case for trial:

(i)	For consideration of charge	2 weeks
(ii)	For evidence of P. Ws.(Ist date)	3 weeks
(iii)	For evidence of P. Ws.(2nd date)	3 weeks
(iv)	For evidence of P. Ws.(3rd date)	2 weeks
(v)	For evidence of P. Ws.(4th date)	2 weeks
(vi)	For examination of accd. u/s 342 Cr.P.C.	2 weeks
(vii)	For evidence of D. Ws	2 weeks
(viii)	For argument	2 weeks
(ix)	For Judgment	2 weeks
(x)	Reserve (if and when time extended)	4 weeks

Maintenance of a time-schedule by the Court of a magistrate in the above line may be helpful to all concerned. It will also help avoid compulsory stoping of further proceedings by a Magistrate in course or the trial of a case in his court.

A separate calender of dates for cases under summary procedure may be maintained by a Magistrate having power u/s 260 Cr.P.c. in the same manner. This will surely help avoid expiry of the time-limit and to conclude trial of a case under the summary way.

There is no denying that stoppage of trial of a case does tantamount so miscarriage of justice. Magistrates should therefore, be careful and cautions to avoid such a situation while trying a case, particularly of cases arising out of heinous offenses. If is also admissible that the Magistrate while passing orders as to the stoppage of further proceedings as well as releasing the accused due to statutory time-limit should narrate the circumstances under which it was done. For administrative purpose order-sheets of case records relating to stoppage of investigation or trial due to the operation of time-limit, should be referred to the District Magistrate concerned for his information and necessary action.

The Code of Criminal Procedure, 1898, was further amended by the Code of criminal Procedure (Amendment) Ordinance, 1986, (Ordinance No. XXIII of 1986) and a new section - 339D was inserted. It has provided for the revival of cases in which further proceedings were stopped under section 339C. Thus, in section 339D provisions have been made for the revival of a case, the trial of which was stopped due to the operation of section 339C sub-section(4) of the Cr.P.C.

Provisions for the revival of cases may be summed up as follows:

(i) An application for the revival is to be made by the government to the court where the proceedings were pending on the date they are stopped.

(ii) Where such court is not in existence or has no jurisdiction to try the case for any reason, the application for such revival shall be made to the court which has jurisdiction to try such case.

(iii) On such application the Court shall revive the case.

(iv) Such application is to be made within 90 days from the date on which the proceedings are stopped.

(v) The proceedings thus revived shall continue from the stage at which they were stopped.

(vi) On the revival of the case the accused shall be released on said (in non-bailable offenses) to the satisfaction of the Court, unless for reasons to be recorded in writing the Court otherwise directs.

(vii) The trial of such a revived case shall be concluded within 120 working days by the Magistrate. If unable to do so, the Magistrate, after recording the reasons therefore will extend the time for another 30 working days and shall conclude the trial of the case.

(viii) The provisions of section 339C shall be applicable in this regard.

(ix) In determining the time for the purpose of trial of such cases the date of revival shall be deemed to be the date on which the case was received for trial.

(x) If the trial of a case after revival case-not be concluded within the specified time, for the proceedings in respect of the trial shall stand stopped and the accused person released.

CHAPTER XVIII

TRIAL IN-ABSENTIA

Through the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ord. No. XXIV of 1982) dated 21st August, 1982 a new section in the Cr.P.C. namely section 339B was inserted providing for the trial of accused persons in-absentia. Sub-section (1) of section 339B was, however, further amended by Ordinance No.LX of 1982, dated 30th December, 1982.

Section 339B, sub-section (1) of the Cr.P.C. provides for the compliance with the requirements of section 87 (Proclamation for person absconding) and section 88 (Attachment of property of person absconding). When 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 offense complained of shall, by order notified in the official gazette, and also published in at least one Bengali daily newspaper, 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 the order, and if such person fails to comply with such direction, he shall be tried in his absence.

Sub-Section (2) of section 339B provides that 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 offense complained of shall, after recording its decision so to do, try such person in his absence.

The provisions are clear and categorical. In a police case when chargesheet is received against an accused person and that the accused was neither produced under arrest nor appeared/surrendered before the Court, and in a complaint case in which process has been issued against an accused person and he has been absconding all along provisions of sub-section (1) shall apply. The formalities provided in the sub-section are to be completed by the Court taking cognizance. But in a case where the accused appeared/surrendered or produced under arrest before the Court and was released on bail in a complaint case or Police case the provisions of sub-section (2) shall apply. No formalities are required to be observed. The Court will take a decision and record it in the ordersheet that trial against the absconding accused will proceed in-absentia section 339B, sub-section (2) Cr.P.C.

Receipt of service returns (S,R) or P&A orders are to be acknowledge in the order-sheet of the case and the returns shall form part of the records.

If the case is triable in the Court of Session or by the D.M. the Magistrate taking cognizance shall complete all such formalities in respect of the absconding accused persons and then send the case to those Courts under section 205C or 205CC as the case may be, for trial.

It should be remembered that no trial in-absentia can be held without asking the accused to appear before the trial Court on any particular date or without directing sureties to produce him. The provisions of section 87 and section 88 are mandatory. The High Court Division held the following order passed by Sessions Judge to be illegal for non-observance of the above procedure. Kala Meah (member) vs. The State. 1985 BLD 21.

(A Specimen Notice against an absconding accused person for trial in-absentia).

IN THE COURT OF UPAZILA MAGISTRATE,
RAOZAN UPAZILA,
DIST CHITTAGONG

NOTIFICATION

Under Section 339B Cr.P.C.

Whereas it has been made to appear to me that the accused person named below, is required for the purpose of trial in case No. GR-25/83 corresponding Raozan P.S. Case No. 1 (9) 83, under section 380 P.C.

... ... son of late ... ...
of Vill ... ... P.S. ... ...
Upazila ... ... Dist. ... ...

Now, therefore, I do hereby direct the accused person named above to appear during the Court hours before the Court of the undersigned within 15 days from the date of publication of this Notification failing which he shall be tried in-absentia.

Signature
Upazila Magistrate
Raozan, Dist. Chittagong.

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Savar, Dhaka.

CHAPTER XIX

ACTION AGAINST FALSE AND FRIVOLOUS OR VEXATIOUS ACCUSATIONS

A person who is unjustly made an accused in a criminal Court suffers a wrong thereby. Section 250 of the Cr.P.C. enables criminal Courts to award compensation as well as punishment for such wrong in certain cases. It is not thought right to use an essentially summary method in cases of importance, so the section is applicable only in the Courts of Magistrates. Section 250 applies when any Magistrate who has heard a case triable by a Magistrate, that is, a case not exclusively triable by the High Court or Court of Session, acquits or discharges an accused person and is further satisfied that the charge or accusation against that person was false and either frivolous or vexatious. The power cannot be used unless the case was instituted by complaint or upon information given to a police officer or to a Magistrate. Upon an acquittal or discharge in the above circumstances to accusation having been held to be both false and frivolous or vexatious the Magistrate, in his discretion may direct that the person by whose complaint, or upon whose information, the accusation was made, shall pay to the accused a sum not exceeding Taka one thousand. But a Magistrate of the Third Class cannot award more than Taka five hundred. Where 2 or more accused persons are acquitted or discharged the Magistrate may use his full power of awarding compensation respect of each of them.

In addition to the order directing payment of the compensation,he may further ask that the person ordered to pay such compensation shall also suffer imprisonment for a period not exceeding 6 months or pay a fine not exceeding Taka 3 thousand.

The order of judgment directing discharge or acquittal must call upon the complainant or informant to show cause if he is present in Court; if he is not present in the Court it must direct that a summons is to go calling upon him to appear and show cause. The Magistrate must have material before him for a finding that the accusation was either frivolous or vexatious .pg as well as false, and must reach a finding to that effect.

Before awarding compensation or / and punishment of imprisonment or fine, the Magistrate must give the complainant or informant an opportunity to show cause why such an order should not be made. And, if he shows cause, what he says must be recorded in writing and considered. As noted above, the final order, whether it be of acquittal or discharge, must indicate that the complainant or informant is to show cause. If the Magistrate finally orders that compensation be paid and awards punishment of imprisonment or fine, he must state his reasons, the amount and / or the penalty he awards, in writing.

Action under section 250 Cr.P.C. cannot be taken when a case has been legally compounded, for then the parties must be presumed to be in agreement and to have no present grievance against each other. Equally this section cannot be applied when a complaint is dismissed under section 203 for then the accused is not before the Court, the course of his life has not been disturbed by the proceedings. A withdrawal of a case allowed by the Court under section 248 is on the same footing as the compounding of a case. And the complainant or informant must be directly responsible for the institution of the proceedings if he is to be amenable to section 250.

Mere acquittal is no ground for a proceeding u/s 250, that might happen on various reasons. Unless the materials of the case would definitely indicate that the prosecution was started out of spite and malice proceeding u/s 250 can never be taken. -18 DLR 206.

When a subordinate official reports any circumstances to an official superior, and that superior causes the matter to be the subject of a criminal proceeding by handing on the information to a Magistrate, it is rather the superior than the subordinate official who is responsible for the institution of the proceeding. But if in such a case the subordinate official were deliberately acting otherwise than in good faith, and were reporting falsely, or making exaggerated statements out of spite, or otherwise going beyond the proper sphere of his duty, then, it is submitted, his is the real responsibility for the proceedings, and he is the "informant".

There are many rulings on the subject of police responsibility under this section where police officers have happened to report on non-cognizable offenses. Of course, if a police officer complains of an offenses said to have been committed against him personally and without reference to his official position he is merely a private individual for the purposes of the resulting case. And where one has acted officially in good faith, even though very mistakenly and on false information, it does not seem that he ought to be made to pay compensation under section 250. That section can be used at the close of a summary, just as much as at the close of a regular trial. Nor does the use of it bar the subsequent making of a complaint of giving false evidence, or of making a false charge, under the provisions of sections 195 and 476 of the Code. When compensation is awarded u/s 250, time may be granted for paying it u/s 388(2) of the Code, upon the execution of a bond, for appearance. It also may be ordered that in default of payment i. e., if payment is not made the person ordered to pay may be committed to jail in simple imprisonment for a period not exceeding 30 days which will terminate or be proportionately diminished if the money be paid in whole or in part before the term runs out.

The term of 30 day's imprisonment in default of payment of fine u/s 250 can be imposed in respect of each of several accuseds in whose favour payment of compensation has been ordered though the aggregate term of imprisonment exceeds 30

days. It is true that in a proceeding u/s 250, it is not necessary that the actual words used by the complainant in his complaint should be recorded separately as in the case of an accused u/s 342, but there is hardly any doubt that the Magistrate should at least indicate in his judgment that he asked the requisite questions and he should set out the explanation of the complainant and say whether he thought the explanation satisfactory, and if so why compensation may be awarded after examination of all the witnesses. -7 DLR 270.

It is undesirable to pass an order u/s without considering the entire evidence which the complainant has adduced. From the mere fact that some of the witnesses made discrepant statement, it is not safe for the Magistrate to say he is satisfied that the accusation was false and still less to say that it is vexatious, ignoring completely other important evidence on record. -5 DLR 169.

Complaint lodged u/s 107 of the Code even if false and frivolous does not justify initiation of proceeding u/s 250. -14 DLR 188 SC.

This section does not warrant order to pay compensation against a person who only instigates the giving of false information, but does not himself make the complaint or give the information to the police. 14 DLR 562.

Proceeding u/s 250 Cr.P.C. is a separate proceeding and Magistrate awarding compensation subsequent to passing order of acquittal does not act without jurisdiction. - 21 DLR 304 WP.

When an order for compensation is passed u/s 250 by a Magistrate of the Second or Third Class, or one under that section for a sum exceeding Tk. 100 is passed by a Magistrate of the First Class, an appeal against it lies "as if such complainant or informant had been convicted on a trial held by such Magistrate," that is, to the D.M. in the first case and to the Court of Session in the second. The Appellate Court can deal with the whole case, and should it think that the Magistrate's order is wrong it can annul the order for compensation in appeal, and can order further inquiry to be made into the case of a discharge, acting in revision. Appellate Court has the power to diminish the amount of compensation to be paid.

The Sessions Judge has power u/s 435 and 439A Cr.P.C. to examine an order u/s 250 Cr.P.C. in the exercise of its revisional jurisdiction.

An appeal lies to the Sessions Judge u/s 250(3) Cr.P.C. An Appellate Court can go into all the facts of the case, in order to determine whether case is false and vexatious. -33 Cr.L.J. 299.

Measures u/s 250 Cr.P.C may be taken by a Magistrate regularly in appropriate cases. Filing of false and frivolous or vexatious cases as well as cases with exaggerated facts are likely to decrease if actions u/s 250(5) Cr.P.C. are taken as and when such occasions arise. In all such cases proceedings should commence with a notice asking for showing cause to the persons concerned.

CHAPTER XX

MATTERS RELATING TO BAIL

In section 4(1)(b) of the Cr.P.C. definition of bailable and non-bailable offenses has been given. It has been stated there that "bailable offenses" means an offenses shown as bailable in the Second Schedule, or which is made bailable by any other law for the time being in force; and" nonbailable offenses" means any other offenses. In the Schedule II under "Tabular statement of offenses" at the 5th column under the heading "whether bailable or not" against the Penal Code offenses it has been clearly indicated whether the particular offense is bailable or non-bailable. In the concluding part of the Schedule and at column 5 under the heading "Offenses Against Other Laws" offenses whether bailable or not has been mentioned on the basis of punishments provided in that particular law.

In this connection it is considered necessary to reproduce the provisions of the relevant sections of the Cr.P.C. namely, sections 406, 497 and 498 relating to bail.

In What Cases Bail to be Taken (Section 496)

When any person other than a person accused of a non-bailable offense is arrested or detained without warrant by an officer-in-charge of a police-station, or appears or is brought before a Court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail.

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided;

Provided further that nothing in this section shall be deemed to affect the provisions of section 107(4), or section 117(3).

When Bail may be taken in Case of Non-bailable Offense (Section 497)

(1) When any person accused of any non-bailable offense is arrested or detained without warrant by any officer-in charge of a police station, or appears or is brought

before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offense punishable with death or transportation for life.Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offense be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a nonbailable offense, but there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry be released on bail, or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his on its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offense and before judgement is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offense, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) The High Court Division or the Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

Power to Direct Admission to Bail or Reduction of Bail (Section 498)

The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be any appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced .

Discussions on Bail

Bail matter plays a very important role in the administration of Criminal Justice in all countries, particularly in Bangladesh, in view of our criminal justice system. Hence it is essentially required that the provisions of the relevant law in the matter of bail are very carefully gone through and meticulously observed. In bailable offenses a prayer for bail shall not be rejected and in a non-bailable offense bail may or may not be granted. In a

non-bailable offense a Magistrate is expected to keep in mind the provisions of section 497 Cr.P.C., go through the facts of the case, examine the factors involving the accused and exercise his discretion on the matter judiciously. While granting bail due considerations are to be made about the accused in reference to the alleged offense.

Provisions of section 496 are very clear and categorical. Here the law says that granting of bail to an accused of a bailable offense is mandatory. As soon as such an accused is produced before a Magistrate or appears an order admitting him to bail shall be passed. There may or may not be a petition in writing before the Magistrate for bail on behalf of such an accused. A simple order granting him bail shall be passed adding that in default of furnishing a bail bond, the accused be remanded to jail custody.

In bailable offenses the person accused has the indefeasible right to grant of bail subject to satisfactory sureties being offered, if necessary. -15 DLR 429 (SC).

The basic conception of the word "Bail" is release of a person from the custody of police and delivery into the hands of sureties who undertake to produce him in Court whenever required to do so. -DLR. 154 F.C.

The Code makes a distinction between bailable and non-bailable offenses. The grant of bail to a person accused of a non-bailable offense is discretionary and the person released on bail may again be arrested and remanded to custody by an order of the Court granting the bail. The Court of Session or High Court Division may release any person on bail and by a subsequent order cause him to be re-arrested and remanded to custody.

But a person accused a bailable offense is treated differently. He has a right to be released on bail and only the High Court division has the power to cause him to be arrested and remanded to custody in bailable offenses. There is no question of discretion in granting bail as the words of the section 496 are imperative. Accused of bailable offense cannot be taken into custody unless they are unable or unwilling to offer bail or execute personal bonds. In every bailable offense, bail is a right and not a favour.

The intention of the law is that in such a case the man is ordinarily to be at liberty, it is only when he is unable to furnish such moderate security, if is required of him only then he should remain in detention. -19 Cr.L.J. 329.

The object of demand of security is not to penalise the accused but to ensure his presence in Court and the amount of security must be fixed with due regard to the means of the accused and the nature of the offense. -31 Cr.L.J. 980.

There is admittedly no provision in the Code permitting cancellation of bail in a bailable offense. If, of course, the person enlarged on bail suborns witnesses there may

be other remedies at law open against him, e.g. contempt proceeding or conceivable even proceeding to bind him over to keep the peace or be of good behaviour. There is no provision for cancellation of bail by the Sessions Judge or the High Court Division under section 561A. -15 DLR 429 SC.

The position is completely different in respect to an accused of a non bailable offense. Section 497 provides that accused of a non-bailable offense may also be released on bail. But if there appear reasonable grounds for believing that he has been guilty of an offense punishable with death or transportation for life he shall not be so released.

In case of a bail application Court is required to be satisfied before the application that a prima facie case exists as to the involvement of the accused in the offense. -(1973) 25 DLR 119.

In the matter of bail u/s 497 Cr.P.C. for offenses punishable with death or transportation for life, the Courts are only concerned in examining whether reasonable grounds do or do not exist to connect an accused person with that offense. -(1971) 23 DLR(SC)36.

Persons actually sick or infirm may be released on bail even in case of charge involving death or lesser sentence. -18 DLR 390 SC.

Bail to a person accused of an offense punishable with death can, however, be granted where the Court is of opinion that reasonable grounds do not exist that such offense has been committed.

It would be incorrect to say that a person who is accused of an offense punishable with death or transportation for life cannot be admitted to bail except on ground of age, sex or infirmity, as section 497 Cr.P.C. envisages; that bail shall be refused if there appear reasonable grounds for believing that the person accused has been guilty of an offense punishable with death or transportation for life. It follows that if the Session Judge or the High Court forms an opinion that such reasonable grounds do not appear, the prayer for bail may be allowed. The determination whether bail will be allowed to a person accused of an offense punishable with death or transportation for life will, thus, depend on the facts of each case. -20 DLR (SC) 245.

In the context of the administration of criminal justice in our country, a convention has been created over the years in the legal practice on the matter of granting or rejecting bail in non-bailable offenses. Following are the factors which are generally examined and considered by various Courts in granting or rejecting a prayer of bail on behalf of an accused involved in a non-bailable offense:

(i) Gravity of the offense alleged,

(ii) Complicity of the accused in the alleged offense,
(iii) Chances of abscondance of the accused,
(iv) Scope of tampering of evidence by the accused and
(v) Any other factor either in favour or against the accused person.

Bail in non-bailable cases is a matter within the discretion of the Courts, which has to be exercised with due care and caution on the facts and circumstances of each case. In the case of non-bailable offenses which are not punishable with death or transportation for life, grant of bail should be the rule, and the refusal thereof should be an exception to that rule. The practice of Magistrate or Judge to send bail application to the police for report and then acting on such report is absolutely illegal and against all canons of criminal jurisprudence. -52 Cr.L.J. 358.

The policy of the law is that every young person and woman accused should be granted bail. Bail may be granted only when the nature of ailment is serious enough to endanger a person's life. Successive applications for bail on the same facts are not competent. But with a view to prevent also of process of Court or meet the ends of justice, a second application for bail could be made even in the absence of fresh material - PLD 980 Lah. 127.

A fresh bail application can be moved on the ground that particular circumstance has either not been brought to the notice of the Judge or it has not been considered by the Judge.

There are five situations when a person granted bail may have the bail when canceled and recommitted to jail:

(i) Where the person on bail, during the period ofbail, commits the very same offense for which he is being tried or has been convicted,
(ii) If he hampers the investigation,
(iii) If he tampers with the evidence,
(iv) If he runs away to a foreign country, or goes underground or beyond the control of his sureties, and
(v) If he commits violence in revenge.

Cancellation of bail at the bidding of an army officer, followed by warrant of arrest, illegal. -33 DLR 77.

Grant of bail is discretionary with the Court and the discretion has to be exercised judicially. Justice must be meted out with the absolute impartiality; necessary to inspire confidence in disposition of justice. High official status is no ground to be dealt with in a

manner other than what is provided by the constitution declaring that all are equal before law and entitled to equal treatment. When an accused surrenders he can leave the Court only when his bail prayer is granted by the Court; otherwise he continues to remain in Court's lawful custody. His leaving the Court without such order, tantamounts to his escape from Court's lawful custody. There can be nothing like allowing an accused to be treated on bail by furnishing a bail bond in future something which is repugnant to law. High Court's orders are to be complied with by the subordinate Courts. Contrariness is deplored .-32 DLR 169

When a case is under investigation under MLR the question is whether the matter is pending before the Martial Law Court, and if not, then section 497 Cr.P.C. comes into play. Question of granting bail cannot be decided by reference to matters not envisaged in the Cr.P.C. Section 497 which provides that if there are sufficient grounds for further inquiry into the guilt of the accused pending such inquiry be released on bail. -29 DLR 167.

Refusal to grant bail by Sessions Judge. Magistrate can inspite of such refusal, on a subsequent occasion, in proper circumstance grant bail. -27 DLR 32.

Undue delay in holding the trial, due to the prosecution procrastination will be a valid ground for granting bail and question of granting bail in such a case need be considered with care. Application by prosecution for cancellation of bail: Notice such application to be served on the accused well in advance. -20 DLR 339 SC.

Jurisdiction of ordinary criminal Court including its jurisdiction to grant bail is barred when a case is ordered to be tried by the Special Tribunal. -20 DLR I WP.

Second application for bail before the same Court will not be entertained unless a new ground for modification of the earlier order has been made out. -10 DLR 452.

Granting of bail in non-bailable offense: Magistrate must record reason in support of his order. 10 DLR 3 WP.

Ill-defined fear that the accused would tamper with prosecution evidence cannot hamper grant of bail. 2 PCR 89.

Gravity of the offense charged is not by itself sufficient to refuse bail and bail may be allowed. -25 DLR 119.

Section 498 gives the High Court Division and the Court of Sessions very wide powers to admit an accused person to bail in any case even when he is charged with a non-bailable offense. -8 Cr.L.J. 49.

The powers of the High Court Division or the Court of Session given by section 498 are not controlled by the statutory limitation laid down in section 497 of refusing bail if there appear reasonable grounds for believing the accused is guilty of an offense punishable with death or transportation for life. The powers in this section are not fettered by any rules defining the limit within which they would be exercised. -30 Cr.L.J. 718.

All the ordinary criminal Courts while trying a case, whether under the ordinary law or any Martial Law Regulation or Order, are competent to entertain a bail application. So long as there is no order covered by Martial Law orders or Regulations to military courts, the Sessions Court and the High Court Division can exercise jurisdiction under this section (section 498). -PLD 1959 Pesh. 49.

First Judge of the High Court refused bail, later on a fresh application for bail was moved before another Judge of the same High Court who grants bail. Extreme impropriety that results from such course. -25 DLR 45 SC.

Bail granted under section 498 cannot be canceled by the Sessions Judge in revision. He can refer the matter to the High Court which can cancel it u/s 561A. Undue prolongation of trial is a ground for bail. -16 DLR 325.

The question of granting or refusing bail depends upon the particular circumstances of each case. The mere fact that an offense is punishable with death or life imprisonment is not by itself sufficient to refuse bail u/s 498 Cr.P.C. -16 DLR 12 WP.

Power of High Court to grant bail u/s 498 in non-bailable cases is wider than that conferred by sections 496 and 497 of the Code. -15 DLR 41 WP.

It is advisable and quite appropriate as well that reasons are invariably stated while granting or rejecting bail to an accused of a non-bailable offense. Bail rejected by one Magistrate may not be granted by another Magistrate, if no new ground has been placed on behalf of the accused. Bail rejected to-day should not be granted to-morrow in the same situation and circumstances. It must also be kept in mind that the amount of bail is not excessive (section 498), nor should there be any conditional bail; other wise, it would tantamount to refusal of bail. There is no scope in the Court of a Magistrate to grant-ad-interim bail to any accused person.

All entries in the bond and bail-bond (Form No. XLII of Sch. v) need be examined carefully before such bonds are accepted and signed by Magistrate. Name and full particulars of accused person on whose behalf the bond is furnished, the names and addresses of the sureties, the amount of bail, etc., should be correctly and legibly written

in the bail bond at the appropriate places in order to avoid any confusion or misgivings subsequently.

