INDEX

Sr.No.	Chapter Name	Page No.
1.	Proposed Preface to Revised Volume-III of the High Court Rules and Orders	1
2.	Chapter 1 Practice in the Trial of Criminal Cases	5
3.	Chapter 2 Initiation of Proceedings	10
4.	Chapter 3 Attendance of Accused Persons and Service of Processes	14
5.	Chapter 4 Procedure in Enquiries and Trials by Magistrates	22
6.	Chapter 5 Plea Bargaining	36
7.	Chapter 6 Record of Evidence in Criminal Cases	40
8.	Chapter 7 The Judgment	46
9.	Chapter 8 Cases under Special and Local Acts:	51
10.	Chapter 9 Cases against Government Servants	57
11.	Chapter 10 Maintenance Cases	60
12.	Chapter 11 Cases relating to Offences affecting the Administration of Justice	64
13.	Chapter 12 Witnesses-Criminal Courts	77
14.	Chapter 13 Bail	81
15.	Chapter 14 Investigation, Remand, Cancellation of Cases and Inquest.	89
16.	Chapter 15 Police Diaries and Statements before the Police	96
17.	Chapter 16 Confessions, Statements and Dying declarations before Magistrates	100
18.	Chapter 17 Approvers	107
19.	Chapter 18 Proceedings against Absconders	111
20.	Chapter 19 Extradition and Foreign Jurisdiction	113
21.	Chapter 20 Mentally Ill Persons or Persons of Unsound Mind	116
22.	Chapter 21 Medico Legal Evidence	121
23.	Chapter 22 Sentences	123
24.	Chapter 23 Execution of Sentences	129
25.	Chapter 24 Probation, Admonition and Youthful Offenders	137
26.	Chapter 25 Sessions Cases	147
27.	Chapter 26 Criminal Appeals and Revisions	153
28.	Chapter 27 Transfer of cases	159
29.	Chapter 28 Judicial Lock-ups	164
30.	Chapter 29 Judicial Powers-Criminal	175

Proposed Preface to Revised Volume-III of the High Court Rules and Orders

Pre-revised Volume-III of the High Court Rules and Orders contained instructions to Criminal Courts subordinate to the High Court. High Court Rules and Orders were framed several decades back, before partition of the country, by Lahore High Court-now in Pakistan (predecessor of this High Court). Since then, various amendments were made thereto from time to time by issuing correction slips. However, during the long period of several decades, there have been large scale changes in law including enactment of new laws, besides great advancement in technology. The old Code of Criminal Procedure, 1898 has been replaced by new Code of Criminal Procedure, 1973 making drastic changes in some aspects of the criminal procedure. In view thereof, complete revision of the High Court Rules and Orders, instead of patch work of making amendments, was required. Accordingly, while revising Volume-III of the High Court Rules and Orders, aforesaid changes including rules, correction slips, notifications and instructions issued by the High Court from time to time have been taken into consideration.

Some provisions of pre-revised Volume-III had become obsolete and have, therefore, been omitted in this revised Volume. Some new provisions which needed to be introduced have been added. Some provisions which needed modifications have been modified accordingly whereas some other provisions have been retained in this revised Volume.

Chapter-1 of pre-revised Volume III of the High Court Rules and Orders consisted of 8 parts having separate rules (bearing separate numbers) on different subjects. It caused great inconvenience and confusion in referring to any rule. Consequently, Chapter-1 of pre-revised Volume III has been split into 6 separate Chapters in this revised Volume. However, Chapter-2 of pre-revised Volume III relating to Summary Trials has been included in Chapter-4 of this revised Volume

relating to Procedure in Enquiries and Trials by Magistrates. Similarly, Chapter-4 of pre-revised Volume III relating to Trial of Riot Cases has been incorporated in Chapter-7 of this revised Volume relating to The Judgment. A new Chapter-5 relating to 'Plea Bargaining' has been added because a new Chapter XXIA on the subject was inserted in the Code of Criminal Procedure, 1973 by Act No.2 of 2006. Chapter-3 (Security Cases), Chapter-28 (Jurors), Chapter-29 (Public Prosecutors) and Chapter-31 (Sessions Divisions) of the pre-revised Volume III have been omitted in the revised Volume because the same are not relevant/required for various/obvious reasons. Chapters 13 and 13A of pre-revised Volume III relating to Confessions and Statements of Accused Persons and Dying Declarations respectively have been consolidated in Chapter-16 of this revised Volume relating to Confessions, Statements and Dying Declarations before Magistrates. Similarly, Chapter-19 and Chapter-23 of the pre-revised Volume III relating to Sentences and Habitual Offenders respectively have been consolidated in Chapter-22 of this revised Volume relating to Sentences.

Some provisions of Chapter-8 of pre-revised Volume IV of the High Court Rules and Orders relating to 'Processes of Criminal Courts' have been incorporated in Chapter-3 of this revised Volume III relating to 'Attendance of Accused Persons and Service of Processes' (initial part whereof corresponds to Chapter-1 Part C of pre-revised Volume III relating to 'Attendance of Accused Persons and Prisoners'). Some provisions of Chapter-11 of pre-revised Volume IV of the High Court Rules and Orders relating to 'Realization of Fines' have been incorporated in initial part of Chapter-23 of this revised Volume relating to 'Execution of Sentences' (subsequent major part whereof corresponds to Chapter-20 of pre-revised Volume III relating to 'Execution of Sentences').

While preparing this revised Volume, instead of incorporating relevant provisions of the Code of Criminal Procedure in detail which would be only duplicity of the said provisions, attention of the Subordinate Courts has been drawn by simply referring to the relevant provisions of the Code of Criminal Procedure. However, where deemed necessary, the said provisions have been incorporated or mentioned in detail in this revised Volume.

All rules, notifications and instructions issued by the High Court from time to time have not been incorporated in detail in this revised Volume. Only some of them which were found important and of frequent and common use have been mentioned in detail or reproduced. Whereas reference has only been made to the others which have, however, been uploaded on the website of the High Court, so that in case of need in some rare particular case, the same may be accessed by the concerned Judicial Officer/Advocate/Litigant. Instructions relating to use of computers and video conferencing etc., are being issued by the High Court from time to time. Consequently, instead of incorporating the said instructions in this revised Volume, the instructions are being uploaded and updated on the High Court website.

Principles of law laid down by this Court or by Hon'ble Supreme Court on some important aspects have also been incorporated where required. However, the same are subject to further evolution of law in future.

Views were also sought from the Judicial Officers and Members of the Bar in Districts and Sub-Divisions of both the States and Union Territory through District and Sessions Judges and the same were also taken into consideration while preparing this revised Volume.

Comparative Table of provisions of pre-revised Volume-III and provisions of this revised Volume has been prepared and included for facility of reference.

Revised Volume has been prepared after thorough revision with great effort with hope that it would be useful for Judicial Officers, Advocates and Litigants.

Justice L.N. Mittal (Retd.)
Chairman, Committee on Process
Re-engineering.

Punjab and Haryana High Court Rules and Orders

Volume 3

(Instructions to Criminal Courts subordinate to the High Court)

Chapter 1

Practice in the Trial of Criminal Cases

1. Court/ Office hours and holidays and vacation:

Rules 1 and 2 of Chapter 1, Volume 1 of High Court Rules and Orders relating to subordinate Civil Courts shall also apply to subordinate criminal courts.

2. Place of sitting:

All trials/enquiries should ordinarily be conducted at the respective Court houses. However, in exceptional circumstances, for reasons of security for the accused, witnesses or the Presiding Officer or for any other valid reason, the Presiding Officer may, either on his own motion or on the application of the prosecution, the accused or any witness, decide to hold the Court at any other place within the limits of his local jurisdiction. A formal order giving reasons for the same should be passed. Neither party should be prejudiced by such an order. A copy of the order should be sent to the High Court. However, if the Court has to be held outside the limits of his local jurisdiction, the Presiding Officer shall seek prior permission of the High Court.

3. Procedure for filing of cases:

(i) Cases may be filed in Criminal Court on every working day during Court hours.

(ii) All complaints, police reports, applications or other documents should be presented directly to the Presiding Officer by the Complainant/Advocate/Government Prosecutor/applicant concerned.

However, if and when, provision for centralised institution of criminal cases at any district or sub-divisional headquarter is made by the High Court, the cases shall be instituted accordingly.

(iii) Members of the ministerial establishment are strictly forbidden to receive complaints, police reports, applications or other documents direct from lawyers or their clerks or from litigants or Government prosecutor. However, Talbanas and stamped postal envelopes should be received direct by the Ahlmad and a receipt given for the same whether demanded or not.

(iv) On presentation of police report, the Presiding Officer may mark the same to Ahlmad for checking and report as well as for entering in the relevant Register and for presenting the same along with bail/remand papers or other connected papers if any pending.

(v) On filing of complaint, the Presiding Officer may proceed with the same in accordance with procedure laid down in the Code of Criminal Procedure.

(vi) On filing of bail application or any other application, the Presiding Officer may deal with the same in accordance with law.

(vii) The Presiding Officer may fix suitable hours (atleast twice a day) at which complaints, police reports, bail applications, other applications, or documents may be presented. Urgent applications may, however, be entertained even outside the said hours.

(viii) The Presiding Officer may also fix hours for hearing of bail applications or other urgent applications on each working day. However, urgent applications may be heard even outside the said hours.

4. Court to be open:

(i) Criminal Courts should ordinarily be open to the public, as laid down by Section 327 of the Code of Criminal Procedure. However, the Presiding Officer has discretion to exclude the public generally or any particular person from the Court room.

(ii) Inquiry or trial in cases of sexual offences under Section 376, Section 376-A, Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code, 1860, or in any other case if so provided by any law, has to be conducted in camera and as far as practicable, by a woman Judge or Magistrate, so that the prosecutrix and other witnesses do not feel shy while deposing in the Court. Nevertheless, the Presiding Officer may allow any particular person to be in the Court room during any part of the proceeding.

(iii) For safety and security purpose or for any other sufficient reason, the Presiding Officer of any Court (Civil or Criminal) may, by general or special order, regulate, restrict or ban the entry of any person carrying any weapon or ammunition in the Court Room. However, kirpan of small size as religious symbol of Sikhs should be allowed to be brought in the Court Room. Mobile telephones should be kept on silent mode and should not be used for talking inside the Court Room.

5. Speedy disposal of cases:

(i) Presiding Officers should give priority to cases in which an accused person is in custody. Attention is also drawn to Section 309, Code of Criminal Procedure. The same should be kept in view and unnecessary and long adjournments should be avoided. Every effort should be made to examine all the witnesses in attendance. Section 437(6) of the Code of

Criminal Procedure entitles an accused in custody for non-bailable offence triable by Magistrate, to bail if the trial is not concluded within 60 days from the first date fixed for taking evidence in the case. This provision should be kept in mind in the relevant case so that an accused, otherwise not entitled to bail, may not become entitled to bail by default due to delay in trial. However, for reasons to be recorded, bail may still be declined to such an accused.

(ii) If arrest of some other accused is to be awaited so that all the accused may be put to trial together, only a short adjournment should be granted.

6. Date for examination of witnesses:

When the accused appears or is produced in warrant case instituted on police report, the Magistrate has to supply, to the accused, free of cost, copies of requisite documents referred to in Section 207 of the Criminal Procedure Code. The accused should get reasonable time to study the documents before the Magistrate proceeds to decide the question of framing charge under Section 239/240 of the Criminal Procedure Code. If charge is framed and the accused does not plead guilty, a date for examination of prosecution witnesses has to be fixed at that stage.

7. Unexpected holiday etc.:

In the case of unexpected holiday or leave of the Presiding Officer, the cases fixed for the day may be taken up in advance by the Presiding Officer and adjourned to suitable dates. However, if this is not possible, the cases shall be taken up by any other Judicial Officer as per arrangement to be made by the concerned Sessions Judge. If no such arrangement is possible, the cases shall be deemed to be adjourned to the next working day of the concerned Presiding Officer. In all events, the cases in which the accused are in custody shall be put up on the due date before Duty Magistrate.

Chapter-2

Initiation of Proceedings

1. Cognizance of an offence:

Section 190 of the Code of Criminal Procedure provides that Judicial Magistrate First Class may take cognizance of any offence. Judicial Magistrate Second Class may take cognizance of such offences as are within his competence, only if he is specially empowered to do so by the Chief Judicial Magistrate. Cognizance may be taken on police report, on complaint or information received or on Magistrate's own knowledge. In most cases, cognizance is taken either on complaint or on police report. If cognizance is taken on Magistrate's own knowledge or information received, the Magistrate should, before taking evidence, inform the accused of his right to have the case tried by another Court and if the accused so desires, the case must be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate (Section 191).

2. Examination of complainant and the witnesses:

If cognizance is taken on complaint, the Magistrate is required to examine the complainant and the witnesses, if any, present and to record the substance of their examination (commonly called preliminary evidence). The same shall be signed by the complainant and the concerned witnesses respectively and also by the Magistrate. If the complaint is transferred to a subordinate Magistrate, the transferee Magistrate shall do the needful. Such examination of complainant etc. is not necessary where complaint in writing is made by a Court or a public servant acting or purporting to act in the discharge of his official duties. Sections 200 to 203 of the Code of Criminal Procedure dealing with 'Complaints to Magistrates' require pointed attention of the Magistrates. Complaints of non-cognizable offences should not

ordinarily be sent to the police for enquiry under Section 202 of the Code except for very special reasons.

3. **Importance of Preliminary Evidence:**

The examination of complainant and his witnesses is not a mere formality. Result of this preliminary evidence enables the Magistrate to determine whether to issue process against the accused or not. The preliminary evidence, if properly recorded, may result in summary dismissal of a complaint and thus save an innocent person from the ordeal of appearing as accused in criminal Court. The Magistrates must, therefore, be very careful while recording preliminary evidence and deciding to issue or not to issue process against the accused.

4. **Process against accused:**

After recording preliminary evidence and enquiry, if any, under Section 202 of the Code, if there is no sufficient ground for proceeding, the Magistrate may dismiss the complaint. However, if the Magistrate finds sufficient ground for proceeding, he should issue process for the attendance of the accused subject to filing of list of prosecution witnesses, requisite number of copies of complaint and process fee. Similarly, even in case instituted on police report, process may be issued against the accused, if there is sufficient ground of proceeding against him.

5. **Presentation of Police report:**

Power of Judicial Magistrate to hold preliminary enquiry, in cases reported by the Police, conferred by Section 159 of the Code, should be used in appropriate cases. After completion of investigation, the police present a report (commonly called a challan) along with relevant documents including statements of witnesses recorded during investigation. Magistrate can take cognizance on such report. On appearance or production of the accused, the Magistrate has to supply copies of various

documents to the accused free of cost as mentioned in Section 207 of the Code. Even in complaint cases, triable exclusively by Court of Session, the Magistrate has to supply to the accused, free of cost, copies of statements recorded under Section 200 or Section 202, statements and confessions, if any, and other documents, if any, produced before the Magistrate.

6. **Jurisdiction:**

(i) The question of jurisdiction requires careful attention at the initial stage. The First Schedule of the Code of Criminal procedure classifies the Courts by which different offences are triable. To determine the nature of the offence, the facts ascertained from preliminary evidence and enquiry, if any, in complaint case and from the police investigation in the case of police report should be taken into consideration. Much importance should not be attached to the particular section or offence mentioned in the complaint or police report. It should also be remembered that cognizance of certain offences cannot be taken at all except upon the complaints of certain persons or Courts or with previous sanction of the Government, in view of Sections 195 to 199 of the Criminal Procedure Code.

(ii) The question of territorial jurisdiction may also arise in some cases. The general rule is that an offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed. However, Sections 178 to 189 of the Code create some exceptions to this general rule. In fact, these provisions have been made to facilitate determination of territorial jurisdiction in cases of doubt etc. In the case of offence falling within multiple territorial jurisdictions, the case may be enquired into or tried in any one of the territorial jurisdictions.

(iii) If a Magistrate finds that the offence disclosed is not triable by him, he should report the case to the Chief Judicial Magistrate for its transfer to a competent Court.

Chapter-3

Attendance of Accused Persons and Service of Processes

1. Discretion to issue summons or warrant:

When a Magistrate finds that there is sufficient ground for proceeding, he has to decide whether he should issue summons or warrant in the first instance for the attendance of the accused. Sections 87 and 204 of the Code of Criminal Procedure should be kept in view in this regard. In a summons case, ordinarily a summons should be issued in the first instance although for special reasons as mentioned in Section 87 of the Code, warrant may be issued even in the first instance in a summons case. In a warrant case also, although the Magistrate has discretion to issue a warrant or a summons, it is desirable that ordinarily a summons should be issued in the first instance, particularly in cases triable by the Magistrate himself. In cases of heinous offences, however, a warrant may be issued in the first instance. The warrant may be either bailable or non-bailable. Since it involves the question of personal liberty of the accused, the Magistrate has to be very careful while deciding whether to issue a summons or a warrant and in the case of a warrant, whether bailable or non-bailable. Warrant should not be issued when a summons would be sufficient for the ends of justice. Discretion to issue bailable warrant instead of non-bailable warrant should be exercised with due regard to the nature of the offence, the position of the accused and all other circumstances of the case.

2. Dispensing with attendance of accused:

As a general rule, a criminal trial should be conducted in the presence of the accused. However, Sections 205 and 317 of the Code of Criminal Procedure give discretion to the Court to dispense with the personal attendance of the accused in certain circumstances provided that he is represented by an Advocate. Personal

attendance of the accused may be dispensed with either for a particular date of hearing or in general. However, nevertheless, the Court has discretion to direct the personal attendance of the accused at any subsequent stage of the proceedings. Courts should be careful to ensure that the discretion is not misused by the accused with malafide intention to avoid recording of evidence or examination of witnesses in attendance or to delay the trial, so as to pressurize the witnesses or with some other ulterior or oblique motive.

3. **Attendance of prisoners in Criminal Courts:**

(i) The attendance of any person confined in any prison may be required by any Criminal Court either to give evidence or to answer a charge of an offence.

(ii) Provisions of the Prisoners (Attendance in Courts) Act, 1955 and almost similar provisions of Sections 266 to 271 (Chapter XXII) of the Code of Criminal Procedure are required to be studied carefully to secure the attendance of any person confined in any prison when required by any Criminal Court for either purpose.

(iii) The presence of a person confined in any prison is secured by issuing appropriate order (commonly called production warrant) to the Officer Incharge of the prison.

(iv) It frequently happens that a person confined in prison in some case is ordered to be released on bail or otherwise in that case, but he is not released on account of his production warrant received in some other case for a future date although he may not be required to be confined in prison in such other case. It results in unnecessary and illegal detention of the person in prison thereby interfering with his precious personal liberty. Courts should, therefore, be very careful while issuing production warrant. Whether the person is or is not required to be confined in prison in the case in which production warrant is issued, should be so mentioned conspicuously in red ink on the production warrant.

(v) In appropriate case, examination of a person confined in prison as witness may be ordered to be recorded either on commission or by audio video electronic means.

(vi) Production warrant should be issued well in advance for the date fixed for hearing, so as to avoid unnecessary delay.

4. **Signing of summons:**

Every summons shall be in writing, in duplicate, signed legibly and in full by the Presiding Officer or Reader of the Court, with the name of his office or the capacity in which he acts. The practice of signing initials only or of using a stamp is objectionable and should not be adopted.

5. **Service of summons and process fee in non-cognizable cases:**

(i) In non-cognizable cases within the meaning of Section 2(l) of the Code of Criminal Procedure, summonses are to be served through the civil process-serving establishment attached to the Courts.

(ii) Process fee of ₹50/- as prescribed by Rules made by the High Court has to be paid at the time of institution of the case.

6. **Service of summons outside the jurisdiction:**

(i) Under Section 67 of the Code, a summons issued by a Court for service at any place outside the local limits of its jurisdiction should ordinarily be sent in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is to be served.

(ii) Where the vernacular of the District to which the summons is sent for service differs from that in which the process is written, it should be accompanied by a translation in English.

(iii) All reports made on summons received for service from any District or State, the vernacular of which differs from that in which the report is written, shall be translated into English and the translation shall be sent back with the summons to the Court issuing it.

7. **Affidavit in proof of service**

(i) Section 68 of the Code makes an affidavit of service admissible in evidence in certain cases. When the summons is served outside the local limits of the jurisdiction of the Court issuing it and in all cases in which the serving police official will probably not be present at the hearing of the case, the serving police official should make an affidavit in the form given below before the nearest Magistrate. The affidavit and a duplicate of the summons duly endorsed should then be returned to the Court issuing the summons.

Declaration of service of summons

I___________son of __________ do hereby solemnly declare that I did on ________ the __________ day of ___________serve___________son of _____________of_____________with the summons now shown to me and marked. A, by delivering (or tendering) a duplicate to him [or, by leaving a duplicate for him with_________ an adult male member of his family residing with him or by affixing duplicate to a conspicuous part of his house or homestead].

(Signed).

Declared before me at______by_______this______day of_____20_____.

Magistrate.

(ii) The same procedure will be observed by Process Servers in regard to criminal processes in similar circumstances.

8. **Service of summons for particular classes of persons**

(i) **Government Servants:**

In view of Section 66 of the Code, when the person summoned is in the active service of the Government including Railways, the summons should ordinarily be sent in duplicate to the Head of the Office of the person summoned, who will cause the summons to be served on the person summoned.

(ii) **Bodies Corporate**

When the summons has to be served on an Incorporated Company/Registered Society or other Body Corporate such as Municipal Committee, service may be effected by serving the summons on the Secretary, Local Manager or other Principal Officer, or by registered post letter addressed to the Chief Officer of the Corporation in India, as stipulated by Section 63 of the Code.

(iii) **Military Personnel**

Section 66 of the Code relating to persons in the active service of the Government also applies to summons issued to a soldier, officer or other person in military employ. The summons should, therefore, be sent for service to the Head of the Office or Head of Department or Officer Commanding of the person summoned.

(iv) **Counsels-General:**

(a) When it is necessary to summon any Counsel-General to give evidence in a criminal case, the Court should consider the possibility of taking evidence on commission as provided by Sections 284 to 289 of the Code.

(b) However, if summons is to be issued to any Counsel-General to give evidence in a criminal case, the summons should issue in the form of a letter of request.

9. **Forms and contents of warrants/processes:**

General warrants for arrest should never be issued by a Court. Every warrant should state as briefly as possible, the matter or cause on which it proceeds. Arrest warrant should be in prescribed Form. By mentioning the offence, the cause of arrest

is expressed in the Form. In all warrants and processes, besides mentioning the Court issuing them, father's name, caste, tribe or nationality and residence of the person to be arrested/summoned should be entered, so as to place his identity beyond doubt.

10. **Warrant only when necessary:**

A warrant of arrest implies arrest and restraint. It impinges upon the personal liberty of the person. Great care should, therefore, be taken that the warrant is issued only when necessary. When a summons would be sufficient for the ends of justice, warrant should not be issued. Courts should exercise greater caution in issuing arrest warrant against a public servant except in cases of pronounced refractoriness or willful omission to obey the summons. In most cases, if attention of the superior officer is drawn to the conduct of the subordinate, and the concerned public servant is warned about coercive and penal consequences in case of willful non-attendance, it will produce the desired effect.

11. **Execution of warrant outside jurisdiction:**

Sections 77 to 81 of the Code of Criminal Procedure need proper attention for execution of a warrant outside the local limits of the jurisdiction of the Court issuing it. Under Section 78, the warrant may be forwarded by post or otherwise to the Executive Magistrate or District Superintendent or Commissioner of Police within local limits of whose jurisdiction it is to be executed.

If a police officer has to execute a warrant beyond the local jurisdiction of the Court issuing it, he shall ordinarily take it for endorsement either to Executive Magistrate or to officer in charge of the police station (or his superior officer) within the local limits of whose jurisdiction the warrant is to be executed. After endorsement by such Magistrate or police officer, the warrant may be executed by the concerned police officer. The local police shall, if required, assist such officer in executing the warrant.

A warrant of arrest may be executed at any place in India and not beyond.(Section 77 of the Code).

12. **Handcuffing of undertrial prisoners:**

Rules 26.4 (3), 26.21A, 26.22, 26.23 and 27.12 of the Punjab Police Rules, 1934 deal with handcuffing of prisoners. Some of these Rules have been adversely commented upon by the Hon'ble Supreme Court in the case of Prem Shanker Shukla versus Delhi Administration AIR 1980 Supreme Court 1535. In the said case as well as in the case of Sunil Batra versus Delhi Administration and Others AIR 1980 Supreme Court 1579, Hon'ble Supreme Court has laid down guidelines relating to handcuffing of undertrial prisoners while escorting them to and from Courts. Accordingly, now handcuffing of prisoners in routine or merely for the convenience of the escort is prohibited. Classification into 'better class' and 'ordinary' prisoners under Rule 26.21A, for the purposes of handcuffing, has been done away with by declaring the said Rule to be ultra vires. Handcuffing of an under trial prisoner is now permitted only as an extreme measure when there is no other reasonable way of preventing his escape. Reasons for the same have to be recorded and submitted to the Court in which the under trial prisoner is produced in handcuffs and handcuffing thereafter shall be subject to approval of the said Court. It should be resorted to in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit. Mere gravity of the offence is no justification for handcuffing. If increase in the number of guards or close watch by armed policemen, special training for escort police, protected vehicles for transport of prisoners or other alternative measures may suffice, there should be no handcuffing.

Presiding Officers of the Courts are accordingly directed to ensure due compliance with the aforesaid guidelines/directions issued by Hon'ble Supreme Court

which is the law of the land. No undertrial prisoner should be produced in the Court in handcuffs, unless approved by the Court for valid reasons.