Proceedings u/s 514 Cr.P.C. are to be drawn up against the surety or sureties whenever there is a breach of the bond. Necessary provisions as to a bond of accused and sureties have been made under section 499 Cr.P.C. The provision laid down in this section as to the nature and contents of the bail bond are imperative and must be strictly followed. It is the Court granting bail which has to determine the sufficiency of the bond as well as the sureties. Form No. XLV is prescribed in Schedule V for the purpose. When the bail bond is not in accordance with the form, the person executing it incurs no liability. -AIR (1957) SC 587.

On the language of section 499 Sessions Judges and Magistrates have no power whatever to impose any condition at all when they grant bail. -4 DLR 352.

Section 499 is a substantive section which empowers the Court to release a person on bail and this section speaks of a person being released on bail either on his own bond or on a bond for such sum of money as the Court thinks sufficient. -33 DLR 145.

If obligation to appear in the transferee Court is not specified in the bond, the surety cannot be penalised for failure of the accused to appear in that Court. No Court other than the one before which the accused was bound by the bond to appear can forfeit the bond. -22 DLR 175 WP.

Magistrate granting bail should verify solvency of the surety himself and not act upon the advice of others. Execution of a bond by the surety is a simple contract between the Court and the surety whereby the custody of the person is given to the surety for the accused's production in Court according to the terms of the bond. Surety must be a person competent to contract. The word `sufficient ' as prefixed before the word `Surety' in section 499 Cr.P.C. would include not only the solvency of the person offering himself as the surety but also his fitness to enter into a contract under the surety bond.

Section 514 Cr.P.C. lays down the procedure for forfeiture of bonds. For a proceeding under this section against the sureties of a bail bond in case of breach, the Magistrate is required to follow the provisions laid down thereunder the various sub-sections carefully.

Before an order of forfeiture of bond is passed it is necessary to give notice to the executant why the amount mentioned in the bond should not be paid, and if he fails to show sufficient cause, only then the Court can proceed to recover the money. When opportunity has been given to a surety to show cause why he should not be made to pay

the proceedings cannot be said to be in accordance with law and should, therefore, be quashed. -33 DLR 166.

Issue of distress warrant to the surety without asking him to show cause is illegal. Courts should not be too hard to the lawyer surety. -13 DLR 275.

The proceeding u/s 514 Cr.P.C against sureties for the forfeiture of the bond and asking for show cause will be passed in the order sheet of the main case record, and a forward date for showing cause will be fixed . With the copy of this order a supplementary case record will be started. The bail bond or bonds will be transferred to this supplementary case record from the main record for disposal according to law. Action against the accused for securing his appearance by way of issuing a W/A will proceed in the main File and against the sureties for forfeiture of the bond will proceed in the supplementary File. Both the actions will be initiated and pursued together, but in two separate Files.

A bond may be forfeited and the amount of bail realised from the sureties in full. Exemptions may be made partly as the Magistrate thinks proper and reasonable. Sureties are liable to pay the amount jointly and severally. When a bond is forfeited and the penalty is not paid, a warrant will issue for the attachment and sale of the defaulter's movable property, and if the penalty is not wholly recovered by this process there may be an order for imprisonment in the civil jail for a term which may extend to 6 (six) months.

CHAPTER XXI

SUMMARY TRIAL OF CASES

By summary trials we mean the procedure of trying cases summarily. The purpose of summary trial is the speedy disposal of certain cases without impairing justice. However, summary trial is not intended for contentious and complicated cases which necessitate lengthy trial. The object is not to deprive the accused person of any of the rights of regular trial but only to shorten the work of the Magistrate recording the evidence (1939 Nag. 87).

Section 260 of the Cr.P.C. provides that the M.M. or D.M. or any Magistrate of the first class specially empowered by the Government and any bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered by the Government shall try in a summary way all or any of the following offenses:

(a) Offenses not punishable with death, transportation or imprisonment for a term exceeding two years.

(b) Offenses relating to weights and measures under sections 264 (use of false instruments of weights), 265, (use of false instruments of weights and measures), and 266 (in possession of false instruments of weights and measures) of the Penal Code.

(c) Hurt under Section 323 of the same Code.

(d) Theft under sections 379, 380, or 381 of the same Code where the value of the property stolen does not exceed 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 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 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 ten thousand taka.

(h) Mischief under sections 426 and 427 of the same Code.

(i) Criminal trespass under section 447 and house-trespass under section 448 and offenses under sections 451 ,453,454,456 and 457 of the same Code.

(j) Insult with the intent to provoke a breach of the peace under section 405 and criminal intimidation under section 506 and offenses under sections 509 and 510 of the same Code.

(jj) offenses as to personation at an election under section 171F of the same Code.

(k) Abetment of any of the above offenses.

(l) An attempt to commit any of the above offenses.

Under section 263 Cr.P.C. in cases where no appeal lies, the Magistrate need not record the evidence of witnesses or frame a formal charge, but he shall enter the following particulars in the prescribed form:

(a) Sl. No.
(b) Date of commission of the offense.
(c) Date of the report or complaint.
(d) Name of complainant (if any).
(e) Name, Father's name and residence of the accused.
(f) Offenses complained of an the offenses proved (if any) and the value of the property (if any).
(g) The plea of the accused and his examination (if any).
(h) The finding and in case of a conviction, a brief statement of the reason.
(i) The sentence or other final order.
(j) Date on which the proceedings terminated.

The Government may empower any Magistrate and bench to try summarily any of the following offenses as well as for their abetment or attempt:

(a) Offenses against the Penal Code sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 223, 334, 336, 341, 352, 426, 447, 504.

(b) Offenses 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. However, no sentence to imprisonment for a term exceeding two years shall be passed in the case of any conviction under summary trial (section 262(2) Cr.P.C.).

It may be mentioned that previously summary trial was a discretion of the concerned Magistrate. But after the Second Cr.P.C. Amendment of 1982 it is mandatory. In a summary trial the procedure laid down in Cr.P.C. In Chapter XX is to be observed except where exception is allowed (vide section 262(1) Cr.P.C). It is a summary trial only in respect of the record of its proceedings and not in respect of the

proceedings itself. It would be complete and carefully conducted. In a summary trial no formal charge is framed. If the accused is to be convicted, a brief statement of reasons is to be stated. There is no appeal in which a trial for a sentence to fine only not exceeding 200 taka has been awarded (Section 414 Cr.P.C.).

There are a number of other laws outside the Cr.P.C. and the Penal Code which are triable in the summary procedure, when the law itself specifies this procedure (such as offenses under the Pure Food Ordinance). Time limit for summary trial is 120 working days only. No extension is allowed after it. A Magistrate while trying a case in a summary way must ensure two things:

(i) whether he has the power to try the case and
(ii) whether the case is triable under the summary way.

Procedure to be Followed

The Magistrate will fix up a date for trial and let it be known to all concerned. As far as possible the commencement of trial and its completion should take place on the same date. Although no formal charge is framed, the order sheet of the Magistrate must incorporate the charge. The witnesses are to be informed and the deposition shall be on oath. Evidence may be recorded at verbatim or in boiled form. No detailed evidence need be recorded but the gist should be there in the memorandum of evidence. So much of recording is necessary which in the opinion of the Magistrate is required for the ends of justice. Application of 342 Cr.P.C. is a must. There should be scope for cross examination and arguments. The Magistrate is to write and pronounce his order. In case where appeal is allowed, elaborate recording is a must. When a case is triable by a bench and if the bench differs in opinion, any dissenting member may write a separate judgment, but the presiding officer shall have the responsibility to write and pronounce the order.

The statutory emphasis for a summary trial is on the date and nature of the offense, the pleadings of the accused and recording of reasons for conviction . On the other hand, order for acquittal takes a simple form. But the Appellate Division opined in Md. Matiur Rahman Vs. Asgar Ali and other that although unlike conviction law does not require reasons to be given in case of acquittal, it is highly desirable that a Magistrate passing an order of acquittal should at least give some indication as to how on evidence the order of acquittal was passed. -1984 BLD (AD) 227.

CHAPTER XXII

COMPOUNDING OFFENSES

The purpose of our legal system is not only to punish criminals and wrong doers but also to see that peace and tranquility prevail in the society. This is sometime done under give and take and compromise policy . The Cr.P.C. makes ample provision for it .

There are certain compromises which are done outside the Court, some time even before a case starts in any criminal Court. But once it starts, compounding of offenses are done according to set procedure. Offenses that may be lawfully compounded are those that are mentioned in section 345 Cr.P.C. as well as in the 6th column of schedule II of it Offenses other than those mentioned in the section cannot be compounded lawfully. -1985 Cal.218. The intent of the section is that in the case of certain minor convictions where the general public are not vitally affected, the complainant should be permitted to come to terms with the party against whom he complains the offense being specified in the section. -1921 Bom. 166.

In the section there are two major categories. Sub-section(I) Specifies the person by whom an offense may be compounded. Permission of Court in not necessary for offenses mentioned therein, and as soon as a compromise is arrived at, the Magistrate has nothing more to do except to record a judgment of acquittal. -194 Lah. 561d. The second category of offenses as mentioned under subsection (2) are those which might be compounded only with the permission of Court. An agreement to compound an offense falling under this subsection can only be effected with the permission of the Court after the institution of criminal proceedings. -1942 Mad. 662. It is the duty of the Magistrate in each case which is compoundable with his permission to decide it and the responsibility is his. He cannot refer to higher Courts for decision whether or not to permit the offense to be compounded. -1935 Lah. 266.

The list of compoundable offense are as follows:

Offenses which can be compounded
(under sub-section 1 of section 345 Cr.P.C.)

Sections of the Penal Code applicable.	Persons by whom offense may be compounded
298	The person whose religious feelings are intended to be wounded.
323, 334	The person to whom the hurt is caused.
341, 342	The person restrained or confined.
352, 355, 358	The person assaulted or to whom criminal force is used.
374	The person compelled to labour.
426, 427	The person to whom the loss or damage is caused.
447, 448	The person in possession of the property trespassed upon.
490, 491, 492	The person with whom the offender contracted.
497	The husband of the woman.
498	Ditto
500 501 502	The person defamed.
504	The person insulted.
506	Theperson intimidated.
508	The person against whom the offense was committed.

Offenses which can be Compounded with the Permission of the Court
(under sub-section (2) of section 345 Cr.P.C.)

Sections of the Penal Code applicable.	Persons by whom offense may be compounded.
147	The person against whom force or violence has been used.
148	Ditto
324	Ditto
325	Ditto
335	Ditto
336	Ditto
337	Ditto
338	The person to whom hurt is caused.
343	The person confined
344	Ditto
346	Ditto
347	The person wrongfully confined.
348	Ditto
354	The women assaulted or to whom the criminal force was used
356	Ditto
357	The person assaulted or to whom the force was used.
379	The owner of the property stolen
380	Ditto
381	Ditto
403	The owner of the property misappropriated.
406	The owner of the property in respect of which the breach of trust has been committed.
407	Ditto
408	Ditto
411	The owner of the property stolen
414	Ditto
417	The person cheated.
418	Ditto
419	Ditto
420	Ditto
421	Ditto

Sections of the Penal Code applicable.	Persons by whom offense may be compounded.
421	The creditors who areaffected thereby.
422	Ditto
423	The person affected thereby.
424	Ditto
428	The owner of the animal.
429	The owner of the cattle or animal.
430	The person to whom the damage is cause.
451	The person in possession ofthe house trespassed upon.
482	Theperson to whom lossorinjury is caused by such use.
483	The person whose trade orproperty mark is counterfeited.
486	Ditto
493	The womanwithwhom cohabitation was caused.
494	The husband or wife of the person so marrying.
509	Thewomanwhom it isintended to insult orwhoseprivancy isintruded upon.
511	The person against whom such attempt was made for committing the offense.

The compounding of an offense signifies that the person against whom the offense has been committed has received some gratification not necessarily of a pecuniary character to act as an inducement for his desiring to abstain from a prosecution.-1924 Lah. 593. A compromise may be effected without the passing of any consideration, the only essential thing required being that some arrangement should have been arrived at between the parties which settle their difference, even by a direct apology from the accused.-10 C.L.J. 228.

Any person may set the criminal law in motion but it is only the person specified in the third column of the two tables under the section who can compound offenses . A case may be compounded at any time before the sentence is pronounced.-1918 Cal. 238. After conviction, however , there can be no compromise except with the leave of the Appellate Court. -1934 Sind 122. A Magistrate cannot allow a case to be compounded after the record of the case is called under section 435 Cr.P.C. with a view to transferring the case because his jurisdiction is suspended . -1925 Bom. 247. Where compromise is alleged by one party and denied by the other the Magistrate must try the case -1931 Lah. 402. Where an accused alleges that the offence is compounded, the onus is on him to show that there was a composition valid in law.-1927 Bom. 410. When a

case is compounded it results not merely in a discharge but in an acquittal and until such order of acquittal is properly set aside, an accused cannot be prosecuted again for the same offense.-1934 Lah. 317.

Sub-section 3 provides that when any offense is compoundable under this section, abetment of such offense or an attempt to commit such offense (when such attempt is by itself an offense) may be compounded in like manner.

Sub-section 4 provides that when the person who would otherwise be competent to compound an offense under this section is under the age of 18 years of or is an idiot or a lunatic, any person competent to contract on his behalf with the permission of the Court may compound such offense.

Sub-section 5 Provides that when the accused has been sent for a trial or when he has been convicted and an appeal is pending, no for the offense shall be allowed without the leave of the Appellate Court. Sub-section 5A provides that the High Court Division acting in the exercise of its power of revision under section 439 and a Court of Session so acting under section 439A may allow any person to compound any offense which he is competent to compound under this section.

Sub-section 6 provides that the composition of an offense under this section shall have the effects of an acquittal of the accused with whom the offense has been compounded . It might be mentioned that where the petition of composition is put up, it is Magistrate's sole remaining duty to record a formal order of acquittal and to set the accused person at liberty. Conviction of the accused after composition is illegal. -45 All. 145 Because a composition has the effect of an acquittal and not a discharge and therefore, there is a complete bar to the prosecution of the accused for the same offense. -1934 Lah. 317. But where there are several accused persons, the composition of an offense with one of them has not the effect of acquittal of all the accused persons but only of the particular accused with whom a composition took place. -7 Lah. 334.

Sub-section 7 provides that no offense shall be compounded except as provided by this section . It might be mentioned that where an accused is charged with two offenses and one is compounded, the charge for the other offense does not **Ipso facto** lapse, and the accused is not necessarily acquitted in respect of that offense.

When composition is sought under a compoundable offense, a joint petition is addressed to the Magistrate bearing the signature/L.T.I. of both the complainant and the accused that a private settlement has been agreed upon by themselves (with the intervention of the well-wishers of both sides). He examines the complainant/person affected and then makes the necessary orders.

CHAPTER XXIII

FRAMING OF CHARGE AND ACQUITTAL OR CONVICTION

Framing of Charge

When the case is ready for trial it will be transferred and received for trial by the Magistrate . As soon as a case is received for trial a date will be fixed for consideration of charge against the accused . Charge is to be considered in presence of both prosecution and defence. Relevant section are 241A and 242 Cr.P.C. In Police cases all relevant papers and documents Viz., FIR, C.S., statements of witnesses recorded u/s 161 Cr.P.C. confession of accused (if any) recorded u/s 164 Cr.P.C. T.I. Parade report (if any), Seizure list, Medical report, opinion of experts, etc., are to be looked into an examined. Similarly, in Complaint cases the P.C., statement of the complainant his witnesses (if any) recorded u/s 200 Cr.P.C., enquiry report u/s 202 Cr.P.C.(if any), medical certificate, title deeds, payment receipts, etc., should be examined. If considered necessary, the Magistrate may also examine the accused. After a hearing the decision as to framing of charge is to be taken . If the Magistrate considers the charge to be groundless he shall discharge the accused after recording the reasons for doing so (section 241A Cr.P.C.). If there are more than one accused in a case charge has to be considered against each of them individually and action taken accordingly . It is needless to say that in the same case charge may be framed against an accused and another accused may be discharged after due consideration and hearing of both parties.

If upon consideration of the factors and hearing as stated above, Magistrate is of the opinion that there is ground for presuming that the accused has committed the offense as alleged by the prosecution, a formal charge shall be framed against him under section 242 Cr.P.C. In the charge form name of the Magistrate with his power and location, name of the accused,d ate and place of the occurrence, name and gist of the offense committed stating its necessary ingredients, number of the penal section of the particular law, etc. have to be mentioned in the appropriate places. Charge thus framed has to be read over and explained to the accused in the open Court and his plea thereof to be obtained and recorded. The formal charge has to be signed and dated by the Magistrate. All these actions, in brief, will be reflected in the order sheet of the case record while making a record of the day's transaction of the case on this score.

Plea of Accused

In reply to the charge if the accused pleads guilty or admits that he has committed

the offense 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 (section 243).

Plea of guilt does not amount in law that the accused has committed the offense-Court's duty is to see whether the facts brought on record amounts to an offense in law.-22 DLR 124.

When a person pleads guilty, he simply admits the fact which are said to constitute an offense; but the question whether the said facts constitute offense or not under the law is a question which is to be decided by the Court.-22 DLR 124.

A plea of guilty is an admission of all the facts on which the charge is founded as well as an admission of guilt in respect of them. The plea of guilty with qualification does not amount to a plea of guilty to the charge . A plea of guilty refers not to any section of the criminal statute, but to acts alleged against the accused. Section 243 applied to a case summarily by virtue of section 262.

Accused's admission is to be recorded in his own words. Section 243 Cr.P.C. Provides, inter alia, that if the accused admits that he has committed the offense of which he is an accused, his admission shall be recorded as nearly as possible in the words used by him.-20 DLR 461.

Conviction is legal only on the confession of the accused. If the accused himself admits his guilt there is no necessity to enter into the whole gamut of a legal trial. The guilt of the accused having been admitted there is no fact in issue and consequently the necessity of leading evidence to prove the guilt of the accused does not arise. - 14 DLR 121.

A conviction without taking of any evidence and purporting to be based on a plea of guilty and the said plea is not found recorded in accordance with the provision of section 243 Cr.P.C is not legal-11 DLR 514.

Acquittal and Conviction

If he accused does not make such admission, that is, if he pleads not guilty, the Magistrate shall proceed to hear the complainant 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 defense (section 244 Cr.P.C.).

If the Magistrate upon taking all evidence and examining the accused finds the accused not guilty, he shall record an order of acquittal u/s 245(1) of the Cr.P.C.

The Code does not make any provision for acquittal of accused persons without examining witnesses. A Magistrate, who does not find the accused guilty, must record an order of acquittal. No order of discharge can be passed u/s 245(1) Cr.P.C.

But ,if the Magistrate finds the accused guilty he shall convict him and pass sentence upon him according to law as per provisions of section 245(2) Cr.P.C.

Awarding of Sentence

Any sentence imposed upon conviction of an accused should be within the limits of the punishment prescribed by the law in question for the offense as well as within the powers of the Magistrate concerned. All such sentences must be commensurate with the gravity and nature of the offense as well as maximum punishment prescribed . A Magistrate while awarding a severe or lenient punishment to a convicted accused is expected to state reasons therefore. It may be remembered that awarding of disproportionate sentences is an unhealthy phenomenon in the administration of criminal justice. Cause of justice is likely to be defeated if the offenders are not adequately punished through due process of law.

Follow-up action of executing the sentence of imprisonment and realisation of fine amount and depositing the same with the Treasury should be supervised by the Magistrates. These should be a matter of routine checking by all Courts.

In case of trial of an accused in absentia u/s 339B Cr.P.C., a copy of the final order-sheet containing the order of acquittal or conviction and sentence should be sent to the O/C of the P.S. where the W/A against the absconding accused is pending . If the order is one of acquittal the W/A should be recalled, but if it is of conviction and sentence the W/A will remain pending till the convicted accused is arrested or he appears in the Court and committed to prison to suffer the sentence of imprisonment or pays the amount of fine.

CHAPTER XXIV

APPEALS AND REVISIONS

The word appeal has not been defined in the Code. Appeal is taking of a case from an inferior to a superior Court,for the purpose of testing the soundness of the decision of the inferior Court. The word appeal is defined as judicial examination of the decision by a higher Court of the decision of an inferior Court (Lakshmi Ratan Engineering Versus Assistant Commissioner. - AIR 1968 SC 488). An application for leave to appeal is not an appeal (Namamal Vs.Radhey Syam. -AIR 1970 Raj 26). In its technical sense, it means the right of person aggrieved by the judgment or order of a criminal Court of carrying a case to a superior Court with the purpose of ascertaining whether the judgment or order of inferior Court was right. The right to appeal is not a natural or inherent right created by any statute. -1941 Lah.414. It cannot arise by implication. -1832 Sind 88. Therefore ,ordinarily no appeal lies except as provided by Cr.P.C. or by any other special law.

Section 407 Cr.P.C. provides that any person convicted on a trial held by a Magistrate of the second or third class or any person sentenced under section 349 Cr.P.C.(i.e. Requirement of different or more severe punishment) or in respect of whom an order has been made or a sentence has been passed under section 380 Cr.P.C.(when not empowered) by a Upazila Magistrate, may appeal to the District Magistrate. Under ordinance no. XXIV of 1982 the District Magistrate may direct that any appeal under this section or any class of such appeals, shall be heard by any Additional District Magistrate subordinate to him and empowered by the Government to hear such appeals and thereupon such appeal or class of appeals may be presented to such Additional District Magistrate or if already presented to the District Magistrate may be transferred to such Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Under section 408 any person convicted on a trial by an Assistant Section Judge, a Metropolitan Magistrate, a District Magistrate, ADM or other Magistrate of the first class, or any person sentenced under section 349 or in respect of whom an order has been made or sentence has been Passed under section 380 by a Magistrate of the first class may appeal to the Court of Session; provided that when in any case an Assistant Sessions Judge or a Magistrate passes any sentence of imprisonment for a term exceeding 5 years or any sentence of transportation , the appeal of all or any of the accused convicted at such trial shall lie to the High Court Division . Similarly, when any person is convicted by Magistrate of an offense under section 124A of the Penal Code (Sedition), the appeal shall lie to the High Court Division . Section 409 Cr.P.C. provides an appeal to the Court of Session or Sessions Judge shall be heard by the

Sessions Judge or by an Additional Sessions Judge, 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 may make over to him . Section 410 Cr.P.C. provides that any person convicted on a trial held by a Sessions Judge or an Additional Session Judge may appeal to the High Court Division.

There are certain cases from which no appeal can be made. Following are the circumstances:

(a) When an accused person has pleaded guilty and has been convicted by a Court of Session or any Metropolitan Magistrate (except as to the extent or legality of the sentence, section 412).

(b) When a Court of Session passes a sentence of imprisonment not exceeding one month only or when a Magistrate of first of first class or superior Courts passes a sentence of fine not exceeding Tk.50/-only (section 413).

(c) When a Court passes a sentence of imprisonment in default of payment of fine when no substantive sentence of imprisonment has been passed (section 413 Exp.).

(d) When a competent Magistrate passes a sentence of fine not exceeding 200/- only in a summary trial.

Section 405 provides that appeal from an order rejecting application for restoration of property lie to the Court to which appeals ordinarily lie. Section 406 provides that an appeal from an order requiring security for keeping peace or good behaviour under section 118 by a Magistrate shall lie to the Court of Session but the Government may by notification empower any DM or CMM for it . But nothing in this section shall apply to persons the proceedings against whom are laid before Sessions Judge in accordance with the provisions of Sub-section 2 or sub-section 3A of section 123 (default of security). Under section 406A Cr.P.C. any person aggrieved by an order refusing to accept or reject a surety under section 122 may appeal against such order to the Court of Session if made by the CMM OR DM; if the order was made by MM to CMM and if made by any other Magistrate if made by to the DM.

Under section 417(3) no appeal by a complainant for an order of acquittal shall be entertained by the High Court Division after the expiry of 60 days . Section 417A, however ,provides that 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. A complainant may in any case of conviction on a trial held of any Court present an appeal to the Appellate Court within 60

days on the ground of inadequacy. The First Schedule of the Limitation Act, 1908 provides as follows towards the limitation of the Criminal Appeals:

Article	Description of Appeal	Period of limitation	Time from which the period begins to run
1	2	3	4
150	Under the Code of Criminal Procedure, 1988, from a sentence of death passed by a Court of Session 6 or by 7,(the High Court Division in the exercise of its original Criminal Jurisdiction).	Seven days	The date of the sentence
154	Under the Code of Criminal Procedure, 1898, to any Court other than the High Court Division. from.	Thirty days	The date of the sentence or order appealed
155	Under the same Code to the High Court Division, except in the cases provided for by order appealed article 150 and article 157.	Sixty days	The date of sectence or order appealed from
157	Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Sixmonths	The date of order appealed from.

An appeal may lie on a matter of fact as well as on a point of law (section 418 Cr.P.C.). Every appeal shall be made in the from of a petition in writing presented by the appellant or his pleader, and every such petition is to be accompanied by a copy of the judgment or order appealed against unless the Court otherwise directs.

Revision

The power of revision has been given in the Cr.P.C. to the High Court Division as also to the Sessions Judge which includes Additional Sessions Judge as per provision contained in section 439A(3) Cr.P.C. As against appeal, revision may be allowed by the Appellate Courts on the point of law only and not on the point of facts . Revision cannot be claimed as a matter of right, it is rather the discretion of the superior Court. Unlike appeals, in case of revision the Court may even enhance the sentence. Section 439 Cr.P.C. provides that no order under revision shall be made to the prejudice of the accused unless he has had an opportunity of being heard . Where the sentence dealt with under this section has been passed by a Magistrate the Court shall not, however, inflict a greater punishment nor shall the High Court Division convert a finding of acquittal into one of conviction. Moreover, the convicted person shall be entitled also to show cause against his conviction.

Under section 439A the Sessions Judge has also been empowered with the revisional power. Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge in relation to such person shall be final. An Additional Sessions Judge shall have and may exercise the powers of a Session Judge under this chapter which may be transferred to him under any general or special order of the Sessions Judge.

Under section 442A, an Appellate Court shall dispose of an appeal filed before it within 90 days from the date of service of notice upon respondents. A Court having power of revision shall dispose of a proceeding in revision within 90 days from date of service of notice upon the parties.

Under recent Supreme Court rulings, while discharging the rule in a criminal revision for default of the petitioner, the Court is not justified in commenting in the merit of the case (Md. Torab Ali Biswas Vs. The State and others. -BLD Feb. 1984, P. 34). No revision in the High Court Division is maintainable against order passed by the Sessions Judge in revision (Shafiqur Rahman Vs. Nurul Islam Chawdhury and other.- BLD October, 1983, P. 279) .High Court Division has jurisdiction to interfere with finding with fact in revision if illegalities are found in the order of the Court of appeal below (Tofazzal Hossain Shaikh Vs. Mir Mohammad Akand and others. -BLD June, 1984, P. 156). No revision lies before the Sessions Judge against an order of acquittal when the appeal lies to the High Court Division (Ali Hossain and others. Vs. State and another. -BLD Feb. 1985, P. 28).

CHAPTER XXV

OPENING AND MAINTENANCE OF CASE RECORDS AND WRITING OF ORDERSHEETS

Opening and Maintenance of a Case Record

Opening of a case record in complaint cases as well as police cases is the responsibility of the Court staff, namely, the Bench Assistant (Peshkar) and the Court Police (G.R.O.). As soon as a petition of complaint or any other petition is filed in the Court for taking action it is the duty of the Peshkar to place it before the Magistrate after attaching an order sheet. Atop the opening order sheet the name of the Court, and its location, and other necessary particulars as per the printed form need be writting by the Peshkar when it is placed before the Magistrate for his action. Similarly, almost in the same manner the G.R.O. of the Court police establishment will put up the F.I.R. along with an order sheet before the Magistrate incorporating necessary particulars . It will be helpful for all concerned, particularly, when such case records are sent to the Courts of the SJs, DMs, ADMs and other Courts as and when ordered and to the copying section when called for . The FIR should be put up before the Magistrate as soon as it is received from the P.S. Magistrate will put his signature on the FIR and incorporate it in the order sheet and fix up a forward date for the report of I.O. In view of the statutory time-limit for the completion of investigation of a case by the police it is all the more necessary that a case record be opened as soon as the FIR is received in the Court and it should be placed before the Magistrate as quickly as possible.

When a case is received in the Trial File of a Magistrate the Peshkar should attach a Title Page on the case record . It should be separated into two files-`A' File and `B' File. In the `A' File papers like Order sheet. FIR , Seizure list. C.S., statements recorded u/s 164 Cr.P.C., T.I. Parade reports, etc., in respect of police cases and the P/C, statements of the complainant and his witnesses recorded u/s 200 Cr.P.C., M.Cs title documents etc. in Complaint cases, may be kept together systematically. And in the `B' File papers like Haziras, bail bonds, Vokalatnamas , day-to-day petition etc. Will find place. Besides the convenience of higher Courts and others concerned including the copying section, it will also be helpful for the Magistrate himself while taking action u/s 241 A and u/s 242 Cr.P.C. (consideration of charge and framing of charge). In `C' File all exhibits are to be kept and maintained with an Index.

Writing of Ordersheets

Ordersheets are an integral part of a case record. It is the official recording of each transaction of a case on various dates of hearing concerning both prosecution and defense. It forms part of the evidence . Hence, ordersheets should always be written in the proper manner. But in some Courts, Magistrates are found get it written by their Bench Assistants (Peshkars) or G.R.Os for certain portion of the day's order sheet. In some other Courts Rubber stamps for a particular type of routine orders, are used in the order sheet. It is true, that the practice has developed over the years in the different Court establishments .

But it should be mentioned that ordersheets of a case should be written by the Magistrate himself in his own hand . It should be brief, precise and legible. As far as practicable,its language and presentations need be concise. Sufficient care and attention be devoted in writing ordersheets in reference to the day's transaction of the case . While writing ordersheets the Magistrate may take the assistance of peshkar/G.R.O regarding factual situations like presence or absence of accused or complainant, receipt of reports, etc. But under no circumstances a Magistrate should take such assistance when it relates to a decision or refers to an action taken in the case. Fixing up of a date in a case is a matter of decision and "Exd. the Complt. on S.A." is a matter of both decision and action. The use of rubber stamps for orders like "Exd. the complt. on S.A.","Exd. the complt. on S.A. and the provisions of sec.200 Cr.P.C. complied with". etc. and writings like "Examn. of complt. on S.A." " I, c.a." etc. must be avoided . All such orders and writings should be in the hand of the Magistrate himself . Appropriate columns of the order sheet form, viz, Sl.No., Date, Order and Signature need be properly maintained and utilised while writing orders.

Incomplete orders as to show cause, appearance, W/As, W/Ws, etc. should not be passed by Magistrates in the order sheet. Endeavours should be there to ensure that there is no ambiguity nor any mistake in it. All such orders either in favour or against any person reproduced in the order sheet should be an order complete in itself . Experience shows that incomplete or defective orders do create difficulties for the executing agency and, at times, become embarrassing for them in taking action.

For example, orders like ,"O.P. to show cause," " Ask 2nd Party-men to show cause", "Issue S/W", " Issue W/A against the accds. u/s 379 BPC," " Issue S/W", " Issue W/W" and so on are not only incomplete orders, but also defective orders. Magistrate should refrain from passing such orders in the ordersheets . Given below are a few specimen order of routine nature, which may be said to be complete and proper orders:

(i) O.Ps. A,B and C are directed to show cause as to why a proceeding u/s 107 Cr.P.C. shall not be drawn against each of them.

(ii) Issue summons against accds. A,B and C for an offense u/s 379 P.C.

(iii) Issue a S/W U/s 100 Cr.P.C. for the recovery of D, wife of the petitioner. Ifrecovered, she should be released on a bond of Tk. 2000 in the custody of her father/uncle/elder brother or any other responsible person of her choice on condition that the surety/jimmadar will produce her before this Court on the next date.

To ... ...

(iv) Issue W/W against all PWs cited in CS with a bail of Tk. 500 each.

(v) Complt. present. Exd. him on S. A. Seen the medical certificate. Heard. Issue summons against accds. A and B for offense u/s 448/324 P.C.

To ... ...

(vi) Exd. the complt. on S.A. 2 more witnesses are also exd. as produced by him. Heard. The alleged offense appears to be serious. Issue W/A against accds. A, B and C for an offense u/s 365 P.C.

To ... ...

(vii) Complt. present. Exd. him on S.A. Heard submissions on his behalf. To Chairman, ... Union Parishad, for an inquiry and report.

To ... ...

CHAPTER XXVI

METROPOLITAN MAGISTRACY

The Code of Criminal Procedure, 1998 (Act V of 1898) was amended by Ordinance No. LXXXVI of 1976 dated 5.11.76. The object of the amendment was to provide for a separate Magistracy for a Metropolitan Area and for ancillary matters . It was provided in the Ordinance that it would come into force on such date as the Government may by notification in the official Gazette, appoint. Accordingly, the Government was pleased to appoint the 10th of August, 1979 under SRO No. 225-L/79 dated 6-8-79 as the date on which the said Ordinance came into force, and thus the Dhaka Metropolitan Magistracy came into existence, that is, with effect from August 10, 1979.

Again, on the 3rd November, 1979, the Code of Criminal Procedure 1898, was further amended and the Code of Criminal Procedure (Amendment) Ordinance, 1979 (Ordinance No. XXX or 1979) was promulgated .This Ordinance was, however, repealed and replaced by Act IV of 1980 dated 8-3-80 and the Chittagong Metropolitan Magistracy came into being on November 30, 1979 under S.R.O. No.1455-MHA (PLIV) dated 26-9-79.It is pertinent to mention here that the Dhaka Metropolitan Police Ordinance,1976 (Ordinance No. III of 1976) dated 17-1-76 and the Chittagong Metropolitan Police Ordinance,1978 (Ordinance No XLVIII of 1978) dated 18-11-78 came into force on 1-2-76 and 22-11-78 respectively.

The Khulna Metropolitan Police Ordinance, 1985 (Ordinance No LII of 1985) dated 26-10-85 came into force on ..... The Khulna Metropolitan Magistrate was established on ..... July, 1986 under S.R.O. No..... dated..... The Magistrate started functioning with one CMM and two MMs on and from .... It may be mentioned that the Dhaka Metropolitan Police Ordinance, 1976 (Ordinance No III of 1976) Provides that the Police not apply to the Dhaka Metropolitan Area. But the Chittagong Metropolitan police Ordinance 1978 (Ordinance No. XL VIII of 1978). states that the provision of the Police Act.1861, so far only as they are not inconsistent with any provision of this Ordinance, shall apply to the Chittagong Metropolitan Area. Name is the provision in this regard in the Khulna Metropolitan Police Ordinance, 1985. Hence, the Police Regulation Bengal, 1943, have no manner of application in the Dhaka Metropolitan Area, while they are applicable in the Chittagong and Khulna Metropolitan Areas in so far as not inconsistent with any provision of the said Police Ordinances.

The Dhaka Metropolitan Area now comprises of the areas included within the

boundaries of the following police stations in the district of Dhaka:

1.	Kotwali	7.	Tejgaon	13.	Shabuj Bag
2.	Sutrapur	8	Mohammadpur	14.	Uttara
3.	Ramna	9.	Dhanmondi		
4.	Lalbagh	10.	Mirpur		
5.	Motijheel	11.	Cantonment		
6.	Demra	12.	Gulshan		

The Chittagong Metropolitan Area comprises the areas included within the boundaries of the following police stations in the district of Chittagong:

1.	Kotwali	4.	Port
2.	Panch Laish	5.	Chandgaon
3.	Double mooring	6.	Pahartali

The Khulna Metropolitan Area comprise the areas included within the boundaries of the Khulna and Daulatpur police stations in the District of Khulna.

The code of Criminal Procedure provides for 5 classes of Criminal Courts in Bangladesh including the Metropolitan Magistrates (sec.6) .It has further been provided that the Government shall appoint a Chief Metropolitan Magistrate and such other Metropolitan Magistrates as it may deem fit for the purposes of the Code in a Metropolitan Area. Provisions are also there for the appointments of Additional Chief Metropolitan Magistrates to exercise jurisdictions in all places within the Metropolitan Area for which appointments have been made. The jurisdictions of the District Magistrates and all other Magistrates, namely Magistrates of the first, second and third classes of the district have been excluded from a Metropolitan Area. A Metropolitan Area shall be deemed to be a sessions division, but as a transitory provision, it has been provided that until the Metropolitan Court of Session is established the Court of Session exercising powers and jurisdiction in relation to a Metropolitan Area shall continue to exercise its powers and functions.

The Chief Metropolitan Magistrate is vested with considerable administrative authority over the other Metropolitan Magistrates,and can distribute the work arising for disposal among the various Courts as much as he chooses. He has, of course judicial authority over the police, but the executive authority over them , which in a district is vested in the District Magistrate, belongs almost entirely to the Police Commissioner. When sitting in Court, the CMM has no greater authority than any other MM except that he can issue warrants for searches for documents and things in the custody of Postal and Telegraph authorities and that only he can take cognizance of a charge made against a

married man of committing rape upon the person of his wife or commit such a man for trial. He has also judicial and quasi-judicial powers which are not possessed by other Metropolitan Magistrates. All Metropolitan Magistrates,including the Additional Chief Metropolitan Magistrates and Bench of such Magistrates shall be subordinate to the Chief Metropolitan Magistrate. The CMM is authorised to make , from time to time , rules or give special orders consistent with the Cr.P.C. as to the distribution of business among the Metropolitan Magistrates . It may be stated here that the CMM . or the ACMM is also a Metropolitan Magistrate, but a Metropolitan Magistrate is not CMM or ACMM. A Metropolitan Magistrate has inherent powers of taking cognizance u/s 190 and of summary trial u/s 260 . But he has no power to transfer cases u/s 192 Cr.P.C.

As to the provisions of the Cr.P.C. relating to "Public Nuisances" (section 133) and "Temporary orders in urgent cases of nuisance or apprehended danger" (Section 144), the Metropolitan Magistrates has no jurisdiction. All such matters are to be attended and dealt by the Police Commissioner of a Metropolitan Area in accordance with the provisions of the Metropolitan Police Ordinances of the Area concerned.

The Chief Metropolitan Magistrate or an Additional Chief Metropolitan Magistrate is authorised to try all offenses mentioned in column 8 of the 2nd Schedule of the Cr.P.C. This is in accordance with the principle as laid down in section 28 of the Cr.P.C. All such Magistrates have power to deal with all cases shown in that schedule to be triable by them . They ought to dispose of all such cases which their power of punishment enable them to punish adequately.

It may be mentioned here that the Metropolitan Magistrates enjoy a unique position in the Galaxy of Magistracy. In this connection the relevant section of the Cr.P.C.(section 25) is reproduced below.

In virtue of their respective offices,the Judges of the Supreme Court are Justices of the Peace within and for the whole of Bangladesh, Sessions Judges, District Magistrates and Metropolitan Magistrates are Justices of the Peace within their respective jurisdictions.

CHAPTER XXVII

HOLDING OF MOBILE COURTS BY MAGISTRATES

Every law is enacted and promulgated by the Government with a view to its being observed by all citizens . Any violation is actionable according to the provisions of the particular law . As soon as any such violation is detected by the authorised agency and reported to the Magistrate or Court competent to take action will try the case and punish the offender in the prescribed manner. A Magistrate's role is adjudication of the offense on receipt of a prosecution report from the appropriate authority as provided in the particular statute . Before taking action under any law a Magistrate will satisfy himself that he has jurisdiction to do it and that the prosecuting agency is the appropriate authority under the particular law.

Mobile Courts are held mainly looking to the convenience of the parties concerned . It helps correct and timely detection as to the violation of prescribed laws and rules thereunder . It also facilitates quick disposal of cases. Detection and prosecution of offenses and trial of offenders at the spot and disposing of the case instantly are not only convenient to all concerned,but it has also a salutary effect on the prevention and recurrence of such offenses.

Needless to mention that a Magistrate having power of taking cognizance is competent to hold his Court at any place within his territorial jurisdiction. In selecting the venue for holding a Mobile Court the Magistrate will consider the convenience of all and ensure necessary facilities as much as possible. He will also see that discipline , decency and decorum of the Court is well maintained. Adequate security arrangements should not be ignored. Before the commencement of the Court proceedings all arrangements indicated above need be checked up and completed.

On receipt of prosecution reports from the competent officer the Magistrate shall consider the charge and frame the charge according to law (sections 241A and 242 Cr.P.C.) and obtain the plea of the accused .If the accused pleads guilty the Magistrate will take action accordingly and award punishment when he decides to do so. If the accused does not plead guilty the Magistrate will fix a date for hearing,release the accused on bail and direct him to appear in his Court on the date fixed. In holding trial and disposing of cases in a Mobile Court by a Magistrate necessary assistance from his Bench Assistant and Peon may be taken. Steps should also be taken to ensure proper preparation, maintenance and safety of all papers and case records. Imposed fines should be realised, accounted for and deposited quickly according to rules.

Listed below are some of the enactments for the violation of which Mobile Courts are generally held:

1. The Motor Vehicles Ordinance, 1983
   (Ordinance No. LV of 1983)
2. The Pure Food Ordinance, 1959
   (Ordinance No. LXVIII of 1959)
3. The Control of Essential Commodities Act, 1956 (Act I of 1956)
4. The Shops and Establishment Act, 1965
   (Act VII of 1965)
5. The Railway Act, 1890
   (Act IX of 1890)
6. The Cinematograph Act, 1918
7. The Places of Public Amusement Act, 1933
   (Act X of 1933)
8. The Forest, Act 1927
9. The Electricity Act, 1910
10. The Vagrancy Act, 1943
11. The Public Gambling Act, 1867
    (Act II of 1967)
12. The Telegraph Act, 1885
13. The Excise and Salt Act, 1944
14. The Prohibition of Smoking in Show Houses Act, 1952 (Act XIII of 1952)
15. The Essential Articles (Price Control and Anti-hoarding) Act, 1953 (Act XII of 1953)

CHAPTER XXVIII

LAWS RELATING TO CONTEMPT OF COURTS

Contempt of Court is a disobedience to the rules, orders,process or dignity of a Court, which has power punish for such offense by attachment. Contempts are either direct, which only insult or resist the powers of the Court or the persons of the judges who preside there; or consequential, which without such gross insolence or direct opposition plainly tend to create a universal disregard of their authority. Contempts may be divided into acts of contempts committed in the Court itself and out of Court.- Wharton's Law Lexicon.

Contempt of Court is either (1) Criminal Contempt consisting of words or acts obstructing , or tending to obstruct the administration of justice or (2) Contempt in procedure, consisting in disobedience to the judgments , orders or other process of the court and involving private injury. -Halsbury's Laws of England , 3rd Ed. Vol.8,pp.2 & 3.

The over-riding question in all cases of contempt of Court must,however,be whether the action or remark of the alleged contemner is or is not calculated to interfere with, interrupt or thwart the course of Justice. Unless the question can be answered in the affirmative, there can be no case of contempt of Court. There are two kinds of this offense; one direct and another indirect. If a person makes any remark derogatory to the dignity of the Judge, and if that remark is calculated either to put the judge in an embarrassing position so that free administration of justice is jeopardised or to make the litigant public lose confidence in him, he thwarts justice indirectly and commits contempt of Court of the kind which has been called scandalizing a Court or a Judge . No action can,however,be taken if the criticism is reasonable and is offerred for the public good. Action can be taken for contempt if the criticism is made against the judge in his judicial functions. -State Vs. Tribhuvan Nath-AIR 1959 Pat. 262: ILR 37 Pat. 1130.

For contempt of Courts relevant laws are (a) section 228 of the Penal Code,(b) Section 228 P.C. read with section 480 Cr.P.C. and (c) The Contempt of Courts Act, 1926 . Offenses against the public justice are distinct from those of contempt of Courts. Section 228 P.C. Provides that whoever intentionally offers any insult , or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding shall be punished with simple imprisonment for a term which may extend to 6 months ,or with fine which may extend to Taka one thousand or with both. This is the only section of the Penal Code which deals with contempts committed against a judicial officer,that is to say,a Court. In cases coming under this section the Court is both prosecutor and judge,and so the powers under this section should be used only in

exceptional cases . Courts taking action under this section ought not to give room for the impression that they are unduly sensitive.

The object of this section is to punish a person who intentionally insults in any way the Court administering justice,It is to preserve the prestige and dignity of the Court that this section is provided. It lays down the highest sentence that could be inflicted for contempt of Court. Under section 480 Cr.P.C. a person guilty of contempt of Court may be dealt with summarily ,but in such cases he can be only fined . The Penal Code does not provide against a contempt of Court committed by the publication of a libel out of Court,when the Court is not sitting , and neither in Chapter XXI (of defamation) nor elsewhere does it provide for the punishment of a contempt of Court committed by the publication of libel reflecting upon a Judge in his judicial capacity,or in reference of libel reflecting upon a Judge in his judicial capacity,or in reference to his judicial conduct in the discharge of his duties.-10 Cal.130.

The other legal provision for contempt of Courts is available in the Contempt of Courts Act, 1926 (Act XII or 1926).

Procedures in respect of taking action for contempt of Court will vary according to situations and circumstances. **Firstly,** there may be situations when the contempt is committed in the presence or view of the presiding officer of the Court within his court-room and the contemner is present before the Court. **Secondly,** occasions may also be there when the contempt is committed in the presence or view of the Court, but the contemner has left the court room and not available for action instantly. Or the Court does not see fit to deal with the offense committed in its view and presence by means of summary powers u/s 480 Cr.P.C. either because it considers that for personal or administrative reasons it is inadvisable to do so,or because it considers that a fine not exceeding Taka two hundred is not an appropriate punishment. In the circumstances the outraged Court, in the alternative, may record the facts constituting the offense and forward the case to a Magistrate haveing jurisdiction to try the same. **Thirdly,** there also occasions when the contemptuous act is done outside the Court (beyond the view or presence of the Court)by making statements, speeches, writings, publications through leaflets, posters ,newspapers, etc . Generally , actions for contempts committed in the first and second situations stated above are taken u/s 228 P.C. read with section 480 Cr.P.C. and only u/s 228 P.C. respectively. But for contempts committed through the means indicated in the third category mentioned above, action is always taken under the provisions of the Contempt or Courts Act, 1926.

PROCEDURE FOR ACTION U/S 228 P.C. READ WITH SEC.480 CR.P.C

In such cases Magistrate may cause the offender to be detained in custody . Any action for an offense u/s 228 P.C. read with section 480 Cr.P.C. shall be taken before rising of the Court . It should be ascertained that the insult or interruption was done intentionally while the Court was sitting in any stage of a judicial proceeding. Under this section Courts are given power to punish summarily offenses of these kinds committed in their view and presence by any offender . Upon the commission before it of any such contempt of its authority, any Court may cause the offender to be detained in custody. Then, the Court must take cognizance of the offense before if finally rises on the same day. It must record the facts constituting the offense, which ought to , and will usually, be already on record on the file of the case in the course of which the offense was committed. But a fresh record must be made of them, by way of transcript from the other record of otherwise , for the purposes of summary criminal proceeding. Then the offender must be given opportunity to make any statement he may desire to make in his defense, and all that he says must be recorded . Only after that , the Court may record its finding and pronounce sentence. The provisions of section 367 Cr.P.C. do not seem to apply to judgments in these cases , but enough should be said to show exactly what offense is made out , what the facts of the case are and what defense,if any , is made . The conviction and sentence should refer to section 480 Cr.P.C.as well as to the section of the Penal Code. The Code provides if the offense be one punishable u/s 228 P.C. the record is to show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult. In all these summary proceedings the sentence can be one of fine only , and of nothing else, and the fine may not exceed Taka two hundred. If a fine imposed be not paid, the Court may award simple imprisonment for a term not exceeding one month.

In the second category and in accordance with the provisions of section 482 Cr.P.C. the Magistrate to whom the case is forwarded shall proceed to hear the complaint. He will take cognizance and dispose of the proceedings.

Section 484 Cr.P.C. exceptionally enables a Court to review or rescind its own judgment. When action has been taken u/s 480 Cr.P.C. or u/s 482 and an offender has been sentenced or sent to a Magistrate and after being so sentenced or sent he submits to the order or requisition of the Court, or apolozises to the Court,to its satisfaction,for his interruption or insult,the Court in its discretion may discharge him, or remit the punishment awarded,or withdraw the complaint which was made . It is submitted that the case may also be ended by a discharge, upon such submission or apology being made or tendered while the person concerned is being detained in custody, pending the hearing of his case u/s 480 Cr.P.C.

Section 485 Cr.P.C. enables criminal Courts, but no others, to pass a summary short sentence of imprisonment upon any person who either is legally called upon to produce a document or thing and refuses to produce it , the thing being in his power or prossession, or is a witness and refuses to answer the questions properly and legally put to him . This can be done only when no reasonable excuse for the refusal is offered . The person concerned is not bound to prove that excuse. An excuse cannot be branded as unreasonable unless it is quite clear that it could not hold good in law . A Court acting under this section must record its reasons for doing so in writing . The sentence may be either of simple imprisonment or of detention in the custody of an officer of the Court and the term thereof is not to exceed seven days . If during the course of it the person concerned consents to produce the document or thing , or to be examined and to answer , the remainder of the sentence is to be remitted. But if he persists in his refusal,the Court may summarily fine him under the provisions of section 480 Cr.P.C. In these cases the Court should keep a full and detailed record of all that is said and done in the relevant part of the judicial proceedings in the course of which the refusal is made . A double record by both the presiding officer and an official of the Court should be provided, if possible . And the final order sending the refusing person to imprisonment or detention should be sufficiently full. The imprisonment or detention which may be differently ordered u/s 485 Cr.P.C. is a coercive process, and neither follows a conviction, nor has the effect of one . Section 486 Cr.P.C. allows the person affected to appeal against any sentence passed u/s 480 or u/s 485 Cr.P.C, no matter whether an appeal would not lie from an equal sentence passed by the same tribunal at a formal trial. Such proceedings are also open to revision by the High Court Division.