Further directions on the subject of handcuffing issued by Hon'ble Supreme Court in 'Citizen for Democracy Versus State of Assam and others' AIR 1996 Supreme Court 2193 are also required to be studied and followed strictly.

Chapter 4

Procedure in Enquiries and Trials by Magistrates

1. General:

(i) Chapters XIX to XXI (Sections 238 to 265) of the Code of Criminal Procedure relate to procedure for trial of cases by Magistrates. These provisions should be carefully studied and distinctions in the procedure for trial of different kinds of cases should be carefully noticed and followed.

(ii) The Code recognises four distinct methods of procedure in the trial of criminal cases by Magistrates, namely:

(a) trial of warrant cases instituted on police report;

(b) trial of warrant cases instituted otherwise than on police report;

(c) trial of summons cases;

(d) summary trials.

(iii) The aforesaid procedures are being described briefly hereinafter, step by step in simple manner for easy consumption and use by Magistrates particularly new Magistrates who face procedural problems in early phase of their career.

2. **Procedure in warrant cases instituted on police report**:

(i) Sections 238 to 243 and 248 of the Code deal with the procedure for trial of warrant cases instituted on police report.

(ii) When the accused appears or is brought before the Magistrate(after presentation of police report or challan), copies of documents referred to in

Section 207 of the Code should be immediately supplied to him free of cost and reasonable time should be granted to him to scrutinise and study the same.

(iii) On the next date of hearing, the Magistrate has to consider the police report and documents sent with it. Accused may also be examined if thought necessary. After giving opportunity of hearing to the prosecution and the accused, the Magistrate has to consider whether the charge against the accused is groundless in which case, the accused shall be discharged, or whether there is ground for presuming that the accused has committed an offence triable as warrant case by the Magistrate in which event, charge shall be framed in writing against the accused.

(iv) The charge shall be read over and explained to the accused in vernacular language. He shall be asked whether he pleads guilty to the charge or claims to be tried.

(v) If the accused pleads guilty, he may be convicted after recording his plea.

(vi) If the accused pleads not guilty or claims to be tried, the Magistrate shall fix a date for the examination of prosecution witnesses i.e. for prosecution evidence. Summons may be issued to the said witnesses for the date fixed.

(vii) On conclusion of prosecution evidence, the accused shall be examined (without administering oath) by putting to him all incriminating circumstances appearing against him in prosecution evidence, to enable him to explain the same, as required by Section 313 of the Code. Such examination, to be recorded in question and answer form in full, requires special attention of the Magistrate because the incriminating evidence which is not put to the accused in his said examination, cannot be used to convict him and thus, it may result in miscarriage in justice. The accused may also be permitted to file written

statement in answer to the incriminating evidence and such written statement, if filed, shall form part of the record.

(viii) The accused shall then be called upon to enter upon his defence and produce his evidence, if any. On his request, summons may be issued to his witnesses. Accused may be required to deposit reasonable expenses of the witnesses.

(ix) On conclusion of defence evidence, opportunity of hearing shall be given to both the parties. Thereupon after considering the material on record and the arguments of both sides, if the Magistrate finds the accused not guilty, he shall be acquitted by judgment of acquittal. On the other hand, if the Magistrate finds the accused guilty, he shall be convicted by judgement of conviction. If there is charge of previous conviction making the accused liable to enhanced punishment and the accused does not admit his said previous conviction, the Magistrate may, after convicting the accused in the present case, take evidence in respect of his alleged previous conviction and shall record finding thereon.

(x) In the case of conviction, the accused shall be heard on the question of sentence and shall then be sentenced according to law by passing order of sentence.

3. Procedure in warrant cases instituted otherwise than on police report:

(i) Sections 244 to 249 govern the procedure for trial of warrant cases instituted otherwise than on police report i.e. in complaint cases.

(ii) After recording of preliminary evidence, if sufficient ground for proceeding against the accused is found, he is ordered to be summoned.

(iii) On appearance of the accused, the case shall be fixed for recording precharge evidence of the complainant. Summons may be issued to the witnesses of the complainant, if so required.

(iv) On conclusion of precharge evidence, if the Magistrate after giving opportunity of hearing to the parties, considers that the evidence, even if unrebutted, would not warrant conviction, the accused shall be discharged.

(v) On the contrary, if the Magistrate on considering the precharge evidence forms opinion that there is ground for presuming that the accused has committed an offence trialable as warrant case by the Magistrate, charge shall be framed in writing.

(vi) The charge shall be read over and explained to the accused in vernacular language and he shall be asked if he pleads guilty or has any defence to make.

(vii) If the accused pleads guilty, he may be convicted after recording his plea.

(viii)If the accused pleads not guilty or claims to be tried, he shall be asked on the next date of hearing or may be forthwith, if he wishes to further cross-examine any, and if so, which, of the witnesses of the complainant/prosecution whose evidence has been taken in precharge evidence. The witness, if any sought to be further cross-examined, shall be recalled for this purpose.

(ix) The evidence of remaining witnesses, if any, for the prosecution shall then be recorded.

(x) On conclusion of evidence of prosecution/complainant, the same procedure as described in sub rules, (vii) to (x) of the preceding rule relating to warrant cases instituted on police report, shall be followed.

(xi) If the offence is compoundable or non-cognizable and the complainant is absent on any date of hearing before framing of charge, the Magistrate may discharge the accused. But in other warrant cases instituted as complaint cases, the Magistrate may proceed with the complaint notwithstanding the absence of the complainant on any date of hearing.

4. Miscellaneous:

(i) If on framing charge, the Magistrate finds that he is not competent to try the case, he should submit the case to Chief Judicial Magistrate for transfer to Court competent to try it.

(ii) While framing charge, provisions of Chapter XVII (Sections 211 to 224) of the Code of Criminal Procedure have to be kept in mind. Special attention is to be paid to provisions relating to contents of charge, joinder of charges and offenders, alteration of charge and procedure thereon, joinder of offence of same kind within one year in single charge, trial for more than one offence, framing of charges in the alternative and charge relating to previous conviction for purpose of enhanced punishment.

(iii) In view of Section 296 of the Code, evidence of formal character may be taken by affidavit, but the deponent shall be summoned and examined in the Court if so required by the prosecution or the accused or at the discretion of the Court.

(iv) If the accused is not represented by counsel, the Magistrate should assist him in cross examination of witnesses for the prosecution. He should also be explained what he is required to prove or disprove or what evidence he could give to rebut the prosecution case.

(v) In view of Section 315 of the Code, an accused may now appear as his own witness in defence to give evidence on oath but on his own request only. His failure to give evidence shall not give rise to any adverse presumption against him.

(vi) The Court also has power to award cost for an adjournment, payable by the defaulting party to the opposite party.

5. **Procedure for trial of summons cases:**

(i) Chapter XX (Sections 251 to 259) of the Code of Criminal Procedure govern the procedure for trial of summons cases by Magistrates.

(ii) As seen earlier, procedure for trial of warrant cases instituted on police report is different from procedure for trial of warrant cases instituted otherwise than on police report i.e. complaint cases. However, in summons cases, procedure is the same irrespective of whether a case has been instituted on police report or otherwise than on police report i.e. complaint case.

(iii) In a summons case, on appearance of the accused, particulars of the offence called substance of accusation have to be stated to him straightaway. He shall then be asked whether he pleads guilty or has any defence to make. However, it is not necessary to frame a formal charge.

(iv). If the accused pleads guilty, he may be convicted after recording his said plea as nearly as possible in the words used by him.

(v) Where summons is issued under Section 206 of the Code for petty offence, the accused may, without appearing personally, plead guilty by sending letter by post or messenger and also the amount of fine specified in the summons. The accused may thereupon be convicted of the petty offence and sentenced to pay the specified fine amount.

(vi) If the accused does not plead guilty or claims to be tried, the case shall be fixed for evidence of prosecution/complainant. Summons may be issued to the witnesses. Complainant/prosecution may be required to deposit reasonable expenses of the witnesses to be summoned.

(vii) On conclusion of evidence of prosecution/complainant, the accused shall be examined under Section 313 of the Code as mentioned in Rule 2 (vii).

(viii) Evidence, if any, to be led by the accused in his defence shall then be recorded. Witnesses may be summoned on his application. He may be required to deposit reasonable expenses of the witnesses. Reasonable opportunity should be given to the accused to lead evidence in his defence.

(ix) On conclusion of defence evidence, both the parties shall be heard. Then if after considering the material on record and the arguments advanced by both sides, the Magistrate finds the accused not guilty, he shall be acquitted by recording judgment of acquittal.

(x) If on such consideration as aforesaid, the Magistrate finds the accused guilty, he shall be convicted and sentenced according to law by recording judgment of conviction and sentence. No separate hearing on question of sentence is required to be given to the convict in a summons case unlike that in a warrant case. Sentence may form part of the judgment of conviction.

(xi) The accused may be convicted even for a different offence triable as a summons case, which appears to have been committed, provided the accused would not be prejudiced thereby.

(xii) In complaint case, if the complainant does not appear on the date of hearing, the accused is to be acquitted, unless the Magistrate dispenses with the attendance of the complainant being not necessary and proceeds with the

case. Same provision applies to non-appearance of complainant due to his death.

(xiii) The complainant may, before passing of final order, with the permission of the Magistrate, withdraw the complaint for sufficient grounds. Thereupon the accused shall be acquitted.

6. **Distinctions in procedure for trial of summons cases and of warrant cases:**

There are some significant distinctions in procedure for trial of summons cases and of warrant cases. The same should be kept in view, so that there is no procedural illegality or irregularity which may result in miscarriage of justice. The said distinctions are stated below:

(a) In summons case, the procedure is same irrespective of whether the case has been instituted on police report or is complaint case whereas in warrant case, the procedure in case instituted on police report is different from the procedure in complaint case.

(b) In summons case, only particulars of the offence called substance of accusation have to be stated to the accused and no formal charge is required to be framed whereas in warrant case, formal charge is required to be framed.

(c) In summons case, on appearance of accused, substance of the accusation is to be stated to him straightaway, before recording any evidence, whereas in warrant case instituted otherwise than on police report i.e. in complaint case, on appearance of accused, evidence called pre-charge evidence has to be recorded and after considering the same, the question of framing or not framing of charge is to be determined.

(d) In summons case, on conviction of the accused, no separate hearing is to be granted to the convict on the quantum of sentence and accordingly sentence may

form part of the judgment of conviction whereas in warrant case, after finding the accused guilty and before passing the sentence, accused has to be heard on the quantum of sentence.

(e) In complaint cases, effect of non-appearance or death of complainant is also different in summons case and warrant case. In summons case, the accused is to be acquitted unless the Magistrate dispenses with the attendance of the complainant being not necessary whereas in warrant case, if the offence is compoundable or non-cognizable, the Magistrate has discretion, before framing of charge, to discharge the accused if the complainant is absent whereas in other warrant cases instituted on complaint, the Magistrate has to proceed with the case notwithstanding the absence of the complainant.

(f) Magistrate may, in the interest of justice, order trial of a summons case in accordance with procedure for trial of warrant cases, but not vice-versa.

(g) Manner of recording evidence is also different in summons cases and in warrant cases.

7. **Procedure when the accused cannot understand the proceedings:**

If the accused, though not of unsound mind, cannot be made to understand the proceedings, as in the case of deaf and dumb person, the Court should not stay the proceedings and should proceed with the trial till the Court has come to conclusion as to the innocence or guilt of the accused person. If the accused is found not guilty, he shall be acquitted. However, if the accused is found guilty, he shall be convicted and the proceedings shall be forwarded to the High Court with a report of the circumstances of the case. Thereupon the High Court shall pass such order as it thinks fit (Section 318 of the Code).

8. **Procedure for summary trial of cases:**

(i) Chapter XXI (Sections 260 to 265 of the Code of Criminal Procedure) deal with the procedure for summary trial of cases.

(ii) Summary trial can be held only by a Chief Judicial Magistrate, or by a Magistrate of the First Class specially empowered in this behalf by the High Court. The offences which can be tried summarily are enumerated in Section 260 (1) of the Code. All summons cases can be tried summarily. Some warrant cases mentioned in Section 260(1) of the Code may also be tried summarily. Magistrate of the Second Class may also be conferred power by the High Court to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine and any abetment of or attempt to commit any such offence.

(iii) In summary trials, the procedure to be followed is broadly that of the summons case subject to modifications made by Sections 263 and 264 of the Code.

(iv) No sentence of imprisonment for a term exceeding three months can be imposed on conviction in summary trial.

(v) In view of Section 376(d) of the Code, sentence of fine not exceeding two hundred rupees imposed in a case of summary trial is not appealable. In such case, only the particulars required by Section 263 of the Code may be recorded in the summary register and substance of evidence need not be recorded. However, in appealable cases, besides the aforesaid particulars, the Court shall also record the substance of the evidence and the judgment containing a brief statement of the reasons for the finding of guilt or innocence. No other record is required.

(vi) Even in summary trial of a warrant case, if the accused is not found guilty, he shall be acquitted (and not discharged) because in summary trial, the procedure is that of summons case in which no formal charge is to be framed.

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

(viii) It has come to the notice of the High Court that summary case are entered in relevant registers only when the accused appears in Court, with the result that a large number of such cases may escape the notice of Courts. It is, therefore, emphatically impressed that as soon as a summary case is received, it should be entered in the relevant institution register. On appearance of the accused, the case should then be entered in register of summary cases.

9. Dismissal in default: (i) Complaint cases should not be dismissed in default hastily. If a complainant is absent when his case is first called for hearing, ordinarily the case should be passed over and called for hearing again later on. While dismissing the complaint case in default, the time of dismissal should be mentioned, besides also mentioning that the case was called twice or thrice (as the case may be).

(ii) Before dismissing a case in default, the Magistrate should carefully consider:-

(a) whether such an order is legal; and

(b) whether it is justified by the circumstances.

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

10 Age to be carefully considered :(i) If age of an accused person, complainant or any witness is material to the matter in issue or is likely to affect the sentence, the Court should record a careful finding as to his probable age. The Presiding Officer

may add a note expressing his own opinion as to such probable age. In case of doubt, opinion of a Medical Officer should be taken. Age of the accused as found or believed by the Court should be invariably stated in the judgment. When the accused is asked to plead guilty or not to the charge, he should be required to state his age. If he understates or over-states his age, his probable age by appearance may be noted by the Court.

(ii) The Magistrates are directed to be careful when an accused who appears to be juvenile is produced before them. In such a case, Magistrate should follow the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules made thereunder. If the accused is juvenile by appearance or claims to be juvenile, the Court may make an enquiry to determine the age of the accused and pass appropriate order for further proceedings according to such determination or may forward the accused to the Juvenile Justice Board for such enquiry and further orders.

11. Medical Examination: (i)Attention of the Magistrates is drawn to Sections 53, 53-A and 54 of the Code of Criminal Procedure relating to medical examination of accused and Section 164-A of the Code relating to medical examination of the victim of rape or attempted rape. These provisions should be carefully studied because question of medical examination of accused or such victim arises not in frequently.

(ii) Soon after arrest, the accused is required to be examined medically so as to prepare record of any injuries or marks of violence on his person and the approximate duration thereof.

(iii) If medical examination of an accused is likely to afford evidence as to the commission of an offence, he may be medically examined on the request of Police Officer. If necessary, Magistrate may pass order for such medical examination of the accused. Reasonable force, if necessary, may also be used for such medical examination of the accused.

(iv) Provision of preceding sub-rule shall similarly apply to an accused in a case of rape or attempted rape. The doctor conducting such examination should mention in his report name, address and age of the accused and marks of injury if any, besides other particulars.

(v) During investigation of an offence of rape or attempted rape, medical examination of the victim may be conducted with her consent or with consent of the person competent to give such consent on her behalf. Such medical examination should be got conducted within 24 hours from the time of receiving the information of the offence. The doctor conducting such medical examination should mention in his report name, address and age of the woman victim and marks of injury if any and her general mental condition, besides other necessary particulars.

12. Disposal of property and documents: (i) Sections 451 to 459 contained in Chapter XXXIV of the Code of Criminal Procedure relating to disposal of property (including documents) require careful study and attention.

(ii) Section 451 relating to custody and disposal of property pending trial is frequently used for release of property on superdari during investigation, inquiry and trial. Courts should exercise discretion in this regard judiciously on the basis of settled norms, practices and precedents.

(iii) At the conclusion of trial, the Court is required to pass appropriate order regarding disposal of the case property. The Court may order its delivery to the person entitled to possession thereof. The Court may also order destruction or confiscation of the property or disposal thereof in any other lawful manner. Courts should invariably pass appropriate orders regarding disposal of case property at the conclusion of trial. Order for delivery of any property to any person may be without any condition or on condition of executing necessary bond with or without surety undertaking to restore the property if so required.

(iv) Court of Session may, instead of making such an order, direct the Chief Judicial Magistrate to deal with the property in accordance with law.

(v) The order regarding delivery of property without execution of bond remains in abeyance for two months or till disposal of the appeal, if any, filed, except where the property is live stock or is subject to speedy and natural decay.

Chapter 5

Plea Bargaining

1. **General**:

The concept of plea bargaining in criminal trials, prevalent in foreign countries, has, for the first time, been introduced in India by inserting Chapter XXI-A (Sections 265-A to 265-L) in the Code of Criminal Procedure by Amending Act No. 2 of 2006 w.e.f. 5.7.2006. Since this is a completely new provision, necessary guidelines regarding the procedure for plea bargaining are being laid down in this Chapter.

2. **Applicability of Chapter XXI-A of the Code**:

Plea bargaining is available in respect of an offence which is not punishable with death or imprisonment for life or imprisonment for a term exceeding 7 years, irrespective of whether the case is instituted on police report or otherwise i.e. complaint case. However, plea bargaining is not applicable in respect of offences, affecting the socio economic condition of the country, as may be determined by the Central Government by notification. The Central Government has issued Notification No. S.O.1042(E) dated 11.7.2006 determining the offences under various laws affecting the socio-economic condition of the country for this purpose. Plea bargaining is also not available where the offence has been committed against a child below the age of 14 years or against a woman. Plea bargaining is also not applicable to any juvenile or child as defined in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. Application for plea bargaining:

(i) An accused may file application for plea bargaining in the Trial Court, containing brief description of the case. The application shall be accompanied

by an affidavit of the accused stating that he has voluntarily filed the application after understanding the nature and extent of punishment and that he has not been previously convicted in a case charged for the same offence.

(ii) Notice of the application shall be given to the public prosecutor or the complainant, as the case may be, and also to the accused to appear on the date fixed.

(iii) The Court shall examine the accused in camera to satisfy itself that the application has been filed voluntarily. The other party shall not be present at the time of such examination.

(iv) If the Court finds that the application has not been filed voluntarily by the accused or that he has previously been convicted in a case charged for the same offence, the application shall be rejected and the Court shall proceed further with the case from the previous stage.

(v) If the Court is satisfied that the application has been filed voluntarily, it shall provide time to both the parties to work out a mutually satisfactory disposition (settlement) of the case. Such settlement may include giving of compensation and other expenses of the case to the victim by the accused.

4. Guidelines for satisfactory disposition:

In case instituted on police report, the Court shall issue notice to the public prosecutor, the Investigating Police Officer, the accused and the victim to participate in meeting to work out a satisfactory settlement whereas in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim for such meeting. The Court shall ensure that the process of working out a satisfactory settlement is completed voluntarily by the parties participating in the meeting. The

accused (and also the victim in complaint case) may, if so desired, participate in the meeting with his counsel.

5. Report of satisfactory settlement:

If a satisfactory settlement is worked out, the Court shall prepare a report thereof which shall be signed by the Presiding Officer as well as by all participants of the meeting. If no such settlement is worked out, the Court shall record this fact and then proceed further with the case from the previous stage.

6. Disposal of the case:

(i) Where a satisfactory settlement of the case is worked out, the Court shall award compensation to the victim in accordance with such settlement.

(ii) The Court shall hear the parties on the quantum of the punishment and may release the accused on probation or provide any other benefit under Section 360 of the Code or under the Probation of Offenders Act, 1958 or any such other law.

(iii) If minimum punishment is provided for the offence, the Court may sentence the accused to half of such minimum punishment.

(iv) If the case is not covered under clause (ii) or (iii), the Court may sentence the accused to $1/4^{th}$ of the maximum punishment provided for the offence.

(v) The Court shall deliver its judgment in the aforesaid terms in open Court and it shall be signed by the Presiding Officer.

(vi) The judgment shall be final and no appeal shall lie against it. However, Special Leave Petition under Article 136 and Writ Petition under Articles 226 and 227 of the Constitution may lie.

(vii) Benefit of Section 428 of the Code for setting off period of detention undergone by the accused against the sentence of imprisonment imposed shall be available.

7. Statements of accused not to be used:

The statements made or facts stated by an accused in an application for plea bargaining shall not be used for any other purpose except for the purpose of plea bargaining.

Chapter-6

Record of Evidence in Criminal Cases

1. **General**

(i) Sections 272 to 299 of the Code of Criminal Procedure deal with evidence in criminal cases. These provisions should be carefully studied and observed.

(ii) Recording of evidence is most material and significant aspect of a criminal trial. Correct decision of a case hinges on correct recording of evidence. A slight deviation in language or words may make significant change in its meaning and probative value. It may result in grave miscarriage of justice. It is, therefore, impressed on all the Judicial Officers that they should pay proper personal attention to the recording of evidence. The growing tendency of some Judicial Officers to leave the work of recording evidence entirely in the hands of a Court official, without supervision and superintendence of the Officer himself, is strongly deprecated and should be discontinued forthwith. By doing so, the Judicial officers may be playing in the hands of counsel for the parties and the Court official and are causing great disservice to the system of administration of criminal justice.

2. **Only relevant evidence be recorded.**

In recording evidence, Courts should take care to see that it is relevant and admissible under the provisions of the Indian Evidence Act, 1872. If any objection is raised as to the admissibility of any evidence, the Court should endeavour to decide it forthwith. The particular piece of evidence objected to, the objection and the decision thereon should be clearly recorded.

3. **Duty of Court to elucidate facts**

Courts should endeavour to elucidate the facts and record the evidence in a clear and intelligible manner. A Judge in a criminal trial is not a mere disinterested auditor of the contest between the prosecution and the defence nor the Judge is expected to act like a mere tape-recorder to record whatsoever is stated by the witness; rather it is his duty to elucidate points left in obscurity by either side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on the Court to elucidate necessary material by playing an active role in the recording of evidence and this power should be judiciously utilized when necessary.

4. **Mode of recording evidence**

The manner in which evidence is to be taken down by the Presiding Officer in enquiries and trials is prescribed in Sections 274 to 276 of the Code. In summons cases and enquiries, only memorandum of the substance of the evidence given by the witness is to be recorded although Magistrate has discretion to record evidence in full himself or by dictation in open Court. However, in warrant cases and session trials, evidence must be recorded in full by the Presiding Officer himself or by his dictation in open Court or under his direction and superintendence. The evidence shall be signed by the Presiding Officer and shall form part of the record. Proviso added to Section 275(1) of the Code also enables a Magistrate to record evidence of a witness in warrant cases by audio video electronic means in the presence of the Advocate of the accused. The evidence of the outstation Judicial Officers, doctors and other official witnesses should preferably be recorded in this manner, in accordance with instructions of the High Court. Evidence has to be recorded in the presence of the accused, or if his personal attendance is dispensed with, in the presence of his advocate.

Attention is also drawn to Section 119 (particularly its proviso) of the Indian Evidence Act, 1872, as substituted by the Criminal Law (Amendment) Act, 2013. The said provision should be carefully studied and strictly followed wherever applicable.

Attention is also drawn to Clause (b) of sub-section (5A) of Section 164 of the Code inserted by the Criminal Law (Amendment) Act, 2013, whereby statement of a disabled person recorded under the said sub-section is to be treated as his examination-in-chief at the time of trial.

5. **Statement to be read over to the witness**

When evidence of each witness is completed, it shall be read over to him in the presence of the accused (if present) or his advocate and shall be corrected, if necessary. If the witness denies the correctness of any part of the statement when it is read over to him, the Presiding Officer may, instead of correcting/changing the statement, make a memorandum/note thereon of the objection made by the witness and shall add his own necessary remarks.

6. **English Record**

In Session trials, if the witness gives evidence in English language, it may be recorded in English only. The evidence of other witnesses should be recorded in vernacular and also simultaneously in English translation on the dictation of the Presiding Judge. Any apparent discrepancy between the vernacular statement and the English record should be explained in a note by the Judge. Sometimes, considerable differences are found between the English and vernacular records owing to a neglect of these instructions. Serious view of any such lapse on the part of any Judge shall be taken.

7. **Particulars of witnesses and parties to be noted**

Care should be taken to record the parentage, age, occupation and place of residence of the parties and the witnesses, so as to clearly establish their identity. When a person is known by two names or his precise name is doubtful, both names should be recorded or the doubt cleared up. It should also be clearly noted whether the witness is called by the prosecution or by the defence or by the Court.

8. **Note of cross-examination and re-examination**

Care should be taken to distinguish the cross-examination and re-examination of witnesses by a note before the commencement thereof. If a witness is not cross-examined, the record should show that the opposite party did not wish to do so. The practice of writing cross-examination as 'nil (opportunity given)' for this purpose may be continued.

9. **Legible record**

The statement or memorandum of evidence should be carefully written in a legible manner. If any such record is illegible, while forwarding a case to High Court, legible copy thereof should be submitted with the record of the case.

10. **Evidence on commission**

Attention of the Courts is also drawn to Sections 284 to 290 of the Code of Criminal Procedure relating to examination of witnesses on commission. These provisions should be resorted to wherever necessary, according to the procedure laid down therein.