Summary Procedure for Punishment for Non-attendance by a Witness in Obedience to Summons

Section 485A Cr.P.C. provides that if any witness summoned to appear before a Criminal Court is legally bound to appear at a certain Place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart , and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offense and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding Taka two hundred fifty. In every such case the Court shall follow , as nearly as may be practicable, the procedure prescribed for summary trials.

This section does not dispense with mensrea as an ingredient for the offense. The Court should find if the summons has been served and the accused had knowledge about it and did disobey the summons there after Courts should not be too sensitive for

punishing contempts and this power should be used sparingly,i.e.in serious cases only.-AIR 1945 PC 184.

A Judge may take action u/s 485, if a witness refuses to answer such questions as are put to him , but if the questions are themselves meaningless, then the witness has no other alternative but, keeping in mind the dignity of the Court, to keep quiet and respectfully refuse to answer them.-10 DLE 12 WP.

Contempt of Courts Act

The third type of action for contempts of Courts is to be taken under the contempts of Courts Act, 1926 (Act XII of 1926). Provisions of this Act are applicable in all cases of contempts of Courts in whatever manner or at whatever place (outside or inside the court-room) it is committed.

The statute provides that High Court Division shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to them as it has and exercises in respect of contempt of itself. Section 2, sub-section (1) may be seen in this connection.

It has further been provided in the same section, sub-section (3) that the High Court Division shall not take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offense punishable under the Penal Code.

Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may extend to 6 months, or with fine which may extend to Taka two thousand or with both , provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court; Provided further that High Court Division shall not impose a sentence in excess of that specified in this section for any contempt either to itself or a subordinate Court.

The categories of contempt are so manifold that it is not possible to attempt an exhaustive classification of what may or may not constitute a contempt, but generally speaking , any conduct that tends to bring the administration of law by a Court into disrespect or to contumaciously disregard its processes or to interfere with or prejudice parties or their witnesses during the litigation amount to a contempt.-15 DLR SC 150.

The contempt of Court may be committed by:

(i) Scandalizing the Court itself.

(ii) Abusing parties who are concerned in the causes in presence of Court.
(iii) Prejudicing the Public against persons before the cause is heard.

There cannot be anything of greater consequence than to keep the streams of justice clear and pure that parties may proceed with safety both to themselves and their characters.-PLD 1961 Lah. 51.

All publications which offended against the dignity of the Court or are calculated to prejudice the course of justice, will constitute contempt. "Any act done or writing published , which is calculated to bring a Court or a Judge into contempt , or to lower his authority,or to interfere with the due course of justice or the lawful process of the Court". Fair and legitimate comments on judgments of a Court would not be actionable, provided the limits of bonafide criticism are not exceeded.

Any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Court is contempt of Court.-PLD 1964 (WP) Lah. 661 (FB). Criticism of the acts of Courts and judicial officers done in their administrative capacity,if contains improper imputations, amount to contempt of Court. - 10 DLR 309.

To say that a "Magistrate is playing as a tool" in the hands of a party is a serious onslaught on the dignity of the Court and these expressions clearly scandalize the Court.- 19 DLR 526. Scandalization of Court is the grossest form of contempt .

Legal practitioners may be punished for contempt of Court even for language professedly used in discharge of their functions as advocates. An advocate is guilty of contempt in making wild allegations of corruption against the trying Judge without verifying and satisfying himself that the allegations were in fact sustainable. He cannot claim may privilege if not acted in a bonafide and diligent manner. It has been repeatedly emphasised that they are not the agents of the men who pay them , but are acting in the administration of justice and in matters of making applications to Court they are bound to exercise an independent judgment and to conduct themselves with a sense of personal responsibility.-21 DLR 9WP0 264.

A lawyer is expected at all times to maintain the dignity of the Court regardless of the short-comings of the individual presiding over the Court , for , it is not his personal dignity but ;the dignity of his office which has in the public interest to be respected . - PLD 1963 SC 1.

Interference with Course of Justice.

Attempt to influence judicial officers regarding a case-contempt to Court.

From one aspect, anything in the nature of approach to a judicial officer outside the Court while he is seized of a case , in relation to such a case, is per se an interference with justice. -16 DLR (SC) 427.

Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good , no Court could or would treat that as contempt of Court. Justice does not live in seclusion and protection of cloisters : it is an essential part of practical life and should, therefore , be open to fair comments. But , it should run in streams pure and clear and should not be contaminated with night soil. PLD 1962 (1) WP 574 (DB).

A person is guilty of contempt of Court if,in respect of a pending proceeding, he publishes a writing:

(a) in which he assumes the truth of certain facts connected directly or indirectly with matters awaiting the decisions of the Court, or

(b) in which he attacks the conduct and the character of the parties to the proceeding or similarly attacks a person who is one of the principal figures and awitness in the proceeding though not a party to it; or

(c) in which he forecasts the probable judgment of the Court and makes the comment that law and justice would be defeated by such judgment. -(1939) 1 Cal. 399 (SB) .

Comments in a newspaper upon a pending case , which has any tendency to interfere with the due course of justice,or to prejudice the public against persons who are on their trial , is technically a contempt of Court. -(1930) 58 Cal. 884.

A journalist is entitled to comment on matters of public interest and no suit will lie against him unless he has exceeded the bounds of fair comment or was actuated by malice. -20 Bom. L.R. 185.

False statements published in newspapers are not fair criticisms -26 CLJ 401.

Editor cannot plead ignorance of contemptuous matter published in newspapers. Held: It is of no avail to the Editor to plead ignorance of the publication of the contemptuous matter in his newspaper, for,in law he is responsible for everything that is printed in his newspaper. -15 DLR (SC) 355.

The Editor, Manager, Printer and Publisher of a Newspaper must accept the fullest responsibility for everything that is published. It is no excuse or justification to say that it

is a quotation from somebody else. Even the repetition of a contempt is a contempt. - PLR (1964) Dacca 241 (DB)

It is the duty of the Editors , Printers and Publishers of the Newspapers to verify the correctness before they publish and print any news about any Court proceeding. - PLD 1963 Dacca 8.

An apology in a contempt case can be mitigating circumstance only if the contemner surrenders himself unconditionally to the judgment of the Court. An apology after every conceivable defence can hardly be considered to be a genuine apology. -DLR (FC) 19.

Apology tendered by a person guilty of contempt can be taken into consideration if offered unconditionally and as evidence of real contribution. 21 DLR (WP) 264.

A specimen application from the Court of a Magistrate to the Supreme Court, High Court Division , praying action against an alleged contempt under the Contempt of Courts Act, 1926 and the orders passed on the matter by the Hon'ble High Court Division are reproduced below for a perusal and taking guidance: It will help the readers for an appreciation of the precise requirements of such applications and the Hon'ble High Court Division's action thereon.

To
The Registrar,
The Supreme Court of Bangladesh,
Dacca.

Subject: Reference for action under section 3 of the ContemptofCourts Act,1926 (ActXIIof 1926) against Major (Retd.) M.A, Jalil, President of the Jatyo Shamaj TantrikDal (JSD),Mr. Bahauddin Chowdhury, Editor in-charge and Mr.Ruhul Amin Bhuyan, Publisher of the daily Ganakantha.

Reference: Unfair and contumacious comments made by Major (Retd.) M.A. Jalil, President of the Jatyo Shamaj Tantrik Dal (JSD) on 10-3-81 published in the "Daily Ganakantha" on 11-3-81.

I, Md. Ghulam Moula Mazumder, Metropolitan Magistrate, Dacca Metropolitan Area,have the honour to state that a question of taking motion under the Contempt of Courts Act ,1926 , has arisen out of the following facts and circumstances:

Statement of facts.

1. That with the introduction of Metropolitan Magistracy in Dacca Metropolitan Area in August, 1979, Government felt the necessity of organising Courts in the different parts of the city to put an effective check on the violation of Traffic Laws and other Special Laws. The increasing number of road accidents and consequent loss of human life and property created a grave and alarming situation. In order to restrict and eliminate all illegal and hazardous activity in the congested and over-crowded city roads Government provided the Dacca Metropolitan Magistracy with transports and necessary manpower for holding Courts regularly against the traffic law violators . Since January ,1981,3 (three) Magistrates have been holding such Courts regularly in the different areas for 5 days in a week with the assistance of the Dacca Metropolitan Police. Reports of activities of such Courts are required to be submitted on daily and weekly basis. I am one of those Magistrates who are assigned with the duties of holding such Courts against the offenses of traffic violations and other Special Laws in the different areas of the Capital City.

2. That on 9-3-81 at about 11 A.M. I was holding Court at the Moghbazar crossing within P.S. Ramna and was trying cases prosecuted under the Motor Vehicle Act (Act VI of 1939). I received 8 prosecution reports from the attending police officer . The Court was being held on the wide road side assisted by my bench clerk , orderly peon and police personnel . When I was engaged in the disposal of the cases and the proceedings of the Court were going on , suddenly at about 12-30 hours about 150 unruly hooligans attacked all of us shouting against the police and holding of the Court and trial of cases . They began to assault me with lathis , iron rods , fists and blows . I was seriously injured in different parts of my body including a fracture of my nasal bridge bone wherefrom there were profuse bleeding's . The Government Microbus used by me was seriously damaged by the miscreants with iron rods and brick bats. Within 10/12 minutes the miscreants fled away. They also snatched away my wrist watch and money bag . I was then taken to the Rajar Bagh Police Hospital where I was rendered first aid and thence to Dhaka Medical College Hospital for treatment from where I was released on 21-3-81.

3. Police Sgt. Md. Liakot Ali who was present at the time of occurrence lodged a written FIR with O/C Ramna P.S. on the same date over the exceedent, which has been registered as Ramna P.S. Case . NO.32(3)81 u/s147/148/353/332/379/427/323/325/34 P.C. He has named 7 assailants whom he and others could identify at the time of occurrence . Subsequently 4 other assailants were identified in a T.I. Parade. The case is now pending investigation by police and report.

4. As published in the daily Ganakantha of the 11th March '81,it appears that while commenting on the holding of the Court by me and the incident of the date (i.e.9-

3-81) Major (Retd.)M.A. Jalil,President of the Jatyo Samaj Tantrik Dal, made the following contemptuous statement in a Press Conference held by him on Tuesday the 10th of March, 1981;

"জাসদ সভাপতি বলেন, "ভ্রাম্যমাণ আদালতে কর্তব্যরত ম্যাজিষ্ট্রেট ঘুষ গ্রহণকালে জনগণের হাতে প্রহৃত হন। তাই ঘুষখোর ম্যাজিষ্ট্রেট নয়, ভ্রাম্যমাণ আদালতের জন্য সৎ ম্যাজিষ্ট্রেট চাই। কিন্তু এই ঘটনাকে কেন্দ্র করিয়া ইতিমধ্যে ২০০ ট্রাক ড্রাইভারকে গ্রেপ্তার করা হইয়াছে। তাদের উপর অত্যাচার চালান হচ্ছে। এ সব করে সরকার দেশকে গৃহযুদ্ধের দিকে ঠেলে দিচ্ছে"। মালিক, শ্রমিক ও সরকারের প্রতিনিধি সমন্বয়ে যানবাহন নিয়ন্ত্রণের ব্যাপারে ভ্রাম্যমাণ আদালত গঠন করার জন্য তিনি দাবী করেন"।

5. A copy of the paper cutting of the Ganakantha published on March 11,1981, is enclosed herewith for favour of kind perusal and ready reference. In the above publication there is a positive imputation that I was taking bribe while holding Court on that day but it is fully false, frivolous and vexatious and inconceivable. These comments as published in the said daily newspaper are false, malicious and highly motivated. These are highly contemptuous and derogatory to the dignity and prestige of a Court. This has greatly affected and undermined my position and integrity as a Court and has also lowered the image of Magistracy in the estimation of the general public. The further statement that the Magistrate while working in the Court was beaten by the members of the public while he was taking bribe,is also totally false. The incident of the hooliganism on the Court on that date was published in most of the dailies of the city and it was condemned by many leaders and organisations. The aforesaid comments amount to a contempt of Court and, therefore, actionable under the appropriate provision of the law.

Prayer.

6. In the circumstances, I would humbly pray that steps may kindly be taken for drawing up of proceedings under the Contempt of Courts Act, 1926 against the persons whose particulars are given below or take such other action or actions as the Hon'ble Court may deem fit and proper .

1. Major (Retd.) M.A. Jalil
President,
Jatyo Shamaj Tantrik Dal
Bangladesh,
958, Outer Circular Road,
Rajar Bagh, P.S. Motijheel, Dhaka.

LIBRARY
Bangladesh publ. Administration
Training Centre
Savar.Dhaka.

2. Mr.Bahauddin Chowdhury,
Editor-in-charge,
Daily 'Ganakantha'
24/GA,Tipu Sultan Road,
P.S. Sutrapur, Dacca.

3. Mr. Ruhul Amin Bhuyan,
Publisher of the Ganakantha,
24/GA, Tipu Sultan Road,
P.S. Sutrapur, Dhaka.

Your obedient servant,

Sd/-
(Md. Ghulam Moula Mazumder)
Metropolitan Magistrate
Dhaka City, Dhaka.

THE 24 TH NOVEMBER,1981

Chowdhury A.T.M. Masud, J:

On a report made by Mr. Md. Ghulam Moula Mazumder,Metropolitan Magistrate,Dhaka city, this Rule was issued calling upon the opposite-parties to show cause as to why they should not be committed for Contempt of Court.

It has been stated in the said report that on 9-8-81 at 11 A.M. the learned Magistrate was holding Court at Moghbazar Crossing within Ramna P.S. for trial of Offenses under the Motor Vehicles Act and at about 12-30 P.M. some unruly persons came, obstructed the trial, attacked the Magistrate and injured him and over the said incident Ramna Police registered a case,which is under investigation by the Police. It has further been stated in the report that in its issue of March 11, 1981 the Daily 'Ganakantha' published report of a press conference held by opposite party No.1 Major (Retd.) M.A. Jalil, on 10-3-81 wherein he made imputation that the Magistrate was taking bribe while holding Court on 9-3-81 . Opposite party No.2 Mr.Bahauddin Chowdhury is the Editor-in charge and opposite party No.3 Mr. Ruhul Amin Bhuyan is the publisher of the Daily Ganakantha.

In answer to the Rule the opposite parties entered appearance and were represented by Mr. A.N.M. Gaziul Hoque.The opposite parties remained personally present in Court at the time of hearing of this Rule,as directed by this Court.

Mr. Moazzem Hossain,the learned Deputy Attorney General appeared on behalf of the State.

Mr. Gaziul Hoque , the learned advocate appearing for the opposite parties has taken us through the affidavits filed by them as well as through the impugned publication . He submits that opposite party No.1 is President of a political party viz .Jatyo Shamaj Tantrik Dal and the press conference he addressed on 10-3-81 covered many topics of public interest. Besides,in the said press conference a large number of truck drivers met the opposite party No.1 and brought to his notice their grievances and at the haste of a press conference opposite party No. 1, without intending any disrespect to Magistracy or to any particular Magistrate, in good faith, made the impugned statement for which he had expressed his genuine regret and repentance.

In his affidavit, after narrating the circumstances under which the impugned statement was made, opposite party No.1 states that he has the highest respect for the judiciary including the Magistracy and that he never named any particular Magistrate in his statement and he never made any imputation that Mr. Md. Ghulam Moula Mozumder was taken bribe while holding Court on 9-3-81 . He has categorically stated that his

demand for appointment of honest Magistrates for mobile Courts is never directed against nor intended to offend the learned Magistrate Mr. Md. Ghulam Moula Mozumder. Opposite Party No.1 has, however, expressed his regret and repentance and offered unconditional apology.

We have perused the impugned statement published in the Daily Ganakantha.

Opposite party Nos.2 and 3 have stated in their affidavits that they published the entire report of the press conference including the impugned statement in good faith and without any malice or motive whatsoever, without realising whether it contains any element of contempt of Court. They also expressed their regret and repentance and offered unconditional apology .

Although the name of any particular Magistrate was not mentioned in the impugned statement but the scope of misunderstanding cannot be totally ruled out . Any way reading the entire impugned statement it would appear that the real demand of opposite party No.1 was the constitution of mobile Court for traffic control with representatives of the employers, employees and the government and incidentally he made certain comments about the magistracy holding mobile Courts.

We are, however , of opinion that as a President of a political party he should have guarded his language while making comments about the Magistrates holding mobile Courts. We disapprove the language he used in making comments about the Magistrate holding mobile Court,more so when a specific case is under police investigation.

As regards opposite party Nos.2 and 3,they being associated with the Publication of a Daily News Paper,they should have been more careful in publishing statements containing comments about the Magistracy.

Having considered the facts and circumstances of the case,and in view of the regret expressed and unconditional apology tendered by the Opposite Parties, which we have accepted, with the observation made above, we exonerate the opposite parties of the charge of contempt. The Rule is accordingly disposed of .

I agree

A. T. M. Masud

MD. ALTAF HOSSAIN 'J'

M. A. Hossain

CHAPTER XXIX

SOME IMPORTANT PROVISIONS OF THE VILLAGE COURTS ORDINANCE, 1976

Ordinance No. LXI of 1976

The Ordinance was promulgated on July 31, 1976 and November 11, 1976 was the appointed day on which it came into force under Notification No. S.R.O. 353-476 dated 20-1-76. Subsequently, it was amended by Ordinance No. VIII of 1978 and Ordinance No. IV of 1979. Some provisions of the V.C. Ordinance, which are of particular relevance,to the Upazila Magistrates are discussed here. These provision shall apply only to areas which are within the limits of a Union Parishad.

Jurisdiction
(Section 3 V.C)

All cases relating to offenses specified in Part I of the Schedule and to matter specified in Part II thereof shall, save as otherwise provided in the Ordinance be triable by Village Courts, and no Criminal or Civil Courts shall have jurisdiction to try any such case or suit .

A Village Court shall be constituted and shall have jurisdiction to try a case when the parties to the dispute ordinarily reside within the limits of the Union in which the offense has been committed with respect to a criminal case or the cause of action has arisen with respect to a civil suit.

Where one of the parties to a dispute ordinarily resides, and if the offense has been committed or the cause of action has arisen within the jurisdiction of one Union; and the other party ordinarily resides within the jurisdiction of another Union, then, a Village Court may be constituted in the Union in which the offense has been committed or the cause of action has arisen. But in any such case or suit each party shall have the right to nominate its representative from its own Union (section 6).

Composition
(Section 5 V.C)

A Village Court shall consist of a Chairman and two members to be nominated, in the prescribed manner, by each of the parties to the dispute. But one of such two

members shall be a member of the Union Parishad concerned. The Chairman of the Union Parishad shall be the Chairman of the Village Court. If, for any reason, he is unable to act as Chairman or his impartiality is challenged by any of the parties concerned any member, other than nominated members, of the Union Parishad appointed by the S.D.M.(Upazila Magistrate) shall be the Chairman of the Village Court.

If either party to the dispute consists of more than one person, the Chairman shall call upon the persons constituting that party to nominate two members on their behalf, and if they fail so to nominate, he shall authorise any one of such persons to do so. The persons so authorised shall alone have the right to nominate such members.

If any party to the dispute does not find any of the Union Parishad to be impartial, he may seek the permission of the Chairman to nominate any other person to be a member of the Court in place of the member of the Union Parishad. If the Chairman is satisfied that there are good grounds for giving such permission, he may permit the party to do so.

Where the members required to be nominated are not nominated within the prescribed time , the Village Court shall without such members, be deemed to have been validly constituted and trial shall proceed accordingly.

Powers of a Village Court
(Section 7 V.C)

A Village Court shall have no powers to pass a sentence of imprisonment or fine. But if it holds a person guilty of a criminal offense as per Part I of the Schedule, it may order to pay the aggrieved party a compensation of an amount not exceeding Tk. 5 thousands.

Finality to the Decision
(Section 8 V.C)

If the decision of a Village Court is unanimous or by a majority of 4 to 1 , the decision shall be final and binding on the parties . No appeal lies from such a decision . It shall be enforceable in accordance with the provisions of the Ordinance . Only when the decision is by a majority of 3 to 2 , any party may, within 30 days of the decision apply to the S.D.M.(Upazila Magistrate). If the Upazila Magistrate is satisfied that there has been a failure of justice he may either set aside or modify the impugned decision or direct the dispute referred back to the Village Court for reconsideration.

It is necessary to mention here that the Code of Criminal Procedure provides under section 13A sub-section (2) that a Upazila Magistrate shall have all the powers of a Sub-

divisional Magistrate under that Code. After the decentralisation of the judiciary such application shall now lie with the Upazila Magistrate . Under sections 10 and 11 a Village Court is empowered to pass a sentence of fine upto Tk.250/- and 500/- respectively for the willful disobedience to comply with summons and for contempt in reference to its proceedings.

Recovery of Fine
(Section 12 V.C)

Section 12 of the Ordinance provides that where a Village Court imposes a fine under sections. 10 or 11 and such fine is not immediately paid,it shall record an order stating the amount of fine imposed and the fact that it has not been paid , and shall forward the same to the Union Parishad concerned which shall proceed to recover it in the same manner as a tax levied by a Union Parishad is recovered under the local Government Ordinance, 1976 (XC of 1976) as if such fine is a tax levied by the Union Parishad.

Transfer of Certain Cases
(Section 15 V,C)

Under section 15 of the Ordinance , if the circumstances of the case falling within the jurisdiction of a Village Court are such that public interest and ends of justice demand its trial in a criminal Court, the S.D.M.(Upazila Magistrate) may withdraw the same from the Village Court and forward it to the criminal Court for trial. In the same way a Village Court also forward a case to the criminal Court for trial and disposal if the ends of justice demand a punishment for the accused under section 15(2) of the V.C. Ordinance. .

Similarly, the fact that some offenses are triable under the Ordinance by Village Courts does not, however, prevent the police from investigating any such offense being a cognizable offense, but the concerned criminal Court is competent to direct that same be tried by a Village Court (section 16).

Procedure
(Section 13 V.C.)

Save as otherwise expressly provided by or under V.C. Ordinance, the provisions of the Evidence Act, 1872, the Code of Criminal Procedure , 1998 and the Code of Civil Procedure, 1908, shall not apply to proceedings before any Village Court.

Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before any Village Court.

SCHEDULE
PART I

CRIMINAL CASES

1. Sections 143 and 147 of the Penal Code (Act XLV of 1860) read with the 3rd or 4th clause of section 141 of the Code when the common object of the unlawful assembly is to commit an offense u/s 323 or 426 or 447 of that Code, and when not more than 10 persons are involved in the unlawful assembly.

2. Sections 160, 323, 334, 341, 342, 352, 358, 426, 447, 404, 506 (Ist part), 508, 509 and 510 P.C.

3. Section 379 ,380 and 381 P.C. When the offense committed is in respect of cattle.

4. Section 379 P.C., when the offense committed is in respect of any property other than cattle, and the value of such property does not exceed Tk. 5 thousands.

4A. Sections 380 and 381 P.C., when the offense committed is in respect of any property other than cattle, and the value of such property does not exceed Tk. 5 thousands.

5. Sections 403,406 ,417 and 420 P.C.,when the amount in respect of which the offense is committed does not exceed Tk. 5 thousands .

6. Section 427 P.C, when the value of the property involved does not exceed Tk. 5 thousands .

7. Sections 428 and 429 P.C.,when the value of the animal does not exceed Tk. 5 thousands.

8. Sections 24, 26 and 27 of the Cattle Trespass Act, 1871.

9. Attempts to commit or abetment to the commission of any of the above-mentioned offenses.

In this connection it is pertinent to state here that a tendency is found to exist amongst some of the litigants to avoid the jurisdiction of the Village Court Ordinance by adding such sections of the Penal Code which are beyond the jurisdiction of the

Ordinance. With the same end in view while filing cases the number of accused persons or the pecuniary limits are increased. Magistrates should,therefore,carefully scrutinise the petition of complaint and examine the complainant critically at the time of taking cognizance. It is desirable that such tricks, if any, do not escape the notice of the Magistrates and they are capable of detecting it at the proper time and in all such cases appropriate measures are taken by them.

CHAPTER XXX

SOME IMPORTANT PROVISIONS OF EVIDENCE ACT

In a Court of law taking and weighing evidence is of prime importance. It is, therefore, necessary to understand nature, scope and meaning of evidence in the trial of cases as provided in the Evidence Act. In this chapter some important provisions of the Evidence Act, 1872, are high lighted.

In our country the Evidence Act of 1872 is applicable for both Civil and Criminal Proceedings i.e.in all judicial proceedings. Under section 4(m) of Cr.P.C., Judicial proceedings include all proceedings in the Court of which evidence is taken on oath. In a Civil Suit, decisions are taken by the Court on the balance of probability. There, preponderance of probability decide the fate of a particular suit. But in a criminal Court, a case is to be proved beyond all reasonable doubts. It is commonly said that in a criminal Court the presiding Judge or Magistrate must see that no innocent person is punished,even if hundred culprits are set free. Hence there should be no faintest shade of doubt in the mind of the Judge or the Magistrate about the commitment of the crime by the accused, and if any doubt arises in the mind of the Judge or Magistrate, the accused will get the benefit of doubt.

Under the Evidence Act. Evidence means and includes (section 3) :

(1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of facts under inquiry; such statements are called oral evidence.

(2) All documents produced for the inspection of the Court,such documents are called documentary evidence.

Evidence is taken in a Court to prove or disprove certain facts. In the process, there might remain certain facts which are neither proved nor disproved, rather remain not-proved. Moreover a Court may presume certain facts or shall presume certain facts, and certain facts might be conclusive. There are also certain things about which a Court may take Judicial notice (section 57).

Types of Evidence and Examination.

Evidence has been categorised as oral, documentary and material or direct and circumstantial. Documentary evidence is again classified into primary and secondary.

Hearsay evidence is another type. But it is not admitted in the Court except under special circumstances. Similarly, secondary evidence is allowed only when the primary evidence is lost, not found, or disproportionately expensive to produce in the Court, etc.

Examinations are also categorised as examination-in-chief, cross-examination and re-examination. In examinations, leading questions which suggest the answers, are not allowed as a rule (section 141).

Special Features of Criminal Proceedings.

Although in respect of evidence there are similarities between Civil proceedings and Criminal proceedings, there are yet certain general rules and special features of criminal cases with regard to proving a case, which are as follows:

(1) In a criminal case the person accused of the offense is presumed to be innocent until there is proof to the contrary. Criminality is never to be presumed. This is known as presumption of innocence.

(2) It is for the prosecution to prove the guilt of the accused beyond reasonable doubt and not for the accused to prove his innocence (except under certain special circumstances). Where there is a doubt as to whether the accused committed the offense, he should be given that benefit of doubt. That is to say that the burden of proof is generally on the prosecution.

(3) There must be clear and unequivocal proof of the fact that the crime charged has in fact been committed.

Set of Facts

Evidence may be given on two sets of facts :

(1) Facts in Issue

(2) Relevant Facts

Fact by itself means and includes (section 3):

(1) Anything, set of things or relation of things capable of being perceived by senses.

(2) Any mental condition of which a person is conscious.

Certain objects arranged in a certain order or a man hearing or seeing something, a man's words, a man's holding certain opinion or a man's having certain reputations-are all facts.

Facts in issue are those which are alleged by one party and denied by other on pleadings in a civil suit ; or alleged in the charge and denied by the plea of not guilty in a criminal case, so far as they are in either case material. Facts in issue means and includes any fact from which either by itself or in connection with other facts, the existence, non-existence nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

In the second category comes that relevant facts (sections 6-16).All those facts which in the eye of law so connected with or related to the fact in issue, that they render the latter probable or improbable or roughly throw light upon them are relevant facts. Relevant facts are those which are the parts of same transaction, facts which are the occasion, cause, effect or opportunity; facts which are the motive, preparation, previous or subsequent conduct ; or those which explain a fact or introduce a fact.

Other relevant facts are things said or done by conspiracy in reference to a common design; things which make the facts in issue probable or improbable; facts which held determining amount of damages in a suit for damage; when right or custom is in question, any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied; facts showing existence of state or mind such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will or of bodily feelings; facts bearing on question whether an act was accidental or intentional, etc.

There are certain other which are also considered to be relevant facts. Such as evidence in earlier judicial proceedings, entries in books of account in regular course of business, opinion of experts, facts that support or contradict the opinion of an expert, opinion regarding public right and custom, etc. So far as character is concerned the fact that the person accused is of a good character is relevant in criminal proceedings (section 53). But bad character of the accused is irrelevant unless evidence has been given that he has a good character (section 54). Previous conviction is relevant in a later stage, after one is convicted for proposing an enhanced punishment under the provision of Cr.P.C.

Burden of Proof.

The question of burden of proof is discussed in the Evidence Act from sections 101-114. General principles are as follows:

(1) Normally one who asserts the existence of a fact, he must prove it.

(2) The burden of proof in a suit or proceedings lies on that person who would fail or become loser if no evidence at all were given on either side.

(3) The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence .

(4) In case of dependency of one fact upon the other, the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

(5) The burden of proving that the case of an accused comes within exception is on one who asserts it.

(6) When any fact is specially within the knowledge of any person the burden of proving that fact is upon him.

(7) The burden of proving death of a person knowing to have been alive within 30 years is on the person who affirms it.

(8) The burden of proving that a person is alive who has not been heard for seven years is on the person who affirms it.

(9) The burden of proof as to break of known relationship in the cases of partners, landlord and tenant, principal and agent is on the person who affirms it.

(10) When someone is in possession of something and claims to be an owner, the burdenof proving that he is not the owner is on the person who affirms that he is not the owner.

(11) In respect of good faith in transaction where one party is in relation ofactive confidence, the burden of proving the good faith falls on one who is in the position of active confidence.

(12) A birth during the valid marriage is a conclusive proof of legitimacy and so is within 280 days after the dissolution of the marriage unless one can prove it to the contrary.

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case (section 114).

CHAPTER XXXI

IMPORTANT AND COMMON SECTIONS OF THE PENAL CODE

The Indian Penal Code, 1860, (Act XLV of 1860) came into operation on the Ist day of January, 1862. Now it is named the Penal Code, and not the Bangladesh Penal Code. The Chief object of the P.C. is to identify violations of right which are dangerous to the society and to require and justify the infliction of punishment to suppress them. It is, therefore, accepted as the substantive law. the P.C. defines offenses and prescribes punishment for the commission of offenses.

To understand the provisions of the P.C. or for that matter the criminal law, it is necessary to gather a first hand knowledge of the terms crime, intention, motive mens rea, knowledge, innocence, mistake of fact, mistake of law and an offense are some of the mental elements that play a vital part in the law of crime.

(1) **Intention:** Intention has been defined as the fixed direction of the mind to a particular object or a determination to act in a particular manner.

Intention connotes a conscious state in which mental faculties are roused into activity and summoned into action for the deliberate purpose of being directed towards a particular and specified and which the human mind conceives and perceived before itself. "Criminal intention" simply means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse.

(2) **Motive:** Motive means anything that can contribute to give both to, or to prevent any kind of action. Motive may serve as a clue to the intention, but even though the motive be pure, the act done under it may be criminal. Good motive, of course, does not excuse an offender for an unlawful act.

(3) **Mens rea:** Mens rea literally means `guilty mind'. The intent and the act must both concur to constitute the crime. Although as a general rule there must be a mind at fault before there can be a crime. But it is not always an inflexible rule. A criminal act may be committed without intention, but those cases are few.

(4) **Knowledge:** `Knowledge' signifies a state of mental realisation in which the mind is a passive recipient of certain ideas and impressions arising in it or passing before it. It would refer to a bare state of conscious awareness of certain facts in which human

mind itself remains supine or inactive. Knowledge of a fact is an essential ingredient, it must be distinctly proved.

(5) **Innocence:** The law presumes a person innocent until his guilt is proved. The burden of proving every fact essential to bring the charge home against the accused lies on the prosecution. The evidence to prove a guilt must be such as to exclude, to a normal certainty, every reasonable doubt of the guilt of the accused. In matters of doubt it is safer to acquit than to condemn.

(6) **Mistake of fact:** A mistake of fact consists in an unconsencious ignorance or forgetfulness of a fact, past or present, material to the transaction. Under the Penal Code the mistake must be one of fact, and not of law.

(7) **Mistake of law:** It happens when a party having full knowledge of the fact comes to an erroneous conclusion as to their legal effect. Mistake in point of law in criminal cases is no defence.

(8) **Offense:** According to the Penal Code "offense" denotes a thing made punishable by it, except those mentioned in the clauses of section 40 P.C. It is an illegal act or omission as defined in section 33 read with section 32. According to the Code of Criminal Procedure, 1898, "offense" means any act or omission made punishable by any law for the time being in force.

Scheme of the Penal Code.

The Penal Code consists of 23 Chapters and 511 Sections, which may be broadly divided into two: (1) General provisions and (2) Specific offenses.

General Provisions.

(1) Introduction and Territorial Operation of the Code - Sections 1 to 5.
(2) General Explanations - Sections 6 to 52A.
(3) Punishments - Sections 53 to 75.
(4) General Exceptions including the Right of Private Defence - Sections 76 to 106.
(5) Abetment - Sections 107 to 120.
(6) Criminal Conspiracy - Section 120A and 120B,
(7) Other offenses - Sections 121 to 510, and
(8) Attempts to commit offenses - Section 511.

Specific Offenses.

In the Penal Code specific offenses have been enlisted under five categories or groups, namely,

(1) offenses affecting the State, (2) offenses affecting the common weal, (3) offenses affecting the human body, (4) offenses affecting corporeal or incorporeal and (5) offenses affecting reputation.

General Explanations
(Sections 6 to 52A)

This part of the Penal Code deals with important and leading terms used throughout the Code. The Terms are defined and explained and the meanings thus announced are steadily adhered to throughout the Code. Therefore, whenever any confusion or doubt arises in respect of the meaning of any term (used in this Code) one should refer to these sections of the Penal Code, dealing with general explanations. It is said that all these serve as a key to the interpretation of the whole Penal Code.

Punishments
(Sections 53 to 75)

The main object of punishment is to prevent commission of offenses. The measure of punishment must, therefore, vary according to the circumstances in each case. The types and scales of various punishments that are provided for in the Penal Code are stated below briefly:

(a)	Death:	(i)	Mandatory u/s 303.
		(ii)	Discretionary u/ss. 121, 132, 194, 302, 305, 311, 396 and 397.
(b)	Imprisonmment for life:	(i)	Imprisonment for life is mandatory u/ss. 226, 311, 388 (Part II) and 389 (Part II).
		(ii)	It is discretionary u/ss. 121, 121A, 122, 124A, 125, 128, 130, 131, 132, 222, 225 (Part V), 223, 238, 255, 304, 365, 307, (Part II), 313, 314, (Part II), 326,329, 264, 364A, 371, 376 (Part II), 394, 396, 438, 449, 459, 467, 472, 474 (Part II), 475, 477, 489A, 489B and 511 (for attempting to commit offenses punishable with imprisonment).

(c)	Imprisonment	(i) Rigorous - The offender under this sentence is confined to jail and put to hard labour such as grinding corn, earth, drawing water, cutting fire-wood,etc. (ii)Simple - The offender undergoing this sentence is confined to jail and he is not put to any hard labour.
(d)	Termof Imprisonment:	(i) Maximum imprisonment which can be awarded for awaeded an offense is for life. (ii) The lowest term of imprisonment prescribed for a given offense is 24 hours (Section 510). (iii) The minimum term of imprisonment has not been limited in the Code, except that for offenses u/ss. 397 and 398,the imprisonment shall not be less than 7 years.
(e)	(i) Rigorous Imprisonment only:	Offenders u/ss. 194, 226, and 449.
	(ii) Simple Imprisonment only:	Offenders u/ss. 168, 169, 172 to 176, 178 to 180, 187, 188, 223, 225A, 228, 291, 341, 500, 501, 502, 509 and 510.
	(iii) S. I. or R. I partly or wholly:	Sentences may in certain casesof imprisonment, be wholly or partly simple imprisonment or rigorous imprisonment (section 60).
	(iv) rigorous and/or simple imprisonment (alternative):	For the offenders of the rest of the sections of the Penal Code.
(f)	Solitary Confinement:	The principle has been laid down in sections 73 and 74. It is inflicted in suitable cases in order that a feeling of loneliness may produce wholesome influence and reform the offender. It cannot be awarded as a part of the imprisonment in lieu of fine. It cannot also be awarded for cases in which imprisonment does not form part of the substantive sentence.
(g)	Enhanced punnishment for certain offenders:	The principles have been laid down in section 75. Enhanced punishments can be awarded only for offenses relating to coin and government stamps (sections 230 to 263A and for

offenses against property (sections 378 to 462).

(h) Forfeiture: The offense for which forfeiture of specific property is prescribed are only 3 in the PenalCode. These aresections 126, 127 and 169.

(i) Fine: Punishment of fine only has been provided for offenses u/ss. 137, 154 to 156, 171-G to 171-I, 278 to 283, 290 and 294A.

(j) Imprisonment in default of fine: (i) Sentence of imprisonment for non-payment of fine (section 64).
(ii) Limit to imprisonment for non-payment of fine when imprisonment and fine awardable (section 65).
(iii) Description of imprisonment for nonpayment of fine (section 66).
(iv) Imprisonment for nonpayment of fine when offense punishable with fine only (section 67).
(v) Imprisonment to terminate on payment of fine (section 68).
(vi) Termination of imprisonment on payment of proportional part of fine (section 69), and
(vii) Fine leviable within 6 years, or during imprisonment. Death not to discharge property from liability (section 70).

For the principles in the above-mentioned circumstances relating to fine sections of the Penal Code mentioned against each above may be looked into.

(k) Whipping: This form of sentence is awarded under the Whipping Act of 1909 as an alternative or an additional punishment for certain offenses. The Penel Code by it self does not provide a any punishment of whipping. A Metropolitan Magistrate and Magistrate of the First Class are empowered to award a sentence of whipping

		(section 32 Cr. P.C.) provided that such punishment is authorised under the relevant law.
(l)	Detention in Correctional Institute:	Section (i)The Children Act,1974, (ii) The Children Rules, 1976, and (iii) The Probation of Offenders Ordinance, 1960.

The measure of punishment is a point about which magistrate's should be guided by the rulings of superior courts of this subcontinent and the practice obtaining in our courts. Although only the higher limit of the punishment has been prescribed, the facts of the case should be the determining factor in the matter of awarding the measure of punishment.

General Exceptions
(Sections 76 to 106)

The Code deals with general exceptions described in sections 76 to 106. These exceptions fall within the following categories:

1. Judicial acts (sections 77 and 78),
2. Mistake of fact (sections 76 and 79),
3. Accident (section 80),
4. Absence of criminal intent (sections 81 to 86 and 92 to 94),
5. Consent (sections 87 and 90),
6. Trifling acts (section 95) and
7. Private defence (sections 96 to 106).

The burden of proving the existence of circumstances bringing the case within any of the general exceptions is upon the accused. The Court shall ordinarily presume the absence of such circumstances. But if it is apparent form the evidence on record, whether produced by the prosecution or by the defence that the general exception would apply, them Court's presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception. But before this burden of proving the exception is thrown on the accused , the ingredients of the offense must be proved by the prosecution.

The Right of Private Defence
(Sections 96 to 106)

Every person has a right subject to certain restrictions to defend (a) his own body, (b) body of any other person, (c) the property whether movable or immovable of himself

or any other person against any act which is an offense falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit any such offense and (d) against an act which would otherwise be a certain offense but is not an offense by reason of the doer being of unsound mind, a minor and intoxicated person, or a person acting under a misconception of fact.

There is no right of private defence in at least three cases mentioned in section 99. The right of private defence of the body extends to the causing of death, or any other harm to the assailant under certain circumstances mentioned in sections 100 to 106. The right of private defence of property extends to the causing of death or any other harm to the assailant under circumstances of (a) robbery, (b) house-breaking by night, (c) mischief by fire to building, then, etc. and (d) theft, mischief or house trespass reasonable causing the apprehension of death or grievous hurt (section 103). Subject to these restrictions the right of private defence of property extends to the causing of any harm short of death. The right of private defence of the body and of the property commences from a certain point of time and continues to certain point of time as mentioned in sections 103 and 105.

Abetment
(Sections 107 to 120)

Three kinds of abetment are dealt with in the Penal Code. A person abets the doing of a thing, who:

1. instigates any person to do that thing, or

2. engages with one or more other persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of the conspiracy and in order to the doing of that thing, or

3. intentionally aids, by any act or illegal omission, the doing of that thing. It shouldbe noted that abetment of an illegal omission may amount to an offense (Explanation 1 of section 108).

It is not necessary that the act abetted should be committed (Explanation 2). If the act abetted is committed and no express provision is made for its punishment, then, it shall be punishable with the punishment provided for the offense abetted (section 109).

Criminal Conspiracy
(Sections 120A and 120B)

The ingredients of this offense are:

1. That there should be an agreement between the persons who are alleged to conspire and
2. That the agreement should be:
   (a) for doing of an illegal act or
   (b) for doing by illegal means an act which may not itself be illegal. Conspiracy is a substantive offense and has nothing to do with abatement. Offenses relating to abatement are listed from sections 107 to 120.

Public Tranquillity
(Sections 141 to 160)

Offenses against Public Tranquillity hold an important place in the Penal Code. They are (i) Unlawful assembly, (ii) Rioting, (iii) Promoting enmity and (iv) Affray.

An unlawful assembly is an assembly of five or more persons if their common object is:

1. To overawe by criminal force ---
   (a) the Government, (b) the Parliament and (c) any public servant in the exercise of any lawful power.

2. To resist the execution of law or legal process.

3. To commit mischief, criminal trespass or other offenses.

4. By Criminal force:
   (a) to take or obtain possession of any property, or
   (b) deprive any person of any corporeal right, or
   (c) enforce any right or supposed right.

5. By criminal force to compel any person:
   (a) to do what he is not legally bound to do, or
   (b) to omit what he is legally entitled to do.

It should be borne in mind that the assembly must consist of five or more persons. There must be some present and immediate purpose of carrying into effect the common

object. A meeting for deliberation only and to arrange plans for future action is not an unlawful assembly.

An assembly not unlawful when it assembled may subsequently turn unlawful (Explanation 1 of section 141). As soon as an innocent person bc comes aware of the fact that an assembly of which he is a member, has become unlawful he should at once disassociate on pain of being liable under this section of the P.C. (section 142). If an offense is committed by any member of an unlawful assembly every person of that assembly is guilty of committing an offense in prosecution of the common object (section 149).

Rioting

Riot is an unlawful assembly in a particular state of activity. To constitute this offense the following must be proved:

1. that the accused being five or more in number, formed an unlawful assembly,
2. that they were animated by a common unlawful object,
3. that force or violence was used by the unlawful assembly or any member of it, and
4. that such force was used in prosecution of the common object.

If the common object of an assembly is not illegal, it is not rioting although force might have been applied by any of its members.

Promoting Enmity between Classes

This section punishes persons who promote feelings of enmity or hatred between different classes of the citizens of Bangladesh by words, signs or visible representations.

Affray

When two or more persons by fighting in a public place disturb the public peace they commit an affray.

Difference between riot and affray:

(1) An affray cannot be committed in a private place (a riot can be),
(2) An affray is committed by two or more persons (a riot by five or more),
(3) A riot is more severely punishable than an affray.

Offenses by or relating to Public Servants (section 161 to 171)

These sections deal with offenses by public servants alone. The offenses which are common between public servants and other members of the community are left to the general provisions of the Penal Code. Definition of "Public servant" has been given in section 21 P.C. in all details. There are as many as 12 situations in which a person may fall within the definition of "public servant". In section 161 an explanation of the word 'gratification' has been given to state that it is not restricted to pecuniary gratifications, or to gratifications estimable in money. The section deals with the acceptance by a public servant of an illegal gratification or bribe as a motive or reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions favour or disfavour to any person. This section refers only to the taker and not to the giver of the bribe. The giver or offerer is dealt u/s 165A. The other sections upto section 171 deal with different kinds of offenses by public servants or relate to the offices of public servants.

Contempts of Lawful Authority of Public Servants (Sections 172 to 190)

These penal provisions are important in so far as they deal with contempt of lawful authority of public servants. Obedience to lawful authority is ordinarily enforced by these provisions. Contempts of lawful authority of Courts, Revenue Officers, Police Officers and other public servants are punishable. Absconding to avoid service of summons, preventing service of summons, non-attendance in obedience to summons notices, intentional omission to assist a public servant, disobedience to order duly promulgated by public servant, are some of the offenses described in these sections of the Penal Code.

False Evidence And Offenses Against Public Justice (Section 191 to 229)

Offenses listed under the above heading deal with definitions and punishments of false evidence and offenses against public justice. These sections are simple and easy to understand . But they are very important to any public servant, particularly, a Magistrate in performing his functions.

The provisions relating to offenses under sections 211 and 228 P.C. are important. False charge of offense made with intent to injure is punishable u/s 211. The section

includes two distinct offenses, namely, (a) actually instituting or causing to be instituted false criminal proceeding, and (b) preferring a false charge. The former assumes the later, but the later may be committed where no criminal proceedings follow. But under the second Paragraph there should be an actual institution of a criminal proceedings on a false charge. The mere making of a false charge would be punishable under the first paragraph. Thus two conditions are necessary before the enhanced punishment provided in the second paragraph could be inflicted:

(1) Proceedings on the false charge should have been actually instituted; and

(2) the false charge must be in respect of an offense punishable with death, imprisonment for life, or imprisonment for seven years or upwards to constitute a false charge u/s 211 are:

(i) An intent to cause injury to particular person.

(ii) Such injury should have been intended:
   (a) by instituting or causing to be instituted criminal proceedings against that person, or
   (b) by falsely charging him with having committed an offense.

(ii) Knowledge that there is no just or lawful ground for such proceedings or charge against that person.

Section 228 provides punishment for an intentional insult or interruption to public servant sitting in judicial proceedings. This is the only section of the Penal Code which deals with contempt committed against a judicial officer, that is to say, a Court. The object of this section is to punish a person who intentionally insults in any way the Court administering justice. It is to preserve the prestige and dignity of the Court that this section is provided. It lays down the highest sentence that could be inflicted for contempt of Court. Under section 480 of the Cr.P.C. a person guilty of contempt of Court may be dealt with summarily but in such cases he can only be fined. Section 228 P.C. is confined to those cases of contempt of Court where the public servant is sitting in any stage of a judicial proceeding.

From sections 230 to 263A offenses relating to coin and Government Stamps have been enumerated. Offenses relating to weights and measures are listed in sections 161 to 267.

Offenses affecting Public Health, Safety, Convenience, Decency and Morals have been defined and made punishable under sections 268 to 294A.

Mention may be made of the following:

Section 279: Rash Driving or Riding on a Public Way.

Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused.

The section requires two essentials:

1. Driving of a vehicle, or riding on a public way.
2. Such driving or riding must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person.

In a charge under the section it is necessary to prove

1. That the accused was driving a vehicle or that he was riding,
2. That it was public way on which he was driving or riding.
3. That he was driving or riding in a rash or negligent manner. (Negligence cannot be inferred from the mere fact of a person having been run over).
4. That the driving or riding was such as to be likely to cause hurt or injury.

Section 280: Rash Navigation of Vessel

The same rules apply to navigation on a river as on a highway, and persons, who navigate a river improperly (i.e. too much speed) or by negligent conduct are as much liable as if the accident occurred on a public highway either by furious driving or negligent conduct.

This section is analogous to section 279. Section 279, however, applies only in the case of a `public' road, whereas section 280 is not limited to public navigable waters, but would also include waterways in private property. This section deals with inland navigation. Rash and negligent navigation on the high seas will not be punishable under the Penal Code.

To establish an offense under section 280 it is necessary to prove:

1. That it was a vessel which was being navigated.
2. That the accused was navigating the same.
3. That he was doing so in a rash or negligent manner.
4. That the navigation was such as to endanger human life, or was such as to be likely to cause hurt or injury.

For offenses relating to (1) negligent conduct with respect to fire or combustible matter. (2) Negligent conduct with respect to explosive substance, (3) Negligent conduct with respect to machinery, (4) Negligent conduct with respect to pulling down or repairing buildings, and (5) Negligent conduct with respect to animal, provisions of sections 285, 286, 287, 288 and 289 respectively will apply.

Section 290: Punishment for Public Nuisance in Cases not otherwise provided for

In the Penal Code definition of public nuisance has been given under section 268. The definition of `public nuisance' given in this section is material with reference to section 290, which provides a punishment for the offense of committing a public nuisances in any case not otherwise punishable under the Penal Code. In several sections punishments are provided for various specific public nuisances. This section provides for the vided for various specific public nuisances. This section provides for the punishment of any nuisance falling within the four corners of the definition given in section 268, but not punishable under any other section.