11. **Documents should be duly proved**

(i) Care should be taken to see that all documents placed on the record, e.g., the First Information Report, plan of the spot, medical certificates/documents etc. are duly proved. Sections 291 to 296 of the Code containing special rules of evidence

need careful attention. Reports of some experts including Mint Officers, Scientific Experts and Forensic Science Laboratory etc. have been made per se admissible in evidence in criminal trials without the concerned person being summoned and examined as a witness in the Court. However, the Court has discretion to summon and examine any such officer/expert as witness.

(ii) Under Section 294 of the Code, when one party files any document in Court, the opposite party may be called upon to admit or deny the genuineness of such document. If the genuineness of any document is not disputed, it may be read in evidence without formal proof thereof although the Court may in its discretion require such proof. This provision should be extensively used by the Courts to curtail examination of unnecessary avoidable witnesses.

(iii) Evidence of a formal character may be given by the witness on affidavit. This enabling provision should be frequently used by the Courts to save time of the Court and to avoid requirement of the deponent to attend the Court. However, the Court has discretion to summon and examine the deponent as witness. The Court shall do so, if required by either party. The practice of tendering such affidavit in evidence with observation that the opposite party does not want to cross-examine the deponent may be continued, so that the deponent does not have to attend the Court and the time of the Court to record statement of such deponent is saved.

12. **Demeanour of witnesses**

Courts must make a note about the demeanour of a witness when it is noteworthy and affects the probative value of the evidence given by the witness. Such a note would be of great help to the Court in correctly assessing the probative value of the evidence at the time of decision of the case.

13. **Record of proceedings.**

Proper record of proceedings of every date of hearing fixed in a case should be maintained, dated and signed by the Presiding Officer. Such record is commonly called zimni order. Besides mentioning the proceedings of the date, it should also mention the next date of the hearing and the purpose thereof. Reason for granting adjournment should also be mentioned in such order. The order should be written by the Presiding Officer himself or on his dictation.

Chapter-7

The Judgment

1. General

(i) Judgment is the culmination of trial. Quality of judgment reflects the wisdom and intellect of the Judicial Officer. Proper attention should be paid to the judgment. It should be self-contained. Besides mentioning the facts and the evidence precisely and concisely, the judgment should also contain the point or points for determination and the decision thereon along with reasons therefor.

(ii) Sections 353 to 365 contained in Chapter XXVII of the Code of Criminal Procedure dealing with the judgment should be carefully studied. Attention is invited to the important provisions.

(iii) Section 353 of the Code stipulates how the judgment is to be pronounced. Ordinarily it is to be pronounced in the open Court in the presence of the accused, but in certain circumstances, it may also be announced in the absence of the accused. The judgment should be dated and every page thereof should be signed. Judgments should not be written during court hours before dealing with all the cases fixed for the day.

(iv) Section 354 deals with contents of the judgment. The offence and the provision of law under which the accused is convicted or acquitted should be mentioned in the judgment. In case of acquittal, the accused, if in custody, should be set at liberty forthwith. In case of conviction, appropriate punishment has to be awarded to the convict.

(v) Section 357 of the Code relates to payment of compensation to the victim or heirs of the deceased victim. Compensation may be ordered out of the fine amount. If fine amount is not part of the sentence imposed, still order for payment

of compensation may be made. Compensation should not be disbursed before expiry of limitation period for filing appeal or before decision of the appeal, if preferred. It is essential to observe this precaution because if the order for payment of compensation is set aside, modified or varied in appeal, it becomes difficult to recover the compensation amount from the payee, if disbursed before the decision of the appeal. Compensation amount should be reasonable and should be assessed keeping in view the nature of offence, the nature and extent of loss or injury and capacity of the accused to pay. This provision should be frequently used in judicious manner in appropriate cases. However, in every case, it is mandatory duty of the Court to apply its mind to the question of grant or refusal of compensation.

(vi) Special attention is drawn to the new provision of Section 357A of the Code stipulating that victim compensation scheme shall be prepared and funds shall be provided for the same. Under this provision, trial Court may make recommendation for award of compensation even when the accused is acquitted or discharged or the offender is not traced or identified and no trial takes place or when compensation awarded under Section 357 of the Code is not adequate.

(vii) Provisions of Sections 360 and 361 of the Code need to be carefully observed along with provisions of the Probation Of Offenders Act, 1958. These provisions should be applied in appropriate cases. Special reasons for not applying the same, where applicable, have to be stated. However, ordinarily, benefit of probation should not be extended to a convict under Section 304A, Indian Penal Code, or to a convict of an offence punishable with minimum sentence of imprisonment.

(viii) Special attention is drawn to Section 362 of the Code according to which the Court after signing the judgment or final order disposing of a criminal case shall

not alter or review the same except to correct a clerical or arithmetical error. This provision, being diagonally opposite to the review power of Civil Court, needs particular attention.

(ix) Attention is also drawn to Section 363 of the Code regarding supply of copy of judgment. If accused is sentenced to imprisonment, copy of the judgment has to be supplied to him free of cost immediately. In some other cases also, copy of judgment has to be supplied free of cost. There is also provision for supply of copy of judgment or other record of the case to the accused or to any other person affected by the judgment on payment of prescribed charges.

(x) An accused sentenced to death should be informed of the limitation period for preferring appeal.

2. **Compensation to accused**

Attention of the Court is drawn to the little known provision of Section 250 of the Code of Criminal Procedure under which compensation may be awarded to an accused in case of his acquittal or discharge, if the accusation is groundless or frivolous. The extent of compensation and the procedure for awarding the same is contained in the said provision. The compensation amount should not be disbursed before the expiry of limitation period for filing appeal or before decision of appeal, if preferred. This provision should be used in appropriate case to curb frivolous cases. Vide Section 358 of the Code, compensation not exceeding one thousand rupees may also be awarded to an accused for causing his arrest without sufficient ground.

3. **Powers to be recorded**

The record and final judgment/order in a criminal case shall disclose the designation/powers of the Judicial Officer hearing/deciding the case. When the

Officer exercises powers specially conferred under some enactment, the same should be disclosed in the record of the proceeding and the final order.

4. **Compounding of offences**

If an offence is compounded, with or without the permission of the Court, as per Section 320 of the Code, it has the effect of acquittal. While granting or refusing permission for compounding, Court should consider all facts and circumstances of the case. Reason for granting or refusing permission for compounding, where permission is necessary, should be stated. However, judgment in such case is not needed on facts.

5. **Riot cases and cross cases**

(i) Riot cases which generally involve large number of persons need to be handled carefully. There is great danger of innocent persons being implicated along with the guilty. Both the parties generally give widely divergent versions of the riot. The police usually prosecute members of both the parties with divergent versions and evidence. It is the duty of the Court to ascertain the truth.

(ii) An important question that arises for determination in riot cases is as to which of the parties was the aggressor and which was acting in self-defence. Court should give proper finding on the said question.

(iii) When both parties are being prosecuted, the two cases should be tried simultaneously, but always separately. Evidence should be recorded carefully so as to bring about the role or connection of each accused distinctly. The mention or omission of the name of an accused person in the First Information Report lodged promptly by an eye-witness and the presence or absence of injuries on his person are relevant, though not conclusive, factors to determine his involvement in the occurrence.

(iv) Separate judgments have to be recorded in both the cases. Evidence of one case should not be imported in the judgment of the other case. Evidence of the two cases should not be mixed up.

(v) Section 149 of the Indian Penal Code (IPC) makes every member of an unlawful assembly constructively or vicariously liable for offences committed by other members in prosecution of common object of the assembly. It should be carefully determined whether said provision is applicable or not. For applying Section 149 IPC, at least 5 members must be sharing the common object although conviction of at least 5 members is not always essential. If Section 149 IPC is not applicable, vicarious liability may still arise under Section 34 IPC, if the criminal act was committed in furtherance of common intention of all.

(vi) If the accused is convicted for a number of offences, separate sentence has to be passed for each offence although Court has power to make the sentences of imprisonment for two or more offences run consecutively or concurrently. (Section 31 of the Code)

(vii) The aforesaid provisions of this rule also apply, so far as may be, to other cross cases allegedly arising out of one and the same occurrence. Separate judgments should be recorded also in other connected cases tried separately.

Chapter 8

Cases under Special and Local Acts:

1. **The Arms Act, 1959**: (i) Provisions of the Arms Act, 1959 which are relevant for a case should be carefully studied. Section 2 relates to definitions and interpretation. Sections 3 to 12, 24-A and 24-B relate to requirement of license and certain prohibitions contravention whereof is punishable under Sections 25 to 33. All these provisions need particular attention.

(ii) Besides fire arms and ammunition, certain other arms have also been notified/prescribed under Sections 4 and 5 of the Act which require license for possession, use etc. thereof. Knife with blade exceeding specified dimensions and spring actuated knife fall in this category.

(iii) Kirpans possessed or carried by Sikhs as religious symbol are exempt from the operation of the Arms Act but manufacture thereof is not so exempt.

(iv) Special attention is drawn to definition of 'prohibited ammunition' and 'prohibited arms' in Section 2(h) and (i) and to Section 7 prohibiting possession, use etc. thereof and to Sections 25 and 27 relating to punishment.

(v) Minimum punishment is prescribed for certain offences. Special care should be taken to impose at least minimum sentence wherever provided.

(vi) The possession of arms by a person after the expiry of his license and before its renewal amounts to contravention of Section 3 which is an offence punishable under Section 25 of the Arms Act.

(vii) Section 27(3) of the Act providing for mandatory sentence of death only, when the use of any prohibited arms or prohibited ammunition or any act in contravention of Section 7 results in the death of a person, has been declared

to be ultra vires the Constitution and void by Hon'ble Supreme Court in State of Punjab Vs. Dalbir Singh 2012(1) Apex Court judgments 461.

(viii) Attention is also drawn to Section 39 according to which prosecution for any offence relating to contravention of Section 3 cannot be instituted without previous sanction of the District Magistrate.

2. **The Punjab Excise Act, 1914**: (i) By amendment made in the Punjab Excise Act, 1914, as applicable to Punjab, Assistant Excise and Taxation Commissioner has been authorized to impose penalty in respect of certain contraventions of the Act. Thereupon such contraventions, on payment of the penalty, cannot be tried by Criminal Court. However, some other contraventions of the Act are still offences triable in Criminal Court. In Punjab, some offences are also compoundable vide Sections 80 and 81 of the Act.

(ii) In the Punjab Excise Act, 1914, as applicable to Haryana also, amendment has been made to confer power on Collector to impose penalty in some cases. However, the Collector may also refer any such case to the Court for trial. In other cases, offenders are still liable to be tried in Court.

(iii) Courts should, therefore, be careful to see whether the case is triable in the Court or penalty is to be imposed by Assistant Excise and Taxation Commissioner (in Punjab) or by the Collector (in Haryana).

(iv) Minimum punishment is prescribed for certain offences. Accordingly less than the minimum sentence where provided should not ordinarily be imposed.

(v) Enhanced punishment is also provided for certain offences after previous conviction, by Section 68-A of the Act. The said provision should be applied in letter and spirit wherever applicable.

3. General

Benefit of Section 360 of the Criminal Procedure Code or of the Probation of Offenders Act, 1958 should not ordinarily be extended where minimum punishment is prescribed for the offence. In other cases also, under the aforesaid special Acts, these beneficial provisions should be applied with care and caution.

4.The Narcotic Drugs and Psychotropic Substances Act, 1985:

(i) Provisions of the NDPS Act and the Rules framed thereunder, which are relevant for a case, should be carefully studied. In particular, provisions of Chapter IV and Chapter V of the NDPS Act need special attention.

(ii) No narcotic drug, psychotropic substance, coca plant, the opium poppy or cannabis plant can be distrained or attached by any person for the recovery of any money under any order or decree of any court or authority or otherwise. (Section 11).

(iii) In exercise of the powers conferred by clauses (vii-a) and (xxiii-a) of Section 2 of the NDPS Act, the Central Government, vide notification No. S.O. 1055(E), dated 19th October, 2001, has specified small quantity and commercial quantity of various narcotic drugs and psychotropic substances for the purposes of the aforesaid clauses. Any quantity lesser than the quantity specified in column 5 of the Table in the said notification shall be small quantity whereas any quantity greater than the quantity specified in column 6 of the Table in the said

notification shall be commercial quantity. The said notification should be carefully perused while deciding a case under the NDPS Act.

(iv) Chapter IV of the NDPS Act contains the law regarding offences and penalties which must be carefully studied. Offences punishable with imprisonment for a term of not more than 3 years may be tried summarily by Judicial Magistrate First Class as per Chapter XXI of the Code of Criminal Procedure 1973. [Section 36-A (5)]. This is an enabling provision and it is not mandatory to try any such offence summarily. The Court has discretion in the matter.

(v) All offences under the NDPS Act which are punishable with imprisonment for a term of more than three years are triable only by the Special Court constituted under the Act. [Section 36-A(1)]. Whereas other offences may be tried by Judicial Magistrate First Class or any Judicial Magistrate in accordance with Part II of the First Schedule to the Code of Criminal Procedure, 1973, depending on the punishment prescribed for the offence. In view of Section 37 of the NDPS Act, every offence punishable under the Act is cognizable and non-bailable.

(vi) Provisions of Section 360 of the Code of Criminal Procedure, 1973 and of the Probation of Offenders Act, 1958 do not apply to a person convicted of an offence under the NDPS Act unless such person is under eighteen years of age or the offence for which such person is convicted is punishable under Section 26 or Section 27 of the Act. (Section 33).

(vii) Under Section 34 of the NDPS Act, Courts are empowered to order execution of bond, at the time of conviction for an offence under the Act, with or without sureties, for abstaining from commission of any

offence under Chapter IV of the Act for a period not exceeding three years.

(viii) An officer-in-charge of a police station is required to take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under the NDPS Act within the local area of that police station or which may be delivered to him. (Section 55).

(ix) Whenever any offence punishable under the NDPS Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed (Section 60), goods used for concealing such contraband drug or substance (Section 61) and sale proceeds of any such contraband drug or substance (Section 62), are liable to confiscation. Any animal or conveyance used in carrying any such drug or substance or other such articles is also liable to confiscation under Section 60 of the NDPS Act. Procedure for making confiscation has been prescribed in Section 63 of the NDPS Act which should be meticulously followed. Chapter V-A has been added to the NDPS Act providing for forfeiture of property derived or obtained from or attributable to the contravention of any provisions of the NDPS Act. However, such forfeiture can be ordered by competent authority authorized by the Central Government and not by the Courts.

(x) All prohibitions or restrictions imposed by or under the NDPS Act on the import into India, the export from India and transhipment of narcotic drugs and psychotropic substances are deemed to be prohibitions and restrictions imposed by or under the Customs Act,

1962 and the offender may be tried and punished for offences under both the Acts. (Section 79).

(xi) The provisions of the NDPS Act and the rules made thereunder are in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 and the rules made thereunder. (Section 80).

(xii) For disposal of seized narcotic drugs and psychotropic substances soon after their seizure i.e. pending investigation and trial, the procedure prescribed in Section 52-A of the NDPS Act should be meticulously followed.

Chapter-9

Cases against Government Servants

1. **General**

A Judicial Magistrate taking cognizance of an alleged offence against a servant of the Government or of a Local Body shall report the commencement of such proceedings together with brief details of the case to the District Magistrate who shall forward a copy to the Departmental Officer Incharge of the Department to which the accused belongs. A further report will be sent in the same way on the termination of the proceedings stating whether they have terminated in conviction, discharge or acquittal. In case of conviction, a copy of the judgment shall also be forwarded.

2. **Strictures against Police Officers**

(i) Courts should be cautious in making remarks (strictures) censuring the action of Police Officers. Such remarks should be made only when essential and strictly relevant to the case. Whenever it is necessary to make any criticism on the work and conduct of any Police Officer/Government servant, the Court should send a copy of the judgment to the District Magistrate.

(ii) Attention is drawn to sub-rules (5) and (6), as applicable in Punjab and Chandigarh, and sub-rules (2) and (3), as applicable in Haryana, of Rule 16.38 of the Punjab Police Rules, 1934 dealing with strictures made by the Courts on the personal character or professional conduct of a Police Officer. The same should be complied with wherever applicable.

3. **Criminal cases affecting persons belonging to the Armed Forces.**

(i) Attention is drawn to the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978 framed by the Central Government in exercise of powers conferred by Section 475 (1) of the Code of Criminal Procedure. These Rules should be carefully studied and observed whenever a criminal case against a person subject to military, naval or air force law or any other law relating to the Armed Forces of the Union comes before a Court. These Rules inter alia stipulate that before proceeding against such an accused person, the Magistrate has to give a written notice to the Commanding Officer or the competent military, naval or air force authority of the accused to ascertain from the said officer or authority as to whether the accused is to be tried by Court-martial or by the ordinary Criminal Court. The Magistrate shall proceed according to the reply received from the Competent Authority. If the Competent Authority desires that the accused be tried by Court-martial, the Magistrate shall not proceed with the case and shall forward the accused along with a statement of the offence to the Commanding Officer concerned. On the other hand, if the Competent Authority replies that the accused be tried by ordinary Criminal Court, the Magistrate shall proceed with the case in accordance with law.

(ii) Whenever such an accused is committed to jail whether for trial or under sentence, his rank shall always be stated in the warrant of commitment.

(iii) When such an accused is convicted of any offence by the ordinary Criminal Court, information in the form given below shall be furnished by the Court to the Commanding Officer of the convict.

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

Similar information is to be furnished in respect of a reservist of the Army sentenced to imprisonment for any term exceeding three months.

(iv) Whenever a military pensioner is convicted and sentenced to imprisonment for a criminal offence, a copy of the judgment shall be sent to the Controller of Military Accounts and Pensions.

(v) Attention is also drawn to Sections 124, 125 and 126 of the Air Force Act, 1950 and Sections 125, 126 and 127 of the Army Act, 1950.

Chapter 10

Maintenance Cases

1. General

Provisions of Sections 125 to 128 of the Code of Criminal Procedure relating to grant of maintenance (including interim maintenance and cost of proceeding) and alteration and enforcement thereof should be carefully studied to know the scope thereof. Proceedings under these provisions although of criminal character are in fact civil in nature. Section 125 of the Code is not intended to provide for all possible cases in which a wife (including a divorcee who has not remarried), child or parent (applicant) may be entitled to receive maintenance from the husband, parent or son/daughter (respondent). It provides only summary remedy to the destitute or neglected applicant. It does not over-ride civil law relating to right of maintenance nor it excludes jurisdiction of Civil Courts.

2. Recording of evidence.

(i) Evidence is to be recorded in the presence of the respondent or where his personal attendance is dispensed with, in the presence of his advocate. Evidence is to be recorded as in a summons case.

(ii) It has come to notice of the High Court that some Magistrates are recording evidence on affidavits in such cases. It is completely irregular and illegal. There is no provision for recording of evidence on affidavits in such cases. This illegal practice should be discontinued forthwith. Evidence is to be recorded as in a summons case in the Court itself.

3. Standard of proof etc.

If relationship alleged by the applicant with the respondent is denied by the latter, it has to be inquired into and proved. However, standard of proof is not as strict as required for an offence of bigamy etc. It is a summary remedy for the destitute or neglected applicant to obtain maintenance. The determination of relationship between the parties in such a case is subject to final determination by the Civil Court. All necessary requirements of Section 125 of the Code should be satisfied or proved before an order for maintenance is made i.e. relationship between the parties, the applicant is unable to maintain himself or herself, the respondent has sufficient means, but has refused or neglected, to maintain the applicant. Order for maintenance may be refused to a wife on the grounds mentioned in Section 125(4) of the Code. Order for maintenance may be cancelled on the grounds mentioned in Section 125 (5) of the Code. Interim maintenance during pendency of the application along with cost of proceedings may also be awarded in an appropriate case and application for the same should be disposed of expeditiously. If the respondent willfully avoids service or neglects to attend the Court, the case may be decided ex parte. Maintenance under this provision may be allowed even to a woman in long established live-in-relationship with the respondent.

4. Quantum of maintenance.

(i) While assessing the quantum of maintenance, factors like means of the respondent including his earning capacity and if other persons are lawfully dependent upon him should be taken into consideration. An able bodied male

respondent has earning capacity and has, therefore, means to maintain the applicant. The applicant is entitled to live with same standard as the respondent. Needs of the applicant and status of the parties also have to be kept in view. The order should be for cash monthly allowance and not in kind. Maintenance should ordinarily be granted form the date of application although for reasons to be recorded, it may be ordered from some subsequent date including the date of order. Payment of maintenance should be unconditional. Maintenance amount may also be fixed by compromise between the parties. Now there is no upper or maximum limit for the amount of maintenance. Copy of the order granting final or interim maintenance has to be supplied free of cost to the applicant.

(ii) The Magistrate may, at the initial stage of the case on appearance of the respondent, require him to file affidavit of his assets and liabilities and sources of income and the monthly or annual income. It will cut short the litigation and also facilitate in determination of proper amount of maintenance, particularly interim maintenance.

5. Contents of judgment.

The judgment should briefly state the pleadings and evidence of the parties, the points for decision and the decision thereon along with reasons.

6. Enforcement of order.

Section 125(3) read with Section 128 of the Code provides effective mechanism for enforcement of the maintenance order. The Magistrate should take effective steps in accordance with law for expeditious enforcement of

the order of maintenance because otherwise the very purpose of granting of the maintenance to the destitute or neglected applicant shall be defeated.

7. Family Court.

Where Family Court has been established under the Family Courts Act, 1984, such a Court has exclusive jurisdiction to adjudicate upon the application filed under Section 125 of the Code.

8. Reciprocity in enforcement of maintenance orders between India and other countries.

The Maintenance Orders Enforcement Act, 1921 provides for reciprocal arrangement between India and other countries for enforcement of maintenance orders. In exercise of powers conferred by Section 12 of the Act, the Central Government has made the Maintenance Orders Enforcement Rules, 1955 which should be carefully studied and applied whenever necessary. The said Rules may be accessed at the High Court website. The Central Government has issued various notifications under Section 3 of the Act regarding applicability of the Act to various foreign countries i.e Mauritius, Zanzibar, Somali, Kenya, Uganda, Seychelles, Northern Rhodesia, Singapore, Malaysia, Nyasaland (now Malawi), Southern Rhodesia, Myanmar, Sarawak. The Central Government has also extended the Act to England and Ireland, Australia, New South Wales, Basutoland, the Bechuanaland and Swaziland, Victoria, South Africa and Sri Lanka as per orders passed under unamended Section 3 of the Act.

Chapter-11

Cases relating to Offences affecting the Administration of Justice

1. General

Sections 195, 199 and 340 to 352 of the Code of Criminal Procedure should be carefully studied and kept in view.

2. Cognizance on complaint only

(i) In view of Section 195 of the Code, no Court can take cognizance of the offences mentioned in that Section except on the complaint in writing of the public servants or Courts mentioned in that Section. The successor Presiding Officer can also make such a complaint in respect of such offence committed before his predecessor. Appellate Court may also make such a complaint.

(ii) Procedure for making such a complaint is given in Section 340 of the Code. Such complaint has to be proceeded and dealt with as if the case were instituted on a police report (Section 343(1) of the Code) and, therefore, examination of the complainant and the witnesses i.e. preliminary evidence is also dispensed with by the first proviso to Section 200 of the Code.

(iii) If appeal is pending in the main case out of which such a complaint has arisen, ordinarily proceedings in the complaint should be stayed/adjourned till the decision of the appeal.

(iv) For making complaint under Section 340 of the Code, the main consideration should be whether it is expedient and in the interest of justice to resort to this provision. The Court is not always bound to make a complaint, even if the case falls within the purview of Section 340 of the Code. The Court has discretion in

the matter. The discretion has to be exercised judiciously and guided by expediency and interest of justice. A complaint should not be made unless a prima facie case is made out and there is reasonable chance of conviction. Before making complaint, Court may, if necessary, also hold preliminary enquiry in which notice may also be given to the concerned person.

3. **Summary procedure for perjury**

(i) Section 344 of the Code provides for speedy and summary procedure for trial for offences of knowingly or wilfully giving or fabricating false evidence in criminal cases. The Court, instead of making a complaint under Section 340 of the Code, may, after recording opinion at the time of final decision that any witness intentionally gave or fabricated false evidence, itself try the witness summarily for which procedure laid down in Section 344 of the Code should be followed. The Court has discretion either to make complaint under Section 340 of the Code or to try the witness summarily under Section 344 of the Code. The Court should be guided by the principle of expediency and interest of justice. In case of appeal or revision application in the main case, the Court should stay further proceedings of the summary trial till disposal of the appeal or revision application. Further proceedings of the summary trial shall obviously abide by the result of the appeal or revision application.

(ii) Offences of giving or fabricating false evidence are unfortunately very common. Action should, therefore, be initiated in only gross or serious cases of such offences and not in every case. In case of conviction, deterrent punishment should be imposed to eliminate or minimize the evil of perjury.

4. **Contradictory statements etc. by a witness**

Where a witness appears to be giving false evidence, special care should be taken in recording the evidence in a precise and clear manner because ambiguities in the statement often furnish loopholes for plausible explanation resulting in failure of justice. When contradictory statements are made by a witness, he may be charged in the alternative although it may be difficult to decide which of the two contradictory statements was false.