In order to substantiate an offense under section 290 it is necessary to prove:

1. That the accused did an act or was guilty of an illegal omission.
2. That such act or omission caused injury, danger, or annoyance.
3. That such injury, danger, or annoyance was common to the public or the people in general who dwell or occupy properly in the vicinity.

Or it has to be proved:

1. That the accused did an act or was guilty of an illegal omission.
2. That the act or omission in question must necessarily cause injury, obstruction, danger, or annoyance.
3. That such injury danger, or annoyance must necessarily be caused to persons who may have occasion to use any public right.

In order to constitute a nuisance there must be both (1) injuries, that is the wrongful act and (2) damnum that is damage, actual or presumed.

Nuisance is the unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it.

Nuisance ordinarily means that which annoys or hurts or that which is offensive .

Nuisance cannot be defined exactly. In order to judge whether nuisance has taken place or not, the political, social and economic situation prevailing in a country as well as the subjective standards of the persons affected will have to be considered from an objective stand point.

Section 291: Continuance of Nuisance after Injunction to Discontinue

This section punishes a person continuing a nuisance after he is enjoined by a public servant not to repeat or continue it. Sections 142 and 143 Cr.P.C. for instance, empower a Magistrate to forbid an act causing a public nuisance. The Civil Procedure Code also empowers a Court to issue a temporary injunction.

To establish an offense under this section it is necessary to prove:

1. The issue of the injunction.
2. That such injunction was legally issued.
3. That the injunction was one which restrains the repetition or continuance of a public nuisance.
4. That he has repeated or continued the public nuisance.

Sections 292, 293 and 298 make punishable offenses relating to (a) Sale, etc. of obscene books, etc., (b) Sale, etc. of obscence object to young person and (c) obscene acts and songs respectively.

Offenses relating to Religion have been provided under section 295 to 298 in the Penal Code. Magistrates may look into the provisions of the afore-mentioned sections of the Penal Code as and when they would require to know about any of those offenses and punishments prescribed.

Offenses affecting the Human Body (Sections 299 to 377)

Definition of Culpable Homicide (Section 299)

Whoever causes death by doing an act with the intentions of causing death or with the intentions of causing such bodily injury as is likely to cause death, or with the knowledge that is likely, by such act, to cause death, commits the offenses of culpable homicide.

Essentials

1. Causing of death of a human being and
2. such death must have been caused by doing an act:

(i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death or (iii) with the knowledge that the doer is likely by such act to cause death. Homicide is the killing of a human being by a human being. It is either lawful or unlawful.

(a) **Lawful Homicide of simple homicide** -- As is sometimes called includes several cases falling under the general exception under sections 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 92, 100 & 103.

(b) **Unlawful homicide**-- Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing an act having the essentials mentioned above.

Section 300: Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as to likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

When culpable homicide is not murder

Exception

Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave

the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:

(1) that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

(2) that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; and

(3) that the provocation is not given by anything done in the lawful exercise of right of private defence.

Explanation

Whether the provocation was grave and sudden enough to prevent the offense from amounting to murder is a question of fact.

Distinction between these two offenses is very important. Justice Melvill has set forth the distinction in the following manner:

Section 299	Section 300
A person commits culpable homicide, if the act by which the death is caused is done:	Subject to certain exce-rcise culpable homicide is murder if the act by which the death is done:
(a) with the intention of causing death;	(1) With the intention of causing death;
(b) with the intention of causing such bodily injury as is likely to cause death;	(2) With the intention of causing such bod-ily injury as the of-fender knows to be likely to cause the death of the person to whom the harm is caused;
(c) With the knoledge that the act is likely to cause death	(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

Exceptions: Culpable homicide is not murder if it is caused by:

(i) **Grave and sudden provocation:** Provided that the provocation is not sought or voluntarily provoked by the offender as an excuse or giver, by anything done in obedience to the law or by a public servant in the lawful exercise of his powers.

The provocation arising out of abusive language has been held to be grave provocation. Female infidelity is a common cause of provocation .

(ii) **Exercising the right of private defence:** While claiming the benefits of this exception, it must be proved that the offender exceeded it and caused death without premeditation and without intending more harm than is necessary.

(iii) **A public servant:** If the offender a public servant exceeds his legal powers and causes death by an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty, and without ill-will towards the deceased.

(iv) **A sudden fight:** It should not have been pre-arranged.

(v) **Consent:** When the deceased, being above the age of 18 years, suffers death or takes the risk of harm with his own consent.

Section 302: Punishment for murder

In order to establish an offence of murder it is necessary to prove:

1. That the death of a human being has actually taken place.

2. That a murder has been committed by some one, is essntially necessary to be proved.

3. That such act was done with the intention of causing death, or that it was done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death or (b) was sufficient in the ordinary course of nature to cause death or that

the accused caused death by doing an act known to him to be so imminently dangerous that it mustin all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

Section 304: Punishment for culpable homicide not amounting to murder

In an offense under this section it is to be proved:

1. The death of the person in question.

2. The such death was caused by the act of the accused.

3. That the accused intended by such act to cause death.

   or (a) that he intended by such act to cause such bodily injury as was likely to cause death, or
   (b) that he knew that such act of his would be likely to cause death.

The section has two parts: Part I--Culpable homicide amounting to murder, if act by which the death is done with intention of causing death, etc., and Part II--If act is done with knowledge that it is likely to cause death but without any intention to cause death, etc. It may be noted here that there is variation in the matter of sentence on a conviction under this section. For Part I punishment prescribed is transportation for life, or imprisonment of either description for 10 years and fine. Punishment under Part II of the same section is imprisonment of either description for 10 years, or fine, or both.

Section 304A: Causing death by negligence

This section deals with homicide by negligence. The provisions of this section seem to apply to cases where there is no intention to cause death and no knowledge that the act done in all probability would cause death. It only applies to such acts as are rash and negligent and are directly the cause of death of another person. It must be read along with sections 336, 337, 338 and 338A. All these sections are confined in their operation to acts done without any criminal intent, apart from the rashness or negligence which is their essential ingredient.

In order to establish an offense under this section it is necessary to prove--

1. The death of the person in question.

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2. That the accused caused such death.
3. That such act of the accused was rash or negligent although it did not amount of culpable homicide.

Section 304B: Causing death by rash driving or riding on a public way

Essentials of the section are:

1. Driving of a vehicle or riding on a public way.
2. Such driving or riding must be so rash that it caused the death of the person in question.
3. That he accused caused such death.

Section 307: Attempt to murder

To constitute an offense under this section it is necessary to prove:

1. That the death of a human being was attempted.
2. That such death was attempted to be caused by, or in consequence of, the act ofthe accused.
3. That such act was done with the intention of causing death; or
4. That it was done with the intention of causing such bodily injury as:
   (a) the accused knew to be likely to cause death; or
   (b) was sufficient in the ordinary course of nature to cause death; or that the accused attempted to cause such death by doing an act known to him tobeso imminently dangerous that it must in all probability cause (i) death, or (ii) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

The section will apply even if no hurt is caused if the circumstances disclose that intention of the assailant was to cause the death.

Intention or knowledge and nature of the circumstances are the chief factors to be looked into in determining whether a particular case comes within the mischief of section 307. --Mahmud vs. Crown (1955) 7 DLR 430.

It should be noted carefully that, according to circumstances the Penal Code has provided for three distinct parts of the offense under section 307, namely:

Part I -- Attempt to murder,

Part II -- If such act cause hurt to any person and
Part III -- Attempt by life-convict to murder, if hurt is caused.

Abetment of suicide is punishable under section 306 and attempt to commit suicide is punishable under section 309 of the Penal Code.

Section 312: Causing Miscarriage

This section requires two essentials:

1. Voluntarily causing a woman with child to miscarry.
2. Such miscarriage should not have been caused in good faith for the purpose of saving the life of the woman.

Section 313: Causing Miscarriage Without woman's consent.

When the consent of the woman is not taken the offense comes under this section. When consent is taken, then section 312 applies. Again, under this section (section 313) the person procuring the abortion is alone punished; but under section 312 such person as well as the woman who causes herself to miscarry are both punished.

Section 314: has two parts, namely,

Death caused by an act done with intent to cause miscarriage (Part I) and if act done without woman's consent (part II).

Section 317: Exposure and Abandonment of Child under 12 years by Parent or Person having care of it

This section is intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. It does not apply when the children are left under the care of others. The essentials of the section are:

1. The person coming within its purview must be father or mother or must have the care of the child;
2. The child must have been exposed or left in any place with the intention of wholly abandoning it.

Section 318: Concealment of Birth by Secret Disposal of Dead body

This section deals with the secret burial of a child. If it is foetus only then sections 312 and 511 P.C. will apply. The offense requires three essentials:

1. Secret burying or otherwise disposing of the dead body of a child;
2. It is immaterial whether such child died before or after its birth;
3. Intention to conceal the birth of such child by such secret burying or disposal.

Section 319 and 320

Definitions of the offenses of Hurt and Grievous Hurt have been given in sections 319 and 320 P.C. Section 319 provides that whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. It is commonly known as simple hurt.

Section 320 provides that the following kinds of hurt only are designated as 'Grievous':

(1) Emasculation,
(2) Permanent privation of the sight of either eye,
(3) Permanent privation of the hearing of either ear,
(4) Privation of any member or joint,
(5) Destruction or permanent imparing of the powers of any member or joint,
(6) Permanent disfiguration of the head or face,
(7) Fracture or dislocation of a bone or tooth,
(8) Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain, or unable to follow his ordinary pursuits.

"Voluntarily causing hurt" and "Voluntarily causing grievous hurt" have been defined in sections 321 and 322 P.C. respectively.

The Penal sections are 323, 324, 325, 326 and continues upto 338A of the Penal Code.

Section 323 is a general section for the punishment of voluntarily causing hurt. In an offense under this section it is necessary to prove:

1. that the accused by his act caused bodily pain, disease or infirmity to the victim, and

2. that he did such act intentionally or with a knowledge that it would cause the hurt, etc.

The intent to cause hurt may be presumed from the nature of the hurt caused and the circumstances under which it was caused.

The weapons used for causing such hurts are blunt and the nature of the injuries are certified to be simple, as per the principles laid down in the medical jurisprudence. To constitute an offense under sec. 323 a medical certificate is not necessary in all cases of hurt.

Section 324 provides punishment for an offense of voluntarily causing hurt by dangerous weapons or means such as means of shooting, stalling, cutting, etc. Such hurts are generally caused by a sharp-cutting weapon (as distinct from a blunt weapon). An injury under this section is also simple in nature. The object is to make simple hurt more grave. Practices in cases of offenses under sections 323 and 324 are same and similar except that in a case under section 324 the hurt was caused by an instrument (weapon) for shooting, stabbing or cutting or by an instrument, which used as a weapon, is likely to cause death or by means of fire, etc. or by means of any poison, etc.

To prove an offense under section 324 practice is to obtain a medical opinion as to the nature of injury and the weapon used.

Sections 325 and 326 are the aggravated forms of sections 323 and 324 respectively. In both the offenses the hurts caused are to be grievous in nature as defined in section 320. In all cases of voluntarily causing grievous hurt the evidence of the medical officer who examined and attended on the person to whom the hurt was caused should, if obtainable without unreasonable expense or delay, invariably be taken. The aggravated forms of voluntarily causing hurt are dealt with in sections 327, 328, 330 and 333; and the aggravated forms of voluntarily causing hurt are dealt with in sections 329, 331 and 333 P.C.

There are other types of offenses on account of hurt (simple hurt) prescribed under sections 334, 335, 336 and 337 P.C.

Section 338 provides for punishment of an offense of grievous hurt engendered by an act done so rashly or negligently as to endanger human life or the personal safety or others. This section is an aggravated form of section 337.

Section 338A provides punishment for causing grievous hurt by rash driving or riding on a public way. For such an offense the place of occurrence must be a public way.

Offenses relating to wrongful restraint and wrongful confinement have been covered from section 339 to 348 in the Penal Code. Ingredients of an offense of wrongful restraint are:

1. Voluntary obstruction of a person, and

2. the obstruction must be such as to prevent that person from proceeding in anydirection in which he has a right to proceed.

An offense of wrongful confinement requires two essentials, viz:

1. wrongful restraint of a person and
2. such restraint must prevent that person from proceeding beyond certain circumscribing limits.

Section 346 relates to an offense for wrongful confinement in secret. The offense consists in wrongful confinement, aggravated by the offender's endeavour to deprive his prisoner and those interested in him or bound to protect him of the remedies which the law gives against the wrong.

Wrongful confinement to extort property, constrain to illegal act is punishable under section 347. When such confinement is to extort confessions, or compel restoration of property it comes within the mischief of section 348. It may be stated that wrongful confinement is another form of wrongful restraint with the difference that while restraining a person's movement is common to both wrongful confinement is totally obstructing person's movement from a fixed place and wrongful restraint means partially obstructing a person from proceeding to any direction in which he has a right to proceed.

Definitions of the offenses of Force, Criminal Force and assault and punishments prescribed therefor have been covered under sections 349 to 358. The term `force' contemplates the use of force to a person, and not to a thing. The illustrations to section 350 exemplify the various clauses of the definition of offense of `force' given in section 349.

Section 350 says that `force' becomes criminal when it is used (1) without consent and (2) in order to the committing of an offense, or when it is intentionally used to cause injury, fear, or annoyance to another to whom the force is used. The term `force' as defined here applies to force used in connection with the human body.

Section 351 gives the definition of `Assault.'

Ingredients of `assault' are:

1. Making of any gesture or preparation by a person in the presence of another; and
2. intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

The offense is one that is committed against a person and not against the public. It does involve a breach of the peace. Section 352 provides for the punishment for an offense of assault or criminal force otherwise than on grave provocation.

Section 353 prescribes punishment for an offense of assault or criminal force to deter public servant from discharge of his duty. If hurt is caused under the circumstances mentioned in this section then either section 332 or section 333 will apply.

section 354 prescribes punishment for an offense of assault or criminal force to woman with intent to outrage her modesty. An indecent assault upon a woman is punishable under this section. Assaults committed with the intention of rape are not contemplated by this section. To establish an offense under section 354 it is necessary to prove:

1. that the person assaulted, etc. was a female,
2. that the accused assaulted or used criminal force to her,
3. that he intended thereby to outrage her modesty; or that he knew it to be likely that he would thereby outrage her modesty.

The charge under this section is one which is very easy to make and very difficult to rebut, and when such a charge is made it is necessary to see whether it is supported by independent evidence besides that of the woman herself, or is corroborated by her conduct and the surrounding circumstances and is consistent with ordinary probabilities. The offense under this section is of less gravity than rape.

Section 355: Assault or Criminal Force with Intent to Dishonour Person, otherwise than on Provocation

The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults such as kicking a man, pulling a man's nose, hair, ear, etc., assaulting with a shoe, or laying a whip across the shoulders.

Section 356: Assault of Criminal Force in attempt to Commit Theft of Property Carried by a Person

This section applies to cases of using criminal force in an attempt to commit theft and not to those cases in which theft has been actually committed. It provides for a separate punishment for the rare cases of criminal force used in an attempt to commit theft, and yet not amounting to robbery. The section will generally apply to pickpockets.

Section 357: Assault or Criminal Force in attempt wrongfully to confine a person

The section deals with an assault committed in attempting wrongfully to confine a person.

Section 358: Assault or Criminal Force on Grave Provocation

This is a somewhat mitigated form of the offense described in section 352.

Section 359: Kidnaping

Kidnaping is of two kinds: Kidnaping from Bangladesh and Kidnaping from lawful guardianship (section 359). Kidnaping from Bangladesh etc. described in section 360.

Section 361: Kidnaping from Lawful Guardianship

The offense of kidnaping has been described in this section including an explanation and an exception. The section has four essentials:

1. Taking or enticing away a minor or a person of unsound mind.
2. Such minor must be under the age of 14 years of age, if a male, or under 16 years of age, if a female.
3. The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
4. Such taking or enticing must be without the consent of such guardian.

Section 262: Abduction

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. This section merely gives a definition of the

word "abduction" which occurs in some of the Penal provisions subsequently in the Code. Kidnaping from lawful guardianship is a substantive offense, but 'abduction' is an auxiliary act, not punishable by itself, but made criminal only when it is done with one or other of the intents specified in sections 365 and 366.

Kidnaping and abduction stand on the same footing. They do not include the offense of wrongful confinement or keeping in confinement a kidnaped person. An offense of abduction requires two essentials, viz.,

1. Forcible compulsion or inducement by deceitful means.
2. The object of such compulsion or inducement must be the going of a person from any place.

In section 363 punishment for kidnaping (either from Bangladesh or from lawful guardianship) has been prescribed. This section specifies the punishment for the offenses defined in sections 360 and 361. To support a conviction of kidnaping from lawful guardianship under section 363, the facts must come within the ambit of section 361, i.e. the person against whom the offense is committed must be under the age of 14 years, if a male and under the age of 16 years, if a female. For an offense kidnaping from guardianship the essentials are:

1. That the person in question was at the time of offense a minor under 14 years of age (if a male), and under 16 years of age (if a female); or that such person was of unsound mind. The age of the girl must be proved by the prosecution.

2. That such minor or person of unsound mind, was at the time, lawfully entrusted to the keeping of a guardian.

3. That the accused took or enticed such minor, or person of unsound mind, out of such keeping.

4. That he so took or enticed, etc. without the consent of the guardian.

Section 364: kidnaping or abducting in order to Murder

This section provides for the case of a kidnaper whose object is that the person kidnaped may be murdered or may be disposed of as to be put in danger of being murdered.

Section 366: Kidnaping, Abducting or Inducing Woman to Compel her Marriage, etc.

This section is an aggravated form of the offense under section 363. An intention to seduce subsequent to the elopement is an essential part of this offense. Ingredients of an offense under this section are:

1. Kidnaping or abducting of any woman.
2. Such kidnaping or abducting must be--

   (a) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or

   (b) in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

The second part of this section requires two things:

1. By criminal intimidation or abuse of authority or by compulsion inducing any woman to go from any place.

2. Such going must be with intent that she may be, or with knowledge that it is likely that she will be forced or seduced to illicit intercourse, with some person..

Section 366A: Procuring of Minor Girl and Section 336B: Importation of Girl from Foreign Country

Both the sections were inserted by an amendment of the Penal Code in 1923 (Act of 1923) to give effect to certain Articles of International Convention for the suppression of the Traffic in woman and children. The object was to punish export and import of girls for prostitution. To establish an offense under section 366A it is necessary to prove:

1. That the accused induced a girl.
2. That the girl was under 18 years of age.
3. That the girl was induced to go from a place or to do an act.
4. That the accused did as above with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person.

For an offense under section 366B it is to be proved:

1. That the accused imported a girl to Bangladesh.
2. That the girl was imported from any country outside Bangladesh.
3. That such girl was under the age of 21 years.
4. That the accused imported the girl with intent that she may be, or knowing it to be likely that she will be forced or seduced to illicit intercourse with some person.

Kidnaping or abducting in order to subject person to grievous hurt, slavery, or unnatural offense is punishable under section 367.

Section 368: Wrongfully concealing or keeping in confinement, kidnaped or abducted person

This is one of the sections in which subsequent abetment is punished as a substantive offense. It refers to some other party who assists in concealing any person who has been kidnaped or abducted. For an offense under this section it is necessary to prove:

1. That the person in question has been kidnaped or abducted.
2. That the accused knew of such kidnaping or abduction.
3. That he, having such knowledge, wrongfully concealed or kept such person in confinement.

Section 375: Rape

A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the following circumstances:

(1) Against her will, (2) without her consent, (3) with her consent when her consent has been obtained by putting her in fear of death or of hurt, (4) with her consent when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, and (5) with or without her consent when she is under 14 years of age. Penetration is sufficient to constitute the sexual intercourse necessary to the offense of rape. Sexual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape.

In the definition of rape, the first clause operates, where the woman is an possession of her senses, and, therefore, capable of consenting;

the 2nd, where she is insensible from drink or any other cause, or so imbecile that she is incapable of any rational consent;

the 3rd and the 4th, where there is consent, but it is not such a consent as excuses the offender, because in the one case it is extorted by putting the woman in fear, and in the other, it is obtained by deception of a particular kind;

and the 5th, where the intercourse is with a girl so young must consent is immaterial.

The section requires two essentials:

1. Sexual intercourse by a man with a woman,
2 The sexual intercourse must be under circumstances falling under any of the 5 clauses in the section as stated above.

section 377: Unnatural Offense

The offense consists in a casual intercourse committed against the order of nature by man with man, or in the same unnatural manner with woman, or by man or woman in any manner with animal.

Offenses Against Property
(Sections 378 to 462)

In section 378 `Theft' has been defined. A number of explanations and illustrations have also been given in the same section. The penal section for theft is section 379. In order to constitute theft five factors are essential:

1. Dishonest intention to take property.
2. The property must be movable.
3. It should be taken out of the possession of another person.
4. It should be taken without the consent of that person.
5. There must be some removal of the property in order to accomplish the taking of it.

Theft in house, building, tent, vessel, etc., used as human dwelling or used for custody of property is punishable under section 380 P.C.

The object of the section is to give greater security only to property deposited in a

house so as to be under the protection of the house and not to property about the person of the party from whom it is stolen. Theft from a person in a dwelling house or from any covered or uncovered place is, therefore, established as a single theft under section 379.

Section 381: Theft by Clerk or Servant of Property in possession of master

The section provides for a severe punishment when a clerk or a servant has committed theft because he has greater opportunities of committing this offense owing to the confidence reposed in him, when the possession is with the master this section applies; when it is with the servant, section 408 comes into operation.

Section 382 provides punishment for theft after preparation made for causing death, hurt, or restraint in order to the committing of the theft.

An offense of extortion is punishable under section 384 and its definition has been given in section 383. The ingredients of extortion are:

1. Intentionally putting a person in fear of injury to himself or another.
2. Dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

Extortion by putting a person in fear is punishable under section 386.

Theft and Extortion

Extortion is distinguished from theft:

(i) Extortion is committed by the wrongful obtaining of consent. In theft the offender takes without the owner's consent.

(ii) The property obtained by extortion is not limited as in theft to movable property only. Immovable property may be the subject of extortion.

(iii) In extortion the property is obtained by intentionally putting a person in fear of injury to that person or to any other and there by dishonestly inducing him to part with his property. In theft the element of force does not arise.

Robbery is defined in section 390. In every robbery there is either theft or extortion. It is a special and aggravated form of either theft or extortion. Robbery means

a felonious taking from the person of another or in his presence against his will, by violence or putting him in fear.

Dacoity has been defined in section 391. Dacoity is robbery. committed by five or more persons. Abettors who are present and aiding when the crime is committed are counted in the number. The number of person concerned in the robbery must not be less than five to make an offense of dacoity.

The essentials of the offense of dacoity are that the theft should be perpetrated by means either of actual violence or of threatened violence. The threatened violence may be implied in the conduct and character of the mob. It is not necessary that the force or menace should be displayed by any overt act.

Punishment for robbery has been provided in section 392. Attempt to commit robbery has been made punishable under section 393. When in committing or attempting to commit robbery there is voluntarily causing of hurt it becomes punishable under section 394. To substantiate an offense of robbery under section 394 it is necessary to prove.

1. that the accused or some one jointly concerned with him commit robbery and
2. that the accused or such other person, voluntarily caused hurt in doing so.

Punishment for dacoity has been prescribed under section 395. It is for simple dacoity.

Section 396 is dacoity with murder and section 397 is for robbery or dacoity with attempt to cause death or grievous hurt. Both the sections provide for punishments.

For attempt to commit robbery or dacoity when the offender is armed with a deadly weapon is punishable under section 398.

Section 399 provides for punishment for making preparation to commit dacoity.

Section 400 provides punishment for belonging to gang of thieves.

Assembling for the purpose of commiting dacoity is punishable under section 402. This section applies to mere assembling without proof of other preparation. Where there is preparation section 399 applies.

Section 403: Criminal Misappropriation of Property

The section prescribes punishment for dishonest misappropriation of property.

Explanations and illustrations have also been provided in the section for proper appreciation. Criminal misappropriation takes place when the possession has been innocently come by, but where by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. The offense consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender.

The section requires: (1) dishonest misappropriation or conversion of property for a person's own use, and (2) such property must be movable.

Section 405. Criminal Breach of Trusts has been defined in this section and the offense has been made punishable under section 406. To constitute the offense of criminal breach of trust, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. There must be an entrustment, there must be misappropriation or conversion to one's own use. The section requires:

1. Entrusting any person with property or with any dominion over property.
2. The person entrusted (a) dishonestly misappropriatingor converting to his own use that property, or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation:

    (i) of any direction of law prescribing the mode in which such trust is to be discharged, or

    (ii) of any legal contract made touching the discharge of such trust.

Section 407 prescribes punishment for criminal breach of trust by carrier, etc. Those who receives property under a contract, express or implied, to carry it or keep it in safe custody are punishable under this section for a criminal breach of duty with respect to such property. The persons specified in this section are alike being entrusted with the custody of property for which they are remunerated, their employment being not continuous, but intermittent and in relation to specific goods.