5. **Procedure for offences akin to contempt of Court**

(i) Sections 345 and 346 of the Code of Criminal Procedure lay down the procedure relating to offences under Sections 175, 178 to 180 and 228 of the Indian Penal Code which are akin to contempt of Court, when such offences are committed in the view or presence of the Court. Under Section 345 of the Code of Criminal Procedure, the same Court may try and sentence such an offender on the same day by giving opportunity to show cause, but the sentence in that event is very light being that of fine up to two hundred rupees only and in default of payment of fine, simple imprisonment upto one month. However, if the Court considers that the offender should receive higher sentence or that for any other reason, the case should not be disposed of in the aforesaid manner, the Court may forward the case to Magistrate having jurisdiction. The case shall then be dealt with as if it were instituted on a police report. (Section 346 of the Code).

(ii) It is the duty of every Court to maintain decorum and dignity in the Court, and disrespect to the Court may require punishment of the offender. However, unintentional disrespect committed by ignorant rustic villager, without understanding the impropriety of his conduct, may be passed over without punishment whereas similar conduct or behaviour by an educated and knowledgeable person may call for punishment.

(iii) Except as aforesaid, only High Court can take cognizance of contempt of even subordinate Courts. Subordinate Courts may make reference for the same to the High Court. Proceedings of contempt cannot be initiated after expiry of one year from the date of alleged contempt.

6. **Defamation of public servants**

According to Section 199 (1) of the Code of Criminal Procedure, cognizance of any offence punishable under Sections 499 to 502 of Chapter XXI of the Indian Penal Code cannot be taken except on a complaint made by the aggrieved person or on his behalf if he is under legal or physical disability. However, in the case of such offences against dignitaries and public servants mentioned in Section 199 (2) of the Code of Criminal Procedure, cognizance of such offence may be taken by a Court of Session, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor with the previous sanction of the State Government or the Central Government, as the case may be. However, this provision does not affect the right of the aggrieved person to make complaint or the power of the Magistrate to take cognizance on such complaint.

7. **Non-attendance of witnesses**

Section 350 of the Code of Criminal Procedure provides summary procedure for punishing a witness for non-attendance in obedience to process issued by a Criminal Court. Fine upto one hundred rupees only can be imposed under this provision.

Rules under the Contempt of Courts Act, 1971

In exercise of the powers conferred by Section 23 of the Contempt of Courts Act, 1971 (Act No.70 of 1971) and all other powers enabling it in this behalf, the

High Court of Punjab and Haryana hereby makes the following rules to regulate proceedings under the said Act, namely;

Part I

1. **Short title and commencement-** (i) These rules may be called the Contempt of Courts (Punjab and Haryana) Rules, 1974.

(ii) They shall come into force on such date as the Chief Justice may, by notification in the Official Gazette, appoint in this behalf.

2. **Definitions.** In these rules, unless there is anything repugnant in the subject or context:-

(a) "Act" means the Contempt of Courts Act, 1971 (No.70 of 1971);

(b) "Section" means a section of the Act;

(c) "High Court" means the High Court of Punjab and Haryana;

(d) "Judge" means a Judge or an additional Judge of the Punjab and Haryana High Court or a Judge appointed thereto under Article 224-A of the Constitution of India;

(e) "Advocate General" means the Advocate General for the State of Punjab or the State of Haryana, as the case may be;

(f) "Law Officer" means the officer specified under sub-section (2) of Section 15 of the Act for the Union Territory of Chandigarh;

(g) "Registrar" means the Registrar General of the High Court and shall include Registrars and Joint Registrars and such Deputy Registrar or Assistant Registrar as may from time to time, be specified by the Chief Justice;

(h) All other words and expressions used in these rules but not defined therein shall have the meanings respectively assigned to them in the Act.

Part-II

Cognizance and Procedure

A-General

3. (1). Every petition, reference or motion for taking proceedings under the Act shall be registered as Civil Original Petition (Contempt) in respect of Civil Contempts and Criminal Original Petition (Contempt) in respect of the Criminal Contempts.

(2) In proceedings initiated by petition, the initiator shall be described as the "Petitioner" and the opposite party as the "Respondent" and in other cases, the description of the person proceeded against shall be as follows:

"In re:____________A__________son of______________________B son of _________occupation _________resident of __________."

4. (1) Every petition, motion or reference made under Rule 3 above shall contain in precise language a statement setting forth the facts constituting the contempt of which the person charged is alleged to be guilty and shall specify the date or the dates on which the contempt is alleged to have been committed.

(2) When the petitioner relies upon a document or documents in his possession, he shall file them along with the petition.

(3) Every petition for taking action under the Act shall state the nature of the contempt (Civil or Criminal), shall be supported by an affidavit, and shall be presented in the manner required by rules contained in Chapter I of Volume V of the Rules and Orders of the High Court.

5. (1) Every reference relating to contempt of a court subordinate to the High Court shall be scrutinized by the Registrar who shall place the same before the Chief Justice or any other Judge nominated by him in this behalf for obtaining orders, after noting thereon the nature of the contempt. The Chief Justice or the

Judge may, if deemed proper, seek opinion of the Advocate General concerned before passing appropriate order.

(2) When any publication, application, letter or intimation received by post or otherwise calls for any action being taken under the Act by the High Court on its own motion, the matter shall be dealt within the manner prescribed in sub-rule (1). In the case of criminal contempt of a subordinate court, the Chief Justice or the Judge, as the case may be, may direct that the papers be sent to the Advocate General of the State in which the subordinate court is situate or to the Law Officer, if the subordinate court is situate in the Union Territory of Chandigarh, to move the High Court for taking action under the Act.

6. (1) Every petition, motion or reference in relation to civil contempt shall, unless the Chief Justice directs it to be heard by a larger Bench, be laid for motion hearing before a Single Bench.

Explanation:- Nothing contained in this sub-rule shall apply to proceedings initiated by the High Court on its own motion.

(2) Every petition, motion or reference in relation to Criminal contempt shall, be laid for motion hearing before a Division Bench.

Explanation: Nothing contained in sub-rule (2) shall apply to proceedings initiated by the High Court on its own motion. However, after service of notice on the persons charged, such petitions shall be heard and decided by a Bench of not less than two Judges.

(3) Every notice issued by the High Court shall be in the form appended to these rules and shall be accompanied by a copy of the motion, petition or reference as the case may be, together with the copies of the affidavits, if any.

(4) The notice shall be signed and dated by the Registrar and shall be sealed with the seal of the High Court.

(5) Notice of every proceeding under the Act shall be served personally on the person charged, unless the High Court for reasons to be recorded directs otherwise.

(6) The High Court may, if satisfied that the person charged is absconding or likely to abscond or is keeping or likely to keep out of the way to avoid service of the notice, order the issue of warrant of his arrest which, in the case of criminal contempt, may be in lieu of or in addition to the attachment of his property under sub-sections (3) and (4) of Section 17 of the Act. The warrant shall be issued in the form appended to these rules, in terms of the order of High Court.

(7) Whenever the High Court issues a notice, it may, if it sees reasons so to do, dispense with the personal attendance of the person charged with the contempt and permit him to appear by his counsel, and may, in its discretion, at any stage of the proceedings, direct the personal attendance of such person, and, if necessary, enforce such attendance in the manner hereinbefore provided.

7. (1) When any person charged with contempt appears or is brought before the High Court and is prepared, while in custody or at any stage of the proceedings, to give bail, such person shall be released on bail, if a bond for such sum of money as the High Court thinks sufficient is executed with or without sureties on condition that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the High Court.

Provided that the High Court may, if it thinks fit, discharge him without executing such bond.

(2) Notwithstanding anything contained in sub-rule (1) where a person fails to comply with the conditions of the bail-bond as regards the time and place of

attendance, the High Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the High Court or is brought in custody and any such refusal shall be without prejudice to the powers of the High Court to call upon any person bound by such bond to pay the penalty thereof.

(3) The provisions of Sections 436 to 448 and 450 of the Code of Criminal Procedure, 1973, shall so far as may be, apply to all bonds executed under this rule.

B- Criminal Contempts

8. (1) Any person charged with criminal contempt, other than a contempt referred to in Section 14, may file an affidavit in support of his defence on the date fixed for his appearance or any other date fixed by the High Court in that behalf.

(2) If such person pleads guilty to the charge, his plea shall be recorded and the High Court may, in its discretion, either convict him thereon or accept bail for his appearance at such time, as may be appointed, to receive its judgment.

(3) If such person refuses to plead or does not plead, or claims to be tried or the High Court does not convict him on his plea of guilty, it may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary.

C-Civil Contempts

9. In the case of a civil contempt other than a contempt referred to in Section 14, the High Court may take action:-

(a) on its own motion; or

(b) on a petition presented by the party aggrieved; or

(c) in the case of any civil contempt of a subordinate court, on a reference made to it by that Court.

10. (1) In the case of civil contempt, other than a contempt referred to in Section 14, the person charged may file his affidavit by way of reply to the charge alongwith documents in his possession relied upon by him and shall serve a copy thereof on the petitioner or his counsel at least seven days before the date of hearing.

(2) No further return, affidavit or document shall be filed except with the leave of the High Court.

11. In the case of a civil contempt, the High Court may determine the matter of charge either on affidavits filed or on such further evidence as may be taken by itself or recorded by a subordinate court in pursuance of a direction made by it, and pass such order as the justice requires, having regard to the provisions of sections 12 and 13.

Part-III

Appeals

12. Appeals under Section 19 of the Act shall be filed in accordance with rules contained in Chapters I and 2-C of Volume V of the Rules and Orders of the High Court in so far as the same be applicable.

13. Every person against whom proceedings are initiated under the Act may of right be defended by an Advocate of his choice competent to appear before the High Court.

14. A paper-book consisting of the documents specified in Rule 4 shall be filed by the petitioner or the Advocate General or the Law Officer, as the case may be, in triplicate in a case of criminal contempt and in duplicate in a case of civil contempt. Thereafter, as many copies of the paper-book as there are respondents

to whom notice is issued, shall also be furnished along with the process-fee prescribed in Rule 16.

15 (1) In a case where any proceedings are taken on a reference by a subordinate court or by the High Court on its own motion, the Registry shall prepare the paper-book in triplicate in a case of criminal contempt and in duplicate in a case of civil contempt. Such paper-book shall consist of the following documents:

(i) Reference or motion with documents, if any.

(ii) The objectionable material, if any, alleged to constitute contempt.

(iii) Any other document which the Registrar may deem fit to include or which the High Court may require.

(2) All relevant material brought on the record from time to time shall be included in each paper-book.

(3) In any such case, the Court may, at any stage appoint an advocate for the conduct of the proceedings.

16. The rules contained in Chapter 1-F of Volume V of the Rules and Orders of the High Court shall, in so far as they may be applicable, govern the processes issued under these rules.

17. The rules relating to the grant of copies and translation of records contained in Chapter 5-B of Volume V of the Rules and Orders of the High Court shall, in so far as they may be applicable, govern proceedings under the Act.

18. When any person is summoned by the High Court to appear as a witness in any proceedings under the Act, the expenses of such witness as determined according to the rules for the time being in force, shall be paid by the Registrar out of the Contingency Fund; provided that the Court may direct any party to such proceedings to pay such expenses.

19. The High court may direct any party to a proceeding under the Act to pay the costs thereof as determined by it to any other party thereto.

20. It shall be the duty of the Registrar to carry out, enforce and execute the orders passed by the High Court in any proceeding under the Act, and in particular, orders imposing fines or awarding costs.

Annexure

Form of Notice

[See Rule 6(3)]

In the High Court of Punjab and Haryana at Chandigarh

Notice

Criminal/Civil Original Side Criminal/Civil Original (Contempt)

Petition No.______of 20____

Petitioner(s)

Versus

Respondent(s)

Proceedings under the Contempt of Courts Act, 1971 (Act No.70 of 1971)

Whereas from the material laid before this Court, it has been made to appear that you are guilty of contempt of court, punishable under Section 12 of the Contempt of Courts Act, 1971, the proceedings in the matter will be laid before this Court for the determination of the charge on the_______20_______(Actual).

You are hereby directed to attend this Court at 10:00 a.m. on the______20______

in person to answer the charge and to file

in person or through counsel*

an affidavit with necessary documents, if any, in support of your defence, if any .

an affidavit with necessary documents, if any at least 7 days before the said date**

***Note 1.-** This shall be so stated only if an express order in this behalf has been passed by the High Court. In the absence of such an order this alternative shall be deleted.

****Note 2.-** This alternative is to be mentioned only in cases of civil contempt.

Given under my hand and the seal of the Court, this_________day of_______

20__________.

By Order of the High Court

SEAL

Registrar,
High Court of Punjab and
Haryana, Chandigarh.

Form of Warrant [See Rule 6(6)]

No.__________ Judl/dated_________

In the High Court of Punjab and Haryana at Chandigarh

Judicial Department

Criminal/Civil Original Contempt Petition

Petition No.______of 20____

Petitioner(s)

Versus

Respondent(s)

To

The Chief Judicial Magistrate,

____

Whereas the Criminal/Civil Original Contempt Petition No.________of 20_______versus_______came up for hearing on _________before Hon'ble Mr. Justice(s)________ and it has been made to appear that respondent _______is guilty of contempt of Court, you are hereby directed to cause the said respondent___________arrested and produced before this court on________.

(In case of bailable warrant, the following endorsement shall be made on the warrant).

If the said ________shall give bail in the sum of ₹________ with one surety in the sum of ₹________(or two sureties each in the sum of ₹________) to attend before this Court on the__________day of __________20, and to continue so to attend until otherwise directed by this Court, he may be released.

Given under my hand and the seal of this Court today the_____________

Assistant Registrar (Judicial)

for Registrar.

Chapter-12

Witnesses-Criminal Courts

Part-A: Expenses

Under Section 312 of the Code of Criminal Procedure, State Government is empowered to frame Rules for payment of reasonable expenses to the complainant or witnesses attending the Court in criminal cases. The Rules contained in existing Chapter 9 Part A of Volume III of the High Court Rules and Orders have accordingly been framed by the State Government. The said Rules can, therefore, be amended by State Governments only. These Rules require amendment so as to substantially increase the rates of daily expenses/diet money and travelling expenses of complainant and witnesses keeping in view the prevalent rates. The matter is, therefore, required to be taken up with the State Governments. The amended Rules may be incorporated here.

Part-B

Instructions to check fraud and embezzlement in expenses of witnesses.

The following instructions are issued by the High Court for the guidance of the Nazarat Officers and the Presiding Officers of the Courts to prevent frauds and embezzlements in diet and road money of witnesses.

1. **Specimen signatures to be kept**

   (i) The Nazarat Officer should be provided with specimen signatures of all Presiding Officers for whose Courts he has to pay bills for diet and road money of witnesses etc.

(ii) The Nazarat Officer should satisfy himself that the signatures on the bills placed before him conform to the specimen signatures. Should any loss be occasioned by the neglect of these instructions, the Nazarat Officer will be held responsible.

2. **Responsibility of Nazir**:

Nazir is responsible for all money transactions entrusted to his charge. If the Naib Nazar or any other of his assistants is utilized for disbursement work, the Nazir will remain responsible for supervising them and their work.

3. **Criminal Register**:

(i) Prescribed Criminal Register showing the amount of diet and road money of witnesses for which bills are issued should be maintained in each Magistrate's Court. Comparison, at least once a week, should be made with the Nazarat register by the Magistrate who should initial in the relevant column in token of having done so. This instruction also applies to outlying Courts, insofar as may be.

(ii) This register should also be maintained by the Sessions Judge and each Additional Sessions Judge who should compare it with register of contingent expenditure at least once a week and initial in the relevant column in token of having done so.

4. **Nazir to deposit money** :

Any sum deposited with the Nazir in any case should be deposited by the Nazir in the Treasury without delay. The Chief Judicial Magistrate should make monthly inspection of the Nazir's accounts and satisfy himself

that all instructions are being properly observed and send report to the Sessions Judge

Part C

Commissions to Foreign Countries and Expert witnesses

1. **Arrangements with foreign countries**

Government of India, Ministry of Home Affairs has issued various notifications relating to different foreign countries regarding reciprocal arrangements for examination of witnesses residing in those countries on commission in criminal cases and also for examination of witnesses residing in India on commission issued by Courts in the said foreign countries. The said notifications may be accessed on the High Court website. Instructions contained in Chapter-21 of Volume-I of the High Court Rules and Orders will apply *mutatis mutandis*, insofar as may be, to commissions issued under the Code of Criminal Procedure.

2. Expert witnesses:

(i) Much in-convenience is caused to expert witnesses if they are often summoned by the Courts to give evidence. Care should be taken that an expert is summoned only when necessary and his evidence is duly taken and possibly completed on the day of his appearance and at the earliest.

(ii) Where the reports of experts and some other documents are per se admissible in evidence, without examination of concerned persons as witnesses, in accordance with Sections 291 to 294 of the Code, such experts/persons should not

ordinarily be summoned except when necessary in the interest of justice.

(i) If the expert is at a long distance from the Court, his statement may be recorded on commission, or through video conferencing, if considered appropriate.

Chapter-13

Bail

1. **General**

(i) Sections 436 to 450 of the Code of Criminal Procedure dealing with bail including anticipatory bail should be carefully studied.

(ii) Grant or refusal of bail is very vital and important aspect. It requires due attention and application of mind by the Presiding Officer. It affects personal liberty of the accused.

(iii) Courts have very wide discretion in the matter of grant or refusal of bail. However, such discretion should be exercised judiciously and on the basis of sound principles which have evolved through precedents and otherwise.

(iv) Since grant or refusal of bail affects personal liberty of the accused, bail applications should be treated as urgent and decided expeditiously.

2. **Bail Applications**

(i) There should be specific statement in the bail application regarding pendency or decision of any other bail application filed in any Court by the same accused in the same case. If the accused applicant is not in custody, he shall also file an affidavit, in this regard. However, if the accused-applicant is in custody, such an affidavit may be filed on his behalf by any other person being familiar with the facts.

(ii) All bail applications in the same FIR case should ordinarily be assigned/entrusted by the Sessions Judge to the same Judge who dealt with the first bail application.

3. **Bail in bailable offences**

(i) For every bailable offence, bail is a right not a favour. While fixing the bail amount, Courts should bear in mind the social and financial status of the accused and the nature and gravity of the offence, besides other relevant factors. The amount so fixed should neither be excessive nor inadequate. Bail may be tendered and must be accepted at any time before conviction.

(ii) Attention of the Courts is drawn to Section 436 of the Code, which stipulates that a person accused of a bailable offence may also be released on personal bond. If the accused is indigent and is unable to furnish surety, he has to be released on personal bond without surety. If a person accused of a bailable offence is unable to give surety within a week of the date of his arrest, he shall be presumed to be indigent person for releasing him on personal bond.

(iii) If a person accused of bailable offence fails to comply with the conditions of bail bond regarding attendance in Court, the Court may on his subsequent appearance or arrest refuse to release him on bail, although the Court also has discretion to release him on bail. Such person shall, however, not be released on his personal bond only.

4. **Maximum period of detention**

(i) Besides drawing attention of the Courts to first proviso to Section 167 (2) of the Code laying down the maximum period of detention during investigation beyond which the accused becomes entitled to bail in non-bailable offence, attention of the Courts is also drawn to Section 436A of the Code stipulating that an accused who has undergone detention for a period extending to one half of the maximum period of imprisonment provided for the offence (except the offence punishable with death also) shall be released on his personal bond with or without sureties although the Court has discretion, for reasons to be recorded, to order

continued detention of such accused beyond the aforesaid period, but no such person shall in any event be detained during investigation, inquiry or trial for more than the maximum period of imprisonment provided for the offence.

(ii) In view of first proviso to Section 167(2) of the Code, pending investigation, a Magistrate is not entitled to authorize the detention of an accused in custody for a total period exceeding 60 days or 90 days, as the case may be. Consequently, the Magistrate should exercise caution while authorizing detention of an accused in custody and ensure that the remand of the accused does not go beyond the said period of 60 days or 90 days before presentation of report under Section 173 of the Code. If till expiry of the said period of 60 days or 90 days, such report is not presented, the Magistrate should, even without necessity of filing of formal bail application by the accused, pass an order on 61st or 91st day of first remand for his release on bail if he is prepared to and does furnish bail.

5. **Bail in non-bailable offences**

(i) Under Section 437 of the Code, a Magistrate may grant bail to a person accused of non-bailable offence in certain circumstances mentioned in the said section. However, a Magistrate shall not grant bail to a person accused of an offence punishable with death or imprisonment for life or if the accused is previous convict of certain offences specified in Section 437 of the Code which needs special attention of the Magistrates. This prohibition against bail does not apply if the accused is under the age of sixteen years or is a woman or is sick or infirm.

(ii) In the case of non-bailable offence, in the matter of grant or refusal of bail, the Magistrate has to take a holistic view of the case including the nature and gravity of offence, the role attributed to the accused-applicant, the nature of injury or loss suffered by the victim or value of the property involved and so on and so forth.

(iii) Under Section 437 (6) of the Code, if trial by Magistrate is not completed within 60 days from the first date fixed for evidence, the Magistrate shall release the accused on bail, if he has been in custody during the whole of the said period, although for reasons to be recorded, the Magistrate may still decline bail to such an accused.

6. **Bail in cases under the NDPS Act**

(i) Provision for grant of bail in cases under the Narcotic Drugs and Psychotropic Substances Act is very stringent although it has been diluted to some extent relating to small or non-commercial quantity of contraband substance. However, in cases of commercial quantity of contraband substance and for some other offences, bail cannot be granted, unless the Court is satisfied on reasonable grounds that the accused is not guilty of such an offence and further that he is not likely to commit any offence while on bail. Specific attention of the Courts of Session/Special Courts is drawn to Section 37 of the NDPS Act.

(ii) In view of Section 32A of the NDPS Act, sentence of a convict under the said Act cannot be suspended under Section 389(3) of the Code of Criminal Procedure by the convicting Court.

7. **Anticipatory Bail**

Section 438 of the Code confers power on the High Court as well as Court of Session to grant anticipatory bail in appropriate cases. Some relevant factors to be taken into consideration for deciding application for anticipatory bail are enumerated in Section 438 (1) of the Code. If no interim order of anticipatory bail is granted, the accused applicant may be arrested in the case. The Court also has discretion to order presence of the applicant in Court at the time of final hearing of the application as well as passing of final order. While granting anticipatory bail (interim or final), appropriate conditions including the conditions specified in

Section 438 (2) of the Code can be imposed. The discretion to grant or refuse anticipatory bail is to be exercised judiciously and on the basis of settled principles (by precedents or otherwise). It may be mentioned that in view of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, a person accused of an offence under the Act ibid is not entitled to invoke Section 438 of the Code for grant of anticipatory bail.

8. **Bail by Superior Courts**

Section 439 of the Code empowers the High Court as well as Court of Session to grant bail to an accused in any appropriate case. This power is wider and greater than the power conferred by Section 437 of the Code on the Magistrates. However, again, the discretion to grant or refuse bail has to be exercised judiciously and on the basis of settled principles of law. High Court and Court of Session also have power to cancel the bail of any person who has been released on bail and to direct him to be arrested and committed to custody. These Courts also have power to reduce the amount of bail ordered by a Police Officer or Magistrate.

9. **Bail Post Conviction**

Under Section 389 (3) of the Code, a Court on being satisfied that the person convicted by it intends to present an appeal against his conviction and sentence, may order his release on bail in certain cases under certain circumstances for such period as to enable the convict to present the appeal and obtain bail order of the Appellate Court. However, in view of Section 32A of the NDPS Act, this benefit is not available to a convict under the said Act. Appellate Court has power under Section 389 (1) of the Code to order release of the convict appellant on bail during pendency of his appeal. This power can also be exercised by the High Court in an appeal pending before any Subordinate Court.

10. **Cash or Government promissory notes in lieu of bail.**

Section 445 of the Code provides that the deposit of cash amount or Government promissory notes may be made in lieu of bail.

11. **Fitness or sufficiency of sureties**

(i) In view of Section 441 (4) of the Code, the Court may accept affidavit of relevant facts relating to sufficiency or fitness of the surety or may make an enquiry in this regard. However, unnecessary enquiries should not be held as it results in unnecessary incarceration of the accused. However, nevertheless the court should satisfy itself about sufficiency and fitness of the surety.

(ii) Surety should be asked to make declaration as to the number of other cases, if any, in which he has stood surety, along with relevant particulars thereof.

(iii) To avoid bogus or stock surety, particularly in serious offences, the surety may ordinarily be asked to furnish his latest photograph (passport size) and a copy of some identification document issued by some Public Authority e.g. passport, voter identity card, income-tax PAN Card, Aadhaar Card, driving license etc.

12. **Forfeiture of bail bonds**

In case of forfeiture of any bond, full or part amount thereof may be recovered as penalty from the executant of the bond as per procedure laid down in Section 446 of the Code.

13. **Form of bond for appearance before High Court**

(i) When a person is released on bail by order of the High Court or when bail is to be taken for his appearance before the High Court, the bonds to be executed by such person and his surety shall be in the following forms:

FORM OF BOND AND BAIL BOND

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

Dated this ....……day of……………………. 20…...

SURETY BOND

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

Dated the.......................day of .... 20…..

(ii) The Chief Judicial Magistrate on accepting the bonds shall inform the accused and the surety about the date of hearing in the High Court on which the accused is to appear there.

(iii) These instructions will, insofar as may be, apply *mutatis mutandis* to the accused released on bail by order of Court of Session.

(iv) Except in very special cases, Court of Session should decline to entertain application for bail, unless the Court of Magistrate has rejected the bail application of the applicant-accused.

14. **Notice of bail application**

If and when notice of bail application is issued to the Prosecuting Agency, a definite date should be fixed for the hearing, and original bail application and other documents connected therewith are not to be forwarded to the Prosecuting Agency for report. Copy of the bail application should be sent with the notice.