Criminal Breach of trust by clerk or servant comes within the mischief of section 408. Section 381 punishes theft by a clerk or servant, and section 408 inflicts enhanced punishment on such a person for criminal breach of trust.

It has to be proved:

1. That the accused was the clerk or servant of the person reposing trust.

2. That he was in such capacity entrusted with the property in question or with dominion over it.
3. That he committed criminal breach of trust in respect of it.

Criminal Misappropriation and Criminal Breach of Trust

In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates the same, or wilfully suffers any other person so to do, instead of discharging the trust attached to it.

Section 409: Criminal Breach of Trust by Public Servant or by Banker, Merchant or Agent

This section classes together public servants, bankers, merchants, factors, brokers,attorneys and agents. In order to bring a case within section 409 it is necessary to show that property was entrusted to a public servant and that he accepted the property entrusted, being in his public capacity required or authorised to accept it. To establish an offense under this section it is necessary to prove:

1. That the accused was either a public servant, or a banker, a merchant, or a factor or a broker, or an attorney, or an agent.
2. That he was in such capacity entrusted with the property in question or with dominion over it.
3. That he committed criminal breach of trust in respect of it.

Stolen property is defined under section 410 and dishonestly receiving of stolen property has been made punishable under section 411. Section 410 explains what comes under the words "stolen property". Things which have been stolen, extorted, or robbed, or which have been obtained by criminal misappropriation or criminal breach of trust come under the extended signification given to these words. Section 411 clearly shows that besides dishonest possession of stolen property there must also be the knowledge of or at least reasonable belief in the property being stolen property.

This section requires two essentials:

1. Dishonest receipt or retention of stolen property.
2. Knowledge at the time of receipt that the property was obtained in one of the ways specified in the section.

Section 412 provides punishment for dishonestly receiving property stolen in the commission of a dacoity. The section refers to person other than the actual dacoits. It implies receipt from another person or an act by one not himself the dacoit.

Section 413 prescribes punishment for those who are habitually dealing in stolen property. It punishes severely the common receiver or professional dealer in stolen property. One who casually receives stolen property is punished under sections 411 and 412 according to the taint attaching to the property.

Section 415

Cheating is defined under section 415 along with an explanation and a few illustrations.

This section requires:

1. Deception of any person.
2. (a) Fraudulently or dishonestly inducing that person
   - (i) to deliver any property to any person; or
   - (ii) to consent that any person shall retain any property,

   or

   (b) intentionally inducing that person to do or omit to doanything which he wouldnot do or omit if he were not so deceived, and which act or omission causes or islikely to causedamageor harm to that person in body, mind, reputation or property.

Cheating by Personation is defined in Section 416

This section requires any one of the following essentials:

1. Pretension by a person to be some other person.
2. Knowingly substituting one person for another.
3. Representation that the person representing or any person is a person other than he or such other person really is.

"To personate" means to pretend to be a particular person.

Punishment for Cheating is provided under Section 417

This is meant for simple cases of cheating. When there is delivery of any property or destruction of any valuable security section 420 is the proper section to apply.

Section 418: Cheating with knowledge that wrongful loss may cause to person whose interest offender is found to protect. This section applies to cases of cheating by a guardian, a trustee, a solicitor, an agent, etc.

Section 419 prescribes punishment for cheating by personation. This is the penal section for the offense defined in section 416.

Section 420: Cheating and Dishonestly Inducing Delivery of Property

Where there is delivery or destruction of any valuable security resulting from the act of the person deceiving, this section will apply.

Section 425: Mischief

Offense of Mischief is defined in section 425. Punishment provided for mischief is in section 426. This section necessitates three things:

1. Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.
2. Causing the destruction of some property or any change in it or in its situation.
3. Such change must destroy or diminish its value or utility or affect it injuriously.

Section 427: Mischief Causing Damage to the Amount of Tk. 50/- or Upwards.

This section provides for enhanced sentence where the loss or damage caused is of Tk. 50/- or more.

Section 428: Mischief by killing or maiming animal of the value of Tk. 10/-. It is intended to prevent cruelty to animals and consequent loss to the owner.

Section 429: Mischief by killing or maiming cattle, etc. of any value or any animal of the value of Tk. 50/- or upwards.

This section is exactly similar to the preceding section 428 except that it mentions particular animals. It provides enhanced punishment owing to the greater value of the animals mentioned therein. Intention is the gist of the offense.

Section 431: Mischief by injury to public road, bridge, river or channel. Punishment imprisonment upto five years or fine or both.

Section 435: Mischief by fire or explosive substance with intent to cause damage to amount of Tk. 100/-, or (in the case of agricultural produce) Tk. 10/-. It is punishable under this section.

Section 436: Mischief by Fire or explosive Substance with Intent to Destroy House, etc.

This section punishes mischief by fire or explosive substance. Owing to the serious nature of the means employed the punishment is severe.

The offense of Criminal Trespass is defined in section 441.
It ingredients are:

1. Entry into or upon property in the possession of another.
2. If such entry is lawful then unlawfully remaining is such property.
3. Such entry or unlawful remaining must be with intent:

(i) to commit an offense, or
(ii) to intimidate, insult, or annoy the person in possession of the property.

Section 442: The definition of the offense of "House trespass" is available in section 442. The definitions of other allied offenses have been given in section 443 (Lurking house-trespass), section 444 (Lurking house-trespass by night) and section 445. Section 445 contains an elaborate definition of house-breaking. House-breaking by night has been defined in section 446.

Punishment for criminal trespass has been provided in section 447 and an offense of house-trespass is punished under section 448.

Section 449: House-trespass in order to commit offense punishable with death. **Section 450:**House-trespass in order to commit offense punishable with imprisonment for life. **ection 451:** House-trespass in order to commit offense punishable with, imprisonment. These are also penal sections for the offenses mentioned in each.

Punishments have been provided in Section 452 for House-trespass after preparation for hurt, assault or wrongful restraint, in section 453 for Lurking house-trespass or house-breaking, in section 454 Lurking house trespass or house-breaking in order to commit offense punishable with imprisonment, in section 455 Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint and in section 456 for Lurking house-trespass or house-breaking by night.

Section 457: Lurking house-trespass or house-breaking by night in order to commit offense punishable with imprisonment.

The offense under this section is an aggravated form of the offense described in section 456. In order to establish an offense under section 457 it is necessary to prove:

1. That the accused committed lurking house-trespass by night or house-breakingby night;
2. That the same was to commit theft, or an offense punishable with imprisonment.

Section 458

Lurking house-trespass, or house-breaking by night after preparation for hurt, assault, or wrongful restraint. This section is analogous to sections 452 and 455. It only applies to the house-breaker who actually has himself made preparation for causing hurt to any person, etc., and not his companions as well who themselves have not made such preparation.

Section 459: Grievous Hurt Caused whilst committing Lurking House-breaking or House-trespass

The offense under this section is an aggravated form of the offense described in section 458.

Offenses relating to documents and to trade or property marks are described from section 463 to 489, and those relating to Currency notes and Bank notes are from sections 489A to 489E.

Section 497

For an offense of adultery punishment has been prescribed under section 497. The section requires the following essentials:

1. Sexual intercourse by a man with a woman who is and whom he knows or has reason to believe to be the wife of another man.
2. Such sexual intercourse must be without the consent or connivance of the husband.
3. Such sexual intercourse must not amount to rape.

Defamation

Definition of the offense of defamation has been given in section 499. A number of explanations, illustrations and exceptions have also been stated in the section for proper understanding and appreciation. Punishment is provided under section 500. The section requires three essentials:

1. Making or publishing any imputation concerning any person.
2. Such imputation must have been made-
   (i) by words, either spoken or intended to be read; or
   (ii) by signs; or
   (iii) by visible representations.
3. Such imputation must have been made with the intention of harming, or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

Section 501 provides punishment for printing an engraving matter known to be defamatory. This is a distinct offense from the one under section 500. This section makes such abetment a distinct offense. The section requires two things:

1. Printing or engraving of any matter.
2. Knowledge or reason to believe that such matter is defamatory.

Section 502: Sale of Printed or Engraved Substance

Containing defamatory matter:

This section supplements the provision of the previous section (section 501) by

making the seller of defamatory matter punishable under it. The section has two essentials:

1. Selling or offering for sale any printed or engraved substance.
2. Knowledge that such substance contains defamatory matter.

In order to substantiate an offense under section 502 it is necessary to prove:

1. That the matter is defamatory (section 499).
2. That it is printed or engraved on the substance in question.
3. That the accused sold or offered for sale, that substance.
4. That he then knew that it contained such defamatory matter.

section 503: Criminal Intimidation

The offense has been defined in this section. It has the following essentials:

1. Threatning a person with any injury:

   (i) to his person, reputation, or property; or
   (ii) to the person or reputation of any one in whom that person is interested.

2. Threat must be with intent

   (a) to cause alarm to that person, or
   (b) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or
   (c) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

In the explanation to the section it is stated that a threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. Criminal intimidation is closely analogous to extortion. In extortion the immediate purpose is obtaining money or money's worth; in criminal intimidation, the immediate purpose is to induce the person threatened to do, or abstain from doing, something which he was not legally to do or omit.

Punishment for criminal intimidation has been provided under section 506. It has two parts: Part I is for simple criminal intimidation and Part II is applicable if threat be to

cause death or grievous hurt, etc. For an offense under this section if is necessary to prove:

1. That the accused threatened some person.
2. That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of some one in whom he was interested.
3. That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.

Section 507: Criminal Intimidation by an Anonymous Communication

This section acts as a corollary to section 506. If the criminal intimidation by an anonymous letter, or by a letter signed by a false name, the offense will be subject to higher punishment under this section as it causes great alarm to the recipient.

Section 509: Word, Gesture or Act intended to Insult the Modesty of a Woman

This section requires the following essentials:

1. Insulting the modesty of a woman.
2. The insult must be caused:

   (a) by uttering any word, or making any sound or gesture or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or
   (b) by intruding upon the privacy of such woman.

Section 510: Misconduct in Public by a Drunken Person

This section requires two essentials:

1. Appearance of a person in a state of intoxication in

   (a) any public place, or
   (b) any place which it is a trespass in him to enter.

2. The person so appearing must have conducted himself in such a manner as to cause annoyance to any person.

Attempts to Commit Offenses

Section 511: Punishment for attempting to commit offenses, punishable with imprisonment for life or imprisonment.

This is a general provision dealing with attempts to commit offense not made punishable by other specific sections. It makes punishable all attempts to commit offense punishable with imprisonment and not those punishable with death only.

Stages of Crime-- In every crime, there is,
Ist, intention to commit,
2ndly, preparation to commit it,

If the 3rd stage, that is, attempt, is successful, then the crime is complete. If the attempt fails the crime is not complete, but the law punishes the person attempting the act. An attempt is made punishable, because every `attempt', although if fails of success, must create alarm, which of itself is an injury, and the moral guilt of this offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment; as the injury is not as great as if the act had been committed, only half the punishment, is awarded.--(Livingstone)

N.B: This Chapter has been prepared with the help of the Book "THE LAW OF CRIMES" by Ratanlal Ranchhoddas, B.A., LL.B., and Dhirajlal Keshablal Thakore, B.A. of Lincoln's Inn, Barrister-at-Law.

PART THREE

CHAPTER XXXII

ADMINISTRATIVE FUNCTIONS OF A MAGISTRATE IN RELATION TO HIS COURT

The administrative functions of a Magistrate are many, the most important function being the management of his Court. He should see that his Court is kept neat and tidy, that the Court is not crowded unnecessarily, that the decorum of the Court is maintained, that the orders passed by the Court are promptly carried out, that the processes are timely prepared, signed and served, that the registers are timely prepared signed and properly maintained and the court fees are punched and entered in the relevant register accounted for.

Another important duty of duty of the Magistrate is to see that the Court hajat is properly maintained. He should see that the under trial prisoners (UIPs) are not kept in the hajat in unsanitary conditions, that the court hajat is swept and cleaned on every working day. He should also see and ensure that the hajat is properly secured leaving no chance for escape of the UTPs.

The Magistrate should see that the Court police Establishment, placed under the disposal of the court, functions properly. The Court police Establishment forms an integral part of the Court as it is charged with the responsibility of processing and presenting police cases before the Court for disposal. The Magistrate should see that the establishment is properly accommodated ant that the staff of the establishment discharge their duties properly and timely to assist the Court in dispensing justice.

The Magistrate should also see that `the Court Malkhana' where exhibits (alamats) of cases are kept, is maintained properly. The Magistrate may visit the Malkhana from time to time and see for himself how the alamats have been kept and preserved. He may verify the register to as certain real position. He should also see and ensure that adequate security measures are taken to keep the alamats of the Malkhana secure.

The Magistrate should also ensure adequate seating arrangements for the witnesses. Due to pressure of work of the Court the witnesses might have to wait for long to get their turn for being examined by the court. The witnesses cannot leave before the transaction of the Courts' business for the day. The Magistrate should see to the convenience of the witnesses and make arrangements for construction of Witness Shed and seating arrangements for them.

The Magistrate should also see that the witnesses are paid their traveling and diet allowance on the date of their attendance in order to help them in defraying their personal expenses.

The Magistrate owes a duty to visit the jail, where UTPs are lodged, to see their conditions and also to acquaint himself with the grievance of the jail inmates.

The Magistrate should, whenever passing a sentence of fine, see to it that adequate steps are taken as per provision of section 386 of the Cr.P.C. to realise the amount. He should not leave it to his Bench Assistant (Peshkar) entirely for follow-up action. He should take steps himself either by issuing a warrant for the levy of the amount by attachment and sale of movable property belonging to the offender or by issuing 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. He should ensure that the amount of fine realised is duly accounted for and deposited to the treasury/Bank as quickly as possible.

The Magistrate should keep a vigilant eye on the working of the copying section. He should see that unnecessary delay is not caused in doing the copying work and in returning the Court's record. The Magistrate has got another very important duty to perform. It is his duty to see that the disposed records are consigned to the Record Room in time in order to remove congestion of the Court to facilitate its work. He should hear in mind that the records are very valuable documents and inordinate delay in consigning the records may cause loss or destruction of records.

The Magistrate should also see that orders received from the superior Courts/higher authorities for sending of records, reports/returns are promptly complied with.

The Magistrate is to undertake periodic inspection of his own Court. He should take note of the lapses and take steps to rectify the omissions. Only by exercising effective checks and control over the Bench Assistant and others concerned the Magistrate can bring about salutary changes in Court administration.

CHAPTER XXXIII

FUNCTIONS AND DUTIES OF BENCH CLERK

The Bench Clerk now designated as a Bench Assistant (popularly known as Peshkar) performs a significant role in the business of the Court.

`Peshkar' is a Persian term meaning one who puts up but the duties of the Bench Assistant (Peshkar) are not confined to the business of putting up records only. He performs other important functions also. Bench Assistant is the custodian of case records and registers of the court except those records and registers to be maintained by the G.R.O. Bench Assistant. is also responsible for the safe custody of these records and registers.

Following are the functions and duties of the bench assistant: Placing necessary records and papers before the Magistrate

During the course of hearing of cases by the Magistrate, the Bench Assistant has to place the records of the cases fixed on the day and the petitions etc. submitted by the parties relating to the cases and the fresh petitions in connection with C.R. cases and Misc. cases before the Magistrate.

He should not write any order on the order sheets or on the body of the petitions on behalf of the Magistrate.

Compliances with the orders of the Magistrate

Bench Assistant will carefully go through the orders passed by the Magistrate on the records of the day and petitions submitted by the parties and take appropriate actions towards compliance.

(a) He will fill in the forms of summons, W/A, W/W, P/A, S/W etc. and place the same before the Magistrate for signature. He will see that processes are duly sealed. After obtaining signature of the Magistrate, he will make necessary entries in the Issue Register and send them to the concerned officials for execution. Summons will be served through Process Servers and orders of W/A, W/W, S/W and P/A will be executed through the Police.

(b) He will also prepare the copy of order on the order sheet, if and when

necessary and after obtaining signature of the Magistrate, send it to the concerned official.

(c) He will prepare the Custody Warrants, Jail Warrants etc. and put up before the Magistrate for signature and then send those papers to the Court police.

Maintenance of Court Registers

Bench Assistant is the custodian of the case records and Registers of the Court. The proper maintenance of the Registers is the most important function of the Bench Assistant. The Bench Assistant should not leave the Court without making complete entries in the relevant Registers.

(a) The total amount of Court fee furnished on the petitions should be noted in the Court Fee Register after punching the Court fee stamps and the Register should be placed before the Magistrate for signature.

(b) The total amount of the fine realised should be deposited under proper head of account and fine receipt duly signed by the Magistrate should be issued to every individual accused. Fine case should be started for the unrealised fine.

(c) The number of witnesses examined in full should be recorded in the Witness Register and initial of the Magistrate be obtained.

(d) The disposal of the case and nature of disposal should be recorded in the Trial Register.

(e) Case diary of the Court is an important Register which should be placed before the Magistrate at the very outset of the hearing so that the Magistrate may have an idea about the day's work. Next date of each case fixed by the Magistrate should be noted in the Case Diary which should be placed before the Magistrate for the signature.

(f) Bench Assistant should prepare the necessary periodical statements and send the same to the concerned offenses after obtaining the signature of the Magistrate.

(g) He should maintain and update all other Registers properly and regularly.

(h) In case a Bench Assistant has to work with more than one Magistrate, he will have to maintain all relevant registers separately for each Court.

Consignment of the Case Records

The consignment of case records is another important function of the Bench Assistant.

After the disposal of cases, the case records should be properly classified and consigned to the Criminal Record Room for preservation as per Classification.

Other Functions

(a) On receipt of a requisition from the Record Room for supply of certain document for the purpose of giving copy to the party, the relevant document only should be sent to the Record Room instead of sending the whole record and there should be noting of such sending.

(b) On receipt of the requisition from the higher Court calling for the record, he will ensure quick despatch of the record to the higher Court, and note such despatch.

(c) Bench Assistant should promptly supply the Court's certificate to the official witnesses who come from far away places so that they do not have to waste their time.

(d) Bench Assistants will put up necessary papers for the payment of witnesses' bill and assist the Magistrate in prompt disbursement of the same.

Bench Assistant should know his job so that he can actively help the Magistrate in running affairs of the Court. He must be well-behaved, because he will have to deal with the lawyers, police officers and the litigant members of the public and at the same time, he should be tactful and courteous. He must maintain secrecy of the Court matters and carefully preserve the important documents and records of the Court. The loss of an important document may cause miscarriage of justice or prejudice to a party.

Bench Assistant should not allow any record to be seen by any person without the permission of the Magistrate.

The efficiency of the Bench Assistant can help a lot to the smooth running of the Court's business and administration of justice.

CHAPTER XXXIV

COURT REGISTERS

Court Registers are very vital for the efficient and smooth running of a Court administration and to some extent through these registers a Court remains accountable to its superior authority and also to the public.

Classes of registers:

Every criminal Court shall keep and maintain the following Registers:

a. Case Diary
b. Process Register
c. Trial Register
d. Witness Register
e. Register of Warrants of imprisonment
f. C_1 Register (for cases ended in acquittal, dischargement of dismissal)
g. C_2 Register (for cases ended in conviction)
h. Consignment Register
i. Movement Register and
j. Peon Book.

In addition to the above-mentioned registers, the Court of the District Magistrate or of the Chief Metropolitan Magistrate or of the Upazila Magistrate, the registers noted below also should be kept and maintained:

a. Complaint (CR) Register
b. General (GR) Register
c. Non-General (Non-GR) Register
d. Miscellaneous (MR) Register
e. Register of Criminal Fines

Case Diary [(M) 38)]

Mainly, it contains the following information:

a. When the Court takes its seat and when it rises up.

b. Day to day business of the Court,--What was the work to be done and how it has been dealt with.

Case diary should be preserved for three years.

Process Register [(M)]

A Process Register contains:

a. Number and date of cases of which the process relates with Act and section
b. Name of parties
c. Character of process and date when returnable
d. date of issue and date of return and
e. Receiver's initials and remarks.

Such registers should be preserved for three years.

Trial Register [(M) 34]

Trial Register should be maintained by all Magistrates, who do not maintain Registers (M) 30 to (M) 33, and be preserved for seven years. And in it mainly are laid down:

a. Date of receipt of case
b. Name of complainant or informant
c. Name of accused
d. Name of the case with the section of the Penal Code or other Acts
e. Final order and date and
f. Remarks.

Witness Register [(M) 41]

It contains the following columns:

a. Serial number
b. Name of witness
c. Number of case in primary Registers Nos. (M) 30, (M) 31, (M)32, (M)33, (M)34
d. Date of attendance and date of discharge

e. Whether examined or not
f. Initials of presiding officer
g. Amount paid as expenses
h. Serial number and date of paid vouchers and
i. Remarks, if any.

Such register is to be maintained in all Courts and to be preserved for three years.

Register of Warrant of imprisonment [(M) 37]

The very name of the register suggests that it keeps and preserves all the information regarding the conviction of an accused and in fact, it keeps the following information:

a. Name of person sentenced.
b. Date of sentence
c. Term of imprisonment
d. Date of bail order, if any
e. Date of appellate orders terminating bail
f. Date of recommitment to jail
g. Date of end of terms of imprisonment and
h. Date of return of executed jail warrant and remarks, if applies.

This register should be maintained in all criminal Courts and be preserved till all the prisoners whose names have been entered into it are released.

C_2 Register or Register of Cases decided in Conviction [(M) 52)]

It's register containing a long list of information of cases ended in conviction. Some of the principal items are noted below:

a. Serial number of the case and its serial number in the primary registers.
b. Date of appearance of the accused.
c. Date of decision and number of days taken for such decision.
d. Whether the accused was brought to trial upon arrest or upon warrant or on summons or voluntarily or by transfer.
e. Whether conviction was given on regular trial or on summary trial and whether appealable or non-appealable sentence is given.
f. Nature and term of imprisonment and
g. Fine and whipping, if any.

This register is to be maintained in the Courts of all Magistrates and to be preserved for one year.

Movement Register and Peon Book

These two registers are necessary for office management and are useful in tracing the movement of case dockets (Judicial Case records) from one Court to another, from the Court of the Upazila Magistrate to the Court of District Magistrate or to the Court of Sessions.

Consignment Register [(M) 48]

It keeps the list of Records sent to the District Record-room from the Court of a Magistrate. It is to be maintained in all criminal Courts and to be preserved for the same period as the records to which the list relates. It contains mainly the following facts:

a. Name of the station.
b. Name of the Magistrate.
c. Serial number in the primary registers.
d. Name of the complainant and accused.
e. Nature of the case with the section of Penal Code or other Acts as applicable.
f. Final order passed and details of sentence.
g. Result of appeal or revision.
h. Date of decision.
i. Class of the case file A or B
j. Date when disposed of and shelved in the District Recordroom.
k. Number of shelf and rack in the District Record-room and
l. Date of destruction of files and initials of officer superintending destruction.

Primary Register

The following registers are termed as Primary registers:

a. Complaint Register (M) 30
b. General Register (M) 31
c. Non-general Register (M) 32
d. Miscellaneous Register (M) 33

These four registers are maintained only in the Courts, taking cognizance and to be preserved for seven years. Generally the following information are kept in the above mentioned registers:-

a. Date of receiving the complaint or FIR or non-FIR prosecution or only prosecution.
b. Case number with name of the offense and section of the Penal Code or other Acts, if any.
c. Name of the complaint and the accused/ accuseds, and
d. Final order and date with remarks, if any.

Register of Criminal Fines [(M)23]

This is a very important register to be maintained in the Courts of District and Upazila Magistrates and also in the Courts of the Chief Metropolitan Magistrates and to be preserved for 12 (twelve) years. Following items are mentioned in such registers:

a. Name of the officer imposing the fines.
b. Name and place of residence of the fines.
c. Offense and data of sentence.
d. Amount of fine.
e. Substantive imprisonment and imprisonment in default of fine.
f. Date of issue of warrant and Thana to which issued.
g. Date of return of warrant and amount realized with date of realization.
h. Balance, if any.
i. Amount paid as compensation out of fine realised and amount remitted to the Treasury after payment.
j. Signature of Treasury Muharrir and Clerk-in-charge of the fine register and ofthe Magistrate.
k. Dates on which the notice of realisation of fine is sent to jail and on which the notice is received back from jail after amendment of warrant.

CHAPTER XXXV

ENDS OF JUSTICE; RESPONSIBILITY OF THE MAGISTRATE

Definition of Administration of Justice

"The administration of justice has been defined as the maintenance of rights, suppression of wrongs and thus upholding justice within a political community by means of the physical force of the State".[1]

Civil and Criminal Justice

Administration of Justice has two part, namely:

(i) the administration of Civil Justice and
(ii) the administration of Criminal Justice.