15. **Confirmation of bail orders of High Court**

When certified copy of bail order passed by High Court is presented by the party before the concerned Court, the Court through Superintendent, Clerk of Court or Reader should seek confirmation of the bail order from the High Court on telephone and should then act upon it. However, if bail order is sent by the High Court through e-mail under digital signatures, the same can be acted upon without any further reference with the High Court.

Chapter-14

Investigation, Remand, Cancellation of Cases and Inquest.

1. **Provisions**

Provisions of Sections 154 to 176 of the Code of Criminal Procedure should be carefully studied to know the role of Magistrates during investigation by Police and remand of accused persons and presentation of final investigation report.

Pointed attention is drawn to the provisos added to sub-section (1) of Section 154 of the Code by the Criminal Law (Amendment) Act, 2013.

2. (i) **Difference between Section 156 (3) and Section 202 of the Code**

Under Section 154 of the Code, the Police is supposed to record First Information Report (FIR) in every case whenever information relating to a cognizable offence is received, and to investigate the same. However, the complainant/victim often finds it difficult to get the FIR registered. If Officer Incharge of the Police Station refuses to record the FIR, the aggrieved person may send written complaint by post to the Superintendent of Police. However, if still the FIR is not registered, what is the remedy with the aggrieved person? is the question that often arises. Answer to the question is very simple. The aggrieved person may approach the Area Magistrate with a written complaint. The Area Magistrate has two courses open to him in such a case. Under Section 156 (3) of the Code, the Magistrate may, without taking cognizance himself, order the Officer Incharge of the Police Station to investigate the case. Such investigation has necessarily to be preceded by registration of FIR by the Police Officer. The other course that may be adopted by the Magistrate is to take cognizance of the complaint himself and to proceed with its enquiry. Even during enquiry, the Magistrate may, after recording preliminary evidence, direct an investigation to be made by a Police Officer. The basic difference between the two courses is that

in the former case, FIR is registered and the case will then proceed as instituted on police report. Whereas in the later course, the case will proceed as a complaint case. Once the Magistrate has taken cognizance and recorded statement of the complainant, he cannot thereafter order registration of FIR and investigation under Section 156 (3) of the Code. He may then seek enquiry by the Police by resorting to Section 202 of the Code.

(ii) Cognizable and non-cognizable cases

Police has power and duty to suo motu investigate cognizable offences after registering FIR. However, without order of a Magistrate, Police cannot investigate a non-cognizable offence. Report of any such offence has to be recorded in Daily Diary of the Police Station, and informant referred to the Magistrate.

3. **Time and date of receiving FIR**

(i) In cases of serious offences, copy of FIR is dispatched through special messenger immediately after its registration for being delivered to Area/Duty Magistrate in his Court/residence, who on receiving it should note the date and time of its receipt on the FIR in his own hand and should sign/initial it with date. Such FIR is commonly called as special FIR.

(ii) Other FIRs are dispatched to the Magistrate in his Court in routine. However, time and date of its receipt should be noted on it in the same manner as on Special FIR.

(iii) A separate FIR Register relating to each Police Station should be maintained by Magistrates. Entry in the Register should be made according to serial No. of the FIR. If an FIR registered later in time is received prior in time, blank space

should be left for the earlier FIR in the Register, to be filled in on receipt thereof. In this way, it becomes known at a glance if some earlier FIR has not been received. The Magistrate should inspect the register at least once a month to ensure its proper maintenance and should sign it in token of having done so.

4. **Remand**

(i) Grant of remand, police or judicial, is very important aspect of the role of the Magistrate during investigation of a case by the Police.

(ii) A Police Officer on arrest of an accused may detain him for maximum period of 24 hours (exclusive of the time for journey from the place of arrest to the Court). If the Police Officer wants to retain the custody of the accused beyond the said period, he has to produce the accused before the Magistrate for remand along with case diary.

(iii) If the police seeks police remand of the accused, the Magistrate has to exercise great caution. It has to be seen whether police remand is really necessary or not in the circumstances of the case. For this purpose, the Magistrate should look into the case diary including the investigation done by that time. Police remand should be granted for the shortest period necessary although it may also be extended subsequently, not exceeding 15 days in all. Reasons for granting police remand have to be recorded.

(iv) Even while granting judicial custody, the Magistrate should exercise the aforesaid caution. Judicial remand should not exceed 15 days at a time, although during investigation, it may extend to 90 days/60 days in all depending on the offence, beyond which the accused becomes entitled to bail. During

investigation, the total remand period should not go beyond 90 days or 60 days, as the case may be.

(v) The Magistrates should observe the great distinction between a remand to police custody and a remand to judicial custody. Tendency of police to seek police remand to extort confession should be discouraged. The Magistrates should not grant police remands too readily. The Magistrate has the onerous duty of striking balance while deciding request of police for police remand. Refusal to grant police remand may also sometimes amount to acquittal of the accused because thereby the police may not be able to collect proper evidence and it may thus result in miscarriage of justice. Grant of unnecessary police remand seriously affects the right of the accused.

(vi) A juvenile in conflict with law is required to be produced before the Juvenile Justice Board.

(vii) In case of a woman under 18 years of age, detention can be authorized only in a Remand Home or recognized social Institution.

(viii) The Magistrate should sign and date every page of the case diaries in token of his having seen them.

(ix) The accused must always be produced before the Magistrate when police remand is asked for. However, the Magistrate may extend further detention in judicial custody on production of the accused either in person or through electronic video linkage.

(x) A person who has made a confession before a Magistrate should be sent to judicial lockup although subsequently the police may make written application to seek police remand by giving cogent reasons. However, if an accused, produced

for purpose of making confession, has declined to make confession or has made a statement which is unsatisfactory from the point of the prosecution, he should not be remanded to police custody.

(xi) The Chief Judicial Magistrate should exercise supervision over all Magistrates subordinate to him regarding grant of remand. He should also arrange that the Duty Magistrate attends office at specified hour on public holiday for disposal of remand applications and other urgent applications.

(xii) Before granting remand, police or judicial, opportunity of hearing should be given to the accused or his counsel, if any. Legal aid counsel may also be provided to an accused at the time of remand, if he has not engaged his own counsel. The accused is entitled to communicate with his counsel and his relatives/friends.

(xiii) If identification parade of an accused is to be conducted, he should be produced with his face covered and this fact of the face being covered should be recorded in the remand order.

(xiv) Judgments of Hon’ble Supreme Court and this High Court on the subject of test identification parade including Division Bench judgment dated 31.5.2013 of this High Court in Criminal Appeal No. D-216-DB of 2008 titled as Sukhwinder @ Shoki and Others Versus State of Haryana be studied and followed. Instructions of the State Government issued vide letter No.6091.J, 36/39829 (H-Judl.), dated 19th December, 1936, letter No.6546-J-43/33844 (H-Judl.), dated 17th December, 1943 and letter No.16848-G-55/11327, dated 16th February, 1956 regarding holding of test identification parade be also kept in view. The said instructions can be accessed on the High Court website.

5. **Supervision by Magistrates**

The Magistrates are bound to see that the provisions of the Code are properly observed in letter and spirit, any departmental practice notwithstanding. The Magistrates should not relax the supervision which the law enjoins on them. Such supervision is a check by the Magistrate on the functioning of the police during investigation of a case. Magistrates should also insist that record of search conducted by the Police is transmitted to them as required by Section 165 of the Code.

6. **Cancellation of cases**

In many cases, the police after investigation presents report under Section 173 of the Code for cancellation of the case on the ground: (a) that the offence committed was non-cognizable, or (b) that the information given was false or unfounded, or (c) that the case could not be solved or offender could not be traced. In such cases, the Magistrate is not bound to accept the police opinion and is not supposed to act mechanically. The Magistrate has to examine the record and then pass appropriate order to accept the report or to take cognizance of the case or to order further investigation. The complainant also deserves notice/opportunity of hearing before adjudicating such report except in category (c) i.e. untraced report. Police request for cancellation of a case should be entertained only by way of final report under Section 173 of the Code and not by way of some application or otherwise. A Magistrate even during the course of trial may, at any stage of the proceedings, pass an order of cancellation in appropriate case.

7. **Inquiry by Judicial Magistrate**

Section 176 of the Code makes it mandatory to hold enquiry/inquest by Judicial Magistrate into rape or cause of death in some cases i.e. (i) case involving suicide by a woman within 7 years of her marriage; (ii) case relating to death of a woman within 7 years of her marriage in circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; (iii) Where any person dies or disappears, or rape is alleged to have been committed on any woman, while such person or woman is in police custody or judicial custody. In other cases of suicide, homicide, death caused by animal, machinery or accident, or death under suspicious circumstances, the Judicial Magistrate has discretion to hold inquest or enquiry into the cause of death. For such enquiry or inquest, the dead body if already interred, may be disinterred or exhumed and examined. Provisions of Section 176 of the Code being very important should be carefully studied and observed.

8. **Intimation of conviction in complaint cases**

In complaint cases, intimation of every conviction should be sent to the concerned Police Station with name, parentage, age, caste, occupation and address of the convict, the offence and the sentence and date thereof and name of the Court and other relevant particulars, if any.

Chapter 15

Police Diaries and Statements before the Police

1. Provisions:

Sections 162 and 172 of the Code of Criminal Procedure and Sections 25 to 27, 32, 145 and 161 of the Indian Evidence Act should be carefully studied being relevant to the subject.

2. Accused not entitled to see case diaries:

(i) An accused or his agent or advocate is ordinarily not entitled to call for or see case diaries required to be maintained under Section 172 of the Code. The Court may, however, send for the police diaries during enquiry or trial. Such diaries may be used to aid it in the enquiry or trial, but not as evidence in the case. Police diaries should not be shown to the accused or his agent or advocate. Courts should take necessary precautions in this regard.

(ii) There are certain circumstances in which the accused may use such case diaries. If the Police Officer, who made them, uses them to refresh his memory or if the Court uses them to contradict such Police Officer, then accused may use such case diaries within the purview of Sections 145 and 161 of the Indian Evidence Act.

(iii) The Police Officer may use the case diaries to refresh his memory or the Court may use them not only to contradict the Police Officer but also for the purpose of

tracing the investigation through its various stages, the intervals in the investigation and the steps by which a confession or other important evidence may have been obtained and also for indication of sources and lines of investigation. However, any date, fact or statement referred to in the Police Diary must, if material, be established by evidence.

3.Statement of witness made before police:

(i) Section 162 of the Code should be carefully studied regarding proper use of statement made by a witness before the police during investigation. If the prosecution proposes to examine such witness, copy of his statement has to be supplied to the accused free of cost (along with other documents mentioned in Section 207 of the Code). However, such statement can be used only for limited purpose. If such witness is called by the prosecution, the accused may use such statement to contradict the witness and to impeach his credit in the manner provided by Section 145 of Indian Evidence Act. The prosecution may use such statement, only with the permission of the Court, to contradict the witness. The conflicting statement or relevant portion thereof, duly proved, must be read out to the witness and his attention should be called to the contradictions/

discrepancies and he should then be asked to offer his explanation, if any, for the same.

(ii) Section 162 of the Code is, however, not applicable to dying declaration falling under Section 32 (1) of the Indian Evidence Act. In other words, such dying declaration made to the police during investigation of a case may be proved and used as evidence.

4.Use of First Information Report (FIR):

Section 162 of the Code, prohibiting use of statement of witness recorded during investigation, except for limited purpose mentioned hereinbefore, is not applicable to First Information Report recorded under Section 154 of the Code because FIR is not a statement made in the course of investigation. Accordingly, in view of Section 157 of the Indian Evidence Act, FIR can be used to corroborate the testimony of the person making it, if he appears as a witness. However, if such witness has no personal knowledge of the facts stated in the FIR, then FIR has no probative value except insofar as it discloses the manner in which the police obtained the First Information about the offence and started investigation.

5.Confession made by accused to police:

In view of Sections 25 and 26 of the Indian Evidence Act, confession made to a Police Officer and confession made by an accused while in custody of a police officer (except when made before a Magistrate) is not admissible in evidence. Section 162 of the Code is also not applicable to such confessions. However, when any

fact is deposed to have been discovered in consequence of information received from an accused in police custody, so much of the information, whether confessional or not, as distinctly relates to the fact discovered, may be proved and used as evidence, in view of Section 27 of the Indian Evidence Act.

Chapter-16

Confessions, Statements and Dying declarations before Magistrates

1. **Statement of accused at various stages**

Sections 164, 281, 313 and 315 of the Code of Criminal Procedure regarding confessions and statements of accused should be carefully studied. Section 164 of the Code deals with recording of statements and confessions during investigation or afterwards before commencement of enquiry or trial. Section 313 of the Code enables the Court (including Court of Session) to examine the accused without oath at any stage of enquiry or trial, and also enjoins on the Court to necessarily examine him generally on conclusion of prosecution evidence, to enable him to explain the circumstances appearing against him in the prosecution evidence. This requirement is mandatory. Section 281 of the Code prescribes the manner of examination of the accused. Every question and answer is to be recorded in full. The questions are to be confined to the evidence and not to be put in the nature of cross-examination. The statement is to be signed by the accused as well as the Presiding Officer. Reference may also be made to Section 315 of the Code which enables an accused to appear as a defence witness to give evidence on oath, by making written request.

2. **Confession of accused**

(i) Section 164 of the Code lays down the manner in which any confession or other statement made in the course of investigation or afterwards before commencement of inquiry or trial is to be recorded. The object is to provide reliable record of such statement or confession which could be used as evidence during inquiry or trial. Confession made to a Police Officer or made while in custody of a police officer is inadmissible in evidence except when the confession

is made before a Judicial Magistrate which is admissible in evidence. Consequently, the Police gets the confession made during investigation recorded by a Magistrate under Section 164 of the Code. An accused may himself also appear before a Magistrate to get his confession recorded in any case in which investigation has commenced.

(ii) Various safeguards have been provided in Section 164 of the Code to ensure that the confession made is voluntary and reliable. It is, however, not uncommon that the confession is retracted at a later stage. However, even then the confession recorded under Section 164 of the Code remains admissible in evidence but it has to be scrutinized with greater care and caution. Evidentiary value of a retracted confession depends on the facts and circumstances of each case.

(iii) To make the confession voluntary and reliable, necessary safeguards provided in Section 164 of the Code, which are of great significance, should be strictly followed in letter and spirit. Such confession during investigation can be recorded only by a Judicial Magistrate. It has been so provided to ensure impartiality and authenticity to the confession. Such confession may also be recorded by audio video electronic means in the presence of the advocate of the accused.

(iv) Before recording confession, the Magistrate has to explain to the accused as provided in Section 164 (2) of the Code. A memorandum, as mentioned in Section 164 (4) of the Code, also has to be recorded by the Magistrate at the foot of the confession.

(v) Before recording the confession, the Magistrate by questioning the accused generally has to satisfy himself that the confession is being made voluntarily.

(vi) If the accused produced before the Court for recording confession refuses to make a confession or makes statement which is unsatisfactory from prosecution's point, the accused shall not be remanded to Police custody.

(vii) Confessions should ordinarily be recorded in open Court except for special reasons to be recorded in writing.

(viii) Ordinarily confession should not be recorded immediately after the Police brings the accused into Court. He should be given sometime to reflect, after sending the Police Personnel (except a Constable, if necessary, to secure the safe custody of the accused) out of the Court Room so that the accused feels free and is out of the influence of the Police. If thought fit in any case, the accused may even be sent to judicial custody for a day or so before recording his confession.

(ix) It is reiterated that the Magistrate has to satisfy himself that the confession is voluntary. The Magistrate may even examine the person of the accused to see if physical violence has been used to extort confession or to force the accused to make confession before the Magistrate. If thought fit, in any case, the accused may be got medically examined by a Doctor.

(x) Provision of Section 163 of the Code may also be kept in view while recording a confession.

(xi) The Magistrate may, to ensure voluntary nature of the confession, put questions to the accused regarding the period of his detention including illegal detention, if any, torture, inducement, threat, coercion, suggestion etc. to extort confession, how often questioned by the Police, where apprehended and where detained etc. etc.

(xii) Confession may be recorded in detail to elucidate information required to judge the voluntary nature of the confession. However, the accused is not to be

subjected to cross-examination, but at the same time, the Magistrate should clear the ambiguity, if any, in the confession.

(xiii) Confession must be recorded and signed in the manner provided in Section 281 of the Code.

(xiv) After recording confession also, the accused should be sent to judicial custody although subsequently, the Police may make written application to seek Police remand by giving cogent reasons.

(xv) No Police Officer, particularly Investigating Officer, should be present when a confession is being recorded. However, a Constable, if necessary to secure the safe custody of the accused, may remain present.

(xvi) Under Section 80 of the Indian Evidence Act, there is presumption that the document pertaining to such confession is genuine, was taken in the circumstances mentioned in it and was duly taken.

(xvii) In view of Section 463 of the Code, evidence may be taken, notwithstanding the provision of Section 91 of Indian Evidence Act, that provisions of Sections 164 and 281 of the Code, if found to be not complied with, were duly complied with.

(xviii) Confession recorded by the Magistrate should not be handed over to the Police, but should be forwarded in sealed cover to the Magistrate who is to enquire into or try the case. However, Police may be permitted, if so desired by them, to prepare a copy of the confession or to have photostat copy thereof.

3. **Dying Declaration**

(i) Under Section 32 (1) of the Indian Evidence Act, statement made by a person before his death, as to the cause of his death or the circumstances of the transaction which resulted in his death, is admissible in evidence, if cause of death

of that person comes into question. Such statement is commonly called 'dying declaration'. This provision is based on the principle that a man will not meet his maker with a lie in his mouth. In other words, a man on death bed is not likely to falsely implicate any innocent person.

(ii) Since the maker of dying declaration is not subjected to cross-examination, the dying declaration should be recorded by observing all precautions and safeguards and should inspire confidence. In appropriate case, a dying declaration, even without corroboration, may be sufficient to convict the accused. The Magistrates are, therefore, required to be very careful in recording dying declaration. It should be ensured, so far as possible, that the dying declaration is not result of tutoring, prompting, vindictiveness, imagination etc.

(iii) Ordinarily the Police or Medical Officer should get the dying declaration recorded by a Judicial Magistrate. However, if the person is in imminent danger of dying and presence of Magistrate cannot be secured to record the dying declaration, it may be recorded by the Doctor or the Police Officer.

(iv) Before recording dying declaration, the Magistrate has to satisfy himself that the declarant is in a fit condition to make his statement. If Medical officer is present or may be made available, his opinion or certificate as to such fitness should be obtained. However, if Medical Officer is not present or made available and cannot be awaited, the Magistrate may himself satisfy that the declarant is in fit condition and then record the statement forthwith. The declarant should also remain in fit condition throughout the recording of the dying declaration. The Medical Officer, if available, should also remain present throughout. On conclusion of the declaration, he should certify that the declarant remained fit throughout. The Magistrate also has to record his own certificate in this regard and

also that the statement contains a full and true account of the statement made by the declarant.

(v) The statement, whether made on oath or otherwise, should be recorded in the form of a simple narrative. However, the Magistrate should clear ambiguity, if any. The Magistrate may also ask the declarant to disclose the cause of his injuries or apprehended death or the circumstances of the transaction thereof. The actual words of the declarant should be recorded as far as possible. However, if necessary, note may be given by the Magistrate regarding intended meaning of any words or sentence in view of tone and gestures of the declarant.

(vi) On conclusion, the statement should be read out to the declarant and should, if possible, be signed/thumb marked by him.

(vii) The dying declaration is not to be handed over to the Police although police may be permitted, if so desired by them, to prepare copy thereof or to have photostat copy thereof. The original statement should be transmitted in sealed cover to the Judicial Magistrate having jurisdiction in the case.

(viii) The Magistrate should take all possible precautions to ensure that the dying declaration is free and is a spontaneous statement without any tutoring, prompting, suggestion or aid from any other person.

(ix) Welfare of the injured person should be the first consideration and in no circumstances must proper medical treatment be impeded or delayed to simply obtain the dying declaration of the injured person.

4. **Statement of victim of certain offences.**

Pointed attention is drawn to sub-section (5A) of Section 164 of the Code inserted by the Criminal Law (Amendment) Act, 2013. The said provision should be carefully studied and strictly followed in letter and spirit by Judicial Magistrates

while recording statement of a victim of the offences specified therein, particularly if the victim is temporarily or permanently mentally or physically disabled.

Chapter 17

Approvers

1. **General**:

Sections 306 to 308 of the Code of Criminal Procedure relating to tender of pardon to accomplice/approver should be carefully studied and followed. A person, supposed to be directly or indirectly concerned in or privy to an offence and to whom pardon is granted under Section 306 or Section 307 of the Code of Criminal Procedure, is commonly called approver although the term ‘approver’ is neither defined nor used in the Code. On the other hand, the term ‘accomplice’ is used in Section 306 of the Code. The procedure laid down therein is often resorted to when legally admissible evidence is not otherwise available to bring the offenders to book.

2. **When and by whom pardon may be tendered**:

(i) Pardon can be tendered only if the offence is exclusively triable by the Court of Session or by the Court of Special Judge appointed under the Prevention of Corruption Act, 1988 or the offence is punishable with imprisonment which may extend to 7 years or with a more severe sentence.

(ii) The Chief Judicial Magistrate at any stage of the investigation, enquiry or trial, and Judicial Magistrate First Class at any stage of the enquiry or trial being held

by him (but not during investigation), may tender pardon to the person who is concerned in or privy to the offence in question, on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence as well as to every other person concerned in the commission thereof whether as principal or abettor. After commitment of the case, the Court of Session or the Court of Special Judge may also tender pardon.

(iii) Reasons for tendering pardon must be stated and also whether the tender was or was not accepted by the person concerned.

(iv) The extent of the pardon tendered should be clearly explained to the approver and also that he will not be prosecuted in respect of the case in question, and no others.

3. **Trial after tender of pardon**:

(i) If the Chief Judicial Magistrate has tendered a pardon to any person and examined such person, he, without proceeding further with the enquiry or trial, is bound to send the case for trial to the Court of Special Judge if the offence is exclusively triable by that Court and in other cases, to commit the case to the Court of Session, irrespective of whether the case is exclusively triable by the Court of Session or not.

(ii) Where Judicial Magistrate First Class has tendered a pardon to any person and examined such person, he shall, without proceeding further with the enquiry or the trial, commit/send the case for trial to the Court of Session or the Court of Special Judge as the case may be, if the offence is exclusively triable by that Court and in other cases, send the case to the Chief Judicial Magistrate who shall try the case himself.

4. **Evidentiary value of testimony of an approver**:

The evidence of an approver, being that of an accomplice, is prima facie of a tainted character and has, therefore, to be scrutinized and accepted with utmost care and caution. According to Section 133 of the Indian Evidence Act, a conviction is not illegal or bad merely because it proceeds upon the uncorroborated testimony of an accomplice. However, as a rule of prudence, ordinarily a conviction is not based on the sole testimony of an accomplice unless corroborated. The probative value of the testimony of an approver depends upon the facts and circumstances of each case.

5. **Approver to be kept in judicial custody**:

An approver accepting a pardon, if not already on bail, has to be detained in judicial custody until the termination of the trial. Detention of approver in police custody is not correct.

6. **Trial of approver**:

As condition of pardon, an approver is bound to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned. As per Section 308 of the Code, if the public prosecutor certifies that in his opinion, the approver has not complied with the condition of tender of pardon, the approver may be tried for the original offence or for any connected offence and also for the offence of giving false evidence i.e. perjury. However, such approver shall not be tried jointly with any other accused. Besides it, sanction of High Court is necessary for his prosecution for perjury. Application for such sanction should be made by the State and not by way of reference by the Court. The approver may, at such trial, take the plea that he had complied with the condition of the pardon and onus is on the prosecution to prove that the condition has not been complied with. Statement made by the approver either under Section 306 or Section 164 of the Code may be given in evidence at such trial.

Chapter-18

Proceedings against Absconders

1. **General**

Provisions of Sections 82 to 86 and 299 of the Code of Criminal Procedure relating to proceedings against absconders need to be carefully studied and strictly observed in letter and spirit so that the proceedings are not vitiated in any manner and the absconder on subsequent appearance may not take undue advantage of any loophole therein.

2. **Proclamation**

(i) After satisfying itself of the conditions mentioned in Section 82(1) of the Code, the Court may issue proclamation against an accused or witness. The proclamation has to be published in the manner specified in Section 82 (2) of the Code. It needs special attention that the date for appearance of the accused to be specified in the proclamation should not be less than thirty days from the date of publication of the proclamation. After the proclamation is duly published, the Court should record this fact in its zimni order.

(ii) If the accused or the witness does not appear despite proclamation duly published against him as aforesaid, he is liable to be punished under Section 174A of the Indian Penal Code. Enhanced sentence is provided in the said provision, if the proclamation is in respect of a person accused of any offence mentioned in Section 82 (4) of the Code of Criminal Procedure.

3. **Attachment and sale of property of absconder**

(i) After issuing proclamation, the Court may at any time order the attachment of any property, moveable or immoveable or both, of the proclaimed person. In certain circumstances, attachment may be ordered simultaneously with

the issue of the proclamation. Claims and objections against attachment, preferred by third party claiming interest in attached property, are required to be adjudicated upon by the Court ordering the attachment. The decision thereon can be challenged by the objector by a civil suit within one year.

(ii)Attached property may be released and restored to the absconder in some circumstances on his appearance or may be sold if he does not appear. If interest of the absconder in the attached property is limited or restricted, particularly in the case of the ancestral or Joint Hindu Family property, then only such interest can be attached and sold and it should be so specified expressly.

4. **Evidence in the absence of the absconder.**

Section 299 of the Code provides for recording of evidence in the absence of the absconder. If there is no immediate prospect of arrest of the absconder, the Court competent to try or commit him may record the prosecution evidence in his absence. Ocular, medical and other material evidence should invariably be recorded. On his subsequent arrest, such evidence may be used against him in enquiry or trial, if the deponent is dead or is not available or his presence cannot be procured conveniently to give evidence.

5. **Enquiry in some cases**

Where any offence punishable with death or imprisonment for life has been committed by some unknown person, the High Court or the Sessions Judge may order an enquiry to be held by Magistrate First Class who shall examine the relevant witnesses and their evidence may be used against any person subsequently accused of committing the said offence, if the deponent is not available to give evidence as aforesaid.

Chapter-19

Extradition and Foreign Jurisdiction

1. **Extradition**

(i) Extradition means surrender of a fugitive criminal, who is accused or convict, by one State to another in which he is liable to be punished or has been convicted. Extradition is ordered because crime should not go unpunished.

(ii) Law relating to extradition in India is contained in the Extradition Act, 1962 and Section 105B of the Code of Criminal Procedure. It is not being dealt with in detail here because case for extradition comes very rarely before the Courts subordinate to this High Court. However, whenever such a case comes before any Court, the aforesaid provisions alongwith conditions of extradition order should be studied and observed carefully.

(iii) It is, however, mentioned that Chapter III of the Extradition Act applies to such foreign States to which the Central Government notifies it to apply by reason of extradition treaties/arrangements entered into with the said foreign States by India. Whereas Chapter-II applies to other foreign States notified as such by the Central Government. Such foreign States may include any foreign State which is party to any Convention which may be treated as extradition treaty made by India with that foreign State. There is some difference in the procedures contained in Chapter II and Chapter III of the Act regarding surrender or return of the fugitive criminals to the foreign States. Various orders have been notified by the Central Government under Sections 3 and 12 of the Act making different provisions of the Act applicable to different foreign States. The said orders may be accessed at the

websites of Ministry of External Affairs and Ministry of Home Affairs of the Central Government.

(iv) When the extradition offence is committed on board any vessel on the high seas or any aircraft while in the air outside India, which comes into any port or aerodrome of India, any Magistrate having jurisdiction in such port or aerodrome and the Central Government may exercise the powers conferred by the Act.

(v) In view of reciprocal arrangements for extradition, Courts in India may also seek extradition of a fugitive criminal from a foreign State in accordance with procedure contained in Chapter IV of the Extradition Act, 1962.

2. **Foreign Jurisdiction**

(i) Section 34 of the Extradition Act provides for extra territorial jurisdiction of the Courts in India. Section 34A of the Act relates to prosecution in India of a fugitive criminal who is not to be surrendered or returned on request for extradition from a foreign State. Sections 187 to 189 of the Code of Criminal Procedure also deal with trial for offences committed outside India.

(ii) According to Section 34 of the Act, an extradition offence committed by any person in a foreign State shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence.

(iii) According to Section 34A of the Act, if in the opinion of the Central Government, a fugitive criminal cannot be surrendered or returned on request for extradition from a foreign State, it may take steps to prosecute such fugitive criminal in India.

(iv) Under Section 187 of the Code, Magistrate of the First Class may enquire into any offence committed outside his local jurisdiction (within or outside India),

if the offender is within the local jurisdiction of such Magistrate and the offence is triable in India.

(v) In view of Section 188 of the Code, an offence committed by a citizen of India on high seas or elsewhere outside India, can be dealt with as if the offence had been committed at any place within India where the offender may be found. Similarly, an offence committed outside India by a person, not being citizen of India, on any ship or aircraft registered in India may be dealt with in the same manner. However, previous sanction of the Central Government is essential for enquiry into or trial for any such offence. Clear finding regarding the place of commission of the offence has to be recorded in such a case.

(vi) Section 189 of the Code makes special rule of evidence for enquiry or trial under Section 188 of the Code. It enables the Central Government to direct that copies of evidence recorded or received in foreign country shall be received as evidence during such enquiry or trial. The object is to supply evidence which might not be otherwise procurable.

Chapter-20

Mentally Ill Persons or Persons of Unsound Mind

1. Provisions

Sections 328 to 339 of the Code of Criminal Procedure and Chapters IV and VI of the Mental Health Act, 1987 must be carefully studied and observed while dealing with cases of 'accused persons of unsound mind' (the expression used in the Code) or 'mentally ill persons' (the expression used in the Act).

2. Reception Orders

Chapter IV Part III of the Act lays down the procedure for passing reception order relating to a mentally ill person (not necessarily an accused) when on account of nature and degree of his mental disorder, it is necessary to detain him in a Psychiatric Hospital or Psychiatric Nursing Home for treatment or in the interest of his health and personal safety or for the protection of others. Application for the same may be made by the concerned Medical Officer or by the spouse, or other relative, of the mentally ill person, if the spouse is not available or there is no spouse. The application by spouse or relative has to be made in prescribed form and has to be accompanied by two medical certificates. Reception order may also be passed when a mentally ill person (not an accused) is produced by the police or on information/report that he is not under proper care and control or is ill-treated or neglected. Only Chief Judicial Magistrate or Sub-divisional Judicial Magistrate or specially empowered Judicial Magistrate First Class can pass reception order. Such reception orders may also be passed under Sections 330 and 335 of the Code by Magistrate or Court holding enquiry against or trial of an accused person of unsound mind incapable of making his defence.

3. **Judicial Inquisition**

(i) Under Chapter VI of the Act, application for holding inquisition into the mental condition of an alleged mentally ill person possessed of property may be made to the District Court i.e. City Civil Court or Principal Civil Court of original jurisdiction (District Judge), by any relative, public curator or Advocate General, or in some cases, by the Collector.

(ii) Notice of the application has to be given to the alleged mentally ill person, concerned relative and applicant and the person having custody of the alleged mentally ill person. Court may also appoint Assessors.

(iii) Court has to record finding whether the person is in fact mentally ill or not and if so, whether he is incapable of taking care of himself and of managing his property, or is incapable of managing his property only. If it is found that he is not mentally ill, the application shall be dismissed.

(iv) If the person is in fact found mentally ill and incapable of taking care of himself and of managing his property, the Court has to make order for appointment of his guardian and of Manager for the management of his property. Same person may be appointed as Manager and guardian. If the ill person is capable of taking care of himself, then order regarding management of his property only shall be made. Manager of property has to furnish requisite bond with sureties. Court may also make any appropriate order concerning any matter connected with the mentally ill person or his property.

4. **Miscellaneous**

Accommodation in Psychiatric Hospital or Psychiatric Nursing Home is limited. Earliest possible notice should be given whenever it is proposed to send a person there. So far as possible, arrangements should be made for the patient to

reach the Hospital/Nursing Home before 5:00 PM and on a working day. Rules regarding admission to the Hospital/Nursing Home should also be studied.

5. **Accused persons of unsound mind**

(i) Section 328 of the Code prescribes the procedure to be followed by Magistrate holding an enquiry where the accused appears to be of unsound mind and consequently, incapable of making his defence whereas Section 329 of the Code prescribes the procedure in such case during trial. In either case, the Court has to first enquire into or try the fact of such unsoundness of mind and incapacity of the accused. Both the procedures are somewhat similar with some minor differences. During enquiry, examination of the accused by Civil Surgeon or other Medical Officer is mandatory whereas it is not so during trial, before referring him to a Psychiatrist or Clinical Psychologist. However, even during trial, medical and other evidence has to be considered. The procedure laid down in these provisions should be carefully observed and followed. If the accused is incapable of entering defence on account of mental retardation, then enquiry or trial has to be closed. If the accused is found to be of unsound mind, the Court has to see whether there is no prima facie case against the accused. If so, the accused shall be discharged and then dealt with under Section 330 of the Code. However, if prima facie case is made out, the enquiry or trial has to be postponed and the accused has to be dealt with as provided in Section 330 of the Code. The enquiry or trial may be resumed only when the accused ceases to be of unsound mind and becomes capable of making his defence. However, if on resumption of the enquiry or trial, the accused is still found to be incapable of making his defence, the Court shall again proceed according to Sections 328 to 330 of the Code.

(ii) If an accused, although of sound mind during trial, is acquitted on the finding that he committed the alleged offence while being of unsound mind, such

person shall either be detained in safe custody or be delivered to any relative or friend on giving requisite security (Section 335 of the Code).

(iii) Even during enquiry or trial, an accused of unsound mind may be released on bail or may be ordered to be detained for treatment and safe custody in the manner provided by Section 330 of the Code. Due regard should be had to the public interest, the treatment and safety of the accused as well as protection of others. Medical history of such accused, particularly regarding aggressive behaviour or violent tendency, if any, should be consulted and kept in mind. The accused may also be sent to Psychiatric Hospital or Nursing Home.

6. Power of State Government

Under Section 338 of the Code, if a person of unsound mind, ordered to be detained under Section 330 (2) or Section 335 of the Code, is certified to be fit to be released without danger of causing injury to himself or any other person, the State Government may order him to be released or to be detained in custody or to be transferred to an Asylum. Under Section 339 of the Code, the State Government may order the delivery of such person to his relative or friend on his application and on giving requisite security.

7. Views of Experts

Views of concerned experts on the subject should be kept in view for passing appropriate orders relating to accused persons of unsound mind. Authoritative text book on medical jurisprudence may also be consulted. The case of each accused of unsound mind has to be considered and dealt with separately keeping in view the facts and circumstances thereof.

8. Reception orders of non-criminals

Reception orders under Chapter IV Part III of the Act may also be passed for mentally ill persons, who are not accused in any case. Application for the same may be made by Medical Officer Incharge of the Psychiatric Hospital/Nursing Home or by spouse or other relative of the mentally ill person. The application has to be moved to the Chief Judicial Medical or Sub-divisional Judicial Magistrate or specially empowered Judicial Magistrate First Class. Detailed procedure for the same is contained in Sections 20 to 22 of the Act. Such orders may also be passed otherwise than on an application in view of Sections 24 and 25 of the Act. Detention for specified limited period may also be ordered during medical examination of the mentally ill person.

Chapter 21

Medico Legal Evidence

1. Special Rules of evidence.

Attention is invited to special rules of evidence regarding medical witnesses and reports of Chemical Examiner contained in Sections 291 and 293 of the Code of Criminal Procedure.

2. Link evidence.

(i)Where reference has been made to the chemical examiner, it is the duty of the prosecution as well as the Court to ensure production of complete link evidence to prove that there was no tampering with the articles. Evidence of officials in whose custody the articles remained till the same reached the office of Chemical Examiner is essential for this purpose. However, report of Chemical Examiner that the articles were not tampered with before being examined, is acceptable without the concerned officials of the office of Chemical Examiner, who handled the articles, being called as witnesses. Identity of the articles should also be established by link evidence.

(ii) In case of death, identity of the body with the deceased person has to be established by link evidence.

(iii) Proper custody of articles through out the various stages of investigation, enquiry and trial also has to be established by link evidence of the concerned officials.

3. Views of experts.

While assessing medico legal evidence including report of Chemical Examiner, views of experts and text books on Medical Jurisprudence and Toxicology may be very useful in some cases. The same should be consulted/used wherever necessary.

4. Evidence of Doctors by Video Conference.

Video Conference facility has been provided for examination of Doctors as witnesses posted in Districts other than the District where the summoning Court is situated. It will save precious time of the Doctors and also expenses to the exchequer. Detailed instructions in this regard have been issued by the High Court vide letter No.990-991Spl.C.B.7 dated 31.5.2014. Annexures to these instructions inter alia contain necessary information regarding Nodal Officers of concerned Departments and also Protocol for booking of Video Conference facility. The said instructions including Annexures thereto may be accessed at the High Court website under the head 'High Court Rules and Orders', sub-head 'Volume-III Chapter-21'. The instructions as may be updated or modified by the High Court from time to time shall be uploaded on the High Court website.

Chapter-22

Sentences

1. Suitable Sentence

After conviction, the determination of appropriate punishment is often a question of great difficulty and always requires careful consideration. The law prescribes the nature and the limit of punishment, but the Court has to determine the sentence suited to the offence and the offender. The maximum punishment prescribed by the law for any offence is for the gravest kind and is rarely necessary in practice. Where minimum punishment is prescribed by law, the same must be adhered to. The quantum of punishment depends on a variety of factors, e.g. motive for the crime, its gravity, character, age, mental condition and antecedents of the offender, sudden temptation, prospects of rehabilitation, sentence as a deterrent to the convict or other potential offenders, current community perception, previous convictions and so forth. All mitigating and aggravating circumstances of the case should be carefully weighed by the Court and balance should be struck while passing the sentence. The sentence should neither be excessive nor inadequate. Very wide discretion which is vested in Courts in the matter of quantum of sentence should be exercised judiciously on the basis of settled norms and principles. Observations made by the Hon'ble Supreme Court in 'Shailesh Jasvantbhai Vs. State of Gujarat' (2006) 2 Supreme Court Cases 359 on adequacy of sentence may be studied.

2. Kinds of Punishments

(i) Provisions of Sections 53 to 75 (excluding some sections since repealed) of the Indian Penal Code (IPC) relating to punishments should be

carefully studied. Sections 360 and 361 of the Code of Criminal Procedure, the Probation of Offenders Act, 1958 and the Juvenile Justice (Care and Protection of Children) Act, 2000 should also be carefully looked into. The provision of law prescribing the punishment for the offence of which the accused stands convicted needs to be gone into while passing the sentence, so that the sentence is in conformity with the law.

(ii) Section 53 IPC prescribes various kinds of punishments i.e. death, imprisonment for life, imprisonment (simple or rigorous), forfeiture of property and fine. Sections 360 and 361 of the Code of Criminal Procedure and the provisions of the Probation of Offenders Act as well as the Juvenile Justice (Care and Protection of Children) Act, 2000 provide for release of the convict after admonition or on probation of good conduct and the latter Act also provides for sending the juvenile convict to a Special Home and for order to perform community service etc.

(iii) Provision of enhanced punishment for certain offences, on account of previous conviction, should also be complied with wherever applicable. Previous conviction for attempt to commit an offence is not covered by Section 75 IPC for enhanced sentence. It is also not mandatory to always award enhanced sentence to a previous convict. Very old convictions may ordinarily be ignored.

(iv) Under Section 356 of the Code of Criminal Procedure, in addition to other sentence, the convict may be ordered to notify his residence and change thereof or absence therefrom so as to remain under police surveillance after release from jail, in case of certain offences. Rules framed by Punjab Government vide notification No. 7335 dated the 6th March, 1931, in exercise of power conferred by Section 565(3) of the Code of Criminal Procedure, 1898 (corresponding to Section 356(5) of the Code of Criminal Procedure, 1973) are

available at High Court website. Under Section 106 of the Code, a convict of offences specified therein may be ordered to execute bond for keeping peace, besides other sentence.

(v) Section 357 of the Code of Criminal Procedure enables the Court to give compensation to the victim or heirs of the deceased and to pay cost of proceedings out of the fine amount or where fine is not part of the sentence, the Court may direct the convict to pay compensation amount to the victim or legal heirs of the deceased.

3. **Limits of sentences**

Sections 28 to 31 of the Code of Criminal Procedure lay down the nature and limits of the sentences which may be imposed by different classes of Courts. Besides it, Magistrates of the Second Class cannot exercise power under Section 356 of the said Code nor unless empowered by the High Court, they can deal with first offenders under Section 360 thereof. Under Section 325 of the Code, if the Magistrate is of the opinion that he is not competent to impose suitable punishment on the convict, he may refer the case to the Chief Judicial Magistrate. Some provisions relating to habitual offenders shall be dealt with in a separate Chapter. In the case of a convict of several offences in one trial, separate sentence has to be passed for each offence and if imprisonment is awarded, the same runs concurrently or consecutively as may be ordered by the Court in its judicious discretion. Provisions of Section 71 IPC and Section 31 of the Code of Criminal Procedure should be adhered to in such cases. Ordinarily substantive sentences of imprisonment should be ordered to run concurrently although in an appropriate case, the same may be ordered to run consecutively. As per Section 427 of the Code, where a convict is already undergoing a sentence of imprisonment for life, then sentence of imprisonment for life or for a term on a subsequent conviction

shall run concurrently with such previous sentence. In other cases of a convict already undergoing sentence of imprisonment, it is the discretion of the Court to order the subsequent sentence to run concurrently with the previous sentence failing which the subsequent sentence shall commence at the expiration of the previous sentence of imprisonment. Courts have to be very careful and have to keep in view all these provisions while passing sentence. If the appropriate Government seeks opinion of the Court on application for suspension or remission of sentence of a convict under Section 432 (2) of the Code of Criminal Procedure, the Court should take into consideration all the circumstances of the case including the grounds mentioned in the application while making recommendation to the State Government together with reasons for the same.

4. **Fine amount**

Fine is the lightest form of punishment in a criminal case. Care should be taken to ensure that the fine is neither excessive nor inadequate, particularly with reference to the means of the offender, besides the nature and gravity of the offence. Similarly, balanced view should be taken while awarding sentence of imprisonment in default of payment of fine, also keeping in view the limitations contained in Sections 64 to 67 IPC. Under Section 424 of the Code of Criminal Procedure, execution of sentence of imprisonment in default of payment of fine (where fine is the only substantive sentence) may be postponed for not more than 30 days to enable the convict to pay the fine or he may be permitted to pay it in two or three installments, the first being payable not more than 30 days from the date of order and the other(s) at similar interval(s).

5. **Kinds of Imprisonment**

While imposing sentence of imprisonment, the Court is required to specify whether the imprisonment shall be simple or rigorous. Provision of law

prescribing the punishment should also be kept in mind because for certain offences, simple imprisonment may be the only kind of imprisonment that can be imposed. However, in most of the cases, imprisonment may be of either description. In such cases, Court should exercise its discretion judiciously in ordering simple or rigorous imprisonment. For certain offences, particularly in some Local and Special Acts, kind of imprisonment is not specified. Consequently, in view of Section 3(27) of the General Clauses Act, 1897, such imprisonment may be simple or rigorous. Under Section 73 IPC, solitary confinement for any portion or portions of rigorous imprisonment of the convict may also be ordered, but the limits thereof as specified in the said provision and Section 74 IPC should be adhered to. Solitary confinement is appropriate only for more heinous offences or hardened or dangerous offenders and it can be imposed for offences under the Indian Penal Code only and not under Special or Local Acts. Short term imprisonment, which is neither deterrent nor reformative, should ordinarily be avoided because short duration in Jail is very harmful to the first offender due to association with other prisoners/hardened criminals. It often becomes an introduction to life of crime. It familiarizes the offender with prison, takes away the fear of jail life from his mind, destroys his self-respect and makes him indifferent to further disgrace. On the other hand, imprisonment till the rising of the Court or release after admonition or on probation may be preferred to short term imprisonment. However, in exceptional case, short term imprisonment, which should ordinarily be simple, may also be imposed.

6. Death sentence

Court of Session while passing death sentence has to: (i) direct that the convict be hanged by the neck till he is dead; (ii) submit the proceedings to the

High Court for confirmation of the death sentence; and (iii) inform the convict of the limitation period for filing appeal.

Chapter 23

Execution of Sentences

1. **General :**

Sections 413 to 431 of the Code of Criminal Procedure relating to execution of sentences of various kinds should be carefully studied and used while executing any sentence.

2. **Realisation of fines**:

(i) According to Section 70 of the Indian Penal Code (IPC), unpaid amount of fine may be levied within six years after the passing of sentence and till expiry of imprisonment if it be for more than six years. However, according to proviso to Section 421(1) of the Code of Criminal Procedure, if the convict has undergone imprisonment ordered in default of payment of fine, warrant for levy of fine is not to be issued except for special reasons to be recorded or except when cost of proceedings or compensation has been ordered to be paid out of the fine amount. Consequently, power to levy fine is permissive and not imperative, after the offender has undergone imprisonment in default.

(ii) For recovery of fine amount, warrant may be issued for attachment and sale of moveable property of the defaulter. Since, State Governments have not made rules under Section 421(2) of the Code of Criminal Procedure regulating the manner of execution of such warrants, such warrants should ordinarily be sent for execution to

Tehsildar through Collector and not to Police. The Court may also issue a warrant to the Collector for recovery of the fine amount as arrears of land revenue from the moveable or immoveable property or both of the defaulter.

(iii) Procedure for attachment and sale and adjudication of objections will be similar to that for execution of civil decrees. The objector may be referred to a civil action if his claim seems prima facie groundless.

(iv) Agricultural implements, although not exempt from distress and sale for recovery of fine, should not ordinarily be ordered to be attached and sold.

(v) The Officer selling the attached property will receive commission at the following rate(to be deducted from the sale proceeds):-

(a) If the sale proceeds do not exceed ₹ 1,00,000/-, at 5% thereof.

(b) If the sale proceeds exceed ₹ 1,00,000/-, at 5% on `₹1,00,000/- and 1% on the remainder.

(vi) Fine amount if tendered to Court or Tehsildar taking recovery proceedings or Superintendent of the Jail, at any stage, shall be accepted, and immediately communicated by the Court or the Tehsildar to the jail authorities. The fine amount paid to the Court has to be deposited by the Nazar into the Treasury without delay. Receipt for the fine amount has to be issued in the prescribed form, one copy being given to the payer and counter foil being

retained for record by the Court. Intimation of fine amount recovered by or paid to Tehsildar or Jail Superintendent shall be given to the Court concerned. Entry of recovery or payment of fine amount and deposit thereof in treasury shall be made in the fine register of the Court.

(vii) Care should be taken to prevent illegal detention in prison for default in payment of fine. Immediate action should be taken when fine amount, whole or in part, is paid or recovered.

(viii) If fine amount is remitted in appeal or revision, refund certificate in prescribed form shall be issued by the trial Court and passed by the treasury incharge.

(ix) If compensation/cost amount is to be paid out of fine amount, prescribed refund voucher will be issued for the same.

(x) Concerned Clerk/Ahlmad shall draw attention of the Presiding Officer to unrealized fines, so that necessary steps for recovery thereof may be taken.

(xi) Fine imposed by Civil Court under Section 345 of the Code of Criminal Procedure also must be dealt with in accordance with this rule, so far as may be.

3.**Warrant of commitment to Jail**:

(i) For execution of sentence of imprisonment, warrant of commitment of the convict to jail should be filled in correctly in English in prescribed form without delay and should be signed in full (not initialled) by the Presiding Officer with his own hand and not at all by affixing signature by means of a stamp. The warrant should also be sealed with the seal of the Court.

(ii) A separate warrant for each person, whether under trial or convict, should be issued. The warrant should be prepared with utmost care.

(iii) In Punjab, convicts suffering from leprosy in a communicable form should be sent to the Leper Asylum at Tarn Taran for undergoing the sentence of imprisonment.

4.Warrant for release:

Warrant for release of accused on bail and intimation of payment of fine should be sent to the jail authorities promptly, duly signed in full by the Presiding Officer and sealed with the seal of the Court. If e-mail facility is available in jail, the warrant should be forwarded immediately through e-mail under digital signatures. Warrant may also be sent through fax. In other cases, the release warrant should be sent to the jail, whether at the same station or different station, on the same day through Court official as special messenger.

5.Death sentence:

After death sentence has been confirmed or other order made by the High Court, the record with attested copy of the order shall be sent by the Registry of the High Court to the trial Court which will take steps for execution of the sentence or order by issuing necessary warrant. The trial Court will also intimate the convict of the confirmation of sentence/rejection of appeal. If the sentence has been altered, reversed or enhanced, the trial Court will issue warrant accordingly to the Jail Superintendent. When death sentence is confirmed or is passed by the High Court in appeal or revision, the trial Court on receiving copy of the order of High Court shall issue warrant for execution of the death sentence to the Jail Superintendent. When the death sentence is suspended or commuted, the passing of further orders for carrying out of such sentence is for the Government ordering the suspension or commutation and not for the trial Court.

6.Execution of orders of Appellate and Revisional Courts:

(i) Appellate/Revisional Court will certify its decision to the Lower Court. However, if the impugned judgment was passed by a Magistrate, the High Court will certify its decision to the Chief Judicial Magistrate. The Court receiving the order shall immediately inform the convict and in case of alteration, reversal or enhancement of sentence, will issue a warrant accordingly to the Jail Superintendent.

(ii) If order of Appellate/Revisional Court requires immediate release of a prisoner, such Court will immediately issue a warrant of release direct to the Jail Superintendent who after executing it will forward it with the original warrant of commitment to the Chief Judicial Magistrate. If the warrant is not so received back by the Chief Judicial Magistrate in any case till receipt of order/record from Appellate/Revisional Court, Chief Judicial Magistrate should take immediate steps to ensure release of the prisoner. In case of alteration or enhancement of sentence also, the Appellate /Revisional Court will issue a warrant direct to the Jail Superintendent. The Appellate/Revisional Court should also inform Jail Superintendent of rejection of appeal/revision or confirmation of sentence and should also certify its decision on appeal/revision to the Chief Judicial Magistrate, without delay.

(iii) If a prisoner stands transferred from one jail to another jail, the Superintendent of the Transferor Jail will immediately forward the information or warrant of the order of Appellate/Revisional Court to the Superintendent of the Transferee jail who shall execute the order/warrant and report it to the Court issuing the same.

(iv) If sentences of imprisonment of a convict of several offences in one trial are ordered to run consecutively and the first sentence to be executed is set aside on

appeal/revision, the Appellate/Revisional Court should direct the original Court to issue fresh warrant directing that the second sentence be carried out at once. In such a case, the second sentence shall be presumed to have taken effect from the date on which the convict was committed to jail under the first/ original sentence.