Civil Justice

Civil justice is concerned with the enforcement of rights in civil proceeding. In civil proceeding, the plaintiff claims a right against the defendant who is alleged to have committed a wrong and the Court compels the defendant to do his duty. Civil Justice is concerned with plaintiff and remedy of his rights and as such it is remedial in nature.

Criminal Justice

In a criminal proceeding, the complainant or the prosecutor claims no right but makes an allegation against the accused that a wrong has been committed by the latter. Criminal Justice is concerned with the punishment of the wrong. The subject-matter of criminal proceeding is crime and the Court, if satisfied, punishes the criminal.

It may be pointed out here that proceedings under Chapter XII of the Criminal Procedure Code do not aim at punishment but merely bind down a person to keep peace so that he may not violate the legal rights of others. There are also civil proceedings

1. Hamiduddin Khan. Introduction to Jurisprudence, p. 71.

which aim at the punishment of the wrong. A person may be imprisoned for non-observance of an injunction issued by a civil Court.

According to Salmond[2], the ends or purposes of Criminal Justice are four in number, and in the context of purposes by it, punishment may be distinguished as (1) Deterrent, (2) Preventive, (3) Reformative and (4) Retributive.

Deterrent Punishment

As regards the deterrent aspect of criminal justice, it is considered to be the most important by Salmond. According to the deterrent theory, the object of punishment is not only to prevent the wrong-doer from doing a wrong second time but also to make him an example to other persons who have criminal tendencies. An exemplary punishment should be given to the criminal so that others may learn a lesson from him.

Preventive Punishment

Another object of punishment is preventive or disabling. The offenders are disabled from repeating the offenses by such punishment as imprisonment, death, exile or forfeiture of office. By disabling the criminal he is prevented from committing another crime.

Reformative Punishment

The object of punishment should, according to this view, be the reform of the criminal. The offender might have committed a crime under cricumstances which might never recur. The offender should be treated sympathetically in awarding sentence. The juvenile offenders are sent to industrial schools or reformatories and taught useful crafts to enable them, when out of jail, to earn an honest living.

Retributive Punishment

The primitive conception of criminal justice was private vengeance. The person wronged was allowed to have his revenge against the wrong doer.

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2. Salmond, Jurisprudence.

The retributive aspect of punishment was recognized in ancient penology. Early criminal law was based on the principle that all evil should be requited. Although the primitive method of vengeance has been replaced by the administration of criminal justice, the emotion and instinct that lay at the root of primitive vengeance are still in existence in human nature.

Awarding of Sentence--the Relative Weightage of the different Theories of Punishment

It would be very difficult to base criminal justice on any one theory of justice. Every theory has its own merits and demerits. Their relative weightage should be decided on the merit of individual case. It must be small for minor crimes and heavy for major crimes. For example, the first offenders may be leniently treated. Special treatment may also be given to juvenile offenders.

Magistrate's Responsibility

A Magistrate invested with the authority of administering criminal justice should apply his mind judiciously in deciding all issues coming up before him for adjudication. The Magistrate should discharge his functions without any fear or favour maintaining composure of his mind and not being swayed by emotion. He should give a fair hearing to the parties but refrain from making any comment which may be misconstrued as bias to any side. He should always be on his guard against causing any miscarriage of justice.

The Court is looked upon by the members of the public as a very sacred place inspiring their reverence and every effort should be made to maintain and enhance the dignity of the Court.

The Magistrate should, while awarding sentence, refer to the relevant section of the penal law prescribing the maximum punishment as well as the limit of his own powers of awarding sentence and very carefully decide upon what quantum of punishment will meet the ends of justice.

CHAPTER XXXVI

MAGISTERIAL BEHAVIOUR AND COURT'S DECORUM

In ancient Rome, the term 'Magistrate' originally implied the office of magister (Master) of the Roman people but subsequently it applied to the holder of office.

In countries like Bangladesh which derive their legal system from the Roman law, the term signifies, as per section 3(31) of the General Clauses Act 1897, holder of an office vested with authority to administer the law or one possessing large judicial or executive authority. The institution or office of the Magistracy had all along been and still is a very prestigious, enviable and responsible one and the person given to hold such an office of trust and responsibility must be worthy of the position.

The Magistrate, while sitting in the midst of judicial proceeding should, maintain his composure of mind, give patient hearing to the parties, give all opportunities to the accused to defend himself and give all possible protection to the witnesses.

The Magistrate should be punctual in attending Court. He should maintain strict impartiality and by talk or gesture should not show any bias towards any party. He will do well to bear in mind Civil Rule No. 905 which very succinctly prescribes a Code of Conduct for the guidance of all judicial officers. It reads, "Judges of all grades should avoid, as far as possible, becoming the guests of or entertaining those private individual or government servants who are or may be interested in civil or criminal cases or in matters which may eventually come before them for decision. Any possible imputation of suspicion or bias will thus be removed". He should maintain personal conduct in conformity with the saying that 'justice must not only be done, but it must appear to have been done'.

The Magistrate should try to deliver the judgment of a case soon after the close of hearing. No judgment should be delivered until it has been written and then signed.

CHAPTER XXXVII

MISCELLANEOUS DUTIES OF MAGISTRATES

The term `Magistrate' has been defined by section 3(31) of the General Clauses Act, 1897 as including every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force. But the term has not been defined in the Code of Criminal Procedure 1989. It means one vested with authority to administer the law or one possessing large judicial or executive authority. Previously, a Deputy Magistrate and Deputy Collector (now Assistant Commissioner) would have been posted at the District Headquarters and Sub-divisional Headquarters, or at some Thana Headquarters as Resident Magistrate and they used to perform both executive and judicial functions.

There was a scheme of Thana Magistracy and some Magistrates were posted to a number of selected Thanas with dual responsibilities, on experimental basis during the late sixties.

At the Collectorate or the office of the Sub-divisional Officer, a Deputy Magistrate (now Assistant Commissioner) used to act as Officer-in-charge of one or more sections of those Officers, besides performing judicial functions. In fact, they used to work as Staff Officers to the Deputy Commissioner or Sub-divisional Officer and assignment of work would have been made by the Deputy Commissioner or S.D.O. as the case may be.

With the upgradation of the Thanas to the status of upazila, the office of the S.D.O. is now defunct.

At the upazila level, there is one Upazila Magistrate performing the judicial functions exclusively and there is also one Assistant Commissioner still performing dual functions executive and judicial. Assistant Commissioner acting as judicial Magistrate tries Criminal Cases transferred to him by Upazila Magistrate and at the same time acts as Staff Officer to the U.N.O. and performs the Executive/Administrative duties assigned to him by the Government and U.N.O. He has to work as Finance Officer to the Upazila Parishad.

At the district Headquarters, there are some Assistant Commissioners acting as Staff Officers to the D.C. and they are looking after administrative matters, besides their judicial functions as Magistrates.

Apart from the judicial functions, the Magistrates also perform the following miscellaneous duties:

(a) A Magistrate may be required to guide police action when duly deputed by the appropriate authority to deal with emergent law and order situations like commanding dispersal of unlawful assemblies, control rioting etc. The Magistrate shall have to maintain his composure even on provocations and shall very sparingly have recourse to use of force. He will see that no excess is done, no force more than what is necessary, is applied.

(b) A Magistrate is deputed to conduct the public Examination like S.S.C. Examination. He has to assist the Returning Officer in conducting Public Elections.

(c) He supervises relief work and the distribution of relief materials in case of any natural disaster viz. floods, cyclone, etc.

(d) He performs protocol duties. He receives and sees off the VIPs, arranges their accommodation and transport and accompanies the VIPs during their tour within his jurisdiction.

(e) The Magistrate may also be assigned the task of attesting long hand notes of the speeches of political meetings. Before such attestation, the Magistrate must satisfy himself that the notes at least approximates the speech or speeches as far as he remember to have heard.

(f) The Magistrate may be deputed to remain present at the time of eviction of unauthorised persons from public or private places, while so deputed the Magistrate must see that minimum force is used to cause eviction, Before causing such eviction, the Magistrate should ascertain ascertain that there is no orders from the competent Civil Court or from the competent Civil Court or from the appropriate superior authority to maintain status quo in respect of the property in question.

(g) The Magistrate may also the be deputed to oversee preparation of inventory of articles, household materials and other valuables. Before attesting or authenticating such inventories he must personally ensure that it has correctly been prepared.

(h) In case of police firing, the Magistrate holds executive enquiry. As per instructions of the superior officer, a Magistrate also holds enquiry relating to the general administration and he represents his superior officer in many places of public interest.

(i) The Magistrate may also be deputed to conduct auction sales. In conducting auction sales the Magistrate must ensure that either he himself or other officers concerned in such sales do not purchase or bid for property.

(j) The Magistrate owes a duty to visit the jail where UTPS are lodged to see their conditions and also to acquaint himself with the grievances of the inmates of the jail.

(k) A Magistrate also deals with granting and renewal of license under the Arms Act. He also deals with issuance of some other licenses.

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CHAPTER XXXVIII

MAGISTRATE AND THE JAIL ESTABLISHMENT

Basis of Present Jail Administration

In Bangladesh, the following Acts and Regulations regulate the establishment of the jails, the confinement and treatment of persons therein, and the maintenance of discipline amongst them:

a. The Prisons Act, No. IX of 1994,
b. The prisoners Act, No. V of 1871,
c. The Prisoners Act, No. III of 1900,
d. Regulation No. III of 1818 for the confinement of state prisoners.
e. The Reformatory Schools Act, No. VII of 1897,
f. The Lunacy Act, No. IV of 1912,
g. The Whipping Act, No. IV of 1909,
h. Children Act, XXXIX of 1974,
i. The Factories Act., No. XXV of 1934,

The provisions of the Civil Procedure Code, the Criminal Procedure Code and the Penal Code that relate to the confinement of prisoners, the execution of sentences, appeals, lunatics and the like, are also compiled with in connection with prison administration of Bangladesh and the Jail Code and the Subsidiary Jail Code are based on all these.

Classes of Jails

The following are the classes of a jails established in the various districts under section 59 of the Prisons Act, 1894:

a. Central Jails for the prisoners sentenced to rigorous imprisonment for a period of six month and upwards.

b. District Jails at the headquarters of districts for the confinement of criminal and civil prisoners.

c. Subsidiary jails at the headquarters of sub-divisions (recently upgraded as

districts) and at the headquarters of some of the upazilas for the confinementof criminal prisoners.

d. Special jails for the confinement of special classes of prisoners (Rule-2, Bengal Jail Code).

Superintendence of Inspector-General

The General control and superintendence of jails are vested in Inspector-General and all Magistrates and jail shall obey the orders issued by him in all matters relating to the internal economy. discipline and management of jails. He shall ascertain that all rules and regulations relating to jails are strictly enforced. Any infringement on the part of Magistrates or Superintendents of jails of the rules or of the orders of the Inspector-General if continued after attention has been called to it, shall be brought by the Inspector-General to the notice of Government (Rule-22, Bengal Jail Code and Rule-15, Bengal Subsidiary Jail Code.)

Role of District Magistrate

The District Magistrate (DM) has have general control over a District Jail which is not also a central jail, and can take into his own hands the complete control of the jail, should be consider it necessary to do so, reporting his reasons at once to the Inspector-General (Rule-44, BJC). The subsidiary jail is also under the control of the Magistrate in-charge of such sub-division (recently upgraded as District/Upazila (Rule-21, BJC).

Normally, the superintendent has had control of all details of management but he does obey all orders of DM which are not inconsistent which the Prisons Act, 1894, or with rules make under it. However, except in emergent cases in which immediate action is necessary, such orders be so expressed that the superintendent may have time to refer (if he thinks necessary) to the IG before taking action on such orders. The Superintendent will correspond direct with the Inspector-General (IG) who will communicate his orders reference to the District Magistrate. In the case of a central jail which is also a district jail the control of DM does, as regards prisoners belonging to his district, convicted or under trial, remain the same as in an ordinary district jail (Rule-45. BJC).

The DM is not required to interfere in matters of detail affecting the management of a jail. He should avoid action having a tendency to weaken the authority of the Superintendent over subordinate officers and prisoners (Rule-47, BJC). He does not address any communication or order to any officer of any jail other than the

Superintendent. All orders issued by the DM are in writing and are ordinarily be issued in the form of an entry, in the Visitors Book (Rule-45, BJC). District Magistrates of the Upgraded sub-divisions also act as the superintendent of the subsidiary jail (Rule-21, BJC).

Importance of Jail Visit by a Magistrate

The DM visits the district jail (if not also a central jail) once a week; if for any cause he is unable to visit the jail personally, he may depute the senior covenanted subordinate if there be no convenanted officer, the senior Magistrate to visit the jail. The date of the Magistrate's order of deputation is quoted by the officer so deputed in the remarks made by him in the Visitors Minute Book (Rule-48, BJC). The DM also visits every subsidiary jail within his jurisdiction at least once a year and reports to the IG, the state of each subsidiary jail (Rule-23, BJC).

When the DM is absent on tour from headquarters, the officer in charge of the station for the time being, performs the duties of DM with regard to the jail, subject to any instructions which the DM may give. Such officer appends to his signature in the Visitors' Minute Book the words "in charge of the station during the absence of the Magistrate" (Rule-49, BJC).

The DM is, in all matters affecting the discipline of jails, subject to the control of the IG, and reports to him all important steps which he thinks proper to take (Rule-50, BJC). The Superintendent of subsidiary jails (DM of upgraded sub-divisions) visits the subsidiary jail at least twice a week and be responsible for the efficient management of the subsidiary jail in all details (Rule-30, BJC). He takes every opportunity of examining the food issued to the prisoners, to ascertain that it is of good quality (Rule-32, BJC).

In the event of a vacancy occurring in the office of the Superintendent, or his sickness or inability to discharge his duties, the District Magistrate takes temporary charge of the jail or place Civil Surgeon or Senior Assistant Surgeon of the station or, if there be no such surgeon, one of his subordinates in-charge and reports his action to the IG. The officer so placed in-charge exercises all the powers vested in a Superintendent but is not entitled to special pay unless the period of charge exceeds fifty days (Rule-51, BJC).

Supervisory Board

Out of the ex-officio visitors as prescribed by the government and non-official visitors, as may be appointed by the government, by the commissioners of the divisions

or commissioners of police through gazette notification, is constituted a Board, of which the DM or UPazila Magistrate (Sub-divisional Magistrate) as the case may be, is the ex-officio Chairman. The members should pay visit on varying dates as fixed by the Chairman. The Board should meet quarterly at the jail.

(a) Inspect all buildings and prisoners
(b) Hear any complaints and petitions
(c) Inspect the prisoner's food and
(d) See that it is of good quality and properly cooked and
(e) Examine the Punishment Book and
(f) Satisfy themselves that it is kept up-to-date. The Board should record the proceedings in the Visitors' Minute Book before leaving the jail and the superintendent after noting his explanation and recommendations thereon forwards a copy of the minutes to the IG who submits it to the government with observations (Rule-58, BJC).

Normal Inspection of Jails

Besides making visits in accordance with the order, a prescribed visitor of the jail is authorised to visit it at any other time (Rule-58, BJC). Whenever a visitor records the long detention of an under trial prisoner, a copy of his remarks relating to such matter is to be forwarded to the DM and if he prisoner be under trial in the Court of Sessions. a copy is also to be forwarded to the District and Sessions Judge (Rule-61, BJC).

The regulations relating to the routine visits of police officers to jails are contained in rule 624 of BJC but except as provided for there in, no police or other person is permitted to interrogate a prisoner without the special written permission of the IG or of the DM (Rule-64, BJC). For the subsidiary jails, permission for this purpose would have to be taken from the DM (Rule-28, BJC).

Procedure of `In and Out' of Prisoners

The Jailor ordinarily admits new prisoners into the jail at any time after the opening of the jail upto the hour of lock-up, which takes place at sun set. After lock-up he does not receive any prisoner except on special written order (in addition to the warrant) of the Session Judge or of the District Magistrate or the Magistrate in-charge of the DM's office or of the Magistrate trying the case in which such prisoner may be concerned (Rule-496, BJC). For the subsidiary jails, after lock-up, Deputy Superintendent should not receive any prisoner, except on the special written permission of DM (Sub-divisional Magistrate) of Districts (upgraded subdivision) (Rule-95, BJC).

When Convicted Prisoner Falls III

When a convicted prisoner suffering from sickness, not due to infectious disease, is likely to die if detained in jail but there is a reasonable chance of recovery if he is released, the superintendent reports the facts to the DM in which the prisoner's offense was committed, provided that the prisoner has not more than six months to remain in prison before the expiry of his sentence and the Medical Officer of the jail recommends the release (Rule-502)(i), BJC).

If the Magistrate of the district dissents on it from Superintendent recommendation the Superintendent may request the Magistrate to forward the recommendation to the commissioner of the Division (Rule-502(2), BJC).

If a prisoner detained solely under a sentence of imprisonment in default of furnishing security to keep the peace or for good behaviour is so seriously ill as to be likely to die, whatever the term of his unexpired sentence, the Superintendent shall refer the case to the District Magistrate, who should exercise the discretion allowed to him by section, 124 of the Criminal Procedure Code, under which he can release prisoner without referring to government (Rule-503, BJC, Rule-161, BJC).

Classification of Convicted Prisoners

All convicted prisoners are divided into three divisions, viz., i, ii and iii on the basis of different criteria. The High Courts, Sessions Judges, District Magistrates, Chief Metropolitan Magistrates, Upazila Magistrates (Sub-divisional Magistrates) and Magistrates of the first class (the two latter's through the DM) make the initial recommendation for classification in Division I and II to the government who confirms and reviews (Rule-617, BJC).

The classification of a convicted person as a habitual criminal should ordinarily be made by the convicting Court but if the convicting Court omits to do so, such classification , may be made by the DM (Rule-618, BJC).

Descriptive Roll sent by the Trying Magistrate

With the warrant of every convict is sent his descriptive roll in the prescribed form signed by the Magistrate. This Roll is attached to the prisoner's warrant, and is returned with it to the Court after the sentence has expired. In the descriptive roll the Magistrate notes the classes (divisions) to which the prisoner belongs (Rule-620, BJC).

Civil Jail

If there be a separate civil jail the Superintendent of the Criminal jail shall be Superintendent of the civil jail also, and District Magistrate enjoys the same powers as regards both civil and criminal prisoners except where distinction is made (Rule-887, BJC).

A Confessing Under trial Prisoner

Any special direction as to the separation of an unconvicted criminal prisoner given by the Magistrate is carried out. Such separation should be unaccompanied by any irksome conditions beyond those necessary to secure the object to prevent his communication with other prisoners (Rule- 912, BJC).

Trying Courts and Speedy Trial of Under Trial Prisoners (UTPS)

The superintendent reports to the DM all cases of under trial prisoners admitted for bailable offenses. Superintendent also submits to the District Magistrate in Returns No. 27 fortnightly, reminders regarding all cases in which prisoners have been detained under trial for more than 14 days. The IG may call for an explanation from a Magistrate in cases where under trial prisoners have been detained in hajat an unusual length of time (Rule-915, BJC).

All trying Magistrates should often visit the jail situated within their jurisdiction or near to their jurisdiction to see whether there are UTPs detained for more than normal number of days.

If an under trial prisoner be discharged in open Court, or released on bail while attending the Court, by the Magistrate or Sessions Judge, a notification of the fact under the signature of the officer so discharging or releasing him is sent on the same day to the Jailor (Rule-920, BJC).

Prisoners Condemned to Death

The Superintendent of the jail is present at every execution and like wise the district Magistrate or an officer of Magisterial rank deputed by him (Rule-1003, BJC). In the event of the DM or the Magistrate in-charge considering it undesirable that the body of an executed criminal should be made over to the relatives or friends of the deceased, such body is under the written order of the District Magistrate to be burnt or buried within the

Jail in consonance, as far as possible, with the racial or religious customs of the community to which the deceased belonged (Rule-1008, BJC).

IIIness and Epidemics

Prisoners who are dangerously ill, or moribund, may be permitted to see their relations. Intimation of the conditions of the prisoners should be promptly given to the District Magistrate (Rule-1245, BJC).

It is the duty of official visitors and Magistrates to satisfy themselves that conservancy of the jails is properly carried out (Rule-1189, BJC). If the circumstances of the jail renders segregation of a case of grave infectious disease impossible, the Superintendent with the sanction of the DM, removes the prisoners to any hospital provided his offense is of trivial nature and the term of his sentence is short (Rule-1265, BJC).

In the above paras, an attempt has been made to give an idea about the role of a Magistrate, visualising him in various capacities, in the over all jail administration of Bangladesh. Since the crumbling down of the British, various administration as well as judicial reforms and changes have taken place but still we are carrying the yoke of British made-Jail Codes which need a thorough reshapping and overhauling.

PART FOUR

CHAPTER XXXIX

IMPORTANT NAMES OF SOME OTHER ACTS

1. The Judicial Officers Protection Act, 1850
2. The Police Act, 1862
3. The Sarais Act, 1867
4. The Public Gambling Act, 1867
5. The Court Fees Act, 1870
6. The Cattle Trespass Act, 1871
7. The Oath Act, 1873
8. The Arms Act, 1878
9. The Opium Act, 1878
10. The Touts Act, 1879
11. The Ferries Act, 1885
12. The Prevention of Cruelty to Animals Act, 1890
13. The Railways Act, 1890
14. The Prisons Act, 1894
15. The General Clauses Act, 1897
16. The Stamp Act, 1899
17. The Prisoners Act, 1900
18. The Extradition Act, 1903
19. The Ancient Monuments Preservation Act, 1904
20. The Explosive Substances Act, 1908
21. The whipping Act, 1909
22. The Excise Act, 1909
23. The Lunacy Act, 1912
24. The Passport Act, 1920
25. The Forest Act, 1927
26. The Child Marriage Restraint Act, 1929
27. The Places of Public Amusement Act, 1933
28. The Bengal Touts Act, 1942
29. The Foreigner's Act, 1946
30. The Prevention of Corruption Act, 1947
31. The Prohibition of Smoking in Show House Act, 1952
32. The Control of Essential Commodities Act, 1956
33. The Anti Corruption Act, 1957
34. The Muslim Family Laws Ordinance, 1961
35. Muslim Family Laws Rules, 1961
36. The Customs Act, 1969

37. The Criminal Law Amendment Act, 1958
38. The Scheduled Offenses Order, 1972
39. The Bangladesh Legal Practitioners and Bar Council Order, 1972
40. The Special Powers Act, 1974
41. The Children Act, 1974
42. The Village Courts Ordinance, 1976
43. The Dhaka Metropolitan Police Ordinance, 1976
44. The Chittagong Metropolitan Police Ordinance, 1978
45. The Conciliation of Disputes (Municipal Areas) Ordinance, 1979
46. The Dowry Prohibition Act, 1980
47. The Note-Books (Prohibition) Act, 1980
48. The Public Examination (Offenses) Act, 1980
49. The Acquisition and Requisition of Immovable Property Ordinance, 1982
50. The Motor Vehicles Ordinance, 1983
51. The Cruelty to Women (Deterrent Punishment) Ordinance, 1983
52. The Family Court Ordinance, 1985
53. The Family Codes Rules, 1985
54. The Khulna Metropolitan Police Ordinance, 1985

IMPORTANT ABBREVIATIONS

ACMM	-	Additional Chief Metropolitan Magistrate
ADM	-	Additional District Magistrate
BJC	-	Bangladesh Jail Code
BLD	-	Bangladesh Legal Decisions
CD	-	Case Diary
CMM	-	Chief Metropolitan Magistrate
CR	-	Complaint Register
Cr.P.C.	-	The Code of Criminal Procedure
CS	-	Charge Sheet
DLR	-	Dhaka Low Report
DC	-	Deputy Commissioner
DM	-	District Magistrate
FIR	-	First Information Report
GR	-	General Register
IG	-	Inspector General
IO	-	Investigating Officer
MFC	-	Magistrate, First Class
Misc.	-	Miscellaneous
MM	-	Metropolitan Magistrate
MR	-	Miscellaneous Register
O/C	-	Officer-in-Charge
O/P	-	Opposite Party
P&A	-	Proclamation and Attachment
PC	-	The Penal Code
PP	-	Public Prosecutor
PRB	-	The Police Regulations of Bangladesh
PS	-	Police Station
Sec.	-	Section
SC	-	Supreme Court
SDM	-	Sub-divisional Magistrate
SDPO	-	Sub-divisional Police Officer
SP	-	Superintendent of Police
SR	-	Service Return
SW	-	Search Warrant
TI	-	Test Identification
UM	-	Upazila Magistrate
UNO	-	Upazila Nirbahi Officer
u/s	-	Under Section
UTP	-	Under Trial Prisoner
VC	-	Village Court
W/A	-	Warrant of Arrest
W/W	-	Witness Warrant

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