(v) If a convict is released on bail pending his appeal/revision and the sentence is set aside, the Appellate/Revisional Court shall return the original warrant of commitment with a copy of its order to the Court by which the convict was admitted to bail, with direction to discharge him. However, if the sentence is modified on appeal/revision, the Appellate/Revisional Court shall prepare a fresh warrant and shall forward the same alongwith the original warrant and a copy of its order to the Court by which the convict was admitted to bail, with direction to take measures to secure his surrender and commitment to jail on the modified warrant. If the sentence is confirmed in appeal/revision, the Appellate/Revisional Court shall make endorsement on the original warrant to this effect and return it with a copy of its order to the Court by which the convict was admitted to bail, with direction to take measures to secure his surrender and recommitment to jail on the original warrant. However, if the convict be present in the Appellate/Revisional Court at the time of passing such judgment of modification/confirmation of sentence, the

said Court shall commit the convict to jail on modified/original warrant.

(vi) If on appeal/revision, re-trial is ordered and the accused is not released on bail, the Jail Authorities should return the original warrant of commitment to the trial Court. If the order of re-trial is subsequently set aside and the appeal/revision is to be re-heard, the Appellate/Revisional Court should recall the original warrant and re-commit the accused to jail to serve his sentence, pending disposal of the appeal/revision. However, if the Court orders release of the accused on bail, the procedure laid down in the preceding sub rule should be followed.

Chapter-24

Probation, Admonition and Youthful Offenders

1. **Provisions**

The Probation of Offenders Act, 1958 (the Probation Act), the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Juvenile Act) and Sections 360 and 361 of the Code of Criminal Procedure should be carefully studied and applied, wherever applicable.

2. **General**

There are various theories or schools of Penology. One theory subscribes to deterrent punishment, whereas another theory subscribes to reformation of the offenders. Under the latter theory, efforts are made for reforming the offenders and to bring them to the main stream as normal citizens. Many offenders are not professional or dangerous criminals. They are very suitable for reformation. If they are sent to Jail, they may become professional criminals as a result of association with hardened criminals in Jail. Both the theories have pros and cons. In India, we are following both the theories depending on the facts and circumstances of each case.

3. **Similarities and differences between different provisions.**

(i) The Probation Act, the Juvenile Act and Sections 360 and 361 of the Code all make provisions for release of convicts after admonition or on probation of good conduct. To this extent, these provisions are similar. However, there are also some distinguishing features of the said provisions.

(ii) Sections 360 and 361 of the Code apply to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life and also to any person not under 21 years of age convicted of an offence punishable with fine only or with imprisonment upto 7 years.

(iii) The Juvenile Act applies to juveniles in conflict with law i.e. persons found guilty, who had not completed 18 years of age on the date of commission of the offence. The Juvenile Act, besides providing for probation and admonition, also provides for other types of orders, e.g. order to pay a fine, order to perform community service or to participate in group counseling and similar activities or an order to send the juvenile to a Special Home.

(iv) The Probation Act provides for admonition when any person is found guilty of having committed any offence specified in Section 3 thereof. Section 4 of the Probation Act also makes provision for release of any convict on probation of good conduct on being found guilty of having committed an offence not punishable with death or life imprisonment. Its scope is much wider than that of Section 360 of the Code. It also provides for probation with supervision under Probation Officer. There is also power to award cost of proceedings and compensation for loss or injury caused to any person by the commission of the offence. If the convict is under 21 years of age and the offence is punishable with imprisonment but not with life imprisonment, it is mandatory to release the convict either after admonition or on probation, unless the Court for reasons to be recorded passes sentence of imprisonment. Age of the convict for dealing him under the Probation Act is the date on which the trial Court has to deal with him.

4. **The Probation Act**

(i) The Probation Act also applies to Local and Special Acts besides offences under the Indian Penal Code. Although offences providing minimum punishment are not excluded from the purview of the Probation Act, yet ordinarily benefit of probation should not be extended to a convict of an offence punishable with minimum sentence, particularly a convict under the Prevention of Food Adulteration Act, 1954. Observation of Hon'ble Supreme Court in the case of 'Ishar Dass versus State of Punjab' AIR 1972 Supreme Court 1295 should be studied and kept in view even while dealing with cases under other Local and Special Acts.

(ii) As noticed hereinbefore, Section 3 of the Act provides for release of a first offender of offences specified in that Section, after admonition if found expedient so to do. The object is to afford first offenders especially of tender years, a further chance to reform themselves. The mental agony and disgrace of a criminal trial coupled with the stigma of conviction would be sufficient punishment to such persons. At the same time, an impression should not be created in the public mind that juvenile offenders may commit any crime without fear of punishment. Such an impression may encourage some parents to initiate their children into a life of crime and even children themselves might be tempted to go to the paths of crime being immune from punishment. Accordingly, age, character and antecedents of the offender, nature and gravity of offence etc. should be taken into consideration before passing any order of admonition or probation under any provision.

(iii) Section 4 of the Probation Act makes provision for release of a convict of any offence not punishable with death or life imprisonment, on probation of good conduct with or without supervision of a Probation Officer, instead of sentencing

him at once to any punishment. For release on probation, the convict has to enter into a bond, with or without sureties, to appear and receive sentence when called upon during specified period not exceeding three years and in the mean time to keep peace and be of good behavior. Probation with supervision has to be for minimum period of one year. Normally surety should be taken (in addition to personal bond) to ensure compliance with conditions of the bond and being some guarantee for reform of the offender.

(iv) In the case of a convict under 21 years of age, offence being punishable with imprisonment but not with life imprisonment, report of the Probation Officer has to be called regarding the offender, his character, physical and mental condition, living conditions, circumstances in which the crime was committed and his antecedents etc. Medical or psychiatric examination of the offender, if necessary, may also be got arranged. It is mandatory to release him after admonition or on probation of good conduct, unless for reasons to be recorded, sentence of imprisonment is passed. (Section 6).

(v) Under Section 5 of the Probation Act, the Court releasing a convict after admonition or on probation may direct him to pay reasonable compensation to the person suffering loss or injury and to pay cost of proceedings.

(vi) Under Section 8 of the Probation Act, the Court has power to vary the conditions of probation including increase or decrease of the duration thereof but not exceeding three years in all. Suitable period of probation should be fixed keeping in view all the facts and circumstances of each case.

(vii) If the offender fails to comply with the conditions of the probation bond, the Court may secure his presence by issuing warrant or summons along with

summons of his surety. However, every minor violation of condition should not result in imposition of substantive sentence and instead thereof, penalty may be imposed on the offender in case of first violation, under Section 9(3)(b) of the Probation Act. The Court, however, has discretion to impose sentence on the offender for the original offence on being satisfied that he has failed to comply with the condition of the bond.

(viii) Appellate/Revisional Court may also pass order for release of convict after admonition or on probation or may reverse and set aside any such order passed by the lower Court and in lieu thereof, pass sentence on the offender according to law. (Section 11).

(ix) A convict released after admonition or on probation shall not suffer disqualification, if any, attaching to the conviction. (Section 12).

(x) Nature and effect of probation order, with or without supervision, must be carefully explained to the offender by the Court. It should be impressed that the probation be not taken as a 'let off' or 'acquittal'. Power of the Court to sentence the offender for his original offence is the best guarantee for obedience of conditions of probation order. The probation order should be enforced strictly, so that the system is not discredited. However, first minor lapse may be dealt with by imposing penalty.

(xi) Court should also take precaution that in case of probation order with supervision, the offender is not exploited by the supervising Probation Officer.

(xii) Before making an order under Section 3 or Section 4 of the Probation Act, the Court has discretion to call for report of the Probation Officer regarding the case and the offender and shall take into consideration any such report. The

report may be called for even during trial. However, while dealing with a convict under 21 years of age (under Section 6 of the Probation Act), it is mandatory to call for a report from the Probation Officer and to consider the same. Thus, after recording conviction of any person, process of sentencing may have to be postponed for some time, to consider whether the convict should be dealt with under the Probation Act or not.

(xiii) If the probation is with supervision, the Probation Officer may be required to submit periodical reports to the Court. The Court should watch and monitor the progress of the probationer and may, if necessary, pass an order under Section 8 of the Probation Act varying the conditions or duration of the probation.

(xiv) The Punjab Probation of Offenders Rules, 1962 framed under Section 17 of the Probation Act may also be gone into for passing appropriate order under the Probation Act. The said Rules are available on High Court website.

5. **The Juvenile Justice Act**

(i) 'Juvenile in conflict with law' means a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of the offence. Thus, the relevant date for determining the age of the concerned person is the date of commission of the offence and not the date when he is produced before the Magistrate/Juvenile Justice Board/Competent Authority. In view of Section 7A of the Juvenile Act, claim of being juvenile can be raised at any stage before any Court, even after conviction and imposition of sentence, in Appellate/Revisional Court.

(ii) Age has to be determined from the Matriculation or equivalent certificate; in its absence, the date of birth certificate from the school first attended; and in

its absence, the birth certificate from Municipality/Panchayat; and in its absence, by medical opinion from a duly constituted Medical Board.

(iii) Even for non-bailable offence, a juvenile in conflict with law is entitled to be released on bail or to be placed under supervision of a Probation Officer or care of a fit person or Institution by the Juvenile Board/Court, or even by Police, unless the release is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or would defeat the ends of justice. If release is declined, the juvenile shall not be sent to Jail or Police lockup, but shall be sent to an observation home or a place of safety during pendency of the enquiry. After holding the juvenile guilty, he may be sent to Special Home (and not to jail), if not dealt with in any other manner.

(iv) Free legal aid is also to be provided to the juvenile, unless he or his parent or guardian has arranged legal aid.

(v) No juvenile on being found guilty is to be sentenced to death or imprisonment, but is to be dealt with in any of the manners specified in Section 15 of the Juvenile Act i.e. release after advice or admonition, order to perform community service or to participate in group counseling and similar activities, order to pay fine, release on probation of good conduct with order to place the juvenile under the care of any fit person or Institution, or to send the juvenile to a Special Home for three years although for reasons to be recorded, the Board may reduce the period of stay in Special Home.

(vi) The Board has to obtain social investigation report of juvenile through the Probation Officer or otherwise, and consider the same before passing an order.

Order for supervision under the Probation Officer may also be passed alongwith order of fine or probation.

(vii) When any person alleged to have committed an offence is brought before a Magistrate not empowered to exercise the powers of a Board under the Juvenile Act and the Magistrate is of the opinion that the person is a juvenile or child, he shall forward the person along with his opinion and record to the Competent Authority.

(viii) Proceedings should be conducted in a simple manner without unnecessary formalities, in home-like or child friendly atmosphere. Procedure for trial of summons cases should be followed. The juvenile should not be under close guard of Police person. He may appear in the company of a relative or friend or a Probation Officer. The juvenile may be put to ease to elicit true facts.

(ix) The parent or other person liable to maintain the juvenile may be directed to pay monthly sum as contribution towards maintenance of the juvenile.

(x) While transferring a juvenile girl from one place to another, all necessary precautions have to be taken to maintain her dignity and modesty. She should be properly dressed and escorted by a female and ordinarily made to travel only during day time.

(xi) Police persons dealing with juvenile should be in plain clothes and not in police uniform. Juveniles should not be handcuffed or fettered.

(xii) Rules framed under the Juvenile Act may also be gone into. The Rules are available on High Court website.

(xiii) The Punjab Government Circular No.362J.L.39/4621(H-Jails) dated 4th February, 1939 relating to Borstal Jail (available on High Court website) may also be studied.

6. **Sections 360 and 361 of the Code of Criminal Procedure**

(i) Section 360 of the Code deals with release of first offenders after admonition or on probation of good conduct. If a person under 21 years of age or any woman is convicted of an offence not punishable with death or imprisonment for life and is not a previous convict, it is mandatory to release him/her on probation of good conduct, or special reasons have to be recorded for not doing so. Any convict above 21 years of age, offence being punishable with fine only or with imprisonment upto 7 years, also has to be dealt with in the same manner. For certain offences specified in Section 360 (3) of the Code, the convict should be released after admonition, if he is not a previous convict, or special reasons have to be recorded for not doing so.

(ii) Such an order may also be made by Appellate/Revisional Court. Such an order made by the trial Court may also be set aside by Appellate or Revisional Court.

7. **Observation Homes and Special Homes.**

Information regarding Observation Homes and Special Homes established, recognized and maintained in the States of Punjab and Haryana and Union Territory, Chandigarh under the Juvenile Act is available on High Court website as well as on websites of the concerned Governments i.e. websites of Departments of Social Security and Women and Child Development of Punjab, Women and Child

Development of Haryana and Social Welfare Department of Union Territory, Chandigarh.

Chapter-25

Sessions Cases

1. **Commitment**

(i) It is mandatory to commit to the Court of Session all cases which are shown in First Schedule of the Code of Criminal Procedure as triable by the Court of Session or in which pardon has been accepted by any person on cognizance taken by the Chief Judicial Magistrate. However, any other case may also be committed to the Court of Session, if the Magistrate enquiring into or trying it considers that the case ought to be tried by the Court of Session.

(ii) If cognizance of an offence is taken by a Magistrate on complaint and the offence appears to be exclusively triable by the Court of Session, all witnesses of the complainant including the complainant himself have to be examined on oath in preliminary evidence. However, in such case, the Magistrate cannot issue direction for enquiry or investigation by the Police Officer or any other person. Further, if the complainant fails to examine any witness, in spite of reasonable opportunities, it will not preclude the Magistrate from proceeding further or passing commitment order.

(iii) The Magistrate has to furnish copies of documents free of cost to the accused as required by Section 207 of the Code in a case instituted on a Police report or Section 208 of the Code in a case instituted otherwise than on a police report.

(iv) For committing a case to Court of Session, a Magistrate is neither to act as a mere Post Office nor has to make a roving enquiry by weighing the evidence, as if he was conducting a trial. The Magistrate, on examination of the record and

hearing the parties, has to form a prima facie opinion, whether there is sufficient evidence for commitment. Detailed reasons are not to be recorded in the commitment order.

(v) The commitment of the case must be notified to the Public Prosecutor.

(vi) The accused, if not on bail, must be committed to custody during and until the conclusion of the trial.

(vii) Record of the case should be sent to the Court of Session.

(viii) The names of the complainant and other prosecution witnesses have to be entered in a calendar in prescribed form to be prepared by the Magistrate and sent with the record of the case.

(ix) The Magistrate should impress on the police officials that they are responsible for the proper custody and production at the trial of the entire case property.

2. **General**

(i) The High Court emphasizes the desirability of disposing of Sessions cases with the greatest possible expedition. To achieve it, the Sessions Judges including Additional Sessions Judges may reserve several days in each month for possible Sessions cases. However, if till about a fortnight before the days so fixed, no Sessions case is received by commitment, some other cases may be fixed for such days.

(ii) Place of trial has to be in consonance with Section 9 (6) of the Code, ordinarily at headquarter of the Court.

(iii) On receipt of the record on commitment, the Sessions Judge has to assign the case to himself or to Additional Sessions Judge, if any. The case shall

then be registered in the concerned Court. The Presiding Officer shall satisfy himself that committing Magistrate has carried out the requirements of law.

(iv) Provisions of Sections 225 to 237 of the Code prescribing procedure for trial before a Court of Session should be carefully studied and adhered to.

3. **Charge**

If the Court after considering the record and hearing both the parties considers that there is not sufficient ground for proceeding against the accused, he should be discharged. However, if on such consideration and hearing, the Court finds that there is ground for presuming that the accused had committed an offence which is not exclusively triable by the Court of Session, the Court may frame a charge against the accused and transfer the case for trial to the Chief Judicial Magistrate or Judicial Magistrate First Class, who shall then try the case as a warrant case instituted on a police report. If the offence presumed to have been committed is exclusively triable by the Court of Session, the Court shall frame the charge against the accused, keeping in view the provisions of Sections 211 to 224 contained in Chapter XVII of the Code. The accused has no right to produce any material at the time of framing of charge, but in rare and exceptional case, where authentic defence material clearly demonstrates that the prosecution version is totally absurd or preposterous, such material may be looked into.

4. **Plea of the accused**

(i) In case triable exclusively by Court of Session, the charge so framed shall be read over and explained to the accused who shall be asked, if he pleads guilty or not. If he pleads guilty, the Court shall record the plea and may convict the accused thereon.

(ii) If the accused does not plead guilty or claims to be tried, the Court shall fix a date for examination of the prosecution witnesses.

5. **Prosecution evidence**

(i) If the accused is not represented by Advocate, the Court should appoint amicus curiae at State expense to defend the accused or he may be provided free legal aid, if so entitled under the Legal Services Authorities Act, 1987.

(ii) Examination-in-chief, cross-examination and re-examination, if any, of each witness of the prosecution should be recorded in narrative in full although part of it may be recorded in question-answer form, if necessary, at the discretion of the Court.

6. **Acquittal, if no evidence**

On conclusion of prosecution evidence, the accused has to be examined under Section 313 of the Code. Then before calling upon the accused to enter on his defence, if the Court after hearing the parties and perusing the record finds that there is no evidence that the accused committed the offence, the Court shall record an order of acquittal. However, if the accused is not so acquitted, he shall be called upon to enter on his defence.

7. **Defence evidence, arguments and judgment.**

After conclusion of defence evidence, if any, the Court shall hear the arguments addressed by both the parties. On conclusion of arguments, the Court has to pronounce judgment in open Court immediately or on some future date of which parties should have notice. In case of conviction, accused has to be heard on the question of sentence. Thereupon, order of sentence should be passed, and pronounced in open Court and explained to the accused. The judgment should be written and delivered before the sentence is pronounced.

8. **Preparation of record.**

The record of evidence of each witness should be numbered. Each witness should have a separate record sheet. The confessions and other previous statements of each accused should immediately precede his statement in the Court. The name of each witness and all documents comprising the record along with page number should be enumerated in index.

9. **Weapons and other articles**

In all cases referred to the High Court for confirmation of death sentence and also in cases where death or serious bodily injuries are found to have been caused, a full and accurate description of all weapons produced at the trial should form part of the record transmitted to the High Court. Condition of edge of cutting instrument should also be mentioned. Rough sketch of the weapons should, if possible, be made and placed on record. These instructions should be meticulously complied with. In case of sentence of death or imprisonment for life, the exhibited weapons of offence and blood stained garments, if any, shall be forwarded to the High Court.

10. **Record to be forwarded to the High Court in case of death sentence**

If a case is referred to the High Court for confirmation of death sentence, the record of the Court of Session, with the exception of the final judgment, should be promptly submitted in original. Type-written/computer printed copy of the judgment duly certified by the Presiding Officer himself as true copy shall take the place of the original, whereas the original shall be retained in the Court of Session. Four extra type-written/computer printed copies of the judgment will also be forwarded to the High Court. The entire record of the Court of Session including oral and documentary evidence and examination of the accused, order-sheet and charge-sheet, First Information Report, Inquest report etc. has to be forwarded to

the High Court alongwith four type written/computer printed copies thereof, in English translation where necessary. The reference should be in the prescribed form. The accused should be informed about limitation period for filing appeal. Copy of the judgment shall be furnished immediately to the accused free of cost, when the accused is sentenced to death or imprisonment, even if not applied for.

11. **Copy of judgment to be sent to the Government and record to Court of Session**

When death sentence is confirmed by the High Court, copy of judgment of the High Court should be promptly forwarded by the Registry of the High Court to the State Government. The original record of Court of Session shall be returned to the said Court by the Registry of the High Court together with attested copy of the Court's order whether death sentence is confirmed or not.

12. **Date of execution for death sentence**

While issuing warrant for the execution of death sentence, the Session Court should fix a date for execution of the sentence between fourteen to twenty one days from the date of issue of the warrant.

13. **Legal Aid Rules**

Relevant rules for providing legal aid to accused in Sessions cases including regulations framed by the National Legal Services Authority for free legal services should be studied and used for providing free legal aid to unrepresented accused at the trial in Court of Session. The same are available at High Court website.

Chapter-26

Criminal Appeals and Revisions

1. General

A petition of appeal or revision on behalf of a person convicted by a criminal Court or an application for transfer shall not be admitted, unless it is submitted through the Jail authorities or is presented by the convicted person himself or by some person authorized by a duly stamped and signed power of attorney to present it on his behalf. A petition of appeal against acquittal by a victim or an application for special leave to appeal from the order of acquittal in a complaint case or a petition for revision by a complainant shall not be admitted, unless it is presented by the victim or the complainant himself or by some person authorized by a duly stamped and signed power of attorney to present it on his behalf. The petition of appeal or revision or application for special leave shall be accompanied with copy of judgment or order impeached. A person confined in Jail shall be allowed to appoint his pleader by means of unstamped but signed power of attorney attested by the Superintendent of the Jail. Petitions of appeal and revision written by Jail officials on behalf of prisoners shall be authenticated by the Superintendent of the Jail. Petition of appeal or revision received by post (otherwise than through jail or from the prisoner with endorsement that the Superintendent of the Jail refused to receive it) shall not be entertained and should, if possible, be returned to the person from whom it was received. A pleader engaged by the agent duly appointed by appellant/petitioner shall be required to file a power of attorney. No Court fee shall be charged on appeals preferred on behalf of a prisoner by a pleader or by agent. If the appellant/petitioner desires to apply for suspension of conviction or sentence or stay of recovery of fine, the appellant/petitioner shall file a separate application for each prayer.

2. **Hearing of appeals**

(i) Sections 372 to 394 of the Code of Criminal Procedure providing procedure for hearing of criminal appeals, may be gone into. The Appellate Court should first examine if appeal presented by any person lies under any of the provisions or not. Now victim has also been given right to file appeal against some orders.

(ii) An appeal may be rejected summarily, if after hearing the appellant or his counsel and after perusing the petition of appeal and copy of the judgment or order impeached, without or after calling for and perusing the records of the trial Court, the Appellate Court finds no sufficient ground for interference.

(iii) If the appeal is not rejected summarily, notice thereof shall be issued to the State Government through authorized Officer, and also to the appellant or his counsel if not present when the next date of hearing is fixed. In appeal filed in a complaint case, notice shall also be issued to the complainant, if he is not the appellant. Notice of every appeal shall also be given to the accused, if he is not the appellant. The notice shall be accompanied by copy of the petition of appeal.

Home/Judicial Notification No. 4717-J-(C)/56/52148, dated the 25th June, 1956, issued by Punjab Government appointing officers to whom notice of appeal shall be given, may be seen at High Court website.

(iv) Criminal appeal should not be dismissed in default, but should be decided on merits after perusal of the record even if appellant or his counsel is not present. In case of appeal by convict, if he or his counsel is not present, amicus curiae or legal aid counsel may be appointed.

(v) Under Section 391 of the Code, Appellate Court also has power to allow necessary additional evidence for reasons to be recorded.

(vi) Provisions of Chapter XXVII of the Code applicable to the judgment of a criminal Court of original jurisdiction apply, as far as may be practicable, to the judgment of the Appellate Court. Petty points raised in the appeal may not be discussed in detail and it may suffice to observe that no other point raised by the appellant appears to have any force.

(vii) An appeal against an order under Section 117 of the Code to give security for keeping peace or good behavior or against an order under Section 121 of the Code refusing to accept or rejecting a surety lies to the Court of Session.

(viii) Appellate Court has very wide power to pass any appropriate order in appeal after granting opportunity of hearing to the affected party. However, sentence may not be enhanced, if appeal for enhancement of sentence has not been preferred. Nevertheless, if the sentence appears to be manifestly inadequate, High Court or Court of Session may exercise suo motu power of revision to enhance the sentence after giving opportunity to the convict to show cause against the proposed enhancement of sentence.

(ix) Pending the hearing of appeal, Appellate Court may suspend the execution of the sentence including recovery of fine and may also in rare case suspend the judgment of conviction.

(x) An appeal against acquittal or for enhancement of sentence shall abate on the death of the accused. Any appeal against conviction and sentence of death or imprisonment shall abate on the death of the appellant provided that any of near relatives of the deceased appellant may apply to the Appellate

Court for leave to continue the appeal. If the leave is granted, the appeal shall not abate.

(xi) Legal aid may be provided to an accused, if thought appropriate, in any appeal.

3. **Supply of copies and transmission of appeals and applications of prisoners.**

(i) If the accused is sentenced to death or imprisonment, copy of judgment and order has to be supplied immediately to the convict free of cost.

(ii) Petition for revision as well as petition of appeal has to be accompanied by copy of judgment or order impeached.

(iii) A convict is also entitled to copy of judgment of the Appellate Court free of cost although not copy of judgment or order of the Trial Court for a second time free of cost.

(iv) If the accused is in Jail, a copy of judgment or order in a summons case may also be supplied free of cost, if required for filing appeal or revision, but not for the second time. Petitions of appeal or revision preferred by prisoners, alongwith accompanying copies, should be forwarded by the Superintendent of the Jail to the concerned Appellate/Revisional Court.

4. **Record to be sent to the High Court**

(i) In criminal appeals to be heard by the High Court, the Sessions Judge shall forward to the High Court original record of the Court of Session and four legible and correct paper books type-written or computer printed with proper font size containing the following:-

(a) Case in which sentence is of death or life imprisonment or imprisonment for more than 10 years (including connected case, if any, under the Arms Act or other Acts) – all documents marked as exhibits alongwith entire evidence/proceedings.

(b) If sentence is of imprisonment upto 10 years – FIR on the proper form.

(c) In appeal against acquittal by the Court of Session – all documents marked as exhibits alongwith entire evidence/proceedings (paper books to be prepared and sent only on the requisition of the High Court).

(ii) If any of the aforesaid documents is in vernacular, true translation thereof in English shall form part of the paper books. A certificate by the Superintendent or English Clerk that the translation/typed work/computer print outs are correct as per the original record shall be appended to each paper book.

(iii) The documents in the paper book shall be page marked and indexed as per Index form given in the Appendix. The paper book should be properly bound.

Appendix

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. _________/DB of _______.

……………………………. Appellant/s

Versus

The State of Punjab/Haryana Respondent

Appeal against the Judgment of Shri ______.

Sessions/Additional Sessions Judge, ___________ Dated __________

convicting and sentencing the appellant/s.

Charges & Sentence:-

I N D E X

Sr. No.	*Description of Documents*	*Pages*
1.	All zimni orders of trial court	
2.	Charge Sheet & Plea	
3.	Ruqa	
4.	F.I.R.	
5.	Any special report	
6.	All the prosecution Exhibits – Alphabetically i.e. Ex. PA, Ex.PB,…..	
7.	Marks A,B,C,	
8.	All the Defence Exhibits alphabetically i.e. Ex. DA, Ex.DB, Ex. DC, ...	
9.	Statements of all the PWs i.e. PW1, PW2… alongwith Statements of PP (where they fall)	
10.	Statements of accused	
11.	Defence evidence i.e., DW1, DW2…….	
12.	Short statements of Accused, if any, where they fall	
13.	Judgment	

5. **Transmission of judgment of Appellate Court to Lower Court.**

(i) The Appellate Court will send copy of its judgment to the trial Magistrate for information and return to the Record-keeper. The original record will be sent by the Appellate Court direct to the Record-keeper.

(ii) The Record-keeper will maintain a running list of cases in which trial court records have been received from Appellate Court. When copies of judgments are returned to him by the original Courts, he will add them to the records. If copy of any judgment is not received back from the trial Court within 15 days of dispatch, the Record-keeper may issue a letter of request to the trial Court.

(iii) The trial Court may, if so desired, call for the original record for perusal.

Chapter-27

Transfer of cases

1. General

Sections 406 to 412 contained in Chapter XXXI of the Code of Criminal Procedure deal with transfer of criminal cases. Section 406 of the Code relates to power of Supreme Court to transfer any criminal case from any criminal Court to any other Criminal Court of equal or superior jurisdiction. Under Section 407 of the code, the High Court has power to transfer any criminal case from one Court subordinate to it to another subordinate Court of equal or superior jurisdiction or to itself, on the grounds specified therein. However, no application shall lie to the High Court for the transfer of a case from one Court to another Court in the same Sessions Division, unless an application for such transfer has been made to and rejected by the Sessions Judge.

2. Power of Sessions Judge

Sections 408 and 409 confer power on Sessions Judge to transfer, or withdraw and entrust, any case from one criminal court to another criminal Court (including his own Court) in his Sessions Division. Such an order may be made either suo motu or on the report of the lower Court or on the application of a party interested. Guiding factor for passing such an order is 'the ends of justice' and reasons have to be stated for passing the order. On judicial side, Sessions Judge may order transfer of a case at any stage of the case under Section 408 of the Code. Restriction specified in Section 409(2) of the Code regarding stage of the case is applicable on administrative side only.

3. Power of Chief Judicial Magistrate

Section 410 of the Code enables the Chief Judicial Magistrate to withdraw or recall any criminal case from any Magistrate subordinate to him and to enquire into or try it himself or refer it for enquiry or trial to any other such competent Magistrate. Besides administrate ground for transferring any case, the guiding factor should be the same i.e. ends of justice. On administrative ground, a case in which evidence has already been concluded should not ordinarily be transferred nor the old cases should ordinarily be transferred in large number. Reasons have to be recorded for passing transfer order.

4. Cases triable in more than one District

The necessity for transfer of a case may also arise purely on grounds of territorial jurisdiction. Sections 178 to 184 of the Code should be kept in mind in such cases. Cases which are triable in more than one District should not ordinarily be transferred unnecessarily from one District to another. Public convenience including convenience of witnesses should be the guiding factor for transferring such a case.

5. Reference by Court

(i) If any Additional Sessions Judge or Chief Judicial Magistrate is of the opinion that it would be for the convenience of the witnesses/parties or expedient for the ends of justice if an enquiry or trial were held by some other Court in the same Sessions Division, he should at once send his report with reasons to the Sessions Judge. Any other Judicial Magistrate should send such a report with reasons to the Chief Judicial Magistrate. The Sessions Judge/Chief Judicial Magistrate may pass appropriate order on such a report. If the other Court is not in

the same Sessions Division, the report with reasons should be sent to the High Court.

(ii) If the Presiding Officer of any Court does not, for any reason, want to enquire into or try a case, he should after recording the reason send the request, for transfer of the case, to the Sessions Judge or Chief Judicial Magistrate, as the case may be, who may pass appropriate order thereon.

6. **Common grounds in applications for transfer**

The most common grounds on which applications for transfer of criminal cases are frequently made are: (a) that the Presiding Officer is personally interested in the case, or (b) that he is connected with one or the other party to the case by relationship, friendship etc., or (c) that he has already formed or expressed an opinion in the case, or (d) that the opposite party was seen visiting him in his chamber or residence, or (e) that he has conducted himself in such a manner that fair or impartial enquiry or trial cannot be expected from him.

7. **Personal interest cases**

Section 479 of the Code prohibits a Judge or Magistrate from trying or committing a case, to which he is a party or in which he is personally interested, except with the permission of the Appellate Court. The provision is founded on the maxim that no man can be judge of his own cause or give judgment concerning his own rights. On account of personal interest, there is reasonable likelihood of a bias.

8. **Connection with party**

If the Judge or Magistrate happens to be connected with any party by relationship, friendship etc. in any case before him, he should at once make request/report with reason to the proper Court (Sessions Judge/Chief Judicial

Magistrate) for transfer of the case to some other Court. In such a case also, there is reasonable likelihood or apprehension of bias or suspicion. Request for transfer of the case would avoid the possibility of a transfer application with imputation being made.

9. **Opinion formed/expressed or other party seen with the Officer or apprehension of not having fair trial**

Experience shows that applications for transfer of criminal cases on these grounds are mostly without any substantial basis. It is very easy to make such an imputation against the Presiding Officer. Such applications are made with oblique motive e.g. to delay the trial or to gain time to win over the witnesses. The Sessions Judge/Chief Judicial Magistrate while dealing with such application has to be very careful. Unless he is satisfied, on the basis of the material on record, about the existence of such ground, order for transfer of a criminal case on such ground should not be made because it affects the image and reputation of the Presiding Officer dealing with the case and may demoralize him. It may also encourage frivolous transfer applications. The Sessions Judge/Chief Judicial Magistrate while considering such applications has to see whether there has been any real bias in the mind of the Presiding Officer concerned or there is any basis for apprehension of such bias. Balance has to be struck. It has to be ensured that justice is not only done, but also seems to have been done. At the same time, the Presiding Officer concerned has to be guarded and protected against false and frivolous allegations. If the transfer application is found to be false or vexatious, the Sessions Judge may order the applicant to pay amount not exceeding ₹250/- to the person, who has opposed the application.

10.Miscellaneous:

Transfer application should always be supported by affidavit.

During pendency of the transfer application, proceedings in the lower Court may be stayed in appropriate case.

Notice to the opposite party should be issued unless the transfer application is rejected summarily being frivolous on the face of it.

11. **De novo trial not necessary**

In view of Section 326 of the Code, on transfer of a case from one Court to another, de novo trial shall not be necessary except in the case of summary trial. The transferee Court, however, has power to permit, in the interest of justice, further examination, cross-examination or re-examination of any witness whose evidence has already been recorded.

12. **Separate record for transfer cases**

Applications for transfer of criminal cases and the proceedings therein should form files separate from the records of the main cases sought to be transferred. The transfer applications should be entered in the prescribed register of applications for transfer of criminal cases and not in the register of miscellaneous applications. The records of the transfer applications should be separately consigned to the Record Room. The original order on the transfer application should be kept on the record thereof and a copy of the order should be sent to the Courts concerned.

13. **Transfers on administrative grounds**

Cases transferred by a Court on its own motion or on administrative grounds should not be entered in any register. It is unnecessary to keep any separate record of such transfer proceedings. The original order of transfer, instead of a copy, may be sent to the Courts concerned.

Chapter-28

Judicial Lock-ups

Note: (The existing rules on the subject were issued by the High Court with the concurrence of the Inspector-General of Prisons and the approval of the State Government. Consequently, the proposed Rules before issuance shall also require such concurrence and approval.

The draft of proposed rules has been prepared after holding meetings with Inspector Generals of Prisons, Punjab and Haryana (from the offices of Director Generals of Prisons, Punjab and Haryana) and Assistant Inspector General of Prisons from the office of Inspector General of Prisons, U.T. Chandigarh and in consultation with them).

These rules regulating the management of, and control over, Judicial Lock-ups are issued by the High Court with the concurrence of the Inspector Generals of Prisons and the approval of the Governments concerned, in suppression of previous orders on the subject.

1. **Short title**

These rules may be called the Judicial Lock-ups (Punjab, Haryana and Chandigarh) Management and Control Rules, 2015.

2. **Difference between a Judicial and a Police Lock-up**

(i) In a judicial lock-up, no prisoner can be kept without the written order of a Judicial Officer nor can a prisoner be removed without such written order.

Presently all accused remanded to judicial custody during investigation and trial (whether before Magistrate or Sessions Court) are lodged in jails in which convicted prisoners are also housed to undergo their sentence. Now, there are no separate judicial lock-ups. Accordingly, hereinafter word 'jail' is being used at some places instead of 'Judicial Lock-up'.

(ii) In a police lock-up, an accused on arrest may be detained not longer than 24 hours exclusive of the period necessary for journey from the place of arrest to the Magistrate, without the written order of a Judicial Magistrate. Accused are detained in police lock-up on arrest before being produced before Magistrate and also when remanded to police custody by order of Magistrate.

3. **Management of Police Lock-ups**

Police lock-ups, which are normally located in Police Stations or premises of other Police Branches, are under the exclusive control of the Police Department. Police Officers are responsible for any infringement of the law in regard to them.

4. **Control, Management and Inspection of Judicial Lock-ups**

(i) All Judicial Lock-ups are now located within Jails and shall, therefore, be managed entirely by the Jail Department provided that they shall be subject to these rules in regard to inspection by the Sessions Judge concerned. The Judicial Lock-ups shall be under the general control of the State Government. The Inspector General of Prisons/Director General of Prisons shall exercise overall administrative and financial control on the Judicial Lock-ups for budget estimates, budget arrangements, sanctioning expenditure etc. as per Jail Manual and Government Instructions. It is his duty to also see that the Jails are efficiently managed and the undertrial prisoners confined therein are properly cared for as per

law. Care should be taken that prisoners are not exposed to any unnecessary inconvenience, suffering or degradation.

(ii) It is an important part of the duty of the Sessions Judge to inspect judicial lock-ups at least once a month subject to the general control of the High Court. Sessions Judge should direct the Judicial Officers in his Sessions Division to expedite the disposal of cases of undertrial prisoners as urgent cases.

5. **Responsibility of police**

The Police Department will supply the necessary guards for the conduct of prisoners to and from the Courts and other places like hospital, in accordance with the orders of the Government and the Rules of that Department.

6. **Prisoners' tickets**

For **e**very prisoner confined in a judicial lock-up, thick paper ticket shall be maintained in prescribed form containing the following information:

Date of First Admission to Lock-up___________________

Undertrial Ticket

Register No. ______________________________________

Name_____________ Father's name_______________________

Date of admission to this Jail ___________________________

Offence and Section____________________________________

Committing Court______________________________________

Height _____Weight______ Health ______ Age_____________

Dates of hearing in Court, Letters and Interviews.

Details of other cases

7. **Date of hearing**

The next date of hearing of the case and whether the accused is to be produced in person or through video conferencing shall be entered in the warrant directing the confinement of an accused to a judicial lock-up.

8. **Monthly list**

Jail Superintendent shall submit to the Sessions Judge concerned, a monthly list showing every case in which an undertial prisoner has been in confinement for more than six months in a case triable by Magistrate and for more than a year in a case triable by Court of Session, since the date of his first admission to the lock-up. On receipt of such list, the Sessions Judge shall direct the Courts concerned to expedite disposal of such cases.

9. **Scale of diet**

(i) Undertial prisoners confined in judicial lock-ups shall be dieted according to the scale as prescribed in Jail Manual. The undertrial prisoners may supplement their requirements in the matter of food by receiving articles, in accordance with Jail Manual and instructions of concerned government, from their relatives or friends at the time of interview.

(ii) No alcoholic liquors or intoxicating drugs shall be supplied to undertrial prisoners.

(iii) Undertrial prisoners may be allowed to smoke cigarettes or biris at their own expense in accordance with the Jail Manual and any other law in force. Separate smoking zone should be earmarked in the Jail for this purpose. No prisoner should be allowed to smoke except in the smoking zone. No smoking shall particularly be permitted in kitchens, barracks and other places of common resort.

10. **Inspection by Inspector-General of Prisons**

The Inspector-General of Prisons shall, at least once a year, inspect all Jails in order to see that the sanitary arrangements are satisfactory and that the financial management is efficient. He should bring to the notice of the Sessions Judge any cases of long delay in trial which he may observe and submit a brief report of the

result of every such inspection to the Government and will review the general management of the judicial lock-ups in his annual Jail Report. He may at any time bring to the notice of the Government any matter connected with the management of any jail which he considers to be unsatisfactory or to need attention.

11. **Inspection by Sessions Judge**

(i) The Sessions Judge should, as often as may be possible and at least once a month, inspect every judicial lock-up in his Sessions Division. He should also taste the food meant for the prisoners to ensure its quality and quantity in accordance with the Jail Manual and Government instructions. He should also ensure proper sanitation in the Jail. He should pass such orders as he may consider necessary regarding defects in the management which he may observe. A brief report of every such inspection should be submitted to the High Court and copies thereof being sent to the Inspector-General of Prisons, the Home Secretary to the Government, the District Magistrate, the (Senior) Superintendent of Police and the Jail Superintendent and others, if any, concerned.

(ii) The problems of undertrial prisoners are the concern of three main officers in the District, namely, the Sessions Judge, the District Magistrate and the (Senior) Superintendent of Police. They should jointly inspect every Jail in their jurisdiction at least once in a quarter. They should not depute anyone else on their behalf for this purpose. A note of each such inspection should be recorded by the Sessions Judge and sent to all concerned.

(iii) During inspection, authority of the Jail Superintendent should not be diluted in the presence of the prisoners.

12 **Duty of Jail Superintendent**

Jail Superintendent is responsible for effective day-to-day management and control of the Jail and to see that rules as to sanitation and discipline are observed in the Jail. The buildings should be properly ventilated and not over crowded. The food should be of proper quality and according to the prescribed scale of diet. He should also take measures to ensure proper behaviour amongst the prisoners. The prisoners should not be permitted to be noisy or turbulent or to quarrel or fight with one another. They should not be permitted to procure or to endeavour to procure any article from outside except in accordance with Jail Manual and Government instructions.

13. **Separate accommodation for females and juveniles**

(i) Separate accommodation should be provided for female prisoners who should be allowed sufficient privacy.

(ii) In view of the Juvenile Justice (Care and Protection of Children) Act, 2000, juveniles in conflict with law cannot be detained in police lock-up or judicial lock-up or jail even during enquiry (investigation/trial). They have to be kept in Observation Home or a place of safety as per Section 12 of the Act ibid, if not released on bail.

(iii) Adolescents aged between 18 and 21 years should be provided separate accommodation either in jail or in Borstal Jail.

14. **Prisoners not to be kept in police lock-up**

No under trial prisoner should be permitted to remain in a police lock-up except under the orders of a Magistrate or when in transit.

15. **Provision of lock-up in Court Complex**

(i) In each Court complex, a proper place (known as Bakhshi Khana) shall be provided for lodging undertrial prisoners to be produced in Courts on their date of hearing, and for their guards.

(ii) Hon'ble Building Committee of the High Court approves the size and plan of the building of Bakhshi Khana keeping in view the requirement of each place. Provision for necessary ventilation, drinking water, toilets, and other necessary facilities is also made in the building. CCTV Cameras may be installed to keep proper surveillance and to prevent illegal activities.

(iii) The Bakshi Khana shall be managed by the concerned District and Sessions Judge subject to control of the High Court.

(iv) Interview with undertrial prisoners in Bakshikhana should be permitted with permission of concerned court only.

16. **Prisoners received or taken out under orders of Court**

Undertrial prisoners shall not be received into or removed from a Judicial lock-up except on the written order of a Court. Whenever a prisoner is sent out of the lock-up, the Jail Superintendent should send the warrant with him to the Court for the purpose of having the return endorsement made thereon by the Court.

17. **Sick prisoners**

Sick or wounded undertrial prisoners may be kept in Jail hospital as per medical advice and if necessary, may be sent to any other Government hospital, on medical advice, for treatment (outdoor or indoor). Civil Surgeon/Senior Medical Officer concerned shall ensure proper availability of doctors and other medical staff in the jails.

18. **Clothing**

Undertrial prisoners shall be allowed to wear their own clothing. However, for persons who are insufficiently clad, clothing and bedding shall be supplied by the government.

19. **Handcuffs etc.**

Undertrial prisoners are to be subjected to no further restraint than is necessary for their safe custody, and shall not ordinarily be confined in fetters or placed under mechanical bodily restraint. In the case of any undertrial prisoner who is violent or turbulent or is considered to be otherwise dangerous, necessary minimum restraint in accordance with the Jail Manual may be used under written orders of the Court concerned, or of Superintendent of Jail to be got confirmed from Court concerned or Duty Magistrate within next two days.

Undertrial prisoners while being escorted to and from Court by the Police should not be handcuffed except as provided in Rule 12 of Chapter 3 of this Volume.

20. **Restrictions on undertrial prisoners**

Undertrial prisoners should not be permitted to crop their hair or to alter their personal appearance in any way so as to make it difficult to recognize them.

21. **Information of discharge or release on bail**

When an undertrial prisoner is discharged in Court or released on bail while attending the Court, the Presiding Officer of the Court shall intimate the fact in writing under his signature the same day to the Superintendent of the Jail from which the prisoner was sent to the Court.

22. **Interviews and correspondence**

Undertrial prisoners shall be given all reasonable facilities in accordance with Jail Manual for communicating, either personally or by letter, with their relatives, friends or legal advisors. Interviews may be allowed in accordance with Jail Manual and letters forwarded under the authority of the Jail Superintendent.

23. **Disposal of money or other property**

Money or other property found on the person of undertrial prisoner, other than necessary wearing apparel, shall be taken charge of by the Jail Superintendent who shall be responsible to see that such articles are made over or forwarded to the prisoner at the time of his release.

24. **Punishment for breach of discipline**

Punishment as prescribed by Jail Manual may be imposed for misconduct or breach of Rules in the Jail. Such Jail punishment is subject to approval by the Sessions Judge concerned to whom the papers shall be submitted for approval.

25. R**egister of undertrial prisoners**

A register in the form prescribed showing every admission to and removal from a judicial lock-up shall be maintained by the Jail Superintendent.

26. **Appointment of non-official visitors**

(i) Non-official visitors in respect of any jail may be appointed in accordance with Jail Manual. The appointment shall be for two years unless terminated sooner for reasons to be recorded in writing. A non-official visitor may also be reappointed on expiry of his term. Process for filling up vacancy likely to occur should be initiated by the Jail Superintendent well in advance.

(ii) A non-official visitor should be a local person commanding respect of the public and should be associated with public activities and should not be a practising lawyer.

(iii) Visits by the non-official visitors to the jail and their duties shall be governed by the Jail Manual.

(iv) Entry of every visit of every non-official visitor shall be made in the visitors' book to be kept in every Jail. The non-official visitor may also enter therein any remarks or suggestions, he may wish to make. A copy of the record made by such visitor together with remarks of the Jail Superintendent shall be forwarded to the Inspector-General of Prisons and also in case of a remark relating to long detention of any undertrial prisoner, to the Sessions Judge concerned.

27. **Transfer of undertrial prisoners**

Undertrial prisoners lodged in judicial lock-ups during investigation and trial may be transferred from one jail to another jail with the written permission of the Courts under whose orders they are lodged in judicial lock-ups. Application for transfer may be moved by the prisoner, the police or the jail authorities. The court may also act suo motu. For sufficient reasons, Inspector General of Prisons or Sessions Judge may also transfer an undertrial prisoner from one jail to another jail, under intimation to the Court concerned.

28. **Undertrial facing many cases**

If an undertrial prisoner is facing trial in more than one case at different stations (within or outside the State) and any date of hearing at different stations clashes, then he may be produced in the senior most Court within the State, with intimation to the other concerned court(s) that the prisoner cannot be produced due to this reason.

29. **Appearance by Video Conferencing**

Concerned Court may, on application of either party, police or jail authority or suo motu, order production/appearance of any undertrial prisoner on any date of hearing through video conferencing from jail itself (without personal appearance in court) provided that he is represented by an Advocate. The Court shall specify the date and time for the same on the jail warrant.

Chapter-29

Judicial Powers-Criminal

1. General Powers

The constitution and powers of the Criminal Courts are regulated by Chapters II and III and First Schedule of the Code of Criminal Procedure. Sixth column of Part I of that Schedule indicates the class of Court competent to try each offence falling under the Indian Penal Code. In regard to offences falling under Local and Special Laws, the classes of Courts by which such offences are triable are usually specified in the Act creating the offences. However, in the absence thereof, Sixth column of Part II of First Schedule of the Code indicates the class of Court competent to try offences under any other law, the criterion being the quantum of punishment prescribed for the offence. The term 'Magistrate' used without qualification in any such Act shall be construed in accordance with Section 3 of the Code.

2. Special Powers

In addition to the general powers which the Magistrates are entitled to exercise under Sections 29 and 30 of the Code, they are also entitled to exercise powers conferred upon them by different Acts (Central, Local and Special) dealing with the offences and the punishment prescribed for the same. Section 187 of the Code confers power upon the Magistrate of First Class to issue process to a person who is within his local jurisdiction although has committed the offence outside such local jurisdiction. Under Section 190 of the Code, the Magistrate of First Class has power to take cognizance of offences upon (i) complaint or (ii) Police Report or (iii) information received from any person or (iv) his own knowledge. The Magistrates of the Second Class may also be empowered by the Chief Judicial Magistrates to take cognizance of offences.

3. **Powers conferred by Government/High Court**

The State Government vide Notification No.1004 dated 26th July, 1897 has conferred power of the Magistrate First Class on Registrar of the High Court within the limits of the High Court building and compound.

Similarly, the Government vide Notification No.3 dated 2nd January, 1889 and Notification No.1081 dated 24th August, 1910 has conferred power of Magistrates Second Class on Assistant Commissioners and Extra Assistant Commissioners, and Tehsildars respectively within the limits of their respective Districts.

Power of Principal Magistrate of the Juvenile Justice Board under the Juvenile Justice (Care and Protection of Children) Act, 2000 has also been conferred on senior most Magistrate (after Chief Judicial Magistrate and Additional Chief Judicial Magistrate) in the respective Districts in the States of Punjab and Haryana and Union Territory, Chandigarh.

Powers of Special Courts/Special Judges under different Acts have also been conferred on all Additional Sessions Judges or on the First Additional District and Sessions Judge in each Sessions Division/District.

Power of Judge, Special Court under Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been conferred on all the Sessions Judges and Additional Sessions Judges (except Fast Track Court Judges) in States of Punjab and Haryana and Union Territory, Chandigarh.

Power of Judge, Special Court under Section 11 (1) of the National Investigation Agency Act, 2008 has been conferred on senior most Additional Sessions Judge, Panchkula for the entire State of Haryana, on senior most

Additional Sessions Judge, Mohali for the entire State of Punjab and on senior most Additional Sessions Judge at Chandigarh for U.T. of Chandigarh.

Additional Chief Judicial Magistrate, Panchkula for the entire State of Haryana, Judicial Magistrate (Additional Civil Judge (Senior Division)), Patiala for the entire State of Punjab and Chief Judicial Magistrate, Chandigarh for the Union Territory, Chandigarh have also been conferred power as Special Judicial Magistrate, CBI Court, to try cases triable by Magistrate which have been investigated by Central Bureau of Investigation (CBI) under the Delhi Special Police Establishment Act, 1946.

Similar power to try Sessions triable cases which have been investigated by CBI has been conferred on an Additional Sessions Judge, Panchkula (by name) for the entire State of Haryana, on an Additional Sessions Judge, Patiala (by name) for the entire State of Punjab and on an Additional Sessions Judge, Chandigarh (by name) for Union Territory, Chandigarh, as Special Judge, CBI Court.

A member of Punjab Civil Service (Judicial Branch)/Haryana Civil Service (Judicial Branch) may be required to work as a Civil Judge or a Judicial Magistrate or both.

By issuing specific notifications, powers of Judicial Magistrate First Class under Section 11(3) of the Code and summary powers under Section 260 of the Code are also being conferred on newly appointed Judicial Magistrates on completion of one year training. During training period, they are invested with powers of Judicial Magistrate Second Class.

All these notifications are accessible at High Court website.

4. **Special Judicial Magistrates**

Under Section 13 of the Code, the High Court has framed rules for appointment of Special Judicial Magistrates for trial of petty offences by them. The said Rules are available at High Court website. However, presently there is no Special Judicial Magistrate working in the States of Punjab and Haryana and Union Territory, Chandigarh.

5. **Ex officio Additional District and Sessions Judges**

All District and Sessions Judges in the State of Punjab are ex officio Additional District and Sessions Judges for all other Civil Districts and Sessions Divisions in Punjab. In the State of Haryana, all District and Sessions Judges as well as Additional District and Sessions Judges are ex officio Additional District and Sessions Judges for all other Civil Districts and Sessions Divisions in Haryana.